(1996) 09 DEL CK 0005

In the Delhi High Court

Case No : Civil Writ Appeal No''s. 14, 15 and 16 of 1982

John Tinson and Co. (P) Ltd. APPELLANT

Vs

N.D.M.C. and Another RESPONDENT

Date of Decision : 09-09-1996

Acts Referred:
Delhi Rent Control Act, 1958 — Section 6(1)(A)(2)

Citation : (1996) 64 DLT 114

Hon'ble Judges : S.N. Kapoor, J

Bench : Single Bench

Advocate : Nilima Thakur, for the Appellant;

Judgement

S.N. Kapoor, J.

(1) The petitioner, a Private Limited Company in Cwp 14 to 16 of 1982 have challenged assessment of property bearing No. (i) 54/3 and 54/4; and (ii) 54, 54/1, 54/2, 54/5, 54/6 to 12, Servant Quarters, and back portion ground floor, Janpath, New Delhi vide Resolution No. 33 dated 19.3.1980; No. 2 dated 12.3.81 and No. 2 of 31.3.81, fixing different annual values for the years 1980-81 and 1981-82 and confirmed in appeal by impugned judgment dated 18.11.1981. They have also challenged the recoveries based thereon.

(2) According to the petitioner, along with their objections they have also fi

(3) The Ndmc have contested the writ petition justifying the annual value fixed u/s 9(4) of the Drc Act.

(4) 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 Kapoor and Others Vs. New Delhi Municipal Committee and Others, 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 reasonable acceptable rent. (5) In Dr.Balbir Singh 6- Others v. Mcd And Others the Supreme Court observed as under:

"We may also in this connection refer to the statement made by the Minister of State for Home Affairs on the floor of the Lok Sabha on 8th April 1981 where the Minister observed:

"The Municipal Corporation of Delhi has intimated that 494 general objections for the year 1980-81 filed by the assessees for the revision of assessment of their properties in accordance with Supreme Court judgment were considered by the Corporation. The requests for reassessment on the basis of standard rent u/s 6 of the Rent Control Act, 1958, were considered and not found acceptable to the Corporation as the assessees failed to produce documentary evidence as regards the aggregate amount of the reasonable cost of construction and the market price of the land comprised in the premises on the date of commencement of the construction as provided u/s 6(2)(b) of the Delhi Rent Control Act, 1958. Accordingly assessments were made as provided u/s 9 of the Delhi Rent Control Act, 1958. The details of the properties, locality-wise, are given in the statement attached."

IT is indeed strange that the assessing authorities should have declined to assess the rateable value of 494 properties in South Delhi on the basis of standard rent determinable on the principles laid down in Sub-section (l)(A)(2)(b) or (l)(B)(2)(b) of Section 6 merely on the ground that in the opinion of the Assessing Authorities "the assessees failed to produce the documentary evidence as regards the aggregate amount of reasonable cost of construction and the market price of land comprised in the premises on the date of commencement of the construction." If the assessees failed to produce the reasonable cost of construction of the premises or the market price of the land comprised in the premises, the Assessing Authorities could arrive at their own estimate of these two constituent items in the application of the principles set out in Sub-section (l)(A)(2)(b) or (l)(B)(2)(b) of Section 6. But on this account, the assessing authorities could not justify resort to Sub-section (4) of Section 9. It is only where for any reason it is not possible to determine the standard rent of any premises on the principles set-forth in S.6 that the standard rent may be fixed under Sub-section (4) of Section 9 and merely because the owner does not produce satisfactory evidence showing what was the reasonable cost of construction of the premises or the market price of the land at the date of commencement of the construction, it cannot be said that it is not possible to determine the standard rent on the principles set out in Sub-section (l)(A)(2)(b) or (l)(B)(2)(b) of Section 6. Take for example a case where the owner produces evidence which is found to be incorrect or which does not appear to be satisfactory; can the Assessing Authorities in such a case resort of Sub-section (4) of Section 9 stating that it is not possible to determine the standard rent on the principles set out in Subsection (l)(A)(2)(b) or (l)(B)(2)(b) of Section 6 The Assessing Authorities would obviously have to estimate for themselves on the basis of such material as may be gathered by them the reasonable cost of construction and the market price of the land and arrive at their own determination of the standard rent."

Thus, the assessments u/s 9(4) of the Drc Act was not approved and the Supreme Court insisted in Dr. Balbir Singh''s case (supra) that assessment must be made u/s 6(l)(A)(2)(b) or 6(1)(B)(2)(b) of the Drc Act. Consequently, the Ndmc is supposed to assess the property in accordance with Section 6(l)(A)(2)(b) of the Act.

(6) However, on failure of the petitioner to furnish the requisite data and evidence, as mentioned above, the Ndmc could certainly draw adverse inference against the petitioner.

(7) In Mcd v. Parmeshwari Devi Zurekha Civil Writ No.4486/92 decided on 1.7.1996 the Cpwd rates of cost of construction to estimate the cost of construction have been approved by us. We are just reiterating the same view.

(8) In Municipal Corporation of Delhi Vs. N.C. Jain and Another, a Division Bench of this Court has observed as under:

"The Assessing Authority should try and ascertain as to the market rate of land on the basis of sale deed, auction prices, etc. near about the time when the construction began in the immediate or near vicinity of the land where it is situate. If this evidence, which would be primary evidence, is not available, then reference and reliance can be placed on such circulars which are issued by the various Government departments...".

(9) In view of the above, it cannot be said that it was impossible to assess the value of the land without making any attempt in that direction.

(10) As regards the point of standard rent fixed by Shri F.T.Jones, Rent Controller, Delhi by order dated 24th June, 1942, it may be mentioned that the standard rent was fixed in respect of Premises No. 56, Queensway, New Delhi. If in those circumstances, standard rent of Premises No. 56 was fixed, it is not possible to accept it as the standard rent of the Premises No. 54, Janpath u/s 6 of the Drc Act in the light of the observations of Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others, and Dr. Balbir Singh and Others Vs. M.C.D. and Others, .

(11) The impugned resolutions and the judgments in these three writ petitions are hereby quashed. Ndmc is directed to assess the property afresh in the light of judgment in Dr. Balbir Singh v. Mcd (supra) after giving an opportunity to the petitioner of being heard.

(12) The writ petition is disposed of accordingly.

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

