

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 11.01.2017

+ **W.P.(C) 4411/2010**

ENKAY (INDIA) RUBBER COMPANY PVT. LTD..... Appellant

Through : Sh. B.B. Jain with Sh. Amitabh
Marwaha and Sh. Abhay Jain, Advocates.

versus

MCD AND ORS. Respondents

Through : Ms. Amita Gupta with Sh. Zahid Hanif,
Advocates.
Sh. Brajesh Kumar, Govt. Pleader.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioner challenges Section 169 (amended), Section 170 (b), Section 123 (B)(8) and Section 153 of the Delhi Municipal Corporation Act, 1957 (hereafter "the Act"); it also seeks directions to the effect that the remanded property tax proceedings are barred by limitation and further direction to quash the assessment order dated 11.05.2010 passed by the Jt. Assessor & Collector, Civil Line Zone, Delhi (hereafter "the assessing authority"). The other direction sought is for refund of ₹ 17,59,977/- deposited by it with interest at 18% p.a. from date of deposit.

2. The facts necessary to decide the case are that on 24.02.1984 a Perpetual Lease Deed in respect of B-3, SMA Co-operative Industrial Estate, G.T. Karnal Road, Delhi admeasuring 3044.23 sq.mtrs. was executed by Delhi Administration for a consideration of ₹ 42,780.58. The petitioner lessee sought building sanction which was granted on 12.01.1990. It states that the completion certificate after construction was applied for on 20.11.1991, which was granted on 18.08.1992. According to the valuer's report, the construction cost was ₹ 63,00,000/- as per the report of Shri M.L. Jain, registered valuer. However, the property lay vacant since inception till 1995. In these circumstances, on 30.03.1992, notice under Section 126 of the Act, proposing to introduce the said property for the first time in the assessment list at a proposed rateable value of ₹ 40,00,000/- per annum w.e.f. 01.04.1991 was issued, against which objections were filed on 04.05.1992. Close on the heels of this, on 15.03.1993 another notice under Section 126 proposing to determine the rateable value of the property at ₹ 39,52,800/- per annum w.e.f. 01.04.1991 was issued against which objections dated 12.04.1993 were filed on 13.04.1993. On 21.03.1995 after hearing, the assessing authority decided the proposal determining the rateable value at ₹12,60,120/p.a. w.e.f. 20.11.1991 & ₹11,90,110/- p.a. w.e.f. 01.04.1994. The petitioner appealed against the determination of rateable value, which was allowed on 15.01.1996 by the learned Additional District Judge, who remanded the issue for fresh determination. Whilst the matter was pending, the Act was amended in 2003. In the meanwhile the corporation's petition against the order of the appellate authority, under Article 227 of the Constitution, (CM Main No. 173/1998) was rejected on 02.02.2006.

3. After the remand, the assessing authority, by the impugned order, re-determined the rateable value, holding as follows:

"The building plan for const. of the building was sanctioned on 11.1.1990 and notice for completion of building was given by the tax payer on 20.11.1991 depicts that the tax payer admitted completion of the property as on 20.11.1991 and the same was fit for occupation on the said date, hence the date of granting completion certificate by the DDA does not matter for fixing the date of effect of assessment of built up property. It is pertinent to mention here that the Section 129 of DMC Act about date of completion and not date of granting completion certificate. In view of the dates of obtaining building plan sanction and date of giving notice of completion, the period of const. of the property is taken as January, 1990 to November, 1991. To work out the rateable value of the built up property under section 6(i) of DRC Act, land cost and cost of const. are taken into account.

Moreover, the property is reported in non-res. use, hence Section 2(1)(iii) of Bye-laws, 1994 (determination of rateable value) is applicable to the property in question which provides that the cost of premises shall be aggregate of the Mkt. Value of Land comprised in the premises on the date of commencement of const. and cost of construction of the property. As no sale instances are made available at the time of commencement of construction and no land rates had been published for the colony at the time of commencement of const., the land rates of nearby L&DO Colony are to be resorted to /relied upon for assessment of this property. The nearby colony of the SMA Industrial Estate, GT Karnal Road is Azadpur and L & DO rates for Azadpur for January, 1990 are Rs.8760/- per sqm. for commercial use.

In the circumstances of case, land rates for the above mentioned property at the time of commencement of construction i.e. January, 1990 (as mentioned above) are taken @ Rs.8760/- per sqm. for the first 500 sqm. of land and for the remaining plot are @ Rs.7446/- per sqm. (after giving rebate of

15% for the plot having area more than 500 sqm.), thus, the Mkt. Value of Land at the time of commencement of const. by adding the premium amount of ,Rs.42,780/- and after giving 50% unearned increase comes to Rs.1,16,83,670/-. Regarding cost of const. of the property, tax payer filed a valuation report estimating the same at Rs.62.96 lacs which seems to be on lower side. The cost index(based on CPWD Plinth Area Rates) at the time of commencement of const. i.e. January, 1990 is Rs. 506 and cost index at the time of completion of property i.e. November, 1991 is Rs.656/-.

Thus, the average cost index for the entire period of const. comes to Rs.581/- which gives const. cost for basement, ground floor and first floor @ Rs.274/- per sft., Rs.230/- per sft. And Rs.219/- per sft. respectively. The above const. rates for basement having height of 11 ft. and 9.5 sft. for ground floor and first floor. As the height of basement, ground floor (office), mez. Floor and first floor was shown in Valuation Report as 9.5 ft., 10 ft., 8 ft. and 10 ft. respectively. Whereas the working hall was reported having height of 20 ft. Therefore, the due adjustment of rates on account of height is made.

Consequently, the const. rates for basement, ground floor (office block), ground floor (working hall), mez. Floor and first floor are taken @ Rs.246/- per sft., Rs.233/- per sft., Rs.304/- per sft., Rs.209/- per sft. And Rs.222/- per sft. respectively. On the basis of the said const. rates (based on CPWD Plinth Area Rates), the cost of const. of the property comes to Rs.82,92,484/-. Thus, the agg. Cost of the property comes to Rs.1,99,76,154/-. The RV thereon @ 10 % after giving 100/0 st. rebate comes to Rs.17,97,850/- (non-res.) and the same is fixed w.e.f. 20.11.1991 i.e. date of completion.

As per the provisions of DMC Bye-laws, 1994, std. deduction is given @ 15 instead of 100/0 as earlier. Accordingly, RV of the property is fixed at Rs.16,98,070/-"

4. Mr. B.B. Jain, learned counsel for the petitioner, argues that since the assessing authority did not decide the remanded matter within three years

w.e.f. 15.01.1996, (the date on which the learned Additional District Judge, Delhi remanded the matter back for fresh adjudication in accordance with law) or within three years w.e.f. 02.02.2006, the date on which this court remanded the matter for fresh adjudication, the proposal to increase the rateable value and the demand has become barred by limitation and, therefore, the amount of ₹ 17,59,977/- and interest @18% p.a. w.e.f. the respective dates of deposit are payable. It is asserted that Section 126 of the unamended Act authorized the amendment of the assessment list, by way of determination of assessable value, within three years from the year in which the notice was issued. Since, in the present case, the appellate authority directed a remand in 1996, for which the corporation's petition was pending till 2006, in the absence of any stay, the three year period applied and the assessment was invalid.

5. Mr. Jain submits that this Court should entertain the present proceedings and declare Section 170(b) of the Act as arbitrary because the alternative remedy of an appeal is inefficacious and impracticable. Elaborating on this, it is argued that when the precondition for deposit of tax itself was introduced in the form of Section 170(b) and the said provision was eventually upheld by the Supreme Court in *Shyam Kishore & Ors. v Municipal Corporation of Delhi & Anr* 1993 (1) SCC 22, the legal framework for valuation and assessing premises was wholly different. It is submitted that at that point of time, the unamended Sections 124-127 provided for a different machinery under which rateable values were fixed after due enquiry, for a base year. Rateable value fixation then was preceded by notice and hearing. The said base year would then guide the determination of a rateable value adopted for subsequent years till revised

under Sections 126/127, again after following due procedure and affording proper opportunity. In such an event the Supreme Court had clarified, in *Shyam Kishore* (supra), that in the appeals concerning tax demands and assessments for multiple years, it was sufficient if the pre-deposit was made for the base year alone. But with the complete overhaul of the basis for assessment, i.e. with the introduction of the Unit Area Method, the “base year” concept no longer prevails. This automatically results in the entire tax burden being satisfied first as a precondition for the hearing of appeal. This in turn results in utter perversiveness and arbitrariness thus rendering the remedy of an appeal illusory inasmuch as the assessee is put to an impossible burden - as in the present case, of having to deposit the entire disputed tax amount, for the default in completing timely assessment, by the corporation.

6. Learned counsel for the Revenue urged that the Court should not exercise its discretion under Article 226. He submits that there is no limitation on the power of the Commissioner to determine afresh the rateable value in the present case, as is urged by the petitioner. It was argued that since appeal is a creature of statute and subject to its conditions, the petitioner cannot complain that though such relief is provided, the condition of having to deposit arrears is arbitrary. Counsel highlighted that since the original assessment order was within time the question of the later one, impugned in this petition, after the remand, being time barred, cannot arise.

7. Section 126 of the old Act, as it stood before the amendment in 2003, reads as follows:

"Section 126 Amendment of assessment list

(1) The Commissioner may, at any time, amend the assessment list

(a) by inserting therein the name of any person whose name ought to be inserted; or

(b) by inserting therein any land or building previously omitted; or

(c) by striking out the name of any person not liable for the payment of property taxes; or

(d) by increasing or reducing for adequate reasons the amount of any rateable value and of the assessment thereupon; or

(e) by making or cancelling any entry exempting any land or building from liability to any property tax; or

(f) by altering the assessment on the land or building which has been erroneously valued or assessed through fraud, mistake or accident; or

(g) by inserting or altering an entry in respect of any building erected, re-erected, altered or added to, after the preparation of the assessment list:

Provided that no person shall by reason of any such amendment become liable to pay any tax or increase of tax in respect of any period prior to the commencement of the year [in which the notice under sub-section (2) is given.

(2) Before making any amendment under sub-section (1) the Commissioner shall give to any person affected by the amendment, notice of not less than one month that he proposes to make the amendment and consider any objections which may be made by such person.

[(3) Notwithstanding anything contained in the proviso to sub-section (1) and sub-section (2), before making any amendment to the assessment list for the years, [commencing on the 1st day of April, 1988, the 1st day of April, 1989 and the 1st day of April, 1990 under sub-section (1), the Commissioner shall give to any person affected by the amendment, notice of not less than one month at any time before the 1st day of April, 1992], that

he proposes to make the amendment and consider any objections which may be made by such person.]

[(4) No amendment under sub-section (1) shall be made in the assessment list in relation to

(a) any year prior to the year commencing on the 1st day of April, 1988, after the 31st day of March, 1991;

(b) the year commencing on the 1st day of April, 1988 or any other year thereafter, after the expiry of three years from the end of the year in which the notice is given under sub-section (2) or sub-section (3), as the case may be:

Provided that nothing contained in this sub-section shall apply to a case where the Commissioner has to amend the assessment list in consequence of or to give effect to any direction or order of any court.

Explanation. In computing the period referred to in clause (a) or clause (b), any period or periods during which the proceedings for the assessment were held up on account of any stay or injunction by the order of any court, or the period of any delay attributable to the person to whom the notice has been given under sub-section (2) or sub sub-section (3), as the case may be, shall be excluded.]"

8. Section 126 (4) enacts a bar inasmuch as:

"No amendment under sub-section (1)" i.e amending the rateable value of any property in relation to "the year commencing on the 1st day of April, 1988 or any other year thereafter, after the expiry of three years from the end of the year in which the notice is given under sub-section (2) or sub-section (3), as the case may be". This means that where an assessment list by amendment of the rateable value is proposed to be finalized, a three year period has been provided from the end of the year in which the notice (proposing amendment) is given. The exception to this limitation rule is spelt out as "any period or periods during which the proceedings for the assessment were held up on account of any stay or injunction

by the order of any court, or the period of any delay attributable to the person to whom the notice has been given under sub-section (2) or sub sub-section (3), as the case may be, shall be excluded."

9. In the present case, the corporation does not say that a stay operated for any period or periods after the matter was remanded to the assessing authority in 1996. Indeed, the record shows that its petition under Article 227 was filed in 1998. The assessment was completed three years after the dismissal of that petition. Clearly, in these circumstances, the rateable value was finalized far beyond the permissible period. Even otherwise, the time taken (14 years) to finalize the rateable value was unreasonable.

10. In a previous decision where such open ended power was conferred upon a statutory authority, i.e. a sales tax authority in Punjab, the Supreme Court in *State of Punjab and Ors. v. Bhatinda District Co-op Milk P. Union Ltd.* 2007 (11) SCC 363 delineated the limitations to exercise of such power. In the context of Section 21 (dealing with revisional powers) which armed the Commissioner with untrammelled power to revise orders suo motu the Court held that the statutory grant cannot be given its full effect. The provision concerned was Section 21 of the Punjab General Sales Tax Act, 1948. The Court observed as follows:

"5. In respect of the assessment for the year ending 31.3.2000, the assessment proceedings were completed relying on the return filed by the appellant on 20.3.2001. Indisputably, in terms of Section 11 of the 1948 Act, a period of three years has been prescribed as a period of limitation as contained under sub-section (3) of Section 11 for completing assessment from the last date for filing of return. Sub-section (6) of Section 11 reads as under :

"If upon information which has come into his possession, the Assessing Authority is satisfied that any dealer has been liable to pay tax under this Act in respect of any period but has failed to apply for registration, the Assessing Authority shall, within five years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess to the best of his judgment, the amount of tax, if any, due from the dealer in respect of such period and all subsequent periods and in case where such dealer has willfully failed to apply for registration, the Assessing Authority may direct that the dealer shall pay by way of penalty, in addition to the amount so assessed, a sum not exceeding one and a half times that amount."

11. Section 21 of the said Act provides for revision. Section 21 of the Act with which we are concerned herein reads as under:

"21. Revision-(1) The Commissioner may of his own motion call for the record of any proceedings which are pending before, or have been disposed of by any authority subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such proceedings or order made therein and may pass such order in relation thereto as he may think fit.

(2) The State Government may by notification confer on any Officer the powers of the Commissioner under sub-section (1) to be exercised subject to such conditions and in respect of such areas as may be specified in the notification.

(3) A Tribunal, on application made to it against an order of the Commissioner under sub-section (1) within ninety days from the date of communication of the order, may call for and examine the record of any such case and pass such orders thereon as it thinks just and proper.

(4) No order shall be passed under this section which adversely affects any person unless such person has been given a reasonable opportunity of being heard."

12. The court held that such power, even though widely couched, has to be exercised within reasonable period:

“15. Sub-section (1) of Section 11 empowers the Commissioner to extend the period of three years for passing the order of assessment wherefor reasons are required to be recorded in writing subject, however, to the maximum period of five years. Ordinarily, therefore, a period of three years has been prescribed for completion of the assessment in terms of the provisions of the Act. We may also notice that in cases where an assessment order is to be reviewed, the same should be done within a period of one year.

16. A bare reading of Section 21 of the Act would reveal that although no period of limitation has been prescribed therefor, the same would not mean that the suo moto power can be exercised at any time.

17. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.

18. Revisional jurisdiction, in our opinion, should ordinarily be exercised within a period of three years having regard to the purport in terms of the said Act. In any event, the same should not exceed the period of five years. The view of the High Court, thus, cannot be said to be unreasonable. Reasonable period, keeping in view the discussions made hereinbefore, must be found out from the statutory scheme. As indicated hereinbefore, maximum period of limitation provided for in sub-section (6) of Section 11 of the Act is five years.”

The above decision was noticed and followed subsequently in Delhi Development Authority v. Ram Prakash AIR 2011 SC 1399.

13. For the above reasons, this court holds that the prolonged and inordinate delay in the finalization of the rateable value, in the present case, vitiated the assessment order. It is, therefore, unsustainable and, therefore, quashed. The respondents are directed to refund the amounts deposited, to the petitioner, in the circumstances, with interest @ 9 per cent per annum from date of deposit, till payment, which shall be within six months. The writ petition is allowed in these terms. No costs.

**S. RAVINDRA BHAT
(JUDGE)**

**NAJMI WAZIRI
(JUDGE)**

JANUARY 11, 2017