
(2002) 09 DEL CK 0222
In the Delhi High Court
Case No : C.W.P. No. 5455 of 2002

B.R. Nanda

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-09-2002

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 113, 113(1), 113(2), 114, 116
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 20
Income Tax Act, 1961 — Section 23, 9

Citation : (2002) 09 DEL CK 0222

Hon'ble Judges : S.B. Sinha, C.J.; A.K. Sikri, J

Bench : Division Bench

Advocate : K.L. Rathee and I.C. Kumar, Amit Seth, for the Appellant;

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—The virus of Section 116(1) of the Delhi Municipal Corporation Act, 1957 (hereinafter for the sake of brevity referred to as, "DMC Act") and Bye-Law No. 3(i)(a) of the Municipal Corporation (Determination of Rateably Value) Bye-Laws, 1994 (hereinafter for the sake of brevity referred to as, "the said Bye-Laws") is in question in this writ petition.

2. The factual matrix leading to institution of the present writ petition is brief is under :-

The petitioner herein is said to be the owner of House No. 27, Vasant Marg, Vasant Vihar, New Delhi - 110 057 (hereinafter for the sake of brevity referred to as, "the said property").

The petitioner received an assessment order on 20.07.1986 whereby and whereunder rateable value of the said property was fixed at Rs. 18,710/- w.e.f. 31.12.1985. Allegedly in the year 1987, under the optional scheme for one-time payment of tax, the petitioner opted for payment of 10 years' tax in advance and thereby he became entitled for exemption from payment of any property tax

and education cess for all times to come. However, in April, 1993, the petitioner received a notice dated 24.03.1993 thereby proposing to revise the rateable value from Rs. 18,710/- to Rs. 3,75,100/- w.e.f. 01.04.1992. Allegedly, the petitioner in his reply objected to the said proposal. Allegedly three years later, i.e., in March, 1996, the petitioner received another letter making an ex-parte assessment at Rs. 3,75,000/- w.e.f. 01.04.1992. The said letter making ex-parte assessment was also allegedly objected to by the petitioner.

On or about 20.06.2002, the petitioner yet against received a notice dated 12.06.2002 purported to be u/s 126 of the DMC Act thereby proposing the rateable value of the said property at Rs. 11,80,850/- w.e.f. 01.04.1999 and asking the petitioner to appear in the Office of the Joint Assessor and Collector, Special Assessment Unit II, R.K. Puram, New Delhi on 18.06.2002. Allegedly, since the said notice was received just two days before the date of hearing, i.e., 18.06.2002, he wrote to the said authority that he was planning to go abroad and expected to be back by the third week of August and on return would seek a fresh date for appearance. However, the Joint Assessor and Collector issued an ex-parte assessment order and a bill bearing No. 1291 dated 30.07.2002 was also issued for Rs. 14,78,354/-.

The petitioner vide letter dated 06.08.2002 requested the Joint Assessor and Collector as to how the said amount had been arrived at; to indicate the amount of tax year-wise; and also to give the basis of calculation. However, no reply thereto has been given.

In the aforementioned situation, the petitioner has filed the present writ petition in the month of August, 2002.

3. Mr. K.L. Rathee, the learned counsel appearing on behalf of the petitioner, would submit that property tax is a tax on income arising out of property and, thus, the same would be governed by the provisions of the Income Tax Act, 1961 hereinafter for the same of brevity referred to as, "IT Act"). It was urged that the assessment of rateable value in relation to a property for the purpose of DMC Act is beyond the legislative competence of the State. Drawing our attention to a decision of the Apex Court in *Sultan Brothers (P) Ltd. Vs. Commissioner of Income Tax*, to the following effect :-

"In respect of building..... the owner is liable to tax u/s 9 (corresponding to Section 23 of the 1961 Act) not on actual income received from it but on its annual value and in fact quite irrespective of whether he has let it out or not."

The learned counsel would contend that having regard to the fact that the definition of the term "annual value" or "annual rent" was common in both IT Act and DMC Act, the said decision would apply in all force in the instant case.

Our attention, in this connection, has also been drawn to a decision of the Apex Court in *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, . It was submitted that although an effort was made to

overcome the effect to the said judgment by introducing an amendment in Section 116(1) of DMC Act, the same had not been given effect to. The learned counsel would, Therefore, contend that what was not done directly cannot be permitted to be done indirectly by introducing a similar provision in the Bye-Laws, which is in the nature of subordinate legislation.

The learned counsel, however, concedes that the subject matter of this writ petition is covered by a decision of the Apex Court in Government Servant Co-operative House Building Society Limited and Others Vs. Union of India and Others, but he would contend that as the said decision has been rendered by a two-Judge Bench, whereas the decision in Dewan Daulat Rai Kapoor's case (Supra) having been rendered by a three-Judge Bench, the latter will prevail. It was submitted that a decision rendered by a larger Bench shall prevail over the smaller Bench and in support of the said contention, reliance has been placed on The State of U.P. Vs. Ram Chandra Trivedi, ; Coir Board Ernakulam Kerala State and Another Vs. Indira Devi P.S. and Others, ; Bharat Petroleum Corporation Ltd. Vs. Mumbai Shramik Sangha and Others, ; and P. Ramachandra Rao Vs. State of Karnataka, .

4. DMC Act was enacted to consolidate and amend the law relating to the Municipal Government of the National Capital Territory of Delhi.

Chapter VII of the DMC Act provides for levy of taxes.

Section 113 of the DMC Act specifies several taxes - property tax being one of them. In addition to taxes specified in Sub-section (1) of Section 113, the Corporation is also entitled to the taxes specified in Sub-section (2) thereof. Such inputs are required to be levied, assessed and collected in accordance with the provisions of the DMC Act and the Bye-Laws made there under.

Section 114 of the DMC Act provides for the components and rates of property taxes, which is in the following terms:-

"114. Components and rates of property taxes.- (1) Save as otherwise provided in this Act, the property taxes shall be levied on lands and buildings in Delhi and shall consist of the following, namely:--

(a)

(b)

(c)

(d) A general tax -

(i) of not less than ten and not more than thirty per cent of the rateable value of lands and buildings within the urban areas; and

(ii) on lands and buildings within the rural areas at such lower rates and with effect from such date as may be determined by the Corporation:

Provided that the Corporation may, when fixing the rate at which the general tax shall be levied during any year, determine that the rate livable in respect of lands and buildings or portions of lands and buildings in which any particular class of trade or business is carried on shall be higher than the rate determined in respect of other lands and buildings or portion of other lands and buildings by an amount no exceeding one-half of the rate so fixed:

Provided further that the general tax may be levied on a graduated scale, if the Corporation so determines.

Explanation.-- Where any portion of a land or building is liable to a higher rate of the general tax such portion shall be deemed to be a separate property for the purpose of municipal taxation.

(2) The Corporation may exempt from the general tax lands and buildings of which the rateable value does not exceed one hundred rupees."

Section 115 of the DMC Act specifies the premises in respect of which such property taxes are to be levied.

Section 116 of the DMC Act provides for determination of rateable value of lands and buildings assessable to property taxes, which reads as under :-

"116. Determination of rateable value of lands and buildings assessable to property taxes. --(1) The rateable value of any land or building assessable to property taxes shall be annual rent at which such land or building might reasonably be expected to let from year to year less-

(a) a sum equal to ten per cent of the said annual rent which shall be in lieu of all allowance for costs of repairs and insurance, and other expenses, if any, necessary to maintain the land or building in a state to command that rent; and

(b) the water tax or the scavenging tax or both, if the rent is inclusive of either or both of the said taxes:

Provided that if the rent is inclusive of charges for water supplied by measurement, then, for the purpose of this section the rent shall be treated as inclusive of water tax on rateable value and the deduction of the water tax shall be made as provided therein :

Provided further that in respect of any land or building the standard rent of which has been fixed under the Delhi and Ajmer Rent Control Act, 1952 (38 of 1952), the rateable value thereof shall not exceed the annual amount of the standard rent so fixed.

[Explanation.-- The expressions "water tax" and "scavenging tax" shall mean such taxes of that nature as may be levied by an appropriate authority.]

(2) The rateable value of any land, which is not built upon but is capable of being built upon and of any land on which a building is in process of erection shall be fixed at five per cent of the estimated capital value of such land.

(3) All plant and machinery contained or situate in or upon any land or building and belonging to any of the classes specified from time to time by public notice by the Commissioner with the approval of the Standing Committee, shall be deemed to form part of such land or building for the purpose of determining the rateable value thereof under Sub-section (1) but save as aforesaid no action shall be taken of the value of any plant or machinery contained or situated in or upon any such land or building."

Section 119 of the DMC Act exempts the levy of property tax specified in Section 114 thereof on the lands and buildings, which are properties of the Union of India.

Section 120 of the DMC Act provides for the incidence of property tax in the following terms :-

" 120. Incidence of property taxes.- (1) The property taxes shall be primarily livable as follows :-

(a) if the land or building is let, upon the Lesser

(b) if the land or building is sub-let upon the superior Lesser

(c) if the land or building is unlet upon the person in whom the right to let the same vests.

[Provided that the property taxes in respect of land or building, being property of the Union, possession of which has been delivered in pursuance of Section 20 of the Displaced persons (Compensation and Rehabilitation Act, 1954 (44 of 1954) shall be primarily livable upon the transferee]

(2) If any land had been let for a term exceeding one year to a tenant and such tenant has built upon the land the property taxes assessed in respect of that land and the building erected thereon shall be primarily livable upon the said tenant whether the land and buildings are in occupation of such tenant or a sub tenant of such tenant."

Section 21 of the DMC Act specifies the manner of apportionment of liability for property taxes when the premises assessed are let or sub-let.

Section 122 of the DMC Act provides for recovery of property taxes from the occupiers.

Section 123 of the DMC Act provides that property taxes shall be the first charged on premises on which they are assessed.

Section 124 of the DMC Act provides for maintenance of assessment list.

The scheme of levy of taxes contained in Chapter VIII of the DMC Act including property taxes together with Bye-Laws is a self-contained one.

5. Property taxes are levied on property. A person who has any land or building is only liable to pay such taxes and those who do not have any land and building

are not liable therefore. We, Therefore, fail to understand as to how the property tax can be equated with the IT Act.

6. Submission of Mr. Rathee to the effect that a property, which does not fetch an income, property taxes cannot be levied on the basis of the rate of rent thereof, in our opinion, thus, is wholly misconceived.

7. The matter need not be carried too far in view of a decision of the Apex Court in Government Servant Cooperative House Building Society Ltd.'s case (Supra) , wherein it has categorically been held :-

"To determine the quantum of property tax, Therefore, it is necessary to arrive at the rateable value of the land or building. u/s 116(1), the rateable value is the annual rent at which such land or building might reasonably be expected to be let from year to year less certain deductions. We have to consider how the annual rent at which such property might be reasonably expected to be let, is to be arrived at when the rent of the property is not controlled under the Delhi Rent Control Act, 1958 or any other rent control legislation."

8. Mr. Rathee has referred to a decision of the Apex Court in Dewan Daulat Rai Kapoor's case (Supra) , wherein the Apex Court held that the actual rent payable by a tenant to the landlord would, in normal circumstances, afford reliable evidence of what the landlord might reasonably expect to get from a hypothetical tenant, unless the rent is inflated or depressed by reason of extraneous considerations such as relationship, expectation of some other benefit, etc. The said decision has been explained in Dr. Balbir Singh and Others Vs. M.C.D. and Others, .

9. Our attention has been drawn to the following passage from the decision of the Apex Court in Dewan Daulat Rai Kapoor's case (Supra) :-

"The anomalous situation which would thus arise on the contention of the Revenue would be that whilst the tenant is occupying the building the measure of the annual value would be the contractual rent, but if the tenant vacates and the building is self occupied, the annual value would be restricted to the standard rent determinable under the Act. It is difficult to see who the annual value of the building could very according as it is tenanted or self-occupied."

Allegedly to overcome the effect of the said judgment an amendment to Section 116(1) of the DMC Act was sought to be made by introducing a bill, so as to make "actual rent received or receivable" as the basis of rateable value of lands and buildings but the said bill was allowed to lapse.

It is, however, not in dispute that the Parliament amended Delhi Rent Control Act, the major changes affected thereby are as follows :-

"(i) Delhi Rent Control Act was made inapplicable to tenancies carrying a monthly rent of more than Rs. 3,500/-;

(ii) The Standard rent under the Delhi Rent Control Act was raised from

8.25/8.625% to 10%".

Thereafter only the notices for revision of rateable value were issued.

In the year 1994, Delhi Municipal Corporation (Determination of Rateable Value) Bye-Laws were amended providing for basing the annual value on the "actual rent received or receivable" was introduced.

Admittedly the views of the provision of Section 116(1) of the DMC Act was replaced by the Apex Court in Writ Petition (C) No. 758/1993 by a judgment and order dated 05.08.1998.

10. In *Thermofriz Insulation Ltd. and Ors. v. The State of West Bengal and Ors.* 1997 (1) CHN 209, a Division Bench of the Calcutta High Court, while interpreting Section 174 of the Calcutta Municipal Corporation Act, 1980, observed :-

"20. Section 174 Therefore, does not run counter to the proposition that such valuation has to be only on the basis of a hypothetical rent and not on the basis of actual rent. It even need not be on the basis of the fair rent as Section 174 of the Calcutta Municipal Corporation Act contains an overriding provision and thus valuation of a holding is not dependent on determination of fair rent. In any event in this case no such rent has been assessed. If any fair rent has been assessed the same may be held to be payable by the tenant to landlord. But unless such fair rent is assessed, the tenant is bound to pay the contractual rent to the landlord which per se is not illegal. However, it does not mean that the Corporation is bound to assess only on the basis of actual rent.

21. In *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, upon which strong reliance has been placed by Mr. Mitra, the Supreme Court was considering the provision of Punjab Municipal Act. In the said decision the Apex Court relied upon judgment in *The Corporation of Calcutta Vs. Sm. Padma Debi and Others*, .

22. *Padma Debi's* case (supra) was rendered at a point of time when the Calcutta Municipal Corporation Act was not amended. *Padma Debi's* case (supra) was distinguished by the Supreme Court in *Municipal Corporation, Indore and Ors. v. Smt. Ratnaprabha and Ors.* reported in AIR 1977 SC 308, wherein it was held :-

"While, Therefore, the requirement of the law is that the reasonable letting value should determine the annual value of the building, it has also been specifically provided that this would be as "notwithstanding anything contained in any other law for the time being in force". It appears to us that it would be a proper interpretation of the provisions of Clause (b) of Section 138 of the Act to hold that in a case where the standard rent of a building has been fixed u/s 7 of the Madhya Pradesh Accommodation Control Act, and there is nothing to show that there has been fraud or collusion, that would be its reasonable letting value, but, where this is not so, and the building has never been set out and is being used in

a manner where the question of fixing its standard rent does not arise, it would be permissible to fix its reasonable rent without regard to the provisions of the Madhya Pradesh Accommodation Control Act, 1961.

While, Therefore, we are in agreement with the view taken to Padma Debi's case (supra) that it would not be reasonable to consider fixation of rent beyond the limits fixed by the Rent Control Act as reasonable, it would not a proper interpretation of Section 138(b) of the Act to ignore the significance of its non-obstante clause altogether. That is why we have taken the view that it would be a fair and reasonable interpretation of Section 138(b) to hold that as no standard rent has been fixed so far in respect of the Viram Lodge, the Municipal Commissioner was justified in adopting another suitable criterion for determination the annual value of the building. There is in fact nothing in the Act to make it obligatory for the Commissioner to follow the provisions of the Madhya Pradesh Accommodation Control Act in spite of the non-obstante clause and to limit the annual value to any standard rent that the building might fetch under that Act."

23. It is, Therefore, clear that where any non-obstante clause exists the matter will have to be considered on a different footing. Padma Debi's case (supra) proceeded on the basis that the hypothetical rent cannot exceed the limits of 1950 Act as such hypothetical rent must be commensurate with the market rent and not rent which the landlord may ask for from the tenants in an arbitrary manner. The aspect of the matter has been considered in *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, , in the following terms :-

"But it is not necessary for the purpose of the present appeals to probe further into the question of correctness of this decision, since there is no non-obstante clause either in Section 3(1) (b) of the Punjab Municipal Act, 1911 or in Section 116 of the Delhi Municipal Corporation Act, 1957 and this decision has, Therefore, on application."

24. In *Dr. Balbir Singh and Others Vs. M.C.D. and Others*, , the Supreme Court was again considering the Delhi Municipal Corporation Act the provisions of which were in pari materia with the Punjab Municipal Act and relying upon the decision of Balbir Singh (supra) it held that the standard rent determinable on the principles set out the Rent Act should be the upper limit for such valuation.

25. In *Bhagwant Rai and others Vs. State of Punjab and others*, , the Supreme Court again was dealing with the provisions of Punjab Municipal Act and relied upon its earlier decision in *Dr. Balbir Singh's case* (supra) and *Devan Daulat Rai's case* (supra). However, this aspect of the matter has also been considered by a Division Bench of this court in *Pushpalata Mondy and Another Vs. Corporation of Calcutta*, wherein Division Bench was considering the earlier Act namely, Calcutta Municipal Corporation act, 1951. It is stated that when a revaluation is made the owner gets a fresh right to file objection. However, in

Corporation of Calcutta v. East India Commercial Company Pvt. Ltd. reported in 1982 (1) CHN 360, a Division Bench of this court has clearly held that valuation may be based on the contractual rent unless a fair rent is fixed.

26. In Srikant Kashinath Jituri and others Vs. Corporation of the City of Belgaum, , the Supreme Court already expressed doubts as to the roundness and continuing relevance of fair rent alone as the determinative factor for property tax keeping in view the fact that the Municipality has to render a public service on the basis of the tax realized by it. Furthermore, in Indian Oil Corporation Ltd. v. Municipal Corporation and Anr. reported in JT 1995 (3) SC 636, Ratnaprava (supra) was followed. The Supreme Court deprecated the High Court which refused to follow the Ratnaprava on the basis of the subsequent decision holding:-

"As has been stated, Clause (b) of Section 138 of the Act provides that the annual value of any building shall "notwithstanding anything contained in any other law for the time being in force" be deemed to be the gross annual rent for which the building might "reasonably at the time of the assessment be expected to be let from year to year". While Therefore, the requirement of the law is that the reasonable letting value should determine the annual value of the building, it has also been specifically provided that this would be as "notwithstanding anything contained in any other law for the time being in force". It appears to be that it would be a proper interpretation of the provisions of Clause (b) of Section 138 of the Act to hold that in a case where the standard rent of a building has been fixed u/s 7 of the Madhya Pradesh Accommodation Control Acts and there is nothing to show that there has been fraud or collusion, that would be its reasonable letting value, but, where this is not so, and the building has never been let out, and is being used in a manner where the question of fixing its standard rent does not arise, it would be permissible to fix its reasonable rent without regard to the provisions of the Madhya Pradesh Accommodation Control Act, 1961. This view will, in our opinion give proper effect to the non-obstante Clause (b), with due regard to its other provision that the letting value should be reasonable."

27. There was no non-obstante clause (which has been inserted later on) and such a provision being there is Madhya Pradesh Accommodation Control Act, the law was stated in the following terms:-

"There is in fact nothing in the Act to make it obligatory for the Commissioner to follow the provision of the Madhya Pradesh Accommodation Control Act in spite of the non-obstante clause and to limit the annual value to any standard rent that the building might fetch under the Act."

28. In Asstt. General Manager, Central Bank of India and Others Vs. Commissioner, Municipal Corporation for the City of Ahmedabad and Others, , it was held that the Supreme Court distinguished Devan Daulat Rai's case and followed Ratna Prava as also the decision in Srikant Kashinath Jituri and others

Vs. Corporation of the City of Belgaum, , and held :-

"Where the standard rent is not fixed, the actual rent received shall be deemed to be the annual rent in which the property might reasonably be expected to be let, notwithstanding anything contained in any other law. The non-obstante clause prevents the application of the "Bombay Rent Act to cases falling under proviso(s) for determining the rent at which the property might reasonably be expected to be let. The provisions concerned herein are akin to the provision considered in Ratna Prabha and not with the provisions concerned in the decisions relied upon by the appellants."

11. In Government Servant Cooperative House Building Society Ltd.'s case (Supra) , the Apex Court noticed its earlier decision in The Corporation of Calcutta Vs. Sm. Padma Debi and Others, . The decision in the case of Dr. Balbir Singh and Others Vs. M.C.D. and Others, had also been considered by the Apex Court in Government Servant Cooperative House Building Society Ltd.'s case (Supra) and it was categorically held :-

"8. Therefore, the annual rent actually received by the landlord, in the absence of any special circumstances, would be a good guide to decide the rent which the landlord might reasonably expect to receive from a hypothetical tenant. Since the premises in the present case are not controlled by any rent control legislation, the annual rent received by the landlord is what a willing lessee, uninfluenced by other circumstances, would pay to a willing Lesser. Hence, actual annual rent, in these circumstances, can be taken as the annual rateable value of the property for the assessment of property tax. The municipal corporation is, Therefore, entitled to revise the rateable value of the properties, which have been freed from rent control on the basis of annual rent actually received unless the owner satisfies the municipal corporation that there are other considerations, which have affected the quantum of rent.

9. It was then submitted on behalf of the appellants that if the annual rent actually received is taken as the basis for determining the rateable value of the property, the property tax will become a tax on income of the owner. Such a tax would be beyond the legislative competence of the State Legislature. Being a tax on income, it can be levied only by the Central Government and it would not fall in Entry 49 of List II of the Seventh Schedule of the Constitution. It would, in fact, fall in Entry 82 of List 1, which deals with taxes on income other than agricultural income. Now, Entry 49 of List II covers taxes on lands and buildings. As the High Court has pointed out the three lists in the Seventh Schedule of the Constitution have no relevance to the Union Territory of Delhi since Parliament can make law respecting all the entries in all the three lists. Nevertheless, as the argument has been advanced before us at some length and it may affect other municipal legislations, we will briefly deal with it."

12. Having regard to the fact that the Apex Court had taken into consideration its earlier decisions including Dewan Daulat Rai Kapoor's case (Supra) , we fail to

see as to how the proposition that a decision rendered by a larger Bench shall prevail over a decision rendered by a Division Bench has any application in the instant case. There is no conflict in the decisions of the Apex Court not in fact we find there exists any.

It is now accepted that having regard to the provisions of Delhi Rent Control Act, it is not possible to assess fair rent of the building in question.

13. In that view of the matter by reason of substantive legislation, which if validly made, shall form part of the Act, a change in the manner of determination of rateable value has been made, the same cannot be said to be bad in law.

We, Therefore, do not find any merit in the writ petition, which is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.