
(1998) 01 DEL CK 0037
In the Delhi High Court
Case No : CW No. 1259 of 84

Prem Deva Niranjana Deva Tayal APPELLANT
Vs
Municipal Corporation of Delhi and Others RESPONDENT

Date of Decision : 15-01-1998

Acts Referred:

Citation : (1998) 01 DEL CK 0037

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

Bench : Single Bench

Advocate : Mr. Sushil Salwan, for the Appellant; Mr. B.R. Sabharwal, for the Respondent

Judgement

M.S.A. Siddiqui, J.—The challenge in this Writ petition is to the order dated 20-5-1981 of the Additional District Judge, Delhi, Who had dismissed the appeal filed by the petitioner challenging the fixation of rateable value of the house owned by him, and the order dated 17-4-1984 passed by the Additional District Judge dismissing the review petition filed against the order dated 13-7-1979.

2. Facts relevant and requisite for the purpose of deciding the dispute lie in a narrow compass. The petitioner is the owner of the house bearing No. B-44 Greater Kailash-I, New Delhi (hereinafter called the house in question). Construction of the said house was commenced in September, 1962 and the same was completed in January, 1964.

On 1-4-1964, the house in question was leased out to the American Embassy and remained in its occupation till 14-8-1968. By the order dated 29-6-1964, the Assessing Authority fixed the rateable value of the house in question at Rs.32,350/- w.e.f. 25-1-1964, but on the petitioner's representation, the same was reduced to Rs. 30,190/- w.e.f 1-4-1968 vide order dated 8-1-1968 passed by the Assessing Authority. On further representation, rateable value of the house in question was reduced to Rs. 28,840/- w.e.f 1-4-1970. Thereafter, rateable value of the house in question was reduced to Rs. 23,960/- w.e.f

1.4.1976 wide orders dated 13-7-1979 passed by the Assessing Authority. On 25-3-1977, respondent issued a notice u/s 126 of the D.M.C. Act proposing to enhance rateable value of the house in question to Rs. 54,000/- w.e.f 1-4-1976. Rejecting the objections filed by the petitioner against the proposed enhancement of the rateable value, the Assessing Authority determined it at Rs. 42,800/- vide orders dated 13-7-1979. Aggrieved by the orders dated 13-7-1979, the petitioner filed an appeal u/s 169 of the DMC Act, which was dismissed by the Additional District Judge, Delhi vide judgment dated 20-5-1981. During pendency of the appeal, the Apex Court decided the case of Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others, and held that the rateable value of a property assessable to property tax is to be determined on the basis of standard rent to be calculated in accordance with the principles set out in Section 6 of the Delhi Rent Control Act. Relying on the said authority, the petitioner filed a review petition against the Judgment dated 20-5-1981, which was also dismissed by the Additional District Judge vide orders dated 17-4-1984.

The respondent contested the matter and asserted that the impugned judgment of the Additional District Judge does not suffer from any legal infirmity inasmuch as the Assessing Authority had validly determined the rateable value of the house in question on the basis of the agreed rent received by the petitioner.

3. By the order dated 13-7-1997, the Assessing Authority had determined rateable value of the house in question at Rs. 42,880. The relevant portion of the order is as under:-

"The front and rear units of the house being let out on the actual rent of Rs. 2000/- per month, the annual rateable value after allowing 10% statutory deduction is worked out at Rs. 42,880."

According to the petitioner, the aforesaid reasoning of the Assessing Authority runs counter to the principles of law enunciated by the their Lordships of the Supreme Court in Dewan Daulat Raj Kapoor's case (supra). Petitioner's main grievance is that the learned Additional District Judge had dismissed the appeal summarily holding that no arguments were advanced regarding merits of the case. It is significant to mention that in the Corporation of Calcutta Vs. Smt. Padma Devi AIR 1962 SC 1611 Corporation of Calcutta Vs. Life Insurance Corporation of India, , Guntur Municipal Council Vs. Guntur Rate Payers Association AIR 1971 SC 541 their Lordships of the Supreme Court have consistently held that it is not the value of occupation of the property to the tenant but the rental income from it to the owner which is to be taken into consideration while estimating the reasonable return that a landlord can expect from his property. It has also been held there that wherever the rent is restricted on account of operation of the rent restriction legislation , the outer limit of the reasonable rent that can be expected from the property stands defined by the such restriction. Hence, while estimating the annual rent which might reasonably be expected from such property the provisions of such legislation have to be

taken into consideration. Thus, the annual letting value of the building or land or both to which the rent restriction legislation is applicable cannot exceed the annual standard or fair rent. The view taken in *Dewan Daulat Raj Kapoor's case* (supra) has been explained in *Dr. Balbir Singh and Others Vs. M.C.D. and Others*, which is an authority for the proposition that the rateable value of a building, whether tenanted or self occupied is limited by the measure of standard rent arrived at by the Assessing Authority by applying the principles set out in Section 6 of the Delhi Rent Control Act and cannot exceed the figure of the standard rent so arrived at by the assessing authority. It has also been held that the standard rent determinable on the principles set out in the Delhi Rent Control Act is the upper limit of the rent which a landlord may expect to receive from a hypothetical tenant, but it may in a given case be less than the standard rent having regard to various attendant circumstances and considerations. In this connection, I may usefully expect the following observations of their Lordships:-

".....The test Therefore is not what is the standard rent of the building but what is the rent which the owner reasonably expects to receive from a hypothetical tenant and such reasonable expectation can in no event exceed the standard rent of the buildings determinable in accordance with the principles laid down in the Rent Act, though it may, in a given case be lower than such standard rent."

4. It is significant to mention that the petitioner sought review of the order dated 20-5-1981 passed by the Additional District Judge in H.T.A. No. 47/1979 Whereby the appeal had been dismissed. Along with the review petition the petitioner's counsel Shri Parmodyal Advocate filed his affidavit stating that all points were argued before the learned A.D.J., i.e. regarding non service of notice as also the merits of the case, namely, that the rateable value of the house in question should be fixed on the basis of the standard rent and not on the basis of actual rent received by the petitioner. The averments contained in para No. 10 of the petition regarding the aforesaid facts have not been traversed by the respondent and must, therefore, be deemed to have been admitted. While dismissing the petitioner's appeal the learned A.D.J. observed as under:-

"Regarding merits the appellant alleged that even otherwise the facts and circumstances of the instant case did not justify any revision or enhancement in the existing rateable value of the disputed property but did not elaborate this contention."

5. It is unfortunate that the learned Additional District Judge did not even attempt to test the case on the principles of law enunciated by their Lordships of the Supreme Court in *Dewan Daulat Raj Kapoor's case* (supra). I would like to point out that the orders passed by the Appellate Tribunal constituted under the Delhi Municipal Corporation Act are final and no second appeal lies against them. The decision of the Appellate Tribunal is intended to achieve according to law and the procedure, a judicial determination between the contesting parties of the matter in controversy. A judicial determination of a disputed claim where

substantial question of law or facts arise is satisfactorily reached only if it be supported by the most cogent reasons that suggest themselves to the Appellate Tribunal a more order deciding the matter in dispute not supported by reasons is no judgment at all. The requirement of recordings of reasons in support of a decision transcends all technical rules of procedure. In the instant case, the basic error in the impugned Judgment lies in rejecting the contentions advanced on behalf of the petitioner, without assigning any reason there fore.

6. I am, Therefore, constrained to come to the conclusion that the impugned judgment delivered by the learned Additional District Judge is no Judgment at all. It is very unfortunate state of affairs that 18 years after the date on which the appeal was filed, I have to remand the case of the learned Additional District Judge for disposal according to law. But I see no other satisfactory alternative.

7. For the foregoing reasons, the writ petition is allowed. The impugned orders dated 20-5-1981 and 17-4-1984 are hereby set aside. The case is remanded to the Additional District Judge for disposal according to Law. No order as to costs.