(1996) 09 DEL CK 0054

In the Delhi High Court

Case No : Civil Writ Appeal No. 93 of 1982

Kuljit Singh Kohli APPELLANT

Vs

New Delhi Municipal Committee and Another RESPONDENT

Date of Decision : 09-09-1996

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 9(4)
Punjab Municipal Act, 1911 — Section 84

Citation : (1996) 5 AD 32 : (1996) 64 DLT 118

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

Bench : Division Bench

Advocate : Naveen Chawla, for the Appellant;

Judgement

S.N. Kapoor, J.

(1) The petitioner has challenged the assessment of property bearing No.ll5, Jor Bagh, New Delhi vide Resolution No.31 dated 16.3.1981 and confirmed by judgment u/s 84 of the Punjab Municipal Act (hereinafter called the ''P.M. Act'') dated 30.11.1981. The petitioner has sought a writ of certiorari for quashing the resolution as well as the impugned judgment referred to above and a writ of mandamus restraining respondent No. I from demanding and recovering the property tax over and above the annual value of Rs. 3,985.00 .

(2) According to the petitioner plot was purchased for a sum of Rs. 13,000.00 and total cost of construction was Rs. 48,299.00 . This cost had been accepted by the Income Tax Department in the year 1958-59. The petitioner filed objections on 21.1.1981 supported with the sale-deed and documents including income tax assessment. The objections were disposed of without giving any hearing. The respondents arbitrarily fixed the ratable value at Rs. 44,684.00 by applying the provisions of Section 9(4) of the Delhi Municipal Act (hereinafter called the ''D.R.C. Act). This is contrary to the judgment in Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others, and against the principles of natural justice. The property was originally let out during the

year 1957-58 and on the basis of actual rent the annual value was fixed at Rs.l4,160.00 less 10%. Hence the writ.

(3) In the counter, the Ndmc justified the assessment u/s 9(4) of the D.R.C. Act. They claimed that the petitioner was afforded sufficient opportunity by the Committee and individual notices were also sent apart from public notices.

(4) It is not possible for us to accept the contention of the learned Counsel for the Ndmc as well as the reasons given by the learned Adm in the impugned judgment to justify the stand that the standard rent could not be fixed u/s 6(l)(A)(2)(b) of the Drc Act.

(5) We feel that in this case it could not be said that the petitioner did not furnish the data. Firstly, if the Income Tax Department has accepted the data there may not be any justification to doubt the data furnished before the Income Tax Department without there being any solid reason. Secondly, if for any reason data was not acceptable then they should have certainly collected their own data for the purpose of fair estimation of the value of the land at the time of the commencement of the construction and costs of construction. Simply because it was cumbersome it would not absolve the Ndmc from its statutory duty to assess the property u/s 6(l)(A)(2)(b) of the Drc Act on the pretext that it was not possible, in view of the judgment of Dewan Daulat Rai Kapur v. Ndmc (Supra) and Dr. Balbir Singh (-r Others v. Mcd & Others, (Supra). So far as the value of the land is concerned the value of the land could be assessed on the basis of the market value of the land ascertained from the sale deed of comparative land of the date(s) nearest to the date of commencement of the construction in the vicinity. This record would be available in the office of the respondent also 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.

(6) 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.

(7) 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.

(8) We are unable to approve the impugned assessment order u/s 9(4) of D.R. Act in view of Dr. Balbir Singh And Others v. MCD And Others (Supra). Consequently, we allow the writ petition, direct the Assessing Authority to calculate the gross annual rent and annual value in terms of the judgment in Dewan Daulat Rai Kapurv. Ndmc (Supra) and Dr. Balbir Singh And Others v. Mcd And Others (Supra).

(9) In view of the above, We quash the resolution No. 31 dated 16.3.1981 and the impugned judgment of the learned Additional District Magistrate dated 30.11.1981 in Case bearing No. 35/81. We direct the Assessing Authority to assess afresh after giving an opportunity to the petitioner.

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

