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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **W.P. (C) 184/2022 & CM APPL. 518/2022**

Between: -

SHUBHA BHATTACHARYA

B-6/43, GROUND FLOOR,
SAFDURJUNG ENCLAVE, NEW DELHI – 29

.....PETITIONER NO.1

AKLAVYA ANAND

B-6/43, GROUND FLOOR,
SAFDURJUNG ENCLAVE, NEW DELHI – 29

.....PETITIONER NO.2

(Through: Gaurav Jain, Advocate)

AND

SOUTH DELHI MUNICIPAL CORPORATION

THROUGH ITS, COMMISSIONER

DR. S.P.M. CIVIC CENTRE,
MINTO ROAD, NEW DELHI – 02

.....RESPONDENT

*(Through: Mr. Tushar Sannu, SC for MCD
with Mr. Sobhan Sachdeva, Adv.)*

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Reserved on: 09.07.2024

Pronounced on: 06.08.2024

J U D G M E N T

The petitioners have preferred this petition under Article 226 of the Constitution of India against the South Delhi Municipal Corporation (SDMC), New Delhi (hereinafter 'Respondent') for setting aside the impugned letter dated 24.08.2021, demanding property tax difference/shortfall of Rs.1,02,506/- accrued over 17 years from 2004-05 till 2020-21. Further, the petitioners have also prayed for a no dues certificate and restoration of their names as owners of the subject property in their property tax assessment record.

2. The facts of the petition exhibit that the petitioners bought a property bearing Flat no. B-6/43/1, Category MIG, Safdurjung Enclave, New Delhi – 110029 measuring 93 Sq. mts. *vide* registered sale deed dated 07.06.2019 executed in their favour by the joint owners namely, Dr. Sanjay Agarwal and Dr. Priti Agarwal (hereinafter 'previous owners'). It is pertinent to note that the previous owners had purchased this property from Mr. P. Subramaniam *vide* a registered sale deed dated 10.06.2005. The property tax challan showed zero previous arrears when the petitioners paid the property tax for the first time in the year 2019-20. When petitioners made a request for mutation, they received the impugned letter dated 24.08.2021, demanding clearance of payment of property tax arrears w.e.f. 2004-05 to 2020-21 amounting to Rs.1,02,506/-. The arrears arose because of the shortage in payment of property tax owing to inaccurate calculation of the covered area.

3. Mr. Gaurav Jain, learned counsel for the petitioners, submitted

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that the demand to pay the property tax arrears is

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unlawful as the petitioners became the owner of the subject property only in the year 2019 and there arises no liability on them to pay the arrears of past 17 years. He submits the following reasons to discharge the liability of the petitioners:-

- i. The demand of the property tax dues by the respondent of 15 years is unreasonable as the ownership of the said property has changed hands twice during this period. The shortage in payment of the property tax has occurred long before the petitioners assumed ownership. Thus, the petitioners are only liable to pay the property tax including shortage/difference, if any, from the year 2019 onwards, when they became the owners.
- ii. The tax regime changed from rateable value system to unit area system in the year 2004, wherein, the property owners have to file property tax on self-assessment basis. The petitioners state that the previous owners have been paying the property tax calculated for an area of 56.43 sq. mts. out of the total 93 sq. mts. According to him, due to the said reason, the alleged property tax/shortfall occurred during these years.
- iii. The petitioners made all the efforts to ensure that the property was free from all encumbrances before buying the property. The property records manifested no arrears or dues on the property and they were not aware about the fact that the property tax being paid was lesser than what was due to be paid.
- iv. Further, the respondent did not send any notice to the petitioners as required under Section 123C of the Delhi Municipal Corporation Act, 1957 (hereinafter 'DMC Act').
- v. The petitioners further contend that as per Section 100 of the Transfer of Property Act, 1882 (hereinafter 'Act of 1882').

arises no charge against the property to be enforced on the transferee without notice of the charge.

vi. Lastly, the respondent is barred by the Limitation Act, 1963. Since the limitation period is 3 years, the same bars the respondent from demanding the payment of property tax which became due on or before 30.03.2018.

4. Learned counsel for the petitioners placed reliance on the decision in the case of ***The Ahmedabad Municipal Corporation of the City of Ahmedabad v. Haji Abdulgafur Haji Hussenhai***¹ in support of his contentions. The relevant paragraph relied upon by the petitioners has been extracted below:-

“According to the submission it is not necessary for the saving provision to expressly provide for the enforceability of the charge against the property in the hands of a transferee for consideration without notice of the charge. This submission is unacceptable because, as already observed, what is enacted in the second half of Section 100 of Transfer of Property Act is the general prohibition that no charge shall be enforced against any property in the hands of a transferee for consideration without notice of the charge and the exception to this general rule must be expressly provided by law. The real core of the saving provision of law must be not mere enforceability of the charge against the property charged but enforceability of the charge against the said property in the hands of a transferee for consideration without notice of the charge.”

5. Mr. Tushar Sannu, learned counsel appearing on behalf of the respondent, vehemently opposed the aforementioned submissions and contended as under:-

(i) The relief that the petitioners have prayed for in the present writ petition has already been granted by this Court *vide* order dated 19.01.2022, wherein, the petitioners agreed to have availed the then ongoing amnesty scheme and submitted the amount due with the respondent. The petitioners had deposited

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¹ (1971) 1 SCC 757

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a sum of Rs. 52,460/- which had an excess deposit of Rs. 27,806/- for which the respondent had agreed to adjust the excess amount against their property tax liabilities.

(ii) In addition to the abovementioned relief, the respondent has also carried out the mutation of the property in the name of the petitioners.

(iii) The only grievance of the petitioners is that it was the duty of the previous owners to pay the dues and this duty cannot be casted upon them.

6. Learned counsel has relied upon the decisions rendered by this Court in the cases of *MCD v. Trigon Investment and Trading Pvt. Ltd.*² and *Macdowell & Co. Ltd. v. Municipal Corporation of Delhi*³.

7. I have heard the learned counsel appearing on behalf of the parties and perused the record.

8. The brief issues which stand posited before the Court for determination are delineated forthwith as:-

(I) Whether the petitioners are liable to pay the property tax arrears starting from the year 2004-05 till 2019-20?

(II) Whether the demand for the property tax dues by the respondent is time barred under the provision of Section 455 of the DMC Act?

9. It is discernible from the facts of the instant case that the petitioners became the owners of the said property in the year 2019 and the impugned demand letter of the property tax arrears is starting from 2004-05. Undeniably, out of 17 years of shortfall in property tax payments, the petitioners were not the owners for around 15 years. This fact, however, does not discharge them from the liability of

paying the dues because the respondent is under no obligation to send notice under Section 123 of the DMC Act to the transferee. The prejudice to the petitioner, if any, has been caused by the act of the transferor and not by that of the respondent. The respondent has proceeded well within its rights to raise the demand. Rather, it is a contentious issue which ought to have been clarified amongst the previous owners and the petitioners. The respondent cannot be called to be at fault in such instances.

10. It is a settled position of law that property tax is regarded as first charge under Section 123 of the DMC Act. This position strikes against the argument of the petitioners that in terms of Section 100 of the Act of 1882, a charge cannot be imposed against the property in hands of the transferee without notice.

11. The position of law is fortified by the decision of this Court in the case of *Trigon Investment and Trading Pvt. Ltd.*(supra), wherein, it has been held as under:-

“Any notices required to be issued by the Corporation can be validly issued to the transferor until he intimates the Corporation of the transfer and it would be valid and sufficient service in law; the transferee cannot contend that since he has not been served with the relevant notice, the assessment made or any other action taken is bad in law. If he takes a transfer from a particular person, it is his duty to ensure that the transferor sends the intimation contemplated by section 128(1) and his(transferee’s) name is recorded as the owner or as the person primarily liable, the Municipality cannot be found to be at fault with for not sending relevant notices to the transferee. The substantive liability of the ‘owner’ to pay taxes cannot be defeated by the non-intimation under section 128 of DMC Act or by failure of the transferee to have his name entered in the municipal records.”

(emphasis supplied)

12. As regards to the second issue i.e., whether the demand for the property tax dues by the respondent is barred by time under the provisions of Section 455 of DMC Act, it may be suffice to note that

the property tax constitutes the first charge on a property as per the DMC Act, as already noted above.

13. Section 455 of the DMC Act does not provide protection of limitation period in such claims as taxes *per se* are excluded from the categories listed in the particular Section. This position is reiterated in ***Lakhmi Chand v. Municipal Corporation of Delhi***⁴, wherein, it was held that Section 123 of the DMC Act makes it clear that property tax is the first charge on the premises on which they are levied. Similar position is reiterated in the case of ***Municipal Corporation of Delhi v. Palace Cinema***⁵, wherein, recovery of taxes which can be imposed by the respondent under Section 113 of the DMC Act, was held to be not covered by Section 455 of the DMC Act and therefore, the proviso fixing a period of three years for recovery cannot be called in aid.

14. The exposition of law with regard to the property tax being first charge on a property could be examined through a catena of judicial pronouncements over the passage of time. In the case of ***Mt. Badrunnissa and Ors. v. Municipal Board, Agra***⁶, similar provisions in the U.P Municipality Act, 1916 were considered, and it was held that arrears of house-tax, a charge on immovable property, are covered by Section 132 of the erstwhile Limitation Act, which provided for the limitation period of 12 years and not 3 years.

15. Further, in the case of ***Shidrao Narayanrao Gumaste Patil v. Municipality of Athni***⁷, the Bombay High Court held that arrears of house-tax being the first charge on immovable property are governed

⁴ (1988) 173 ITR 202

⁵ ILR (1972) 1 Delhi 163

⁶ AIR 1939 Allahabad 510

⁷ AIR 1943 Bombay 21

by Section 132 of the erstwhile Limitation Act, now corresponding to Section 62 of the Limitation Act, 1963.

16. In the case of ***Municipal Committee v. Jaswant Rai and Ors.***⁸, the Court held that when the arrears become a charge on the property, the limitation gets enlarged and the recovery could be made within twelve years.

17. The issue of period of limitation for creating a charge to recover property tax under the Delhi Municipal Corporation Act, 1957 was also dealt with in the case of ***Lucky Star Estate (India) Pvt. Ltd. v. Municipal Corporation of Delhi***⁹, wherein, it was held as under:-

“The limitation to enforce payment of arrears is 12 years in the view of the judgment in Lakhmi Chand v. Municipal Corporation of Delhi. According to Section 123 of the Act, house tax is the first charge on the premises where it is levied.”

18. It becomes significant to note the consistent position of law, as is evident from the judicial decisions hereinabove, which holds property tax to be the first charge on a property and the liability to discharge such tax thus, falls upon the person in ownership of the premises. It appears to be the settled position of law from a long time and around all jurisdictions. Therefore, we see no reason to interfere with the same.

19. It is also relevant to note that in the instant case, the petitioners have already availed the amnesty scheme and have deposited an excess amount to what was due with the respondent. The respondent has already submitted that the excess amount shall be refunded to the petitioners by way of deductions in their future assessments. Thus, at this stage, the said issue is not required to be dealt with in a greater detail.

20. In view of the above settled position of law and upon examination of the arguments put forth by the leaned counsel for the parties, the Court is of the opinion that the exposition of law with regards to the issue at hand is unambiguous, unequivocal and widely accepted. Thus, no interference is warranted.

21. Accordingly, the writ petition is dismissed. Pending application(s), if any, are also disposed of.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

AUGUST 06, 2024/P