

(2002) 07 DEL CK 0082
In the Delhi High Court
Case No : C.W. No. 4360 of 2002

M.C.D.

APPELLANT

Vs

Dhunishaw Framroz Daruwala

RESPONDENT

Date of Decision : 23-07-2002

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 116

Citation : (2002) 100 DLT 679 : (2003) 69 DRJ 256

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Rajan Sabharwal, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The petitioner has impugned the order of the Appellate Authority dated 6.7.2000 setting aside the impugned assessment order and remanding back to be decided by the Assessing Authority. The basis of the judgment of the Appellate Authority of learned ADJ is that it is the purchase price of the property which has been taken into consideration and the principle laid down by the Supreme Court of India in the case of Lt. Col. P.R. Chaudhary (Retd.) Vs. Municipal Corporation of Delhi, , has not been followed. It is specifically noted in the impugned order that the principle of parity as laid down by the Hon''ble Supreme Court has not been followed by the Assessing Authority.

2. It may be noted that the present petition has been filed more than two years after the orders passed by the Appellate Authority and thus, in my considered view, would suffer from culpable* delays and laches which itself would disentitle the petitioner to any relief.

3. I, however, consider it appropriate to consider the merits of the matter specially in view of the fact that this controversy keeps on arising despite the law being well settled by Delhi High Court and the Hon''ble Supreme Court of India.

4. In Lt. Colonel P.R. Chaudhary's case (supra), the Supreme Court emphasised

the fact that the disparity between rateable values of old premises and the recent premises has to be avoided and it is with this object in mind that the principles were laid down in the case of *Dr. Ealbir Singh and Ors. etc. v. M.C.D. and Ors.* AIR 1985 SC 309 : 27 (1985) DLT 1 (SC). These principles were reaffirmed for purposes of arriving at rateable value and it was held that 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 which would depend on the size, situation, locality and the condition of the premises and the amenities provided therein. It was further held that this would not, however, be in excess of the standard rent which would be the upper limit. It was noted that in view of the steep increase in the prices of land and building material this may result in huge disparity between the rateable values of old premises and those recently constructed though they may be similarly situated in the same area or even in adjoining localities. It is in order to avoid such a situation that in *Dr. Balbir's* case (*supra*), the principles were laid down for arriving at the rateable value of the newly constructed premises. The Supreme Court further held that no two premises can be similar but at the same time did not agree with the findings of the High Court that the Municipal Corporation of Delhi had no machinery to follow the principles laid down by the Supreme Court. It was held that the Assessing Authority cannot act in an arbitrary fashion ignoring the principles laid down by the Supreme Court.

5. Learned Counsel for the petitioner has, however, contended that the judgment in *Lt.Colonel P.R.Chaudhary's* case (*supra*), though of the year 2000 related to the assessment of the year 1985. It is thus contended that in view of the subsequent enactment of the Delhi Municipal Corporation (Determination of Rateable Value) Bye-Law, 1994, the principle laid down in *Lt. Col. P.R. Chaudhary's* case (*supra*), would not apply.

6. I am unable to accept this submission advanced by learned Counsel for the petitioner. The validity of the aforesaid Bye-laws was decided by the Division Bench of this Court in the case of *Delhi Urban House owners' Welfare Association, J.P. Jain Vs. Union of India*, . The Division Bench upheld the validity of the bye-laws though certain bye-laws were struck being Bye-law 3(1)(a) 3(1)(c)(II) Explanation and part of Explanation II to 3(1)(e). The Division Bench held that the basis of fixation of rateable value of any land or building is to be the annual rent at which such land or building might reasonably be expected to be let from year to year. It was thus held that Sub-section (1) of Section 116 of the DMC Act, 1957 has to be read with the definition of the rateable value as contained in Sub-section (47) of Section 2 of the said Act. The bye-laws framed could not fix the rateable value at any figure more than the annual rent at which such land or building might reasonably be expected to let. The concept of parity in house tax was again reaffirmed.

7. The reading of the judgment of *Lt. Colonel P.R. Chaitdhary's* case (*supra*), and of *Delhi Urban House owners' case* (*supra*), clearly lead to only one conclusion

that the principles for parity of house tax laid down in Dr. Balbir's case (supra), must be followed and the same have not to be given a go-by post the bye-laws coming into force in 1994.

8. In view of the aforesaid position I find no infirmity in the impugned order.