

(1994) 12 DEL CK 0007

In the Delhi High Court

Case No : Civil Writ Petition No. 937 of 1994

Naresh Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 02-12-1994

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 115(4)

Citation : (1994) 4 AD 1084 : (1994) 56 DLT 746 : (1994) 31 DRJ 621

Hon'ble Judges : M. Jagannadha Rao, C.J.;Devinder Gupta, J

Bench : Division Bench

Advocate : M.S. Maini and Madhu Tawetia, for the Appellant;

Judgement

M. Jagannadha Rao, C.J.

(1) The writ petition raises the question, of levy of property tax under the provisions of the Delhi Municipal Corporation Act, 1957 (hereafter called Dmc Act, 1957), upon buildings constructed in agricultural lands, in the context of Section 115(4)(c) of the said Act exempting "agricultural lands and buildings (other than dwelling houses)." .

(2) We shall refer briefly to the facts of the case. The petitioner claims to have purchased agricultural land measuring 13 bighas 10 bids was bearing Khasra No. 6, Killa No. 16 (3.01), 6/15 (3-11), 6/17(4-16), 6/24 (1-14), 6(0.18), situate in the revenue estate of village Bijwasan, Tehsil Mehrauli, New Delhi, as per Annexures P2 and P3. Petitioner says that on 5.8.93, the property was mutated in the name of the petitioner, that in 1986-87, a tube-well was bored for irrigation purposes, that a boundary wall was constructed in 1986- 87 and as the land was situated in the rural area of Union Territory of Delhi, no permission was required under the Dmc Act, 1957 and Building Bye-Laws, 1983. It is stated that on 17.1.1990, a building plan was sanctioned by the Corporation for construction of a building in the aforesaid agricultural land, and a building was constructed and is being "used for agricultural purposes". It is also said that whenever the

petitioner or his family members visit the farm, they temporarily stay there for a night. It is also stated that neither the petitioner nor any other person, is residing in the said building permanently. It appears that the petitioner received a notice u/s 131 of the Dmc Act dated 4:2.1993, as per Annexure P6, and the petitioner's attorney Mr. Suresh Kumar filed objections (as per Annexure P5) stating that no "farm house" was constructed. It is stated that on 15.12.1993, the petitioner received another notice u/s 131 of the Dmc Act, calling upon the petitioner to give the information detailed in the notice (vide Annexure-P6). It appears that the attorney replied on 27.12.93 to the said notice as per Annexure P7 that there is no policy as yet regarding property-tax on "farm houses" and also it is not dwelling house within the meaning of the said words in Section 115(4)(c) of the Mcd Act, and the notice may be withdrawn. While so, the 5th respondent (Deputy Assessor & Collector) sent a further letter (Annexure P8) to the petitioner's attorney stating that the house in question is a farm house on which property tax is leviable,. there was, Therefore, no question of withdrawing the notice and that petitioner is obliged to send the information called for. Thereafter the impugned notice (Annexure P1) dated 2.2.94 was received by the petitioner's attorney, calling for information as to whether the "farm house" was rented out or was under self-occupation, extent of area of land, date of purchase, date of construction, plinth area in each floor, date of commencement and completion of construction, cost of building, including cost of garden, ground, out-houses, if any, appertaining to the building or part thereof, any fitting affixed to the building for the beneficial enjoyment thereof, details if any, of any swimming pools, lifts, etc. However, no cost of moveable furniture or fittings need be included. Cost of boundary wall was to be included. Petitioner could give cost of boundary walls also. A list of value of land for the years for 1981-82 to 1993-94 was furnished. 624

(3) Questioning the said notice Annexure Pi dated 2.2.94, which was issued u/s 131 of the Dmc Act, the writ petition is filed seeking the quashing of the said notice, and also seeking a declaration that the words "other than dwelling houses" in Section 115(4)(c) was unconstitutional and also repugnant to the provisions of the Act.

(4) The writ petition came up for hearing along with certain other cases and the petitioner's counsel as well as other counsel were heard and it was submitted by all counsel that the Court could decide the broad principles underlying the validity and interpretation of Section 115(4)(c), leaving it to the parties to agitate their cases before the departmental authorities or, before the appellate authority, in case they are pending before the said authority.

(5) Counsel for the petitioner also contended that while laying down the principles aforesaid the Court could also decide, in case the building was subject to property tax, whether the entire agricultural land in which the building was located could become taxable or whether only such land as reasonably required for the user of the building should be held liable to property tax.

(6) The Mcd filed a counter, through its Assistant Law Officer stating that the information was sought pursuant to Section 126, that the Bijwasan area fell within the jurisdiction of the Mcd and was within the Union Territory of Delhi. It is said that in urban areas, a general tax is livable on all lands and buildings or part thereof as per the tabular statement referred to in the counter. It is then stated that "even in rural areas, farm houses/buildings etc, are not exempt from property taxes. In fact, all Hotels within the Rural areas (Hotel Corporation, East India Hotels and Hotel Corporation of India) are and have been paying property taxes to the MCD. It is also stated that the schedule referred to in the counter makes the position clear. As per the schedule, it is stated that general tax is livable "on all lands and buildings including Farm Houses, Godowns, Hotels etc. outside village abadi area: Again a table is given showing in Column I, the rateable value (hereinafter described as RV) of lands/buildings or part thereof, in a graduation i.e. when the Rv does not exceed RS. 30,000; while the Rv exceeds Rs. 30,000 and does not exceed Rs. 1 lakh; or where the Rv exceeds Rs 1 lakh. Column 2 refers, in respect of these three gradations, to the value/percentage of Rv used or to be used for residential purposes including- Farm Houses: viz. respectively 3% of the RV; Rs. 900 plus 7% of the amount by which the Rv exceeds Rs. 30,000; Rs. 5800 plus 20% of the amount by which the Rv exceeds Rs. 1 lakh. This covers the three gradations in column 1. Coming to Col. 3, it refers to the same three gradations mentioned in Col. I, giving the value/percentage of Rv used for non-residential purposes including Hotels, Godowns, office complexes, the rates being: 4.5% of the RV; Rs. 1350 plus 10% of the amount by which the Rv exceeds Rs. 30,000; Rs. 8350 plus 10% of the amount by which the Rv exceeds Rs. 1 lakh. It is also stated that, even u/s 115 of the Dmc Act, there is no full or complete exemption from the payment of property taxes qua rural area/agricultural land and buildings. Exemption is qua general tax only and that too, only if the conditions postulated for the grant of the said exemption stand complied with. It is also stated that "Dwelling agricultural units/ Farm Houses are not exempt from the payment of property tax. The Mcd Act, 1957 extends to the Union Territory of Delhi unless otherwise provided in the said Act of 1957, and does not extend to New Delhi and Delhi Cantonment. The Mcd can levy taxes on all land except as aforesaid, be it rural or urban or agricultural.

(7) It is also contended for the Mcd that the provisions of the Act in Section 115(4)(c) which contemplate levy of property tax on dwelling houses are not violative of Article 14 of the Constitution merely because, as per certain resolutions of the Mcd, residential buildings in the abadi area are not subject to property tax. Reference is made in this connection to Section 2(3) which defines "building", to Section 2(24) of the act which defines land". Section 2(47) which defines "rate". Section 2(38) which defines "premises". Section 2(52) which defines "rural area". Section 1(2) of the Act, Section 2(10) which defines "Delhi", Section 507 which deals with rural areas, to Section 177. dealing with power of exemption, to the observations of the Commission "at the time of the

presentation of the budget for 1986-87, to the resolution of 1989-90 presenting rates of taxes at a rate higher turn houses outside" the village abadi area etc. to say that the exemption granted to dwelling houses in the abadi area is reasonable and valid and is based on a rational basis.

(8) In the light of the above, the points that arise for consideration are: (1) Whether Section 115(4)(c) of the D.M.C. Act, in so far as it permits levy of property tax on dwelling houses in agricultural land is discriminatory and violative of Article 14 of the Constitution of India in the context of exemption granted to owner-occupied lands and buildings used for residential purposes and located "in the abadi area of the villages? (2) If property tax is validly leviable u/s 115(4)(c), then what is the meaning of the words agricultural land and buildings (other than dwelling houses), and what is the meaning of the words "buildings" in the context of "agricultural land? (3) If a building is a dwelling house and is also located in agricultural land, what is the extent of that agricultural land which can be subjected to the levy of property tax? point 1

(9) This point deals with constitutional validity of the levy of property tax on "dwelling houses" falling u/s 115(4)(c). The title of Section 115 shows that the section concerns "premises in respect of which property taxes are to be levied." Section 115(4) refers to levy of the "general tax" in respect of "all lands and buildings" in Delhi except: (a) (c) agricultural lands and buildings (other than dwelling houses).

(10) It, Therefore, follows that general tax is not leviable in the case of agricultural lands and buildings (other than dwelling houses) in Delhi as defined in Section 1(2) read with Section 2(10). Now Section 2(10) says that "Delhi" means the entire area of the Union Territory of Delhi except New Delhi, and Delhi Cantonment. That would mean that the rural areas of Delhi are also part of "Delhi" and Section 2(52) defines "rural areas" as the areas of Delhi which immediately before the establishment of the Corporation, were situated within the local limits of the District Board of Delhi, established under the Punjab District Boards Act, 1883 (Punjab Act 20 of 1883) but does not include such portion thereof as may, by virtue of a notification u/s 507, cease to be included in the rural areas as therein defined. Section 507 gives power in sub-clause (a) thereof to exclude any portion of rural area from the rural area, with the previous approval of the Central Government. The Corporation can under sub-clause (b) (i) of Section 507, exempt any rural area from the provisions of the Act and under sub-clause b(ii) of Section 507 or permit the levy of taxes, rates, fee or charges at lesser rates in the rural areas or any portion thereof as compared to rates applicable for urban areas or exempt such areas or portion from any such tax, rate, fee or other charge. II. As seen below, the taxation proposals of 1986-87 do not make any difference between "dwelling houses" in abadi area and non-abadi area of any rural village. But such a distinction is introduced in the resolution for 1989-90. 627

(12) The proposals relating to property taxes for 1986- 87 and again the Budget

Estimates (General) for the year 1989-90 (Resolution No. 1004 to 1006 dated 8.2.89) bring about the principles for levy of property tax on premises in "rural areas". So far as the 1986-87 proposals are concerned, they state that there will be a "general tax" in rural areas as defined in section 2(52). The said tax shall be levied on lands and buildings or part thereof as under: Rv of lands & building Used or to be used for I Hotels,Mills,Ware or part thereof residential purposes house, Cold storage, Oil Depots, Office! complexes and properties, used or to be used for purposes other than residential (i) Where the Rv does 3% of the Rv 4.5% of the Rv not exceeds Rs. 50,000 (ii) Where the Rv Rs. 1500 plus 20% of Rs.2250.00 plus 25% of exceeds Rs. 50,000 the amount by which the amount by which the Rv exceeds the Rv exceeds Rs 50,000 Rs50,000 "provided that no general tax shall be payable on owner-occupied lands and buildings used for residential purposes.

(13) There are some changes brought about by the Resolutions No. 1004 to 1006 dated 8.2.1989, called "Budget Estimates (General) for the year 1989-90 between abadi area and non-abadi areas. The schedule thereof (1-obligatory) deals (i) with property tax (ii) Fire Tax and (iii) General Tax. Under the head of General Tax, it is stated as follows: "(a) In the rural areas, as defined in Section 2(52) of the Dmc Act, the general tax on all lands and buildings or part thereof be levied as under: (x): on all lands and buildings in village abadi area: 628 Rv of lands & Used or to be used for Used or to be used for buildings or part residential -purposes purposes other than thereof only residential (i) Where the Rv does 3% of Rv 4.5% of the rateable not exceed Rs. 1 lakh value (ii) Where the Rv Rs. 3000 plus 20% of Rs. 4500 plus 25% of exceeds Rs. 1 lakh the amount by which the amount by which the Rv exceeds Rs. 1 the Rv exceeds Rs. 1 lakh. lakh. provided that no general tax shall be payable on owner- occupied lands and buildings used for residential purposes. (y) On all lands and buildings including Farm Houses, godowns, hotels etc. outside village abadi area: Rv of lands or Used or to be used for Used or to be used for buildings or part residential purposes non-residential thereof. including Farm Houses. including hotels, godowns, Office- complexes etc. (i) Where the Rv does 6% of Rv 9% of Rv not exceeds Rs. 10,000 (ii) Where the Rv Rs, 600 plus 12% of the Rs.900 plus 18% of the exceeds Rs-10,000 but amount by which the amount by which the does not exceed Rv exceeds Rs. 20,000. Rv exceeds Rs. 10,000 Rs.20,000. (iii) Where the Rv Rs. 1800 plus 20% of the Rs. 2700 plus 25% of exceeds Rs. 20,000. amount by which Rv the amount by which exceeds Rs.20,000. Rv exceeds Rs. 20,000 (b) In Urban areas, the general tax on all lands and buildings or part thereof be Jevied as under:

(14) We shall analyze the 1986-87 provisions and thE latter provisions in- 629 introduced for 1989-90.

(15) A look at the 1986-87 proposals shows that, so far as "rural areas" in Delhi are concerned, lands and buildings are classified into three categories, viz. (i) lands or buildings used or to be used for residential purposes and (ii) Hotels,

Mills, Warehouses, Cold storages. Oil Depots, Office complexes and properties used or to be used for purposes other than residential (in these provisions there is no reference to "abadi area") (iii) lands and buildings" used for residential purposes and owner-occupied. " There was exemption from tax for category (iii). There was no division of property as being located in "abadi area" or non-abadi area".

(16) When we come to the resolution of 1989-90, there is a further classification between abadi of non-abadi areas: (A) Abadi Area: This is classified into three categories: (i) the lands or buildings in abadi area used or to be used for residential purposes only (ii) lands or buildings in abadi area used or to be used for purposes other than residential and ; (iii) lands and buildings in abadi area used for residential purposes and owner occupied. There is exemption from tax for category (iii) while (i) and (ii) are taxable. (B)Out side Abadi Area This is classified into two categories: (i) lands and buildings including farm houses, godowns, hotels etc. outside abadi area but used for residential purposes including farm houses and (ii) lands and buildings used for non-residential purposes including hotels, godowns, office complexes etc. Both categories are taxable.

(17) Therefore it is not as if in the abadi area all lands, buildings are exempt from tax and only lands & buildings in non-abadi area are subject to tax. Even in the abadi area, lands and buildings which are not owner-occupied are subject to tax, and a lesser rate is applied to those used or to be used for residential purposes and a higher rate for those used for non-residential purposes. Even in the non-abadi area, there is a lesser rate for lands and buildings including Farm Houses used or to be used for 630 residential purposes and a higher rate for those used for non-residential purposes including hotels, godowns, office complexes. There is thus a five fold classification of lands and buildings within the rural-area. This is the manner in which u/s 115(4)(c) agricultural land and buildings (except dwelling houses) are proposed to be taxed.

(18) In our view, the legislature and the taxation authority have made a reasonable classification of various types of properties within the abadi area itself and a separate classification of lands and buildings in the non-abadi area. In our view, the classification of owner occupied lands and buildings in abadi area, as a separate class for purpose of exemption is rational and is valid as it is based on the nature of the user of the property as residential or non-residential and also on the basis whether it is owner-occupied or not. We shall give our reasons as to why this classification is rational.

(19) It is now well-settled, that for purposes of taxation by the municipal authorities, it is permissible to impose a differential tax based on geographical classification of the municipal areas or based on a reasonable nexus deducible from the purposes for which the land is used of the levy imposed. Dealing with the levy of house-tax and scavenging tax in a part of the municipal area, by the Bareilly Municipal Board, Subba Rao, J.(as he then was) in Gopal Narain Vs. State

of Uttar Pradesh and Another, stated that u/s 7 of that Act, the Municipal Board had several statutory duties connected with sanitation, drainage, laying of roads, schools, health, water-supply, hospitals, maternity centres, that u/s 8, the Board could also provide special amenities involving heavy expenditure and that a discretion was given to the Board u/s 128(1) to levy taxes in the whole or any part of the municipality. These duties and functions "need -not necessarily be discharged or performed in the entire area of the municipality at once. They may have to be introduced gradually, starting from one part of the area of the municipality with a view to cover the entire area in due course. It may also be that the amenities required in one part of the municipal area may be different from those required in another part of the municipality. It may also be that a part of the area, because of the nature of the soil, distance from well- developed part of the city or for historical reasons, calls for a larger investment for development compared to other parts of the municipality. If so much is conceded, that, different parts of a municipality may require special treatment in the matter of provision of amenities, it would be reasonable to correlate the power of taxation in a part of the municipality with such separate treatment. These aspects are sufficient guidance for a legislative policy. A 631 municipality can impose a tax in a part of a city, if that part, because of the peculiar situation or otherwise, has to be provided with special amenities throwing a heavy financial burden on the municipality or on account of historical reasons. May be there is always an indirect benefit to all areas in a municipality even otherwise but the same "cannot be equated with the direct benefit by way of special benefits accruing to a particular area. Subba Rao J.(as he then was), referred to "Willes on Constitutional Law" (p.590) to say that "a State can take a territory within a city or unit for purpose of taxation." and approved the Full Bench decision of the Allahabad High Court in Municipal Board of Bareilly Vs. Kundan Lal, on the same point. The question again came up in Ahmedabad Manufacturing and Calico Printing Co. Ltd., Ahmedabad and Others Vs. State of Gujarat and Others, . The point there was whether education cess and surcharge which were imposed on land and buildings in the "middle zone" of Ahmedabad were valid in the context of exemption granted to the inner zones and outer zones of the city. The surcharge was levied u/s 3 on all lands except lands included within a village site and not assessed to land revenue, and a tax was levied on lands and buildings in urban areas. It was pointed out by Hidayatullah, J. (as he then was) .that the "three zone"; are the result of the operation of different laws in rural and urban areas. Lands subjected to city-survey and assessed to property tax are saved from the imposition of land revenue to which all lands are normally subjected." This exemption is hundred years old and is based on the fact that land in the heart of the city ceases to be agricultural. Similarly lands in the outer circles are free from municipal assessment because they are outside municipal limits and do not benefit from the municipal service. They are subset to land revenue. The middle zone comes into being because the owners and holders are not content to hold land for agriculture and divert it to other uses" and the exemption given to other zones was upheld. In yet another recent case in Vijay Mills Company

Limited etc., etc. Vs. State of Gujarat and others, , there were different rates of assessment of non-agricultural land depending upon the rental income or return from the land to the owner thereof, as also on the basis of the location of the land. While upholding the same, the Supreme Court observed that the rental value certainly differ from the use to which the land is put as well as the location of the land. In fact, if lands are assessed at same rate in spite of different locations, it may fall foul of Article 14.

(20) From the above discussion, it is clear that geographical classification 632 of land is permissible for purposes of levy of municipal tax if the classification is based on the cost of facilities or amenities to be provided or to the return from the land depending on the use to which it is put, or if the classification is based on historical reasons. In the present case, as is clear from the Commissioner's proposals for 1986-87 onwards, the self occupied residential buildings in the abadi area were not subject to levy over several years, as the property was occupied by the "rural masses". Further if facilities or amenities are to be provided for the dwelling houses located in non-abadi area, the corporation has to incur heavy expenditure in contra distinction to expenditure in non-abadi area. On this ground also the levy on dwelling houses in non-abadi area is, in our view, valid. In fact, it is not as if all dwelling houses in abadi area are exempt from tax. Even in abadi area the residential dwelling houses, not owner occupied, are subject to tax. It is well-settled that in the matter of taxation, the legislature has to be given greater freedom. In R.K. Garg vs. Union of India AIR 1981 SC 2138, the Supreme Court quoted Justice Holmes that "the legislature should be .allowed some play in the joints" because it has to deal with complex problems which do not admit of solution through any doctrinaire or straight jacket formula. Justice Frankfurter observed in Morey vs. Doud (1957) 354 US. 457 that in "the utility, tax and economic regulations cases, there are good reasons for judicial restraint if not judicial deference to legislative judgment." It will be a misfortune, said Justice Cardozo, to force methods of taxation within a Precrustean formula (Stewart Dry Goods Co vs. Lewis) (1933) 294 Us 550.

(21) For all the aforesaid reasons, we hold that Section 115(4)(c) when it excludes "dwelling houses" from the meaning of the words "agricultural lands and buildings", is not vocative of Article 14 merely because the corporation has in its taxation proposals of 1989- 90 chosen to exempt owner- occupied residential dwellings in the abadi area of a village and falling within the rural area to Delhi. Farm Houses will Therefore be liable to property tax to the extent mentioned in Point 2 and 3 below. We Therefore decide Point I against the petitioner. Point 2

(22) The next question is as to the meaning of the words "agricultural land and buildings (other than dwelling houses)" and as to what is the meaning of the words "buildings" in the context of "agricultural land"?

(23) The provision in Section 115(4)(c) deals with grant of exemption from property tax to "agricultural land and buildings (other than dwelling 633

houses)". In so far as the exemption to agricultural land used as such, there is no dispute before us. The question then is what is the meaning of the word "building" in this context? If the word "building" stood alone and was not preceded by the words "agricultural land", the meaning of the word, in our view, would have been different. But when a word is used by the legislature in a particular context or setting or other words, it is well settled, that the word acquires a particular meaning from the "company it keeps". The word takes colour from the context. That is what is meant by the maxim known as "noscitur a sociis". In "Words and Phrases" (Vol. Xiv p. 207) this principle was explained as follows: "Associated words take their meaning from one another under the doctrine of "noscitur a sociis", the philosophy of which is that the meaning of a doubtful word may be ascertain by reference to the meaning of the words associated with it; such doctrine is broader than the maxim "Esjudem generis".

(24) In fact, the latter maxim is only an illustration or specific application of the broader maxim above mentioned The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, , M/s. Rohit Pulp and Paper Mills Ltd. Vs. Collector of Central Excise, Baroda, . The aphorism that a word is not a crystal and that it takes colour from the context is no less true in the case of the words under consideration Union of India and another Vs. Sampat Raj Dugar and another, . Words take colour from each other and the meaning of the more general is restricted to a sense analogous to a less general M/s. Oswal Agro Mills Ltd. Vs. Collector of Central Excise and others etc. etc., .

(25) Therefore, in our opinion, the word "building" in section 115(4) must take colour from the words "agricultural land" and has to be understood not in the general sense of what a "building" is, but in the con- text and colour of the word "agricultural". .

(26) It may in this context be noted that long before the Dmc Act of 1957 was enacted in our country, there was incorporated a similar provision in the English Act, namely. The Rating and Valuation (Apportionment) Act, 1928 (18 & 19 Geo.5, C.44) read with the Local Government Act,1929. u/s 67(1) of the latter Act of 1929 it was said that no person shall be liable to pay rates "in respect or any agricultural land or agricultural buildings". The meaning of these words-was to be ascertained from Section 2(2) of the former Act of 1928 which defined "Agricultural land "as any land used as arable, meadow or posture ground only land used for a plantation of a wood.....; "Agriculture buildings" meant buildings (other than dwell- 634 ing house"s) occupied together with agricultural land Or being a forming part of a market garden, and in either case used solely in connection with agricultural operations thereon". The above said definition in Section 2(2) is now carried into Section 26(4)(a) of the General Rating Act,1967. We "re referring to these provisions only to show the historical aspects of cognate provisions in the corresponding English Statute.

(27) But, at the same time, we have to notice that while drafting the Dmc Act, 1957 the legislature has deviated from the English Statute. The Dmc Act does

not contain any definition of certain words defined in the English Statute. The Delhi statute in Section 115(4)(c) uses the words "buildings", and it not only uses the words "agricultural buildings" but also contains a special definition thereof. But in the Delhi Statute, there is no special definition of the word "building" in Section 115(4) (c) and in Section 2(3) there is only a general definition of the word "buildings". Further the Dmc Act does not define the word "buildings" as lands/buildings used "solely in connection with agricultural operations. In our opinion while the word "buildings" in Section 115(4)(c) takes colour from the context of the word "agricultural" used in the same sub-section, the Legislature has not chosen to say that the buildings must be "used solely in connection with agricultural operations" as in the corresponding English statute. We are of the view that this was a deliberate departure from the English statute.

(28) We are Therefore of the view that so far as the exemption provision in Section 115(4)(c) is concerned the test is not whether buildings or Farm houses are used "solely" in connection with agricultural operations. In our view, the said exemption applies to "buildings" or farm houses used "substantially", if not solely, for agricultural purposes. If this test is satisfied, the building or farm house falls outside the tax-net. So far as the exclusionary words "other than dwelling houses" are concerned, we are again of the view that the buildings or farm houses must be solely or substantially used for "dwelling" purposes, that is to say, with a degree of continuity and permanency, and not solely or substantially for agricultural purposes, then such buildings will fall inside the tax net. We do not visualise any third category of "buildings" or farm houses which do not fall into one or other categories above stated. As summing however that any such intermediate category arises, we are of the view that the person claiming the exemption will not be entitled to exemption from property tax unless he proves that the building is solely or substantially used for "agricultural purposes". Whether a given 635 building is used substantially for agricultural purposes, is a question depending upon the facts and circumstances of each case and on what, according to general principles of law could be said to be the meaning of the words "agricultural purposes".

(29) Therefore in the cases pending before the assessing authority or the appellate authority, it will be for the said authority to decide, with reference to the building or Farm House involved in each case, the question of taxation as per the following principles: (1) if it is a building in the abadi area and is owner-occupied then, as per the scheme of 1989-90 referred to above, it will be exempt from tax. (2) In case it is a building in the abadi area and is not owner-occupied, though used for residential purposes, it will be liable to tax. (3) Again in case it is used for non- residential purposes and is in abadi area, it is liable to tax. (4) If however the building or Farm House is located in the non-abadi area or what is treated as the agricultural land of the village, then the building or Farm House(if it is not a dwelling house) will, together with the agricultural land, be again exempt because of Section 115(4)(c). (5) The building or Farm House last mentioned, for the purpose of getting exemption, need not be solely or

exclusively used in connection with or for agricultural purposes. It is sufficient if, the said building or farm house in the non-abadi area, is used substantially for agricultural purposes. (6) On the other hand, if said building or farm house is used substantially as a dwelling house, with a definite degree of continuity and permanence, then it will not be entitled to exemption from the tax. (7) In each case, it will be a question to be decided on the particular facts and circumstances, depending of course on what could be "agricultural purposes" in law. Point 2 is decided accordingly. Point 3

(30) It is argued for the petitioner that even if a particular building or Farm House is a "dwelling house" in the non-abadi area and is liable to property tax, still the large track of agricultural land, if any, on which it may be located, cannot be subject to tax but such land around it which can be treated as "appurtenant land" can alone be held liable to tax while the remaining part of the agricultural land will be exempt. In our view, this submission is correct and is liable to be accepted. When the legislature exempts "agricultural lands" and buildings used substantially for agricultural purposes from the purview of the property-tax as stated by us and makes only "dwelling houses" located therein subject to tax, it will not, in our 636 opinion, be permissible for the assessing authority to take the entirety of the agricultural land - whatever be its extent - on which the building or Farm House is located, for purposes of levying property tax. We are of the view that only such land around the dwelling house which can be said to be reasonably required for the beneficial enjoyment of the dwelling house or farm house, must alone be the subject-matter of the tax. This will again depend on the facts and circumstances of each case to be decided by the assessing authority or by the appellate authority before which the matters may be pending. We notice that the Delhi Act does not contain any definition of "appurtenant" land and Therefore the question as to what is "appurtenant land" in the context of each dwelling house will have to be determined with reference to the size and extent of the dwelling house and on the basis of what can be said to be the land reasonably required for the beneficial enjoyment of the dwelling house. The remaining part of the agricultural land cannot be subjected to property tax. Point 3.is decided accordingly. In the result, we uphold the validity of the words "other than dwelling house" in Section 115(4)(c) of the Delhi Act and also hold that agricultural lands and buildings are exempt from taxation to the extent stated in Point 2 and 3 above and that "dwelling houses" or farm houses in non-abadi area are liable to property tax as stated in Points 2 and 3 above. It will now be for the assessing authority to issue a fresh show cause notice indicating what is the extent of agricultural land or building or dwelling house or 2 farm house he proposes to tax and what is the land/building liable to exemption and receive the Explanation ,then give hearing to. the petitioner and decide the rateable value or tax in accordance with law and in the light of the above principles. The writ petition is disposed of accordingly.