(1981) 10 DEL CK 0037

In the Delhi High Court

Case No : Civil Writ Appeal No. 2276 of 1981

Chand Pruthi APPELLANT

Vs

Municipal Corporation of Delhi RESPONDENT

Date of Decision : 29-10-1981

Acts Referred:

Citation : (1982) 22 DLT 145

Hon'ble Judges : S. Ranganathan, J;Leila Seth, J

Bench : Division Bench

Advocate : D.P. Gupta, for the Appellant;

Judgement

R. Ranganathan, J.

(1) The short plea of the writ petitioner is that the annual rateable value for the municipal tax purposes of premises M-225, Greater Kailash, Part-II, New Delhi should be fixed on the basis of the actual cost of construction and the cost of the land as on the date of the construction in accordance with the provisions of Section 6(1)(B)(2)(b) of the Delhi Rent Control Act 1958 and not on the basis of the rent the property would fetch if let from year to year on the basis of Section 9(4) of the Delhi Rent Control Act.

(2) The construction of the property in question was completed in April, 1978 and we are concerned with the assessment year 1981-82. The question that arises is whether in the case of a property which is occupied by the owner himself, the municipal value should be fixed on the footing of Section 9(4) of the Delhi Rent Control Act or on the basis of Section 6(1)(B)(2)(b) as contended by the petitioner. This question has already been answered by a Division Bench of this court in the case of Joti Prasad vs. M.C.D. (Order dated 10.11.1980) in G.W. 1 120/80). The matter has also been considered by this Bench at some length in its order in C.Ws. 1734/81, 1735/81 and A 67/81 and 68/81. After discussing the matter at some length we have concluded that in such a case) as this, it is open to the department to resort to the provisions of Delhi Rent Control Act and

determine the annual value in the light of the rents in the locality and comparable cases.

(3) In view of the detailed discussion in our earlier order above referred to; we do not discuss the matter at length in the present case. We would only summarise the position very briefly. The Supreme Court in the case of Dewan Daulat Ram Kapoor 17 (1980) D.L.T. 88 has held that the rateable value for municipal tax purposes should be based on the standard rent of the property within the meaning of the Delhi Rent Control Act whether the property is occupied by owner himself or let out to a tenant and whether the tenant has made or is or is not in a position to make an application for fixation of standard rent. This principle can be clearly applied to a case where the property has been let out to a tenant but the question is; in a case where the property is occupied by the owner himself which is the provision of the Delhi Rent Control Act that should be applied ? We find that the whole of Section 6, upon which strong reliance has been placed by the petitioner, cannot be applied to such a case. Section 6 applies only in the case of properties which have been let out and since the property in question is not one that has been let out the terms of that provision cannotbe applied.It is true that u/s 116 of the Municipal Corporation of Delhi Act, for purposes of municipal tax even a property occupied by the owner has to be considered as having been let out and the rateable value should be found out on the basis that the property is let out. But even this fiction docs not help the assessed because in the case of a property constructed after the 9th June, 1955, the owner of the property is entitled to charge any rent to which the tenant would agree so far as the first five years arc concerned. In other words under the Delhi Rent Control Act if it is assumed that this property is being let out by the assessed than the assessed can legally derive a standard rent equal to any amount to which any tenant would be agreeable. If on the same date for properties similarly situated on agreed rent in excess of the standard rent calculated in accordance with the Section 6(1) can be obtained by the landlord then it appears to us that the department can legitimately claim that it is that amount that would be the standard rent in respect of the property. For instance suppose a part of the property is let out at a particular agreed rent; the department could very well take it that it is the average of such agreed rent that would be derivable by the assessed on standard rent in respect of the entire property including the portions which are in the assessed''s occupation. That apart we have also pointed out in our earlier order that on the language of Section 6 of the Delhi Rent Control Act that provision is not applicable at all to cases of self occupation. The standard rent in respect of property which is in the occupation of the owner can only be determined in accordance with the provisions of Section 9(4) of the Delhi Rent Control Act.

(4) For the above reasons, we are of the opinion that there is no patent lack of jurisdiction or error in the determination of the annual value in the present case. The writ petition, Therefore, fails and is dismissed.