
(1996) 09 DEL CK 0084

In the Delhi High Court

Case No : Civil Writ Appeal No. 1906 of 1982

Dan Singh Bawa and Others

APPELLANT

Vs

New Delhi Municipal Committee and Another

RESPONDENT

Date of Decision : 09-09-1996

Acts Referred:

Delhi Rent Control Act, 1958 — Section 6
Punjab Municipal Act, 1911 — Section 3

Citation : (1996) 4 AD 696 : (1996) 64 DLT 522

Hon'ble Judges : S.N. Kapoor, J;R.C. Lahoti, J

Bench : Division Bench

Advocate : Nilima Thakur, for the Appellant;

Judgement

S.N. Kapoor, J.

(1) The petitioners have challenged the assessment of property known as "Marshall House "having different Units IP/101,101-A,101-B,101-C,101D and 121 to 127 situated at Hanuman Road, New Delhi. "The impugned assessment was made under Resolution No. 14 dated 23.2.1981 for the year 1981-82 and confirmed by order dated 30.4.1982 by Smt. P. Prashad Adm (S.&N.D.).

(2) According to the petitioners they purchased the property on 31.12.1960 for a sum of Rs. 7,25,000.00 . Its property tax was assessed till 31.3.1981 at a rateable value of Rs. 96,000.00 . Civil Court had restrained the Ndmc from recovering house-tax at the rateable value higher than Rs. 96,000.00 per annum. The Ndmc has illegally assessed the annual value of the property by ignoring the law laid down by the Supreme Court in The Corporation of Calcutta Vs. Sm. Padma Debi and Others, , The Guntur Municipal Council Vs. The Guntur Town Rate Payers" Association etc., , New Delhi Municipal Committee v. M.N. Soi And Another 1977(1) Rcr 174. The revision of annual value is neither justified in the light of the provisions of Section 6 nor Section 9(4) of the Delhi Rent Control Act (hereinafter called the "DRC Act"). u/s 3 of the Punjab Municipal Act (hereinafter called the "P.M. Act") the central air-conditioning plant and two lifts

and other machineries could not be taken into consideration while calculating the annual value of the property.

(3) The Ndmc has justified the assessment u/s 9(4) on the ground that it has been finalized in accordance with law and the decision of the learned Adm was in accord with the decision of the Supreme Court. The contention that the air-conditioning plant and lift as mentioned in the grounds were part and parcel of the building and without these facilities, the building may not even have any letting value. It was further submitted that the Civil Court did not have any jurisdiction to adjudicate upon the challenge to the house-tax assessment. When specific remedy is provided the extra-ordinary jurisdiction under Articles 226 and 227 could not be invoked.

(4) None has appeared for the petitioners. Ms. Nilima Thakur appeared for the respondents and she has been heard.

(5) Having heard the learned Counsel for the respondent and after going through the record, we feel that the writ petition could not be dismissed in default at this stage and it should be decided on merits.

(6) Having perused the impugned resolution and the impugned judgment in appeal, we feel that the impugned order of assessment and order of the Appellate Authority have not been made in accordance with the principles laid down in *Dewan Daulat Rai Kapur v. Ndmc* (supra) and *Dr. Balbir Singh and Others Vs. M.C.D. and Others*, . In *Bhagwant Rai and others Vs. State of Punjab and others*, again it has been held that the actual rent is not the measure of arriving at annual value for the purpose of deciding reasonably expected rent.

(7) One of the contentions raised by the petitioner is that the assessment does not even comply with the provisions of Section 9(4) of the Act, for appropriate details relating "to the situation, locality and condition of the provisions and the amenities provided therein" along with standard rent of similar premises thereof, have not been given. The submission is very much substantiated by Annexure "H" copy of the Resolution No. 14 dated 23.2.1981.

(8) Besides it is not possible for us to accept the contention of the learned Counsel for the Ndmc that as the standard rent could be fixed u/s 9(4) and as the petitioners have themselves failed to furnish the appropriate data and evidence about the cost of construction and value of the land at the commencement of construction it was not possible to estimate the annual value and annual rent in accordance with the principles of Section 6(1)(A) of the Drc Act.

(9) We feel that in case the petitioners have failed to furnish the aforesaid data and evidence the Ndmc could certainly draw adverse inference against the petitioners that in case the said evidence would have been produced it might have gone against the plea and objections raised by the petitioner. But this will certainly not absolve the Ndmc from its statutory duty to assess the property u/s

6(1)(A) of the Drc Act, in view of the judgment of *Dewan Daulat Rai Kapur v. Ndmc (Supra)* and *Dr. Balbir Singh & Others v. Mcd & Others (Supra)*. So far as the value of the land is concerned the value of the land could be ascertained from the sale deeds of similarly situated comparative land of the date(s) nearest to the date of commencement of the construction in the vicinity. Such sale deeds would be available in the record of the office of the respondent also as they are filed in connection with mutation of properties in the names of transferees. If the construction has been raised on the lease-hold land the elaborate method is given in *Dr. Balbir Singh & Others v. Mcd & Others (Supra)* and that has to be followed to evaluate the value of the land.

(10) As regards the cost of construction, in absence of any data provided by the petitioner the respondent could act upon the Cpwd rates of cost of construction in the relevant year to have a fair estimate of the cost of construction.

(11) In view of the above, it cannot be said that the value of the land at the commencement of the cost of construction and the cost of construction could not be fairly estimated for the present purpose though it may be slightly cumbersome.

(12) As regards the contention that the cost of central air-conditioning plant and lifts should not be taken into consideration for the purpose of annual value, we feel that this contention cannot be accepted. There is every justification to take into consideration the cost of the lift and the central air-conditioning plant or any other such machinery affixed in the building which increases the utility of the premises. For proper appreciation, we may refer to Section 3(b) of the Pm Act which reads as under:

"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 or enjoyment therewith, may reasonably be expected to let from year to year subject to the following deductions; The term "building" is defined in Section 3(2) of the Pm Act. It means "shop, hut, outhouse, 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". If one refers to Transfer of Property Act and tries to find the meaning of immovable property to decide about lift and central air-conditioning plant, then none of them is timber or standing crop to take either of them out of the purview of the definition of "immovable property". Both of them are either embedded or attached to which is embedded for the permanent beneficial enjoyment of that to which it is attached. Lift like staircase of steel or aluminum if affixed in the building is part and parcel of the building. As such, they are part and parcel of the building. If the central air-conditioning plant is not embedded in wall, or if it is not attached to anything which is embedded (which appears to be highly improbable), it would be covered in the meaning of the term "furniture". For, the term "furniture" means as per the Chambers Dictionary, New Edition, 1993 (reprint in 1996) as under : "movables, either of use or ornament, with which a house is equipped; equipment

(Shakesp); the trappings of a horse; decorations (Shakesp); the necessary equipment in some arts or trades, accessories; metal fittings for doors and windows; the piece of wood or metal put round pages of type to make margins and fasten the type in the chase (printing)."

As such, in any case, for the purpose of Section 3(b) of the Punjab Municipal Act, the lift as well as the central air-conditioning plant are required to be considered for the purpose of assessment of annual value.

(13) As regards the decree of permanent injunction granted by the Civil Court if the assessment of a particular year was being challenged then certain aspect of that judgment by the Civil Court may operate as resjudicata say judgment relating to the question of liability of the person who disputed liability to pay the tax but assessment of yearly tax payable is totally independent and in that respect judgment could not operate as res judicata or a bar to assess every year. It is bound to be different, if additions or alterations have been made, or if on account of legislative changes assessment of previous years is no more a good precedent. In view of the above, this plea in the writ petition is of no consequence for the parties are not at issue about liability to pay tax. The parties are at issue on the point of quantum of the property tax and how it has been assessed.

(14) In view of the aforesaid, we are unable to approve the impugned assessment order u/s 9(4) of D.R. Act in view of decision in Dr. Balbir Singh and Others v. Mcd and Others (Supra). Consequently, we allow the writ petition, quash the impugned order and judgment in appeal and direct the assessing authority to calculate the gross annual rent and annual value in terms of the judgment in Dewan Daulat Rai Kapur v. Ndmc (Supra) and Dr. Balbir Singh and Others v. Mcd and Others (Supra).

(15) The writ petition is disposed of accordingly.

(16) Parties are left to bear their own costs.