Stc Developers Private Ltd vs East Delhi Municpal Corporation on 18 February, 2019

Author: Vibhu Bakhru

Bench: Vibhu Bakhru

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 1987/2016

STC DEVELOPERS PRIVATE LTD Petitioner

Through: Ms Madhumita Bhattacharjee with

Mr Sandeep, Advocates.

versus

EAST DELHI MUNICPAL CORPORATION Respondent

Through: Ms Mini Pushkarna, Standing Counsel, EDMC with Ms Swagata Bhuyan and Ms Ishita Pandey,

Advocates for EDMC.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% 18.02.2019

1. Allowed, subject to all just exceptions.

W.P.(C) 1987/2016 & CM No. 8559/2016

- 2. The petitioner has filed the present petition, inter alia, praying as under:-
 - "a) issue a writ of mandamus or any other appropriate writ, order or direction quashing and setting aside the order dated 17.2.2016 bearing no.TAX(HQ)/EDMC/A&C/2015-16/ D-295 passed by the Assessor and Collector, East Delhi Municipal Corporation being illegal and arbitrary
 - b) Issue a writ of mandamus or any other appropriate writ order or direction declaring the consequential Computation Of Property Tax Bill towards property tax of basement of Cross River Mall, Plot No. 9B & 9C, CBD Sharadara, New Delhi dated 18.2.2018 assessing an amount of Rs.2,80,14,546/- (Rupees Two Crore Eighty Lakhs Fourteen Thousand Five Hundred Forty Six only) towards Property Tax as erroneous and inherently illegal and against the policy;

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c) Issue a further writ of mandamus or any other appropriate writ order or direction directing the respondent to refund the amount of Rs. 1,05,22,265/-

(One Crore Five Lakhs Twenty Two Thousand Two Hundred Sixty Five Only) alongwith interest @18% from the date of deposit till the date when the actual payment is made, as a consequential relief."

- 2. The controversy in the present petition relates to an assessment of property tax in relation to the basement of Cross River Mall located at Plot No. 9B & 9C, CBD Sharadara, New Delhi. It is pointed out in the counter affidavit that the petitioner has an efficacious remedy by way of an appeal under Section 169 of the Delhi Municipal Corporation Act, 1957.
- 3. The learned counsel appearing for the petitioner submits that notwithstanding the said remedy, the petitioner is entitled to maintain the present petition as the assessment order is illegal and contrary to the provisions of the law. She also submits there are several cases wherein this Court has held that existence of an alternative remedy would not bar the jurisdiction of this Court to entertain the petition under Article 226 of the Constitution of India. She also states that the remedy by way of an appeal to the Municipal Taxation Tribunal is not efficacious, since the petitioner may be called to make a pre deposit of tax.
- 4. None of the aforesaid contentions as advanced by the petitioner are persuasive. Whilst, it is correct that the jurisdiction of this Court is not barred on account of an existence alternative remedy, however, the principles evolved for exercising such jurisdiction clearly entail that in cases where an alternative remedy is available, this Court should refrain from exercising its jurisdiction.
- 5. The contention that since the petitioner is required to make a pre-deposit, the same renders the remedy of an appeal inefficacious, is also difficult to accept. The requirement for pre-deposit is a statutory requirement, and it is well settled that recourse to proceeding under Article 226 of the Constitution of India is not available to overcome statutory provisions.
- 6. The learned counsel appearing for the petitioner also submits that the petitioner has amended the writ petition to seek refund of the amount already deposited, and the same relief would not be available before the Municipal Taxation Tribunal. This contention is also unmerited, as it is not disputed that if the petitioner prevails in its contention before the Tribunal, the consequential relief will follow.
- 7. In view of the above, the present petition is disposed of by leaving it open for the petitioner to avail of alternative remedy by filing an appeal before the Municipal Taxation Tribunal.
- 8. It is seen that the present petition has been pending before this Court for almost three years. In the circumstances, this Court considers it apposite to direct that if the appeal is filed within a period of thirty days from today, the same would be considered uninfluenced by the issue of delay.

- 9. It is further clarified that it will be open for the petitioner to move an appropriate application for seeking waiver of the condition for pre-deposit, if otherwise available in law. Needless to state that if such an application is made the Tribunal shall consider the same in accordance with law.
- 10. It is also clarified that all contentions of the parties are reserved.
- 11. The pending application is disposed of.

VIBHU BAKHRU, J FEBRUARY 18, 2019 MK