

(1973) 05 DEL CK 0003

In the Delhi High Court

Case No : Civil Writ Appeal No's. 563-D and 564-D of 1965

Bansi Dhak

APPELLANT

Vs

The New Delhi Municipal Committee

RESPONDENT

Date of Decision : 25-05-1973

Acts Referred:

Citation : (1974) 10 DLT 176

Hon'ble Judges : R.N. Aggarwal, J

Bench : Single Bench

Advocate : Ravinder Sethi and P.D. Bhargava, for the Appellant;

Judgement

R.N. Aggarwal, J.

(1) These two writ petitions No. 563-D and 564-D of 1965 have been placed before us on a reference made by our brother Mr. Justice P. N. Khanna. The said two petitions involve the construction of the first proviso to clause (e) of sub-section (1) of section 3 of the Punjab Municipal Act (hereinafter called the "Act"). Section 3 (1) of the Act read as :

"3. In this Act, unless there is something repugnant in the subject or context,- (1) annual value" means- (a) in the case of land, the gross annual rent at which it may reasonably be expected to let from year to year : Provided that, in the case of land assessed to land-revenue or of which the land-revenue has been wholly or in part released, compounded for, redeemed or assigned, the annual value, shall if the State Government so direct, be deemed to be double the aggregate of the following amounts, namely :- (i) the amount of the land-revenue for the time being assessed on the land, whether such assessment is livable or not ; or when the land-revenue has been wholly or in part compounded for or redeemed, the amount which, but for such composition or redemption, would have been livable ; and (ii) When the improvement of the land due to canal irrigation has been excluded from account in assessing the land-revenue, the amount of owner's rate or water advantage rate, or other rate imposed in respect of such

improvement : (b) in the case of any house or building, the gross annual rent at which such house or building, together with its appurtenances and any furniture that may be let for use or enjoyment therewith, may reasonably be expected to let from year to year, subject to the following deductions:- (i) such deduction not exceeding 20 per cent of the gross annual rent as the committee in each particular case may consider a reasonable allowance on account of the furniture let therewith; (ii) a deduction of 10 per cent for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross annual rent. The deduction under this sub clause shall be calculated on the balance of the gross annual rent after the deduction (if any) under sub-clause (i) ; (iii) where land is let with a building, such deduction, not exceeding 20 per cent of the gross annual rent, as the committee in each particular case may consider reasonable on account of the actual expenditure, if any annually incurred by the owner on the upkeep of the land in a state to command such gross annual rent ; Explanation I-For the purposes of this clause it is immaterial whether the house or building, and the furniture and the land let for use or enjoyment therewith, are let by the same contract or by different contracts, and if by different contracts, whether such contracts are made simultaneously or at different times. Explanation II.-The terms "gross annual rent" shall not include any tax payable by the owner in respect of which the owner and tenant have agreed that it shall be paid by the tenant. (e) in the case of any house or building, the gross annual rent of which cannot be determined under clause (b), 5 per cent. on the sum obtained by adding the estimated present cost of erecting the building, less such amount as the committee, may deem reasonable to be deducted on account of depreciation (if any) to the estimated market value of the site and any land attached to the house building : Provided that- (i) in the calculation of the annual owner under such exceptional circumstances as to render a valuation at 5 per cent. on the cost of erecting the building, less depreciation, excessive, a lower percentage may be taken."

The question that arises for decision is whether the first proviso after clause (e) of sub-section (1) governs the entire sub-section (1) or it is a proviso only to clause (e).

(2) The circumstances in which the said provision has come up for interpretation are these. Premises described as 16/48 Chanakyapuri, New Delhi, bearing municipal No. V. P/B-229 was owned by Shri Shri Dhar. In 1964 Shri Shri Dhar transferred the said premises to his brother Shri Banshi Dhar. The said building was completed in the year 1961 and it was let out to the Resident Representative for Arab League in India at a monthly rent of Rs. 280C.00. By a separate agreement dated 5th March, 1961, the tenant was allowed the use of following machines and appliances at a monthly hire charges of Rs. 700.00 :

1. Two central airconditioning units of 5 tons each. 2. Six electric water boilers. 3. Ten ceiling and pedestal fans. 4. One telephone. 5. One lawn mower.

The municipal committee in fixing the annual value of the building for the year

charges for the proposed to include the hire charges for the aforesaid machines and appliances as part of the rental value and proposed to assess the rateable value of the building at Rs. 41.250.00 per annum subject to a deduction of 10 per cent. on account of repairs. Before the assessing authority it was contended on behalf of the landlord that the hire charges for providing the aforesaid machines and appliances could not be taken into account in fixing the annual value. Reliance was placed before the assessing authority on the first proviso to clause (e) and it was contended that while calculating the annual value of any premises the machinery thereon could not be taken into account. This contention of the landlord was rejected by Shri S. C. Vaish Addl. District Magistrate, who was of the view that the first proviso to clause (e) was only applicable to clause (e) and it did not govern the other parts of sub-section (1). Against the order of Shri Vaish, the landlord has come in petition under Article 226 of the Constitution of India to this Court. C.W.563-D of 1965 relates to the assessment for the year 1965-66 and C.W. 564-D of 1965 relates to the assessment for the years 1961-62, 1962-63 and 1954-65. The two petitions came up for hearing before Mr. Justice P. N. Khanna on January 11, 1973. Before Mr. Justice Khanna, reliance was placed on behalf of the petitioner on a judgment of a Division Bench of the Punjab High Court in *Brahm Wati and another v .Shambhu Nath* Mr. Justice Khanna felt that the judgment cited above required reconsideration and made a direction that the papers be laid before the Chief Justice for Constituting a larger Bench. That is how the petitions have come up for decision before us.

SECTION 3 of the Act is the defining section. Sub-section (1) defines the word "annual value". It has three clauses-(a), (b) and (e), clause (a) deals with land and clauses (b) and (e) with house or building. Clause (e) is applicable only where the annual value of any house or building cannot be determined under clause (b).

SUB-SECTION (1) (a) provides that in cases of land, the annual value shall be the gross annual rent at which it may reasonably be expected to let from year to year. This clause has a proviso and according to it where the land is assessed to land revenue the annual value shall be double the aggregate of the amount calculated in accordance with the principles stated in sub-clauses (i) and (ii). Clause (b) provides that in the case of any house or building, the annual value shall be the gross annual rent at which such house or building together with its appurtenances and any furniture that may be let for use or enjoyment therewith may reasonably be expected to let from year to year, subject to the deductions specified in sub-clauses (i), (ii) and (iii). Clause (e) provides that in case of any house or building the gross annual rent of which cannot be determined under clause (b), 5 per cent on the sum obtained by adding the estimated present cost of erecting the building less depreciation to the estimated market value of the site and any land attached to the house or building shall be its annual value. Then comes the proviso which states that in calculating the annual value of any premises, no account shall be taken of any machinery thereon.

(3) From a reading of clause (b) IT is clear that the annual value of a house or building has to be fixed under clause (b) and clause (c) is attracted only if the annual rent of a house or building cannot be determined under clause (b).

SECTION 61 to 85 in Chapter V of the Act deal with taxation. Section 61 details the taxes that may be imposed by a municipal committee. Section 61(1) (a) provides for tax on buildings and lands payable by the owner. Sub-clause) of sub-section (1)(a) provides that the tax shall not be more than 12 per cent on the annual value. Section 3(1) lays down the principles for assessing the annual value of land, house or building.

Reading of the above provisions would show that tax is payable only on lands and buildings. The word "land" has not been defined in the Act, but section 3(2) defines the expression "building" and it reads :

"building" means any shop, house, hut, out house, shed or stable, whether used for the purpose of human habitation or otherwise and whether of masonry, bricks, wood, mud, thatch, metal or any other material whatever ; and includes a wall and a well."

(4) The definition of the word "building" is a comprehensive one and it includes all sorts of structures. The meaning to be given to the (1965) 67 Plr 310 expression "house or building" in clause (b) does not present any difficulty. It is the expression "together with its appurtenances and any furniture" that has raised some difficulty in construing clause (b). The view of the appellate authority was that airconditioning plants, fans, etc. did fall in the category of machinery, but as the first proviso was only applicable to clause (e) and did not govern clause (b),---no allowance could be made for the machinery in an assessment under clause (b). We are unable to agree in the above reasoning and conclusion of the appellate authority. According to the Webster's new International Dictionary, Second addition, the word " appurtenance " means -

1. That which belongs to something else: adjunct; appendage; an accessory : something annexed to another thing more worthy.

2. In common parlance and legal acceptance, something belonging to another, thing as principal and passing as incident to it, as a right of way or other easement to land, a right of common to pasture, an outhouse, ham, garden or orchard, to a house or messuage. In a strict legal sense, land cannot pass as an appurtenance to land.

(5) The Punjab Municipal Act was enacted in the year 1911. Keeping in view the time when the Act was enacted, in our opinion, the word "appurtenance" in clause (b) would mean an outhouse, barn garden or orchard attached to a house. The said expression will certainly not include machinery or electrical appliances. The word "furniture" normally is understood to mean tables, chairs, beds, wardrobes, desks, stove, etc. The word "furniture" will also not include machinery and electrical appliances. If the framers of section 3(1) had intended

the word "appurtenances" to include machinery and electrical appliances, there appears to be no reason why deduction for such articles would not have been allowed as it has been done in the case of furniture. On a plain reading of clause (b), we are inclined to hold that the expression "appurtenances and any furniture" does not include machinery and electrical appliances.

(6) Clause (e) of section 3 (1) governs only those cases where the annual rent of a house or building cannot be determined under clause (b). In such cases the annual value is to be calculated by estimating the market value of the site and any land attached to the house or building plus the present cost of erecting the building less depreciation. The language of clause (e) also shows that in calculating the annual value of a house or building under this clause, machinery and electrical appliances are not to be taken into account. This, in our view, is the interpretation of clauses (b) and (e) without taking into consideration the first proviso occurring after clause (e). The legislature has, by adding the first proviso, made it clear that while calculating the annual value of any premises, no account shall be taken of any machinery thereon. There is no doubt that the above said proviso occurs after clause (e), but in our view, the language of the proviso makes it plain that it was (?) immediately follows but the entire sub-section (1). It does not stand to reason that the legislature had intended to exclude the machinery only while calculating the annual value in clause (e). The intention of the legislature appears to be that in calculating the annual value of land or building, the machinery thereon shall not be taken into account. This conclusion is apparent on a reading of the provisions of section 3 (1) with section 61 of the Act. To give it any other meaning would lead to absurdities. This view of ours finds support from a judgment of the Punjab High Court reported as *Mst. Brahm Wati and another v. Shambu Nath*, where a Division Bench of the Court held-

" THE proviso to sub-section (1) of section 3 of the Punjab Municipal Act, 1911, occurs after the whole of the sub-section and, Therefore, governs the sub-section as a whole and not merely clause (e) thereof. It cannot be said that the rent account of machinery is to be excluded only when the case falls under clause(c) of subsection (1) of section 3 of the Act, and not when it falls within clause (b) of the said sub-section."

For the reasons given earlier, we are in respectful agreement with the view expressed in *Mst: Brahm Wati and other* (supra).

(7) No other point was urged at the Bar. The result is that the petitions are allowed and we held that in assessing the annual value the rental charges for the central airconditioning plant, electric water boilers, ceiling fans, pedestal fans, telephone and lawn mower cannot be taken into account.

(8) The petitioner will have his costs of the petitions. Counsel fee is fixed at Rs. 100.00.