

(2003) 12 DEL CK 0092

In the Delhi High Court

Case No : CM (M) 820 of 2000 and CM 2086 of 2000

MCD

APPELLANT

Vs

Nehru Place Hotel Ltd.

RESPONDENT

Date of Decision : 02-12-2003

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 129, 346(2)

Citation : (2004) 1 AD 309 : (2003) 108 DLT 715 : (2004) 72 DRJ 437

Hon'ble Judges : R.S. Sodhi, J

Bench : Single Bench

Advocate : Amita Gupta, for the Appellant; Harish Malhotra, for the Respondent

Judgement

R.S. Sodhi, J.—CM(M) No. 820/2000 is directed against the order of the Additional District Judge, Delhi in House Tax Appeal No.113/2000 dated 8th May,2000 whereby the learned Judge has set aside the order of the assessing authority and remanded the matter for reassessment on the basis of guidelines given by him in the aforesaid judgment. Counsel for the MCD submits that the first Appellate Authority has dealt with four points in the appeal. The first point deals with the date with effect from which the rate able value can be calculated. On this point learned counsel for the MCD submits that only guidelines laid down by the Legislature are in Section 129 which deals with this aspect specifically and she submits that after notice of completion is given by the assessed, 15 days thereafter is the date with effect from which the rate able value can be assessed. On the other and, counsel for the respondent submits that rateable value can only be assessed from the date the completion certification has been issued by the competent authority. He submits that without completion certificate it is not possible to use the building as there is a bar u/s 346(2) of the Act. Consequently, he submits that the rateable value will be effected from the date completion certificate has been granted.

2. The second point taken by the First Appellate Authority is whether the value of that land has been correctly assessed. Counsel for the MCD submits that the

value of the land has to be taken on the date of commencement of construction and Therefore, the assessing authority had taken into consideration the value of the land with effect from that date taking into consideration the value of the plot No.38 and applying the formula of escalation thereto to arrive as value of the land of the assessed in question. The respondent on the other hand, submits that since the land was purchased from the DDA and is a hotel plot, only that value which is the actual value can be taken into consideration for the purposes of rateable value. He submits that plot No.38 is a commercial plot and cannot have the same value as that of a hotel plot. Even otherwise, he submits that the sites may be different or may have other variable factors which command a different price. Therefore, in order to determine actual price. The accepted escalation determined by the DDA can be taken into consideration. As far as the date of commencement of construction is concerned, both counsel have no objection to the same being 1st January,1984.

3. The third point taken into consideration by the First Appellate Court is whether the assessing authority has wrongly taken the cost of construction of building into consideration. Counsel for the MCD submits that the assessment of cost of construction of building has been taken on the basis of the balance sheet provided by the assessed. On the other hand, counsel for the respondent submits that the balance sheet do not pertain to the cost of construction of the hotel only. They also pertain to other ancillary buildings which are not part of the hotel block. Even otherwise, it is submitted that only in the event of suppression of cost of construction an alternative means can be adopted and that can be the CPWD rates.

4. The forth point dealt with by the Additional District Judge is whether the assessing authority has wrongly added items in cost of construction like electricity installation, plumbing, fire fighting, air conditioning, partitions, lifts etc. Counsel for the MCD submits that as far as air-conditioning is concerned, the Supreme Court has already adjudicated on the same, to the effect that it cannot form part of cost of construction. She submits that only fixtures which are embedded in the construct on itself whether it be walls or the earth are amenable to be calculated towards cost of construction. To this, counsel for the respondent has no objection.

5. Another point which has arisen in the connected appeals by the assessed concerns the rate of rent for the shops in the hotel where an advance has been received as deposit but no rent is being charged. As far as this question is concerned, counsel for the MCD is taking no stand. Counsel for the respondent on the other hand submits that it would be fair that the interest that the security fetches may be deemed to be the rent of the premises which can then be material for the purposes of calculating he rateable value.

6. I have heard counsel for the parties and perused the documents and material on record. As regards the question as to what is the effective date from which the rateable value is to be assessed, is set down in Section 129 of the Municipal

Corporation of Delhi Act that :

""129. Notice of erection of building, etc.-When any new building is erected or when any building is rebuild or enlarged or when any building which has been vacant is reoccupied, the person primarily liable for the property taxes assessed on the building shall given notice thereof in writing to the Commissioner within fifteen days form the date of its completion or occupation whichever first occurs, or as the case may be, from the date of its enlargement or re-occupation; and property taxes shall be assessable on the building from the said date.""

7. From a reading of the same, it is clear that the rateable value is to be assessed with effect from 15 days after the notice of completion is given in writing to the Commissioner by the assessed. In this case, since notice of completion has been given in writing, there is no difficulty in calculating the date with effect from which the rateable value can be assessed. The argument that Section 346(2) is a bar to using the building without completion certificate, is not available to the respondent since these provisions deal with different aspects of the matter and are not inter-dependent for the purposes of assessing the property to tax. Consequently, I hold that the rateable value shall be calculated as provided u/s 129 of the Delhi Municipal Act. As regards the value of the land in question, it is clear that the assessed had purchased the land in question from DDA and in the absence of evidence to the contrary, it would be desirable that the actual market rate at the commencement of the construction be taken, which would in this case, certainly not be comparable to plot 38, which is a commercial plot, but can be determined with respect to the escalation determined by the DDA. It is needless to say that both counsel have agreed that the commencement of construction shall be 1st January, 1984. As regards the cost of construction, I hold that subject to evidence to the contrary the Assessing Authority may determine this aspect with regard to CPWD rates for the nature and quality of construction.

8. Since counsel for the MCD has fairly argued that additional items which are embedded in the construction itself, be it walls or the earth, can be part of cost of construction, to which the counsel for respondent has no objection. The same is decided accordingly.

9. The last point that has been raised for my consideration is what should be the manner of assessing the shops in the hotel. I am of view that in the facts of this case, where a deposit has been taken but no rent is being charged in the absence of any evidence to show that the shops are in effect a sale, it would be proper that the reasonable interest which the advance deposit can attract be taken as the deemed rent for the purpose of calculating the rateable value or in alternative market rent which the shops may fetch can also be taken into consideration.

10. With this, the order under challenge is set aside. The matter is remanded to the assessing authority to re-assess the rateable value of the premises in

accordance with the directions above. CM(M) 820/2000 is accordingly allowed. CM 2086/2000 stands disposed of. No orders as to cost.