(2006) 10 DEL CK 0063

In the Delhi High Court

Case No : Writ Petition (C) 19169 of 2004

MCD	APPELLANT
Vs	
Shanti Parshad Jain (Huf) and Others	RESPONDENT

Date of Decision : 03-10-2006

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 169, 170
Delhi Rent Control Act, 1958 — Section 6

Citation : (2007) 137 DLT 188

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Geeta Mehrotra, for the Appellant; B.B. Jain, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—Issue rule. With consent of counsel for the parties, the petition was taken up for final disposal.

2. The Petitioner/MCD purports to be aggrieved by an order of the Additional District Judge, in an appeal preferred by the Respondent assessed under Sections 169 and 170 of the Delhi Municipal Corporation Act (hereafter referred to as the "Act").

3. The Respondent is owner of 6, Racquet Road, Civil Lines, Delhi. The property contained an old construction; building activity by way of re-construction was commenced in the year 1989. It appears that the construction was completed in 1993. The question of reassessing the rateable value arose. The Respondent was earlier aggrieved by the assessment and had approached this Court in respect of an order dated 17.9.98, by the Additional District Judge fixing interim rateable value of Rs. 1,50,000/- subject to adjustment. The petition was disposed off by an order dated 24.11.2000 directing the Appellate Court to decide the appeal in accordance with law.

4. After remand the Appellate Authority required the MCD to carry out inspection

of the property as well as the adjacent property with which parity was claimed by the Petitioner, namely 28-B Alipur Road. A team of Assessors and Collectors accordingly prepared a report under the inspection of the Joint Assessor and Collector.

5.The report, upon which the appeals were finally decided reads as follows:

Assessment And Collection Department (CLZ)

As per verbal orders of Jt. ACC (CLZ) The undersigned Officers visited the property No. 28B, Alipur Road and 6 Racquet Road on 31.7.2002 with Sh.Chander Mohan, ZI Spl. Cell a comparative chart regarding two properties is submitted below for perusal of Jt.A&C (CLZ):

1. Both the properties are situated on Racquet Road almost opposite each other.

2. Location and approach Road of both the properties is identical.

3. As per Assessment Files, 28B Alipur Road constructed during 1968-69 while 6, Racquet Road was re-constructed during 1989 to 1993.

4. Accordingly 28B, Alipur Road shows construction type of 1970 is whereas 6, Racquet Road shows latest const. type for example while the flooring in 28B Alipur Road is of mosaic type, the flooring in 6, Racquet Court Road was of superior polished stone slabs.

5. The fitting and fixtures and embellishments in 28B Alipur Road were of simpler variety in comparison of 6, Racquet Court Road where these items were of latest premium quality.

6. The property No. 6 Racquet Road is likely to fetch 20-25% more rent in comparison to 28B Alipur Road.

Sd/- Sd/- AA&C- IV AA&C-I.

6. The Appellate Authority accepted the inspection report and held that having regard to the type, area and the nature of construction and that the construction at Alipur Road being older the property of the respondent the latter had to be assessed on the principle of parity and accordingly determined that the rateable value in respect of the suit property could be enhanced by 25% as compared with the rateable value in 28-B Alipur Road.

7. The MCD, in its petition has averred and its counsel Ms. Geeta Mehrotra has urged during the course of the proceedings that the methodology adopted in the impugned order is erroneous. She submitted that as per the provisions of the Act, read with Section 6 of the Delhi Rent Control Act, 1958 the formula to be applied is the reasonable rent expected to be fetched by the premises having regard to the market price prevailing on the date of construction/construction as the case may be and the cost of construction. She further relied upon the judgment of the Supreme Court in Dr. Balbir Singh and Others Vs. M.C.D. and Others, particularly paragraphs 10 and 11. It was submitted that the standard

rent required to be determined, as the guiding principle for fixing of rateable value had necessarily to be the market value of the land on the date of commencement of construction and the cost of construction. The principle of parity it was submitted could not undermine this basic formula and that in all circumstances the determination of rent/standard rent had to be made. Thus, the learned Appellate Authority, it was submitted fell into error in fixing the rateable value determined and accepted in respect of 28-B, Alipur Road, which was a much older construction.

8. Learned Counsel for the respondent on the other hand, submitted that the decision of the Supreme Court in Dr. Balbir Singh''s case (supra) itself had even while laying down the principle or approving the principle of rateable value sounded a note of caution that in identically situated and adjoining properties there could not be wide disparity in the rateable values, particularly in respect of self occupied properties. Thus, the concept of standard rent/rent which could be reasonably expected had to be necessarily tempered or conditioned by the actual rateable value existing in respect of adjoining properties which had been constructed earlier. He also relied upon the judgment of the Supreme Court in Lt. Col. P.R.Chaudhary v. MCD 2000 (85) DLT 223.

9. In this case it is apparent that the MCD itself inspected the premises and also took into consideration the construction on site in 28-B, Alipur Road. After perusing the report the Court expressed its opinion that though the construction at Alipur Road was older and smaller in size, nevertheless the Respondent''s property by virtue of its later construction could be assessed for a rateable value of about 25% more than the older construction. The only narrow controversy Therefore is whether the formula or method adopted is at variance with the judgments of the Supreme Court and previous decisions of this Court.

10. In Dr. Balbir Singh''s case (supra) the Supreme Court was alive to the situation where two adjoining properties one constructed earlier and the other later, could be assessed at differing rateable values. The eventuality of both having varying rateable values would, it was held, be anomalous. This is evident from the para 11 where the Court noticed that the cost of land gone up about 50 times and the cost of construction also had increased at five fold in the year 1985. In these circumstances the Court directed that while determining the rateable value in case of recently constructed premises the determination of rent/standard rent which the owner might reasonably expect if the premises are let out is bound to be influenced by the similarly situated properties in the same or adjoining locality, which would necessarily be the standard rent for such premises. If one were to keep in the above terms in mind the objections taken in these proceedings by the MCD, in my opinion becomes redundant. There is and cannot be any controversy about the fact that the rateable value in respect of 28-B Alipur Road was based on standard rent on the basis of market value of the land prevailing at the time of construction of those premises along with the cost of construction. If that is to be kept in mind the objection that the market value

as on the date of construction in the present case namely 1989 being ignored to my mind becomes academic. If there is rigid insistence on application of the standard rent formula vis-a-vis such properties, the principle of parity itself would be undermined.

11. The judgment in Col. P.R. Chaudhary''s case (supra) to this supports the view taken by the Appellate Authority in this case. In that decision the Supreme Court held as under:

We find ourselves unable to subscribe to the reasoning of the High Court and the views expressed by it. Law as interpreted by this Court cannot be brushed aside by saying to the effect that it is not in conformity with the statutory provisions. Law laid by this Court is explicit and admits of no doubt. For the purpose of arriving at the rateable value 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. It would depend on the size, situation, locality and condition of the premises and the amenities provided therein. All these and other relevant factors would have to be followed in determining the rateable value. That, however, cannot be in excess of the standard rent which would be the upper limit. But then considering the runaway prices of land and building materials if the standard rent were to be the measure of rateable value there would be a huge disparity between rateable value of old premises and those recently constructed though they may be similar and situated in the same or even adjoining locality. Considering the same and similar services which are provided by the local authority if there is vast disparity between the rateable value of the old premises and the new premises that would be wholly illogical and irrational. To avoid such a situation Dr. Balbir Singh''s case laid the principles which have to be followed in arriving at the rateable value of the newly constructed premises. Of course, rateable value cannot be the same but then at the same time a wide disparity would certainly be irrational, unreasonable and unfair which situation could be avoided by following the principles laid by this Court otherwise the rateable value recording wide disparity would be struck down. There cannot be any ambiguity as to the principle laid by this Court in arriving at the rateable value.

We also find that the reasoning of the High Court is flawed that the Municipal Corporation of Delhi has no machinery if required to follow the principles laid by this Court. No two premises can be similar. In all revenue matters, premises in the locality are certainly available in the records of the Municipal Corporation of Delhi. It has a field staff on the reports of which notices for enhancement of the rateable value are issued. Assessing authority hears the objections to the fixation of rateable value and acts in quasi-judicial capacity. Its orders are appealable. It cannot act in arbitration fashion ignoring principles of law laid by the Court. It cannot fall back on the specious plea that it has no means to act on the principles of law by this Court. Even notice for enhancement of rateable value has to be based on reasons which must exist on record and the owner is entitled to be apprised of those reasons. High Court lent its support to the plea of the Municipal Corporation of Delhi which is contrary to the principles laid by this Court.

12. In view of the above and also in view of the fact that the suggestion of rateable value was at the behest of the MCD itself which understood the law correctly and submitted the inspection report I am of the opinion that there is no infirmity with the impugned order.

13. The writ petition is accordingly dismissed. No costs.

