(2003) 04 DEL CK 0083

In the Delhi High Court

Case No : Civil Writ Petition: 665 and 667 of 1999

MCD		APPELLANT
	Vs	
Jain Brothers and Another		RESPONDENT

Date of Decision : 23-04-2003

Acts Referred:
Delhi Municipal Corporation Act, 1957 — Section 129, 346

Citation : (2003) 1 ILR Delhi 334

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : B.B. Jain, for the Appellant; Amita Gupta, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—The petitioner Corporation has impugned the order dated 16th July, 1998 by these two writ petitions relating to different assessment years though dealt with by a common order. Learned Counsel for the petitioner has raised two issues. The first issue is in respect of the extent of the rebate in case of large plots and the second issue relates to the date from which the rateable value would be applicable.

2. The first issue arises as a consequence of the rebate being given for plots over 500 sq. mtrs. Such rebate is to the extent of 15%. The contention of the learned Counsel for the petitioner is that this 15% rebate is applicable only to the extent the area exceeds 500 sq. mtrs. while learned Counsel for the respondent No. 1 assessee submits that it should be applicable to the total plot area and further higher rebate should be made applicable where the plot area is substantially more than 500 sq. mtrs. In the present case, the plot area is about 3400 sq. yds.

3. Learned Counsel for the petitioner, however, submits that this 15% rebate is an extra benefit over and above the discounted rate per sq.mtr. which is liable to be given to an assessee on account of a larger plot size. It is stated that the market value of the land has to be determined for calculating the rateable value. In calculation of the market value of the land, the plot area size is one such

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consideration. Plots of smaller size will have a higher rate per sq. mtr. as compared to plots of larger size area. As the size increases, the rate per sq. mtr. keeps on falling for the whole plot. Not only this, factors such as the covered area/FAR permissible on the plot are taken into account for calculation of the market value of the land. The location of the plot would also have a bearing.

4. Learned Counsel for respondent No. 1 thus submits that if all the aforesaid factors are taken into account and the 15% rebate is granted in addition to the same on the area over 500 sq. yds., then the respondent No. 1 can have no grievance.

5. I am also of the considered view that in view of the aforesaid submission of learned Counsel for the petitioner various parameters as mentioned by the learned Counsel would be taken into account while determining the market value of the land and larger the plot size, lesser will be the rate per sq. mtr. for the plot. The covered area/FAR would also be a material factor apart from the location of the plot. In such a situation, the additional benefit of 15% rebate can be calculated on the plot area exceeding 500 sq.yds.

6. As far as the second issue is concerned, the same relates to the date of applicability of the rateable value. This arises as a consequences of the provisions of Section 129 of the DMC Act, 1957 (hereinafter referred to as ''the said Act'') which provides for right to levy property tax from the date of completion or date of occupation, whichever occurs first. Learned Counsel for the petitioner submits that the rateable value should be made applicable in terms of Section 129 of the Act. Learned Counsel for respondent No. 1 assessee, however, submits that till the completion certificate is issued in respect of the building, the building is not capable of being occupied and the occupant is liable for prosecution. Learned Counsel further submits that Section 346 of the said Act requires completion certificate to be obtained and no person is entitled to occupy the building till such completion certificate has been obtained.

7. The aforesaid aspect has already been dealt with in the judgment passed in Civil Writ No. 7164/2002 - Municipal Corporation of Delhi v. M/s Senaro Construction Pvt. Ltd. & Anr. decided on 5th March 2003 and, in my considered view, the same principles would apply to all such cases. It has been held that it is earlier of the two dates of date of completion and date of occupation from which house tax is liable to be levied provided the building is occupied. If the building is not occupied and completion certificate is not granted as a consequence of there being unauthorised construction or the failure of the occupant/owner to take the necessary steps and obtained necessary permissions, then also the rateable value would be applicable taking the earlier date and not the date of issuances of the completion certificate. However, where there is delay on the part of the petitioner Corporation in issuance of completion certificate and the assessee does not occupy the building, the assessee cannot be made to suffer as a consequence thereof and in such a situation, it will be the date of issuance of the completion certificate which would be the relevant date.

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8. The assessing authority will keep all the aforesaid factors in mind while passing the fresh order of assessment in pursuance to the impugned order whereby the matter has been remanded back for fresh assessment in accordance with law.

9. The writ petition stands disposed of. Dasti to learned Counsel for the parties.

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