
(1999) 02 DEL CK 0049
In the Delhi High Court
Case No : C.W. No. 1265 of 1997

Krishna Mohan (P) Ltd. Delite Cinema Building	APPELLANT
Vs	
M. C. D. and Others	RESPONDENT

Date of Decision : 19-02-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Delhi Municipal Corporation Act, 1957 — Section 116(3)

Citation : (1999) 2 AD 615 : (1999) 49 DRJ 106

Hon'ble Judges : K. Ramamoorthy, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr. B.B. Jain, for the Appellant; Ms. Anjana Gosain, for the Respondent

Judgement

K. Ramamoorthy, J.—The Company M/s Krishna Mohan (P) Ltd. who is the first respondent in the batch writ petitions (CW Nos 1001 to 1021 of 1993 in which the Judgment was delivered today is the petitioner in this writ petition. The petitioner has challenged the order dated 04.02.1997 passed by the Joint Assessor and Collector fixing the rateable value with effect from 1.4.1992. The reliefs prayed for in this writ petition are as follows:

Strike down section 116(3) of the Delhi Municipal Corporation Act 1957 (Act No. 66 of 1957) as unconstitutional in so far as it gives the Commissioner of respondent No.1 power to include the value of plant and machinery for the purpose of determining the rateable value thereof as ultra-vires the Constitution of India as it delegates uncontrolled powers without specifying the basis on which the plant and machinery is liable to be selected or ascertained for its inclusion in the land or the building for determining the rateable value of any given property. The said unguided power is capable of arbitrary and un-restricted use and Therefore the same is ultra-vires to Article 14 of the Constitution of India and be struck down as such:

hold that Section 116(3) of the Delhi Municipal Corporation Act is in complete

derogation of the provisions of Section 114 of the Delhi Municipal Corporation Act by which property tax can be levied only on the land and building and not on any other moveable or immovable property;

Pass a writ order or direction in the nature of certiorari and be pleased to call for the records relating to the property known as "Delete Cinema" bearing Property No. 2527/X, Asaf Ali Road, New Delhi and be pleased to quash the impugned order dated 04.02.1997.

Issue a writ order or direction in the nature of certiorari or any other writ and be pleased to restrain the respondents 1 & 2 to raise a demand on the basis of the impugned assessment order dated 04.02.1997.

Issue a writ order or direction in the nature of mandamus and be pleased to direct the respondents to fix the rateable value of the aforesaid property at Rs. 89,760/- P.A. on the principle of Section 6(1) of the Delhi Rent Control Act;

2. In this writ petition the petitioner had challenged the order 04.02.1997 by that order the rateable value had been fixed in the following manner:

Date of Cinema	Let out	Let out Total	Effect portion	portion-A	Portion-B	>
1.4.1993	3,26,980/-	43,200/-	1,04,760/-	4,68,720/-	1.4.1994	3,09,950/- 35,490/-
1.4.1994	1,04,040/-	4,49,480/-	1.4.1995	3,10,660/-	35,490/-	45,900/- 3,92,050/-
1.4.1995	3,10,660/-	35,490/-	NIL	3,46,150/-	3.	Mr. Jain, learned counsel for the petitioner submitted that the fixation of rateable value of the Joint Assessor and Collector for the year 1980 and onwards depending upon the order passed by the learned District Judge on 01.06.1991 which is the subject matter of the batch matter of the writ petitions referred to above and Therefore the Joint Assessor and Collector should make afresh assessment in the light of the judgment. Mr. B.B. Jain, the learned counsel for the petitioner contended that if this court is inclined to remit back the matter to the Joint Assessor and Collector the impugned order also may be set aside and the matter be remitted back to the Joint Assessor and Collector.

4. The learned counsel for the petitioner had challenged the virus of Section 116(3) of the Delhi Municipal Corporation Act, 1957. The MCD had filed the counter affidavit submitted that the order passed by the learned District Judge on 01.06.1991 is not a valid and the order impugned in this writ petition cannot be challenged by the petitioner.

5. We do not propose to deal with the contentions in view of the fact that the order dated 01.06.1991 has been set aside and the matter has ben remitted back to the assessing authority. In view of this the order impugned dated 18.03.1994 passed by the Joint Assessor and Collector has also to be set aside and the assessing authority had to make afresh assessment in accordance with law.

6. Only one aspect has to be dealt with and that is, challenge by the petitioner of Section 116(3) of the Municipal Corporation of Delhi Act, 1957. Mr. B.B. Jain, the

learned counsel for the petitioner contended that in view of the judgment of the Supreme Court in New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Others Vs. Municipal Corporation of The City of Ahmedabad and Others, the provisions is ultra virus and Therefore, it is bad and there has been excessive obligation of legislative powers. Section 11(3) of the MCD Act, 1957 reads as under:

116(3)

(1) x x x x x x x x x x x x

(2) x x x x x x x x x x x x

All plant and machinery contained or situate in or upon any land or building and belonging to any of the classes specified from time to time by public notice by the Commissioner with the approval of the Standing Committee, shall be deemed to form part of such land or building for the purpose of determining the rateable value thereof under sub-section (1) but save as aforesaid no account shall be taken of the value of any plant or machinery contained or situated in or upon any such land or building.

7. As could be seen it is only an enabling provision. The Supreme Court had dealt with the point relating to the fixtures. A Division Bench of this Court i.e. Municipal Corporation of Delhi Vs. Pragati Builders and N.R.D.C. of India and Another, has dealt with the point about which the reference is made by us in the Judgment dealing with the order of the District Judge dated 01.06.1991. We have also noticed in the Judgment of the Supreme Court in Hindustan Lever Ltd. Vs. Municipal Corporation of Greater Bombay and Others, . In the light of this, no fresh question arise for consideration. For these reasons, we set aside the order dated 01.06.1991 passed by the District Judge and direct the assessing authority to make afresh assessment and fix the rateable value from 01.04.1988 onwards up to 01.04.1992 in accordance with law on or before 31.05.1999.