(1999) 02 DEL CK 0005

In the Delhi High Court

Case No : C.W. No.1001/93 to 1021/93

Municipal Corporation of Delhi APPELLANT

Vs

M/s. Krishna Mohan (P) Ltd. and Another RESPONDENT

Date of Decision : 19-02-1999

Acts Referred:

Citation : (1999) 2 AD 523 : (1999) 78 DLT 567 : (1999) 49 DRJ 101

Hon'ble Judges : K. Ramamoorthy, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Ms. Madhu Tewatia Adv, for the Appellant; Mr. B.B. Jain Advocate, for the Respondent

Judgement

K. Ramamoorthy, J.—These batch of writ petitions relate to the same property i.e. 2527 of Ward No.10 known as Delite Cinema Building, Asaf Ali Road, New Delhi. The Deputy Assessor and Collector had passed the order fixing the rateable value for the property for the various assessment years. Appeals were filed before the District Judge u/s 169 of the Delhi Municipal Corporation Act, 1957. There were 23 appeals. The details and the number of appeals of the relevant assessment years are as follows:-

S. HTA Assessment Year No. No. 1. 91/90 1968-69 2. 92/90 1969-70 3. 85/90 1970-71 4. 98/90 1971-72 5. 88/90 1972-73 6. 81/90 1973-74 7. 100/90 1974-75 8. 99/90 1975-76 9. 84/90 1976-77 10. 82/90 1977-78 11. 87/90 1978-79 12. 86/90 1979-80 13. 95/90 1980-81 14. 93/90 1981-82 15. 79/90 1982-83 16. 94/90 1983-84 17. 96/90 1984-85 18. 97/90 1985-86 19. 83/90 1986-87 20. 90/90 1987-88 21. 80/90 1988-89 22. 89/90 1989-90 23. 1006/90 1990-91

2. The points of dispute between the owner and the Assessing authority related to the value of the land, cost of construction and fixtures. There was also a contention put forth by the owner that no notice was given by the Assessor before initiating the rateable value on the basis of the alleged additional

construction.

3. Relating to the price of land at Rs. 6,21,129.96, the learned District Judge had noticed that there was no dispute between the parties.

4. Relating to the cost of construction, the District Judge had noticed the contention before him that "it is also admitted case of the parties that the rateable value will have to be fixed of the disputed property since 01.04.1968 on the basis of the original cost of construction". With reference to this aspect the learned District Judge observed:

Considering the material on record and the circumstances of this case, I am of the view that the actual cost of construction of the building in the year 1954 was Rs. 4,67,389.08, as mentioned in the Annexure attached with the report of the Chartered Accountant. As regards the cost of office furniture, Theatre furniture cost of projection and equipment, air-conditioning plant and lift are concerned, they also cannot be considered to be the part of the building and their cost cannot be included in the cost of construction for the purpose of rateable value. It was argued by the counsel for the spondent that all these items should also be included in the cost of construction because they were for beneficial enjoyment of the cinema building. The arguments of the appellant''s counsel that these items cannot be included because they were not part of the building and keeping in view of Section 116 of the DMC Act and the circumstances of this case, they cannot be included under the heading ''Cost of Construction'' has got some force in the circumstances of this case. The office furniture has nothing to do with the construction of the building. Similarly the furniture of atria has nothing to do with the building. They can be removed without any difficulty and these furnitures are prepared after the construction of the building. imilarly the rojection and equipment of the cinema is also installed after constructing the building and that cannot be covered under the heading ''Cost of Construction''. Similarly the air conditioning plant, lift and generator are also cannot be covered under the head ''Building''. In this connection Sec. 116 of the DMC Act is also very material. But keeping in view the facts and circumstances of this case, the charges of electric fans and fittings and of general equipment should be included with the cost of construction. The electric wiring etc., forms part of construction. In these circumstances when I add the electric fans and fittings charges Rs. 51,633.01 and the cost of general equipment Rs.16,133/- as mentioned in the report, the total cost of construction in the year 1954 comes as under:

Cost of building Rs. 4,67,389.08 Cost of electric Rs. 51,633.01 fans & fittings. Cost of general Rs. 16,133.07 equipment. --------------- Total cost of Rs. 5,35,155.16 construction. ===============

5. The learned District Judge relied upon the judgment of the learned Single Judge of this Court in Municipal Corporation of Delhi Vs. National Res. Dev. Corp 1988 RLR 221 wherein this Court took the view "a lift is an amenity and its value cannot be included in the rateable value for the purpose of tax".

6. It was brought to his notice that the view taken in the above case was over-ruled by the Division Bench of this Court. The learned District Judge did not accept the fact on the premise as copy of the Judgment was not produced before him. The Judgment of the Division Bench is reported in Municipal Corporation of Delhi Vs. Pragati Builders and N.R.D.C. of India and Another, . The Division Bench laid down the following criteria for determining the rateable value:

We can cull from the above discussion the following points which are to be kept in mind while determining the rateable value of a building:

a) Has the machinery installed in a building become part of the said building on account of some degree of annexation?

b) Is the said machinery so annexed to the building for its better enjoyment and enhancement of its utility?

(c) Whether any hypothetical tenant would be ready to occupy the said building with all its available facilities and amenities?

(d) What reasonable return a tenant would be called upon to pay on the total investment of the owner for raising such a building along with all its annexures and fixtures so as not to exceed its standard rent?

7. The Division Bench further observed :

It can be safely concluded from above that in case a machinery is so annexed to the building that it has become a part thereof, and it is there for its better enjoyment, in that eventuality it is to be taken into account for the determination of its rateable value. We are thus of the view, from the conspectus .... of the above authorities that a lift is very much a part of the building and thus is to be taken into account for fixing the rateable value.

8. In as much as the learned District Judge had proceeded on the basis of the decision of this court in Municipal Corporation of Delhi Vs. National Res. Dev. Corp. 1988 RLR 221 which has been over ruled, the entire matter has to be remitted back to the assessing authority to determine the rateable value in accordance with law and in the light of the pronouncement of the Division Bench of this Court reported in Municipal Corporation of Delhi Vs. Pragati Builders and N.R.D.C. of India and Another, . The assessing authority shall also consider the ratio laid down by the Supreme Court in Hindustan Lever Ltd. Vs. Municipal Corporation of Greater Bombay and Others, while making the assessment.

9. Mr. B.B. Jain, learned counsel for the respondent raised another point that the Notification u/s 116(3) of the Delhi Municipal Corporation Act, 1957 stating that lift shall be deemed to form a part of land and building was published in the Newspaper on 23.10.1989 and 24.10.1989 and Therefore, that would have only prospective effect. The Public Notice reads as under :

MUNICIPAL CORPORATION OF DELHI PUBLIC NOTICE Lift contained or situated in or upon any building form an integral part of such building for its more beneficial enjoyment and is not plant or machinery contained or situated in or upon any land or building. However, to put this matter beyond any point of doubt, with the approval of Standing Committee, it is hereby notified under Sub-section (3) of Section 116 of the Delhi Municipal Corporation Act, 1957 that lift shall be deemed to form part of land and building for the purposes of determining the rateable value of such land and building under Sub-section (1) of Section 116 of the Delhi Municipal Corporation Act, 1957.

COMMISSIONER

10. Whatever be the legal effect of this Public Notice, the decision of the Division Bench reported in Municipal Corporation of Delhi Vs. Pragati Builders and N.R.D.C. of India and Another, would have its full force. The issue of Public Notice u/s 116(3) would not be relevant when the Division Bench of this court had declared the law.

11. The learned counsel for the MCD Ms. Madhu Tewatia submitted that the other fixtures would also form part of the building and while determining the rateable value the cost of those materials also should be taken into account. According to the learned counsel the fixtures in a theatre would form part of the theatre because without them the building cannot be called the theatre. According to the learned counsel for the Appellant Ms. Madhu Tewatia, these had not been considered by the learned District Judge. When we are remitting back the matter to the assessing authority we do not want to express any opinion on this point. The assessing authority shall determine the rateable value in accordance with law. It shall be open to the respondent/owner to urge all points available in law before the assessing authority and produce any material necessary for the purpose of determining the rateable value. The assessing authority shall consider all the points which may raised by the parties before it and pass the ord er on or before 31.05.1999.

12. Accordingly, the writ petitions stand allowed to the above extent. There shall be no order as to costs.

