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

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Decided on 23.02.2021

+ **RSA 1/2021 & CM APPL. Nos.249/2021, 251-52/2021, 3950/2021**

SOUTH DELHI MUNICIPAL CORPORATIONAppellant
Through: Mr. Sanjeev Sagar with Ms. Nazia
Parveen, Advs.

versus

DR. CHANDER PRAKASH & ANR.Respondents
Through: Mr. Kuljeev Siddharth, Adv.

**CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER**

[Physical court hearing]

RAJIV SHAKDHER, J. (ORAL):

1. This is a second appeal preferred against the judgement and order dated 21.05.2020, passed by the learned Additional District Judge [in short "ADJ"].
2. *Via* the judgement and order dated 21.05.2020, the learned ADJ partially reversed the order dated 31.07.2018, passed by the trial court.
3. The broad facts which are required to be noticed in this case are as follows:
 - 3.1 The respondents before me are the original plaintiffs in the matter. The respondents filed a suit impugning the assessment order passed by the appellant/defendant dated 09.09.2003.
 - 3.2 There were other reliefs also claimed in the suit. However, essentially,

the grievance veered around two grounds insofar as the assessment order was concerned: first, that the appellant/defendant had applied the “purchase price” formula in fixing the rateable value, and second, that the aforementioned assessment order was issued without a mandatory notice being served as was the requirement under Section 126(2) of the Delhi Municipal Corporation Act, 1957 [hereafter referred to as "1957 Act"]. In effect, the respondents/plaintiffs asserted that the principles of natural justice had not been followed.

3.3 It is relevant to note that the subject property *qua* which the assessment order was issued was purchased by the respondents/plaintiffs *vide* registered deed dated 31.07.2002 and at that point in time, property tax amounting to Rs. 3,136/- for the Assessment Years 2002-2003 and 2003-2004 was paid by the then owner, one, Shri Anil Kumar Marwah. The receipts in respect of the same dated 29.07.2002 and 01.08.2003 were generated; an aspect which is not disputed by Mr. Sanjeev Sagar, who appears for the appellant/defendant.

3.4 Furthermore, it is also not disputed by Mr. Sagar, and something which emerges from the record as well is that the respondents/plaintiffs paid the property tax on the subject property up-until 2010. However, the respondents/plaintiffs sold the subject property further to Mr. Sahil Bhandari and his wife, Mrs. Aysha Malhotra. A registered sale deed, in that behalf, was executed between them on 22.06.2010. It is at this point that it came to light that against the subject property, there were arrears of property tax amounting to Rs. 22,745/- plus interest concerning Assessment Year 2003-2004. Because Mr. Sahil Bhandari and Mrs. Aysha Malhotra were interested in having subject property mutated in their name, the outstanding demand,

which is the subject matter of the assessment order dated 09.09.2003 became an impediment.

4. The respondents/plaintiffs made their first endeavour to correct the wrong by filing a suit, albeit in 2012. This suit was, however, withdrawn with liberty to file a fresh suit. The order in that regard was passed on 21.02.2012. Thereafter, in consonance with the liberty given to the respondents/plaintiffs, the instant suit for permanent and mandatory injunction was filed which, unfortunately for them, was also dismissed.

5. It may be relevant to note at this stage that the trial court had framed two issues in the suit. These being:

“(i) Whether the assessment by MCD in accordance with 1994 bye-laws applying the purchase price method in [the] assessment order dated 09.09.2003 is legal?”

“(ii) Whether plaintiffs are entitled to refund from MCD for any excess tax charged & paid?”

6. As indicated above, the trial court, while dismissing the suit, ruled against the respondents/plaintiffs in respect of both issues.

7. It is against this dismissal that the respondents/plaintiffs filed an appeal before the ADJ.

8. Insofar as the first issue is concerned, the learned ADJ ruled in favour of the appellant/defendant.

9. As regards the second issue, learned ADJ ruled in favour of the respondents/plaintiffs.

10. A perusal of the order of the learned ADJ would show that the finding on issue no. (ii) i.e. concerning the refund was pivoted on the reasoning given in paragraphs 26 and 28 of the impugned judgement dated 21.05.2020.

In short, the learned ADJ returned a finding of fact that there had been non-compliance of the provisions of Section 126(2) of the 1957 Act, which required the Commissioner to give the affected person, notice before making any amendment to the assessment list.

11. The learned ADJ found that no notice had been given to the respondents/plaintiffs. For the sake of convenience, the relevant paragraphs are extracted hereafter:

“26. Para seven of the plaint disputing [the] legality of [the] assessment order on the ground that it was passed without mandatory notice to plaintiffs has not been controverted as defendants' right to file written statement was closed. Moreover, it is pertinent to note that attested copy of letter No.Tax/SZ/2011/176 dated 09.08.2011 mentioning notice under Section 126 DMC Act dated 26.03.2002 has been filed on record by PW-2 Shri Ramesh Kumar, Head Clerk, MCD, R.K. Puram, New Delhi and referred as Ex.PW-2/4 but neither office copy of purported notice nor any suggestion about service of notice under Section 126 of DMC Act was put to plaintiff Dr. Chandra Prakash (PW-1) for impeaching his testimony with respect to mandatory notice during his cross-examination recorded on 28.02.2017 and 02.05.2017.

27. Section 126 of DMC Act which has been revealed w.e.f. 01.08.2003 is extracted herein under for better appreciation of the point in issue:

“126. Amendment of assessment list. – (1) The Commissioner may, at any time, amend the assessment list –

(a).....

(b).....

(c).....

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

(e).....

(f).....

(g).....

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 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.

28. Since mandatory notice under Section 126(2) of DMC Act, 1957 was not given to plaintiffs by Commissioner, MCD so Assessment Order dated 09.09.2003 pursuant to [an] amendment of assessment list for enhancing the rateable value and assessment thereupon for the year 2002-2003 is invalid and unenforceable.”

12. Mr. Sagar, who appears for the appellant/defendant, assailed the order of the learned ADJ on the following grounds:

(i) First, that the respondents/plaintiffs had already deposited Rs. 22,745/- with the appellant/defendant by taking advantage of the Special Settlement Scheme 2011-12 [Amnesty Scheme] and therefore the first should have been disposed of on that basis.

(ii) Second, that the suit instituted to assail the assessment order was not maintainable given the statutory remedy available under Section 169 of the 1957 Act.

(ii)(a) In support of this plea, Mr. Sagar has relied upon the judgment of the Supreme Court in ***South Delhi Municipal Corporation and Anr. vs. Today Homes and Infrastructure Private Limited and***

Others, (2020) 12 SCC 680.

13. I have heard Mr. Sagar at some length.

14. Insofar as the first point is concerned, a perusal of the respondents/plaintiffs' letter dated 22.02.2012 would show that Rs. 22,745/- was deposited by the respondents/plaintiffs herein under "protest" and subject to the outcome in the suit. Therefore, Mr. Sagar's argument that because the respondents/plaintiffs had taken advantage of the Amnesty Scheme and thus, the first appellate court could not have directed refund is not sustainable.

15. Insofar as the second issue is concerned, in my view, the same is also not sustainable.

16. A perusal of paragraph 7 of the plaint would show that it has been averred explicitly that no notice was served on the respondents/plaintiffs and that principles of natural justice were not followed. The issuance of notice to the transferee by the Commissioner under Section 126 of the 1957 Act before amending the assessment list is mandatory- something which is apparent on a plain reading of the provision.

17. Therefore, issue number (ii) framed by the trial court, which related to whether or not refund should be ordered in favour of respondents/plaintiffs was pivoted, amongst other facets, on the determination of the underlying issue as to whether or not notice had been issued to the respondents/plaintiffs. That this aspect was squarely in issue is evident on reading the pleadings and the testimony on record. [See: *Nedunuri Kameswaramma vs. Sampati Subba Rao*¹, (1963) 2 SCR 208]

¹ 5. "... No doubt, no issue was framed, and the one, which was framed, could have been more elaborate; but since the parties went to trial fully knowing the rival case and

17.1 Once the first appellate court reached a finding of fact *qua* this aspect, then, in my view, it cannot be argued that the suit was not maintainable as there was a breach of principles of natural justice i.e. fundamental procedure of law.

18. As a matter of fact, the judgment relied upon by Mr. Sagar makes two exceptions as to when a civil suit would lie when the statutory remedy is provided: First when there is a failure to comply with the provisions of the concerned Act. Second, where, the concerned statutory authority has not acted in conformity with the fundamental principles of judicial procedure.

19. A careful reading of paragraph 17 of the ***South Delhi Municipal Corporation*** (*supra*) case alludes to this very aspect. For the sake of convenience, the relevant observations are extracted hereafter:

“17. We have examined the plaint filed by the Respondents carefully. We do not see any allegation made regarding the violation of any provisions of the statute. There is also no pleading with regard to non-compliance with any fundamental provisions of the statute. It is settled law that jurisdiction of the civil courts cannot be completely taken away in spite of either an express or implied bar. The civil courts shall have jurisdiction to examine a matter in which there is an allegation of non-compliance of the provisions of the statute or any of the fundamental principles of judicial procedure. A plain reading of the plaint would suggest that the order impugned in the suit is at the most an erroneous order. No jurisdictional error is pleaded in the plaint. Therefore, the question of maintainability

led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mistrial which vitiates proceedings. We are, therefore, of opinion that the suit could not be dismissed on this narrow ground, and also that there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion. Neither party claimed before us that it had any further evidence to offer. We, therefore, proceed to consider the central point in the case, to which we have amply referred already.”

of the suit does not arise. In the absence of any pleadings in the plaint, the High Court ought not to have remanded the matter back to the learned Single Judge.”

20. Thus, having regard to the foregoing discussion, I find no merit in the appeal. The appeal does not raise any substantial question of law and, hence, can be disposed of at this stage itself. [See: **Kirpa Ram vs. Surendra Deo Gaur**, 2020 SCC OnLine SC 935].

21. The appeal is, accordingly, dismissed.

22. Consequently, all pending applications shall stand closed.

RAJIV SHAKDHER, J.

FEBRUARY 23, 2021

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[Click here to check the corrigendum, if any](#)