
(2011) 01 DEL CK 0281
In the Delhi High Court
Case No : Writ Petition (C) 4052 of 2010

Nakul Kapur

APPELLANT

Vs

NDMC and Others

RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Citation : (2011) 178 DLT 186 : (2011) 3 ILR Delhi 510

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Shanti Bhushan and Sanjai K. Pathak, for the Appellant; Madhu Tewatia, Sidhi Arora and Aeshna Singh, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The writ petition impugns the order dated 9th July, 2009 of the Assessing Authority of the Respondent NDMC revising the rateable value of Property No. B-36, Malcha Marg, New Delhi from the then existing value of Rs. 77,100/- to Rs. 8,00,000/- with effect from 1st April, 2004 and to Rs. 72,90,000/- with effect from 6th November, 2008 and the order dated 15th May, 2010 of the Additional District Judge dismissing the appeal of the Petitioner against the order of the Assessing Authority.

2. Notice of the writ petition was issued and counter affidavit filed by the Respondent NDMC. After some hearing on 3rd December, 2010, further particulars/documents were sought from both the parties and were filed. The counsels for the parties have been heard.

3. The factual matrix emerging from the documents filed and the pleading is as under:

The property comprising of plot of land admeasuring 375 sq. yds. and two and a half residential construction thereon, was acquired by purchase by the mother of the Petitioner vide Sale Deed dated 16th November, 1995 for total sale consideration of Rs. 1,60,00,000/-. The mother of the Petitioner applied to the

Respondent NDMC for demolition of the existing construction in the property and for permission for raising fresh construction and the same was sanctioned by the Respondent NDMC vide order dated 22nd September, 2003. According to the Petitioner, the demolition of the old structure and re-construction started in the year 2004-2005. The mother of the Petitioner applied for sanctioning of revised construction plan and which was allowed on 8th June, 2004. The mother of the Petitioner executed a registered Gift Deed dated 6th October, 2008 in favour of the Petitioner. In the said Gift Deed, it is mentioned that the mother of the Petitioner had "demolished the then existing structure of building on the plot of land underneath the said property and got building plan sanctioned for reconstruction of a new building on the said land". The mother of the Petitioner at the time of the Gift Deed was described as the owner of the "plot of land" as distinct from property and it was further stated that in fact in anticipation of the Gift Deed, the possession of the "plot of land" had been handed over to the Petitioner on 1st April, 2005. The gift for the purposes of stamp duty was valued at Rs. 1,34,82,500/-. The Petitioner on 16th October, 2008 applied for Completion Certificate and which was issued with respect to the new construction on the plot of land on 12th November, 2008. The Petitioner on 26th November, 2008 let out the entire newly constructed property at a rent of Rs. 6,75,000/- per month.

4. It is not in dispute that the Respondent NDMC on 24th January, 2005 had served a notice u/s 72 of the New Delhi Municipal Council Act, 1994 for assessment of the plot of land at the rateable value of `8,00,000/- with effect from 1st April, 2004. It is also not in dispute that another notice was served on 25th March, 2009 proposing the rateable value with effect from 6th November, 2008 at Rs. 72,90,000/-.

5. The Petitioner objected to the aforesaid proposal of the Respondent NDMC by contending that the increase in rateable value from the then existing of Rs. 77,100/- to Rs. 8,00,000/- with effect from 1st April, 2004 and to Rs. 72,90,000/- with effect from 6th November, 2008 was 100 fold and not permissible and the rateable value of similar properties in the neighbourhood was much less. It was contended that the proposal of the Respondent NDMC was thus discriminatory and arbitrary. It was further contended that the house tax was in lieu of municipal services and cannot be disproportionate qua similarly situated properties. Reliance was placed on *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, and *Dr. Balbir Singh and Others Vs. M.C.D. and Others*, .

6. The Assessing Authority of the Respondent NDMC after hearing the Petitioners held that as per Section 63(2) of the NDMC Act, 1994 the rateable value of land which is not built upon but is capable of being built upon and/or which is in the process of erection, is to be fixed at 5% of estimated capital value thereof and as such on the basis of the capital value of Rs. 1,60,00,000/- as disclosed in the Sale Deed of the year 1995 in favour of the mother of the Petitioner, determined

the rateable value of the land as on 1st April, 2004 at Rs. 8,00,000/-.

7. Aggrieved therefrom the Petitioner preferred the statutory appeal u/s 115(1) of the Act. The challenge in the memorandum of appeal was on the ground of parity only. In addition to the judgments aforesaid referred to in reply before the Assessing Authority, reliance was also placed on Lt. Col. P.R. Chaudhary (Retd.) Vs. Municipal Corporation of Delhi, . It was also stated that the entire tax demanded on the basis of the order impugned, had been paid. It appears that the Additional District Judge also summoned the assessment list of the locality and on the basis thereof it was submitted by the Petitioner before the Additional District Judge that the rateable values as revised were not at par with the rateable values of the other properties in the locality.

8. The said appeal was dismissed vide order dated 15th May, 2010. It was held that the judgments relied upon by the counsel for the Petitioner were in accordance with Sections 4, 6 & 9 of the Delhi Rent Control Act, 1958; that Sections 4, 6 & 9 of the Delhi Rent Control Act had in the judgment of this Court in Raghunandan Saran Ashok Saran (HUF) Vs. Union of India and Others, been held to be ultra vires and void; that this Court in The State Trading Corporation of India Ltd. Vs. New Delhi Municipal Council, has held that the principles of standard rent shall not be attracted where the premises are actually occupied by the tenant and the rate of rent is above Rs. 3,500/- per month as in the present case; that the principle of parity as laid down in the judgments in Dr. Balbir Singh (supra) and Lt. Col. P.R. Chaudhary (supra) was laid down while determining the rateable value on the basis of the standard rent in terms of provisions of Delhi Rent Control Act and the Apex Court was not concerned with cases of actual rent beyond the purview of the Delhi Rent Control Act as in the present case; that actual rent is the objective criteria and leaves no scope for any subjectivity and any attempt to reduce the rateable value to below the actual rent will create a lot of confusion and cause of action. It was further held that the unit area method had already been enforced with effect from 1st April, 2009 but the principles thereof could not be applied for period prior thereto.

9. The senior counsel for the Petitioner has before this Court also argued:

(a) that the principles of parity are applicable irrespective of whether the rateable value is determined on the basis of standard rent or actual rent.

(b) Section 63(1) does not make distinction between self occupied and let out properties.

(c) that the provisions of Section 63(2) apply only to land which has not been built up earlier and would not apply to land which has already been built upon and the building where upon is demolished for the purposes of re-construction. Reliance in this regard is placed on Section 109 of the NDMC Act (to which attention was in fact invited by the counsel for the Respondent NDMC) which is as under:

109. Demolition, etc., of buildings-If any building is wholly or partly demolished or destroyed or otherwise deprived of value, the Chairperson may, on the application in writing of the owner or occupier, remit or refund such portion of any tax assessed on the rateable value thereof as he thinks fit.

It is contended that land which has already been built upon and building whereupon is demolished for the purposes of re-construction would be covered by Section 109 and the rateable value thereof is to remain as before and to be not fixed in accordance with Section 63(2) of the Act; rather rebate has to be granted with respect thereto; though it is admitted that the Petitioner having not applied for rebate would not be entitle thereto but it is contended that the rateable value of such land would remain the same as before i.e. Rs. 77,100/-. It is also contended that in such situation there may not be any vacant land at any point of time inasmuch as the work of demolition and re-construction may go on simultaneously.

(d) it is thus contended that the fixation of rateable value with effect from 1st April, 2004 at Rs. 8,00,000/- u/s 63(2) is erroneous.

(e) with respect to the revision of rateable value with effect from 1st December, 2008 to Rs. 72,90,000/- (inasmuch as with effect from 1st April, 2009 unit area method came into force), it is contended that the principles of parity would apply and it is further argued that rather than ordering reassessment by applying the principle of parity, the Petitioner is willing to pay for the said period also as per the unit area method even though the tax so computed would be a little higher.

(f) it is contended that house tax cannot be discriminatory and the principle of parity flows from the Constitution of India itself.

(g) reliance is placed on paras 25 to 27 of Sant Ram Saigal v. MCD 105 (2005) DLT 746 and to para 31 of the The State Trading Corporation of India Ltd. Vs. New Delhi Municipal Council, where the principles of parity were reiterated even in cases of actual letting.

10. Per contra the counsel for the Respondent NDMC has contended:

(i) that even before Sections 4, 6 & 9 of the Delhi Rent Control Act were declared to be invalid, the assessment of rateable value of land on which building existed was different from assessment of rateable value of land alone; that the provisions of the Delhi Rent Control Act were not applicable to open plot of land; the principle of standard rent was thus not applicable to vacant land;

(ii) vacant land stands in its own class and is thus not to be governed by the principle of parity. Reliance in this regard is placed on The The Municipal Corporation of Greater Bombay Vs. Polychem Ltd., .

(iii) it is thus contended that vacant land is to be treated differently and the principle of parity with land which had already been built upon will not arise.

(iv) that once the statute i.e. Section 63(2) had provided the mode of

assessment of rateable value of the vacant land as 5% of the capital value thereof, all other modes of assessment are excluded. Reliance is placed on The Commissioner v. Griha Yajamanula Samkhya 2003 MCC 403 in para 34 laying down that where the Act provides the formula for determination of tax, the same shall prevail.

(v) attention is invited to Asstt. General Manager, Central Bank of India and Others Vs. Commissioner, Municipal Corporation for the City of Ahmedabad and Others, , with respect to the provisions of the Bombay Provincial Municipal Corporation Act, 1949 and to East India Commercial Co. Pvt. Ltd. Vs. Corporation of Calcutta, in relation to the Calcutta Municipal Act, 1951 but during the course of hearing it was found that the provisions of the said two Acts are materially different from that of the NDMC Act and as such the said judgments do not apply.

(vi) with respect to the argument on Section 109 of the NDMC Act, it is contended that the same applies for remission of tax on the building and not to remission of tax on land.

(vi) the judgment of the Division Bench in State Trading Corporation of India Ltd. reported in (2006) 1 AD Delhi 366 is relied upon to contend that after amendment of the Delhi Rent Control Act with effect from 1st December, 1988, the rateable value has to be determined on actual rent basis.

(vii) reliance is placed on Panchshila Co-operative House Building Society Ltd. and Another Vs. Municipal Corporation of Delhi and Another, where a Division Bench of this Court laid down that property tax is a tax and not a fee.

(viii) attention is also invited to Delhi Golf Club Ltd. and Another Vs. N.D.M.C., where also the Apex Court held that the levy of property tax is not to be viewed as fee to avail municipal services.

11. The senior counsel for the Petitioner in rejoinder has contended that for the period 1st April, 2004 to 30th November, 2008, Section 109 is a complete answer. He has also contended that the counsel for the Respondent NDMC has not dealt with the judgment of the Apex Court in Lt. Col. P.R. Chaudhary where it has been observed that the property tax is in lieu of municipal services and therefore has to be co-related thereto. It is further argued that the Supreme Court sustained the provisions of property tax in the Municipal Act which otherwise would have been struck down as discriminatory, only for the reason of laying down that there has to be parity between property tax of all properties in the same locality. It is further argued that it is incongruous that the principle of parity would apply to built up property and not to land when the municipal services required for land are far less than that to a built up property.

12. The first question which arises for consideration is as to whether Section 63(2) laying down the mechanism for determination of rateable value of any land which is not built upon but is capable of being built upon and of any land on which the building is in the process of erection, applies only to land which has

never been built upon and would not apply to land which has earlier been built upon and building whereon has been demolished.

13. The literal reading of Section 63(2) does not limit the scope thereof to only virgin land. The expression used, is "the rateable value of any land" which would also include land which was earlier built upon and the building whereon has been demolished. The only qualification for a land to fall u/s 63(2) is that the same is not built upon but is capable of being built upon. As far as the said qualification is satisfied, it is immaterial whether it was earlier built upon and building earlier existing thereon has been demolished.

14. Unless Section 63(2) is so read, it would create a situation where there is no provision for determination of rateable value of land earlier built upon and building whereon has been demolished. Though Section 63(1) provides for rateable value of any land "or" building but the same is found to be providing in fact for assessment of rateable value of only that land which has been built upon and not of vacant land. The expression "or" used in Section 63(1), in the context thereof is to be read as "and". Section 63(1) contemplates the land or building which might reasonably be expected to be let. A plot of land in municipal areas can be used either for residential or commercial/industrial or for institutional purposes only since, the Municipal Laws prohibit any construction on the land without prior permission and also lay restrictions on the use of land and open land cannot reasonably be expected to be let. Also, proviso to Section 63(1) contemplates standard rent of land "or" building being fixed under the DRC Act. The provisions of DRC Act do not apply to vacant land. Thus there can be no eventuality of fixation of standard rent of vacant land. I am therefore of the opinion that Section 63(1) cannot be said to be providing for mechanism for assessment of rateable value of vacant land only and is concerned with rateable value of land with a building/ structure thereon.

15. Thus the only provision in the Statute for determination of rateable value of vacant land is Section 63(2) and if the same were to be held to not apply to land, though vacant but having been built upon earlier, it would create a void and which is not desirable.

16. I am also of the opinion that there is no basis or rationale for discriminating between the land which has earlier been built upon and the building whereon has been demolished and the land which has never been built upon. If the two were to be so discriminated and the rateable value of land which was earlier built upon and building whereon has been demolished, were to be determined u/s 63(1) and the rateable value of the land which has never been built upon, were to be determined u/s 63(2), it will lead to a situation where the rateable value of land which has never been built upon but is capable of being built upon is far more than the rateable value of similarly situated land also capable of being built upon but on which building was earlier raised and demolished.

17. Had the intention of the Legislature been that Section 63(2) applies only to

land which had never been built upon but is capable of being built upon, nothing prevented the Legislature from so providing. The Legislature however chose to use the words "which is not built upon" and not the words "which has never been built upon".

18. When Section 63(2) within its ambit has included even that land on which the building is in the process of erection and during which time the rateable value is to be fixed at 5% of the capital value of land, there is no reason to hold that the same would not cover land which was earlier built upon and building whereon has been demolished. This shows that the applicability of Section 63(2) is not confined to virgin land only.

19. As far as Section 109 is concerned, the same deals only with building and not with land. It provides for remission of tax assessed on the rateable value of a building which has been wholly or partly demolished or destroyed or otherwise deprived of value. The same will thus have no application whatsoever in determination of rateable value of land.

20. I find that in *Municipal Corporation of Greater Mumbai and Another Vs. Kamla Mills Ltd.*, also, the issue culled out by the Supreme Court was, when a building constructed upon land previously assessed to municipal tax is demolished for construction of a new building, is it open to the Municipal Corporation to assess the rateable value of the land till construction of the building by taking the market value of the land? The contention of the Assessee there also was that the rateable value could not be revised by taking market value and which was accepted by the High Court. The Supreme Court however allowed the appeals of the Municipal Corporation; of course since the Bombay Rent Act applied to vacant land also, it was held that the rateable value be determined as per standard rent and not market value. However the NDMC Act as aforesaid provides for rateable value of vacant land @ 5% of estimated capital value of land. In my view, the matter is thus no longer *res integra*.

21. Thus no error can be found with the assessment or rateable value from 1st April, 2004 in accordance with Section 63(2) of the Act. There is no challenge by the Petitioner to the assessment of capital value of land at Rs. 1,60,00,000/- on the purchase price of land and building close to 10 years ago in the year 1995.

22. The other argument raised by the senior counsel for the Petitioner of there being no vacant land at any time owing to the work of demolition and re-construction going on simultaneously has no basis in the pleadings of the Petitioner, neither before the Assessing Authority of the NDMC nor before the Appellate Authority nor before this Court. The Petitioner has been challenging the rateable value only on the ground of parity. This argument was raised before this Court for the first time after being required to file additional documents vide order dated 3rd December, 2010. Even otherwise, the fact remains that the plans got sanctioned by the Petitioner from the Respondent NDMC, were not for addition, alteration but were for demolition and re-construction. The Petitioner

admits that the sanction for demolition and re-construction was received on 22nd September, 2003. It is thus in the normal course of events that by 1st April, 2004, the work of demolition had been completed and as on 1st April, 2004 there was only a vacant piece of land, may be under construction and covered by Section 63(2) of the Act. In the registered Gift Deed in favour of the Petitioner, it is expressly recorded that the mother of the Petitioner demolished the then existing structure of building on the said plot of land and thereafter got the building plans sanctioned for re-construction. The gift as on 6th October, 2008 also was of a vacant plot of land only and not of land with any old structure existing thereon. Thus the said contention of the Petitioner cannot be accepted.

23. The next question which arises is whether the principle of parity would apply to rateable value of land assessed u/s 63(2) of the Act. I am in this regard, inclined to agree with the contention of the counsel for the Respondent MCD that there can be no parity between built up property and vacant land. The judgment in *M/s Polychem Ltd (supra)* is apposite in this regard. Also, the judgment in *Griha Yajamanula Samkhya (supra)* clearly lays down that where the Act lays down the formula for determining rateable value of vacant land, the same shall prevail. Even in *India Automobiles (1960) Ltd. Vs. Calcutta Municipal Corporation and Another*, it was held that wherever the Municipal Law itself provides the mode and manner of determination of annual value irrespective of Rent Control Act, in such cases the determination of rateable value has to be accordingly. Thus the principles of parity would not apply to the rateable value of land and it cannot be said that the rateable value of vacant land has to be the same as the rateable value of other built up properties in the locality.

24. Thus no interference is called for in the determination of rateable value of the period 1st April, 2004 to 30th November, 2008.

25. As far as the determination of rateable value from 1st December, 2008 to 31st March, 2009 on the basis of actual rent is concerned, the question which arises is whether principles of parity would continue to apply even after the provisions of Rent Act and standard rent have ceased to apply to determination of rateable value.

26. The judgment in *Lt. Col. P.R. Chaudhary* though of after the amendment with effect from 1st December, 1988 to the Delhi Rent Control Act, in para 4 thereof expressly records that the Court was concerned with the law as it existed prior to the said amendment. The principle of parity emerged in the context of determination of rateable value in accordance with the principles of standard rent in the Rent Act. Though the Municipal Statutes provided for the determination of rateable value as per the letting value but the Courts held that since in law, notwithstanding the actual letting value being more, the owner was entitled to and the tenant liable to pay only standard rent as determined in the Rent Act, the municipality while determining the letting value was bound by law i.e. the Rent Act and to treat the letting value as only that which was permissible under the Rent Act notwithstanding the actual rent being more, for the reason of the

same being contrary to law. The Delhi Rent Control Act, 1958 in Section 9(4) thereof, while providing for the determination of standard rent itself provided for the principle of parity by providing that after determining the standard rent in accordance with the principles enshrined therein, the Rent Controller shall have regard also to the standard rent payable in respect to other similar premises in the neighbourhood.

27. Having found the genesis of the principle of parity in the determination of standard rent under the Rent Act, I am of the opinion that the same would not apply when the letting value has to be determined de-hors the provisions of the standard rent. The Municipal Statute does not provide for parity. It provides for determination of rateable value as per the rent at which the property might reasonably be expected to be let. There can be no better proof of the same than the actual rent fetched by the property. Moreover, even if the principle of parity were to apply, the parity will have to be with the other similar properties and parity cannot be with the properties constructed long back and without the modern amenities. It is not the case of the Petitioner that the rent of Rs. 6,25,000/- per month fetched by the property is not the market rent or that any other similarly situated property is not fetching or would not have fetched the said rent. The reasoning given by the two Judge Bench in Lt. Col. P.R. Choudhary for application of parity for the reason of the two properties in the locality enjoying the same services is contrary to the three Judge Bench subsequent judgment in Delhi Golf Club Ltd (supra) of the levy of property tax being qua ownership of the property and being not in the nature of a fee.

28. Moreover, the challenge with respect to the same is for four months only and the computation of the tax under challenge for the said period would be small in comparison to the tax for the remaining period and for this reason also, it is not deemed appropriate to interfere with the same. It is significant that the Legislature has made the order of the Appellate Authority final and this Court is only exercising supervisory jurisdiction and it is a settled principle of law that in exercise of the said jurisdiction, this Court is entitled to refuse to interfere even where the Petitioner has made out a case. The Supreme Court in Srikant Kashinath Jituri and others Vs. Corporation of the City of Belgaum, has already held that time has come for review of the soundness and continuing relevance of the view taken in earlier decisions of the property being determined on fair rent rather than actual rent.

The writ petition is therefore dismissed, however with no order as to costs.