Mother Dairy Fruit And Vegetable Pvt Ltd vs East Delhi Municipal Corporation on 22 May, 2020

Author: Najmi Waziri

Bench: Najmi Waziri

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P. (C) 3240/2020 & CM APPL. 11289/2020

MOTHER DAIRY FRUIT AND VEGETABLE PVT LTD

.....Petitioner

Through: Mr. Sanjay Jain, Senior Advocate with Mr. Atul Batra and Mr. Kundan Mishra, Advocates.

versus

EAST DELHI MUNICIPAL CORPORATION Respondent

Through: Ms. Mini Pushkarna, SC for EDMC with Mr. Harish K. Khinchi, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI ORDER

% 22.05.2020 CM. APPL. 11290-91/2020 (for exemption)

- 1. Allowed, subject to all just exceptions.
- 2. The applications stand disposed-off.

W.P. (C) 3240/2020 & CM APPL. 11289/2020

- 3. The hearing was conducted through video conferencing.
- 4. The petitioner is aggrieved by property tax assessment order dated 19.03.2020 and a bill of the same date, calling upon the petitioner to pay an amount of Rs.66,76,51,268/- and by a Warrant of Distress dated 19.05.2020 bearing no. TAX/HQ/A&C/EDMC/2020/D-33. The impugned order is premised on the petitioner's alleged user and some constructions on the land in its possession. According to the petitioner the impugned assessment, seeks to revise property tax for the past 16 years, starting from the year 2004, although the petitioner has all along been duly assessed for property tax and has paid the same, under two separate assessments heads (i) for residential use and
- (ii) for industrial use i.e. for milk processing plant and ice-cream plant.

5. Mr. Sanjay Jain, the learned Senior Advocate for the petitioner, submits that the order is erroneous on that ground that, inter alia, it falters in the procedure as prescribed in the statute, in particular sections 154, 155 and 156 of the Delhi Municipal Corporation Act, 1957, which read as under:

"...

- 154. Notice of demand and notice-fee.--(1) If the amount of the tax for which a bill has been presented under section 153, is not paid within fifteen days from the presentation thereof, or if the tax on vehicles and animals or the theatre-tax or the tax on advertisements is not paid after it has become due, the Commissioner may cause to be served upon the person liable for the payment of the same a notice of demand in the form set forth in the Seventh Schedule.
- (2) For every notice of demand which the Commissioner causes to be served on any person under this section, a fee of such amount not exceeding five rupees as may be determined by bye-laws made in this behalf, shall be payable by the said person and shall be included in this cost of recovery.
- 155. Penalty in case of default of payment of taxes.--(1) If the person liable for the payment of any tax does not, within thirty days of the service of the notice of demand under section 154, pay the sum due and if no appeal is preferred against such tax, he shall be deemed to be in default.
- (2) When the person liable for the payment of any tax is deemed to be in default under sub-section (1), such sum not exceeding twenty per cent, of the amount of the tax as may be determined by the Commissioner may be recovered from him by way of penalty, in addition to the amount of the tax and the notice fee, payable under sub-section (2) of section 154.
- (3) The amount due as penalty under sub-section (2) shall be recoverable as an arrear of tax under this Act.
- 156. Recovery of tax.--(1) If the person liable for the payment of the tax does not, within thirty days from the service of the notice of demand, pay the amount due, such sum together with all costs and the penalty provided for in section 155, may be recovered under a warrant, issued in the form set forth in the Eighth Schedule, by distress and sale of the movable property or the attachment and sale of the immovable property, of the defaulter:

Provided that the Commissioner shall not recovery any sum the liability for which has been remitted on appeal under the provisions of this Act.

(2) Every warrant issued under this section shall be signed by the Commissioner.

....."

- 6. What is to be seen from the above is that the Municipal Corporation is required to first issue a notice of demand before any recovery proceedings can be initiated. In the present case, no notice of demand was issued subsequent to the bill, so as to result in the Warrant of Distress (recovery proceedings).
- 7. Furthermore, Mr. Jain submits that because of the unprecedented nationwide lockdown declared by the Government of India on 24.03.2020 due to the global pandemic, things have come to a virtual standstill and the petitioner cannot initiate measures to challenge the said demand/bill as per law. He submits that in any case, the period of limitation of 30 days, as provided in section 156, stands extended by virtue of the order of the Supreme Court in W.P. (C) 3/2020 dated 23.03.2020 till the period of lockdown. The lockdown continues even today. In effect, the recovery proceedings purportedly through the Warrant of Distress could not have been issued, pending the petitioner's appeal or other remedial measures being initiated within the period of lockdown extended period of limitation.
- 8. In view of the above, the Warrant of Distress is ex facie premature and needs to be stayed. It is so ordered.
- 9. Issue notice.
- 10. The learned Standing Counsel named above accepts notice on behalf of the respondent.
- 11. Reply be filed within four weeks. Rejoinder, if any, be filed before the next date.
- 12. List on 16.09.2020.
- 13. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsel through email.

NAJMI WAZIRI, J MAY 22, 2020/AB