
(2006) 08 CHH CK 0027
In the Chhattisgarh High Court
Case No : Civil Revision No. 1521 of 1994

Firm Dayal Film Exchange and Another	APPELLANT
Vs	
Nagar Palika Nigam and Another	RESPONDENT

Date of Decision : 24-08-2006

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956 — Section 132(1), 135, 135(2), 136, 138

Citation : (2007) 1 CGLJ 115 : (2006) 4 MPHT 59

Hon'ble Judges : Sunil Kumar Sinha, J

Bench : Division Bench

Advocate : Ravish Agrawal and Sanjay S. Agrawal, for the Appellant; Ashish Shrivastava, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Sinha, J.—This revision is directed against the order dated 5-7-1994 passed in Misc. Civil Appeal No. 9/90 by the Vth Additional District Judge, Raipur affirming the order of re-assessment and issuance of demand of property tax by the Municipal Corporation Raipur, after determining an increase in valuation of building vide Case No. 17/396/1 of 1988-89 under M.P. Municipal Corporation Act, 1956 (hereinafter referred to as "the Act"), with some modification regarding its quantum and liability among the applicants.

2. The brief facts are that applicant No. 2 is the owner of house No. 17/641 situated in Ravi Nagar, Pandri Tarai, Raipur. Earlier the annual value of this building was assessed in sum of Rs. 8,100/- and accordingly the property tax in sum of Rs. 674.75 p. was payable for it. On 27-6-1988, a proceeding for re-assessment commenced and a notice u/s 146 of the Act was issued and information u/s 144 (1) was called from the owner.

3. The owner submitted information that the building has been given on monthly rent of Rs. 750/- to applicant No. 1. On this, the Corporation directed for issuance of notice to applicant No. 1 also. On their own, an information was also

recorded that presently the building is occupied by one Dr. Shanwar Agrawal, therefore, a memo should also be issued to Dr. Agrawal about quantum of rent etc.

4. The applicant No. 1 filed certain objection on 5-7-1988 and denied its liability for payment of such tax. Thereafter spot inspection was done and a noting was made in the note-sheet that it was stated by owner of the building that the building has been sub-let by the tenant, applicant No. 1, to Dr. Shanwar Agrawal who is running a Nursing Home in the said building and is paying a sum of Rs. 4,500/- as monthly rent to the tenant. On this information, taken in the note-sheet, evidence of some person showing him to be partner of applicant No. 1 was recorded and ultimately, the objection raised by applicant No. 1 was rejected and proposed re-assessment, Le., re-assessment on the basis of annual rent as received by the owner @ Rs. 750/- per month and annual rent received by applicant No. 1, tenant from the sub-tenant holding the monthly rent as Rs. 3,750/- (4,500 - 750) was determined and it was directed that both the persons that means owner and the tenant were responsible to pay property tax and accordingly the tax was directed to be recovered against them.

5. This order was challenged by the applicants before the District Court in a Misc. Appeal. The District Court allowed the appeal in part holding that the re-assessed tax in sum of Rs. 8,100/-, as levied against the tenant and Rs. 674.74 p. levied against the owner will not be recoverable against them as above but Rs. 674.75 p. shall be adjusted in Rs. 8,100/- and thereafter, the balance amount shall be preliminary recoverably against the owner and further recoveries shall be made subject to Section 141 of the said Act. The rest of the order was confirmed. It is against this order, passed by the Additional District Judge, the tenant as well as owner have preferred this revision.

6. Learned Sr. Counsel for the applicants argued that the determination of annual letting value for re-assessment is not in accordance with law. He also argued that the finding regarding sub-letting @ Rs. 4,500/- per month is based on no material on record and the order of re-assessment and also the demand made in consequence thereof be set aside.

7. Per contra, learned Counsel for the Corporation supported the action taken by the Corporation and also the order passed by the Additional District Judge.

8. I have heard the learned Counsel for the parties at length and have also perused the records of Misc. Appeal as well as the re-assessment case, copy of which was made available by the Counsel for the Corporation at the time of hearing.

9. Part IV Chapter XI of the Act deals with the matter of taxation. Section 132 (1) (a) provides that for the purpose of this Act, the Corporation shall, subject to any general or special order which the State Government may make in this behalf, impose in the whole or in any part of the Municipal Area, a tax payable by the owners of building or lands situated within the city with reference to the gross

annual letting value of the building or lands, called the property tax, subject to the provisions of Sections 135, 136 and 138 Section 138, as it then was prior to 21-4-1997, provided about ascertaining of annual value of land or building. Sub-clause (b) of this Section provided that for the purpose of assessing a building to the property tax, 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 at which such building, together with its appurtenances and any furniture that may be let for use or enjoyment therewith might reasonably at the time of assessment be expected to be let from year to year, less an allowance of ten 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. There were certain explanation and proviso to Section 138. Section 139 provides for requisition of name of owner. It provides that the Commissioner may, by written notice, require the occupier of any land or building to furnish him within fifteen days with the name and address of the owner of such land or building. Section 141(1) provides that the property tax charged and levied upon any land or building u/s 135, shall be paid primarily by the owner thereof. Sub-section (2) of this Section further provides that the property tax charged and levied on the owner may also be recovered from any occupier of the land or building under the circumstances, in the manner and to the extent as is provided in this Act or may be provided under the bye-laws or rules made thereunder. Section 146 provides for notice when valuation made for the first time is increased. It has been provided that the Commissioner shall, in all such cases, in which any land or building is for the first time valued, or in which the valuation of any land or building previously valued as increased u/s 143 give special notice thereof, to the occupier of the same, and when the valuation is so increased, the said notice shall contain a statement of grounds of the increase.

10. It appears from the records that the notice u/s 146 of the Act was given to the owner on 27-6-1988 on the ground that the building, previously assessed has been put on rent by him and there has been some change in the rent conditions. It was also on the ground that by the time of the notice, there has been increase in the price of land and building and the rate of rent is also increased. A requisition form u/s 144(1), dated 27-6-1988 is also available in the record, in which the owner was called upon to furnish necessary information in pursuance thereof. In the later part of this form, the owner has furnished information and vide Sub-clause (b) of Column 1, he has stated that he has rented the aforesaid building @ Rs. 750/- per month to applicant No. 1, M/s. Dayal Film Exchange.

11. A perusal of the records of the Corporation would also show that on this information, a notice u/s 144(1) was given to M/s. Dayal Firm Exchange who filed their objection on 5-7-1988, mainly raising the ground that the tenant of the premises was not required to pay property tax as the same is recoverable against the owner. Subsequently, another objection was also sent by them regarding fixation of annual letting value in sum of Rs. 40,500/- and proposed

tax to be recovered against them in sum of Rs. 8,100/-.

12. The record would further show that this proposed re-assessment was made simply on an endorsement in the note-sheet of the Corporation that when the persons of the Corporation met with the owner, he informed that M/s. Dayal Film Exchange has sub-let this building to one Smt. Shanwar Agrawal for running a Nursing Home and also for residential purpose for total rent of Rs. 4,500/- per month. Though it is mentioned in the record that memo in this regard be issued to Smt. Agrawal but the copy of any such notice/memo issued to her or any endorsement that the notice was served upon her or any information submitted by her in this regard is not in the record produced before this Court.

13. A perusal of the records would further show that before deciding objection filed by applicant No. 1, one statement was recorded, in which it is shown that it is the statement of a partner of M/s. Dayal Film Exchange, but the name of person giving the statement is not there. Even if we take this statement for consideration, it would appear that the said premises was let to them for rent of Rs. 750/- per month. Except that, no relevant fact has been deposed in this statement and after recording such statement, the objection of applicant No. 1 was dismissed and ultimately the order as aforementioned was passed. Therefore, it is clear that except an endorsement by some employee of the Corporation in the note-sheet that the owner informed that the building has been sub-let by the tenant M/s. Dayal Film Exchange, to Dr. Shanwar Agrawal for rent in sum of Rs. 4,500/- per month, there is no basis for determining that the above rent was being recovered for the said premises and the re-assessment made on the basis of this much material does not appear to be in accordance with aforesaid provisions of law.

14. In the matter of *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, , it has been held by the Apex Court that where the building is governed by Rent Control Legislation, the annual value cannot exceed the standard rent and fact that the landlord is actually receiving higher rent is immaterial. This decision was further followed by the Apex Court in the matter of *Dr. Balbir Singh and Others Vs. M.C.D. and Others*, , in which it was observed that rateable value of building whether tenanted or self-occupied is limited by the measure of standard rent arrived at by the Assessing Authority by applying the principles laid down in the Rent Act and it cannot exceed the figure of the standard rent so arrived by the Assessing Authority. The standard rent determinable on the principles set out in the Rent Act is the upper limit of the rent, which the landlord may be expected to receive from a hypothetical tenant, but it may, in a given case, be less than the standard rent having regard to various attendant circumstances and considerations.

15. An information received in the note-sheet by any employee regarding a disputed fact cannot be held to be the conclusive proof of such fact placed under such information. Such information may be used as a foundation to proceed in enquiry and to reach at a particular conclusion but the same itself cannot be a

conclusive proof so as to pass a final order as has been done in this case.

16. Therefore, it is clear that in case on hand, the impugned increase made by the Corporation, which is based on no relevant material on record and is only based on an endorsement/information made in the note-sheet by some employee of the Corporation, cannot be sustained.

17. In the result, the revision is allowed, the order of re-assessment and demand as well as the impugned order passed by the Appellate Court are set aside.