

(2006) 10 DEL CK 0100

In the Delhi High Court

Case No : Writ Petition (C) 5515 of 2003

Dr. Sherdil Nath and Another

APPELLANT

Vs

Delhi Municipal Corporation

RESPONDENT

Date of Decision : 31-10-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Delhi Municipal Corporation Act, 1957 — Section 126, 169

Citation : (2006) 10 DEL CK 0100

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Sudhanshu Batra, for the Appellant;

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—Issue rule. The writ petition was heard for final disposal.

2. The Petitioner has challenged the judgment and order of the Appellate Authority namely the learned District Judge in an appeal filed u/s 169 of the Delhi Municipal Corporation Act (hereafter referred to as 'the Act?'). The brief facts are that the Petitioners own premises bearing No. S-273, Panchshila Park, New Delhi. They received a notice for fixation of rateable value u/s 126 of the Act. Pursuant to the notice hearing was granted and the Respondent Authorities fixed the rateable value on the basis inter alias of parity with regard to the part of the premises where the Petitioner was in occupation and on rental basis, as per the rent received in respect of the balanced portion.

3. It would be necessary to extract the relevant portion of the assessment order:

As per site report of AZI, GF and FF are on rent and SF self occupied. W.e.f. 22.7.1998, GF was let out @ Rs. 65,000/- per month with security of Rs. 7,80,000/-. Six months security is exempted under the new-byelaws and on remaining security the interest comes to Rs. 3900/- p.m. Total monthly rent works out to Rs. 68,900/- and RV comes to Rs. 7,02,800/-. As per perpetual

lease cost of land is Rs. 21,618/- and FF being self occupied the land cost on pro rata basis is taken Rs. 10,809/-. The cost of construction for FF was Rs. 3,60,000/-. Aggregate cost comes to Rs. 3,70,809/- and RV comes to Rs. 31,500/- , thus the total RV is fixed at Rs. 7,34,300/- w.e.f. 22.7.1998.

Further the assessed made addition on SF at a cost of Rs. 11,80,000/- RV on this cost comes to Rs. 1,00,300/- and by adding to it RV of Rs. 7,74,200/- , the total RV is fixed at Rs. 8,74,400/- w.e.f. 1.3.99 i.e., the date of inspection when the property was found complete. Prior to it w.e.f 22.1.99 interest on security of Rs. 3,90,000/- in r/o GF after six months is taken which comes to Rs. 3,900/- and RV comes to Rs. 39,800/-. The total RV is fixed at Rs. 7,74,100/- w.e.f. 22.1.99. W.e.f. 1.6.99, FF was let out @ Rs. 30,000/- which appears on lower side keeping in view the comparative rents as prevalent in the area. The rent of FF is taken Rs. 55,000/-. ALV comes to Rs. 6,60,000/-, RV of GF is Rs, 74,26,000/- and Rs. 1,00,300/- for SF, thus the total RV is fixed at Rs. 14,03,900/- wef 1.6.1999.

W.e.f 21.7.99, security of GF is reduced by Rs. 1,20,000/- RV on this comes to Rs. 12,200/- and by reducing it from previous RV of Rs. 14,03,900/-, the total RV is fixed at Rs. 13,91,700/- w.e.f. 21.7.99.

1)RV RS. 7,34,300/- p.a. w.e.f 22.7.1998

2)RV Rs. 7,74,100/- p.a. w.e.f. 22.1.1999

3)RV Rs. 8,74,400/- p.a. w.e.f. 01.03.1999

4)RV Rs. 14,03,900/- p.a. w.e.f. 01.06.1999

5)RV Rs. 13,91,700/ p.a. w.e.f. 21.7.1999

4. In the appeal preferred the Petitioner had inter alias contended that in several other cases, i.e. in House Tax Appeal No.175/2001 as well as in other cases (assessment pertaining to property No.534, Chittranjan Park; property being No. B-1919, Chittranjan Park of the year 2001-02 and other cases), in identical circumstances where a part of the premises were self-occupied and other portions were rental, the MCD treated the entire premises as a self- occupied and applied the principle of parity.

5. The Appellate Authority rejected the contention of the Appellant. It was observed, in the course of the order that the rateable value of the premises which were tenanted were to be assessed on rental basis. On the strength of this reasoning, the Appellate Authority/learned District Judge dismissed the appeals. However limited relief was granted in the sense that actual rent was directed to be taken into consideration while computing the rateable value, instead of a higher notional figure considered by the assessing officer.

6. It has been averred by the Petitioners and also contended on their behalf by Shri Batra that the Respondents were duty bound to apply a uniform rule. Having applied the principles of parity, it is contended, enunciated by the Supreme Court in Dr. Balbir Singh and Others Vs. M.C.D. and Others, and Lt. Col. P.R. Chaudhary

(Retd.) Vs. Municipal Corporation of Delhi, and understood it in a particular manner so as to give relief to the assessed where portion of the premises were rented out, the MCD could not apply a different yardstick and apply principle of parity only to self-occupied portions of the premises and deny the same and take rent as the basis for fixing the rateable value in case of rented portion. It is contended that the application of such differing yardstick is arbitrary and also discriminatory.

7. The Supreme Court in P.R.Chaudhary's case (supra) had explained the issue in the following terms:

We find ourselves unable to subscribe to the reasoning of the High Court and the views expressed by it. Law as interpreted by this Court cannot be brushed aside by saying to the effect that it is not in conformity with the statutory provisions. The law laid down by this Court is explicit and admits of no doubt. For the purpose of arriving at the rateable value the basic principle is the annual rent which the owner of the premises may reasonably expect to get if the premises were let out to a hypothetical tenant. It would depend on the size, situation, locality and condition of the premises and the amenities provided therein. All these and other relevant factors would have to be followed in determining the rateable value. That, however, cannot be in excess of the standard rent which would be the upper limit. But then considering the runaway prices of land and building materials if the standard rent were to be the measure of rateable value there would be a huge disparity between rateable value of old premises and those recently constructed though they may be similar and situated in the same or even adjoining locality. Considering the same and similar services which are provided by the local authority if there is vast disparity between the rateable value of the old premises and the new premises that would be wholly illogical and irrational. To avoid such a situation Dr. Balbir Singh case laid the principles which have to be followed in arriving at the rateable value of the newly-constructed premises. Of course, rateable value cannot be the same but then at the same time a wide disparity would certainly be irrational, unreasonable and unfair which situation could be avoided by following the principles laid down by this Court otherwise the rateable value recording wide disparity would be struck down. There cannot be any ambiguity as to the principles laid down by this Court in arriving at the rateable value. We also find that the reasoning of the High Court is flawed that the Municipal Corporation of Delhi has no machinery if required to follow the principles laid by this Court. No two premises can be similar. In all revenue matters, there is no adversary system. Assessment records of the rateable value of the premises in the locality are certainly available in the records of the Municipal Corporation of Delhi. It has a field staff on the reports of which notices for enhancement of the rateable value are issued. The assessing authority hears the objections to the fixation of rateable value and acts in a quasi-judicial capacity. Its orders are appealable. It cannot act in arbitrary fashion ignoring principles of law laid down by the court. It cannot fall back on the specious plea that it has no means to act on the principles of law laid down

by this Court. Even notice for enhancement of rateable value has to be based on reasons which must exist on record and the owner is entitled to be apprised of those reasons. The High court lent its support to the plea of the Municipal Corporation of Delhi which is contrary to the principles laid by this Court.

8. The above declaration of law as also the facts in P.R.Chaudhary's case (supra) as well as formulation of law in Dr. Balbir Singh unequivocally in my opinion, relate to fact situations where the premises were used for residential purposes. The principle of parity as understood by the courts appears to be that where two flats/residential units are located in a same area or are adjacent properties there ought not to be seek disparity in terms of the rateable value. This principle was essential to iron out the differences which might arise on application of the standard rent formula or the other basis for determining the rateable value wherever self-occupied properties were to be assessed.

9. In Balbir Singh's case, the Court did consider a situation where the premier could be partly self occupied and partly rented. The Court did acknowledge, in para 13 that where rent was received in respect of one portion, that would be an accurate basis, subject to the upper limit of standard rent, in the following terms:

The only difference in case of a distinct and separate unit of occupation which is tenanted would be that, subject to the upper limit of the standard rent, the actual rent received by the owner would furnish a fairly reliable measure of the rent which the owner may reasonably expect to receive from a hypothetical tenant, unless it can be shown that the actual rent so received is influenced by extra-commercial considerations.

10. In the present case the facts on record clearly point to significant portions (i.e. about 50% of the built-up area) being rented out. The Petitioner is residing in a portion of the premises. It is also on record that she receives the rents and has disclosed the amounts received to the assessing authorities. The amounts received are clearly definable and the portions rented out can be ascertained. It is not as if the various portions are indeterminate and the Petitioner is in joint possession. In these circumstances the approach of the learned Additional District Judge in dismissing appeal in my opinion cannot be faulted.

11. As far as question of violation of Article 14 is concerned, it has been long established that a wrong interpretation placed by the authorities or wrong application of law does not confer a positive right upon a litigant to assert that such state of affairs ought to continue. In other words Article 14 does not cast a duty which the Court can invoke, in order to direct the authorities to commit an illegality or take a position which is not supported in law. (Ref. State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, Arikaravula Sanyasi Raju Vs. Branch Manager, State Bank of India, Visakhapatnam (Andhra Pradesh) and others, Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others,

12. In view of the above findings I am of the opinion that the petitions are

lacking any merit. They are accordingly dismissed without any order to costs.