**(1997) 11 DEL CK 0053**

**In the Delhi High Court**

**Case No :** Civil Writ Appeal No. 1358 of 1989

Municipal Corporation of Delhi APPELLANT

Vs

D.C. Dua RESPONDENT

**Date of Decision :** 26-11-1997

**Acts Referred:**

**Citation :** (1997) 70 DLT 744

**Hon'ble Judges :** M.S.A. Siddiqui, J

**Bench :** Single Bench

**Advocate :** Madhu Tawetia, for the Appellant;

## Judgement

M.S. Siddiqui, J.

(1) In this writ petition, the challenge is to the order of the Additional District Judge dated 20th May, 1988, who, while accepting the appeal of the respondent, has, inter alia, fixed the ratable value of the property in question.

(2) The learned Counsel for the petitioner has assailed the impugned order on the ground that the learned Additional District Judge has committed a grave error in fixing the rate of the land on the basis of the schedule rates prescribed by L & Do, and further by deducting Rs. 14,000.00 from the cost of construction on account of self as supervision charges. The Assessing Authority applied the rate of the land at Rs. 800.00 per sq. mtr. on the basis of rates notified by the DDA. The learned Additional District Judge, on appeal filed by the respondent applied the rate of Rs. 250.00 per sq. mtr. on the basis of schedule rates prescribed by L& DO. The view taken by the learned Additional District Judge runs counter to the view taken by the various Division Benches of this Court in M.C.D. v. C.P. Gosain, Cwp 4122/1990 decided on 4th October, 1991; Municipal Corporation of Delhi v. N.C. jain & Anr., Cw 1312/1990 decided on 24.7.1991; M.C.D. v. jasvinder Singh & Anr., Cwp 4096/1991 decided on 17th May, 1993; and M.C.D. v. K. P. Gupta. Cw 438 /1988 decided on 26th April, 1990. In view of the said decision, it is apparent that neither the schedule rates of the L.&D.O. nor

 

auction rates alone can form the basis for determining the market price of the land although both are relevant pieces of evidence which can be taken into consideration by the Assessing Authority Along with other evidence, which the parties may produce before the Assessing Authority.

(3) In M.C.D. v. N.C. jain & Another (supra), it was observed by the Division Bench that:

"THAT 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."

(4) The aforesaid view has also been reiterated by another Division Bench of this Court in Sita Nanda v. N.D.M.C. & Anr., 1996 5 A.D. (Del) 34. Thus, the learned Additional District Judge instead of himself determining the rate to be applied ought to have set aside the order of assessment and remanded the case to the Assessing Authority with the direction to determine the market price of land in accordance with law.

(5) As regard the costs of construction, the Assessing Authority has accepted the cost shown in the evaluation report of the valuer (Annexure D). Learned Additional District Judge has deducted an amount of Rs. 14,000.00 from the cost of construction without assessing any reason therefore. In my opinion, the learned Additional District Judge has committed a patent illegality in deducting an amount of Rs. 14,000.00 from the cost of construction shown in the valuation report on account of self supervision charges.

(6) For the foregoing reasons, the writ petition is allowed and the impugned judgment and the assessment order are set aside. The Assessing Authority is directed to redetermine the rateable value of the property in question in accordance with law, keeping in view the observations made in this behalf, no order as to costs.

 