

(1997) 11 DEL CK 0090
In the Delhi High Court
Case No : C.W.P. No.1456-65/89

M.C.D.

APPELLANT

Vs

Y.P.Sethi

RESPONDENT

Date of Decision : 19-11-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 11 DEL CK 0090

Advocate : Madhu Tewatia, for the Appellant;

Judgement

C.W.P. NO. 1456-65/89

1. This judgment proposes to dispose of CWP. Nos. 1457/89 1458/89, 1459/89, 1460/89, 1461/89, 1462/89, 1463/89, 1464/89 & 1465/89 also. In these writ petitions, the challenge is to the order of the Additional District Judge who while accepting the appeals, of the respondent has fixed the rateable value of the property in question.

2. Learned counsel for the petitioner has assailed the impugned order on the ground that the learned Additional District Judge has determined the rateable value without their being any material available on the record. The question involved in these cases is the rate of the land and cost of construction at the time when construction was commenced by the respondent for purposes of determining the ratable value. In Dr. Balbir Singh and Others Vs. M.C.D. and Others, , it was held that ratable value has to be fixed keeping in view the standard rent which is determined on the basis of the cost of land in the year in which the construction commenced. Section 6 of the Delhi Rent Control Act, 1958 lays down principles for determination of the standard rent in relation to any premises. Section 6 covers a variety of premises laying down for determining the standard rent in respect of each of the kinds of premises covered thereunder. The Assessing Authority had arrived at one estimate of costs of the land and construction and the learned Additional District Judge has disagreed with it and had preferred to accept the scheduled rates prescribed by the L & D.O. In the

instant case, the learned Additional District Judge has come to the conclusion that the price of the land as on the date of construction was Rs.27,099/-, being the price paid by the respondent. In my opinion, the learned Additional District Judge has committed a patent illegality in determining the market price of land by adopting the scheduled rates prescribed by the L. & D.O. or by accepting the price of land paid by the respondent. The learned Additional District Judge has ignored the basic principles that the market price or value means the price that a willing purchaser wants to pay to a willing seller for a property having due regard to its existing condition, with all its existing advantages and its potential possibilities when laid out in its most advantageous manner, excluding any advantages due to the carrying out of the scheme for the purpose for which the property is compulsorily acquired under the Land Acquisition Act. (Raghuvansh Narain Singh Vs. U.P. Govt. AIR 1967 SC 465. In this connection, I may usefully excerpt the following observations of a Division Bench of this Court in Municipal Corporation of Delhi Vs. N.C. Jain and Another, :-

"One of the basis for arriving at the market price of land is by invoking the principles contained in Section 24 of the Land Acquisition, Act while determining the market price of land which is acquired by way of acquisition. The assessing authority should try and ascertain as to the market rate of land on the basis of sale deed, auction prices etc. near about the time when the construction began in the immediate or near vicinity of the land where it is situate. If this evidence which would be primary evidence, is not available, then reference and reliance can be placed on such circulars which are issued by various government departments. If the said circulars are contradictory, as they appear to be in the present case, then it would be the duty of the Assessor and Collector to try and ascertain from those Government departments on the basis on which the said Government, departments have fixed the land rates.

3. The learned Additional District Judge has also committed a patent illegality in assessing the cost of construction as Rs.2,60,000/- as against Rs.4,55,364/- assessed by the Assessing Authority on the basis of the rates prescribed by C.P.W.D. It appears that the learned Additional District Judge proceeded to conclude the cost of construction on the basis of valuation report filed by the respondent which was disapproved by the Assessing Authority. The learned Additional District Judge has observed that the Assessing Authority had concluded cost of construction without getting property inspected and also without ascertaining as to of what quality the material was used. It is significant that the Assessing Authority has assessed cost of construction on the basis of the rates prescribed by the C.P.W.D., which is permissible in law. (See T.K. Marwah Vs. N.D.M.C. 1996 V AD (Delhi) 58 In this connection, I may usefully excerpt the following observations of their Lordships of Supreme Court in Balbir Singh's case.

"The assessing authorities would obviously have to estimate for themselves on the basis of such material as may be gathered by them, the reasonable cost of construction and the market price of the land and arrive at their own

determination, of the standard rent."

4. For the foregoing reasons, these writ Petitions are allowed and the impugned judgments of the Additional District Judge are hereby set aside. The Assessing Authority is directed to redetermine the ratable value of the premises in question in accordance with law and the principles laid down by the Supreme Court in Dr. Balbir Singh's case (supra) after giving an opportunity to the parties to lead evidence as may be available to them. No order as to costs.