
(1996) 10 DEL CK 0036

In the Delhi High Court

Case No : Civil Writ Petition No. 1339 of 1981

Ram Prakash and Co. (P) Ltd.

APPELLANT

Vs

New Delhi Municipal Committee

RESPONDENT

Date of Decision : 04-10-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Rent Control Act, 1958 — Section 6, 9(4)
Punjab Municipal Act, 1911 — Section 61

Citation : (1996) 64 DLT 625

Hon'ble Judges : S.N. Kapoor, J; R.C. Lahoti, J

Bench : Division Bench

Advocate : B.B. Gupta, for the Appellant;

Judgement

S.N. Kapoor, J.

(1) The petitioner has challenged the assessment of property tax for the year 1981-82 relating to premises No. 175, Jor Bagh, New Delhi vide resolution No. 33 dated 16th March, 1981 and has sought directions restraining the respondent and their employees, agents etc. from enforcing the order dated 16th March, 1981 and further directing them to fix the ratable value u/s 6 of the Delhi Rent Control Act in the light of the judgment of Supreme Court.

(2) According to the petitioner, a private limited company, represented by its authorised Director Shri Rajiv Gupta, the petitioner-company acquired the said plot measuring 375 sq. yds. for a total sum of Rs. 84,000.00 in the year 1963 under a lease deed dated 3rd January, 1967. This land could not be sold or transferred for a period of ten years and the transfer was to be made subject to payment of 50% of unearned increase vide perpetual lease (Annexure C). The petitioner built on the said land and the total cost of construction amounted to Rs. 78,000.00. The petitioner has also relied on the report of the Valuer amounting to Rs. 1,59,647.00 : For the year 1980-81, the petitioner filed objections vide letter dated 30th January, 1980 (Annexure E) and took objection

that the property should be assessed in the light of the judgment in Dew an Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others, . The petitioner also raised similar objections for the assessment year 1979-80. He did not receive any notice for consideration of the objections and without affording any opportunity, they assessed the property vide Resolution No. 15 on 26th March, 1980 (Annexure F) fixing annual value at Rs. 19,440.00 and 16,200.00 less 10% for ground floor and first floor respectively. The petitioner filed a Civil Writ No. 945/80 in respect of annual value for the year 1980-81. This writ was allowed on 16th October, 1980. Thereafter, the respondent issued notice dated 8th January, 1981 (Annexure H). The petitioner filed objections dated 31st January, 1981 (Annexure 1) on 16th March, 1981. The respondent in absence of the petitioner over-ruled the objections and fixed the annual value of the property of the ground floor at Rs. 19,440.00 and 16,200.00 less 10%.

(3) The petitioner has challenged this assessment, inter alia, on the ground that it is arbitrary, illegal and contrary to the judgment of the Supreme Court of India. No opportunity was given to the petitioner to effectively represent its case. No reasons have at all been given for enhancing the ratable value. The petitioner has not made any additions and alterations. The reasons given in the impugned order are highly vague. The details or alleged additions and alterations had not been furnished. Since no details as regards the changes in situation, locality, condition of the premises and amenities have been given by the respondent the order was vitiated. But re-assessment for the year 1980-81 as per orders of the Division Bench in Writ Petition No. 945/80, was still pending and as such, the present assessment for the year 1981-82 is illegal. that the petitioner has also failed to avail equally efficacious remedy by way of appeal available u/s 84 of the Punjab Municipal Act. The petitioner has failed to furnish the cost of construction and the market value of the land on the date of commencement of the construction. As it was not possible to assess in terms of Section 6, the assessment has been made in terms of Section 9(4). Information given by the petitioner about the amount paid is not relevant for the purpose of Section 6 of the Drc Act. It is alleged that the respondent notified the date for personal appearance before the Committee but the petitioner did not turn up and the petitioner cannot take the advantage of his own wrongs. The filing of the Civil Writ 945/80 has not been disputed. The respondent claims that the assessment has been finalised in terms of Supreme Court decision, after following the correct procedure and affording sufficient opportunity to the petitioner. The assessment is absolutely legal and justified. The assessment for every year is independent and separate and the pendency of the writ petition for the year 1980-81 would not have any bearing so far as the assessment for the year 1981-82 is concerned. The petition was without any merits.

(5) The petitioner filed rejoinder affidavit reiterating their case and denying the allegations made in the counter affidavit filed by Mr. Kailash Chander, the then Secretary of the NDMC.

(6) We have heard the learned Counsel for the respondent Mr. B.B. Gupta and gone through the record in the absence of the Counsel for the petitioner. Neither the petitioner nor his Counsel appeared despite the fact that the matter was listed Along with a note that the matter would not be adjourned.

(7) In this petition, numerous questions arise for determination relating to the judgment of this Court in Writ Petition No. 945/80 M/s. Ram Prakash v. Ndmc relating to the same property for the assessment year 1980-81. In that writ petition, Division Bench of this Court observed as under:

"We find that this is a case of denial of opportunity and on the short ground that the assessment was made by the respondent-Committee behind the back of the petitioner the impugned order cannot be sustained. This is apart from the question raised by Counsel that according to the Supreme Court decision in Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others, , the assessment has to be made in accordance with the standard rent. This question we need not determine as it is enough to decide this writ petition on the ground that an opportunity ought to have been afforded to the petitioner before the assessment was made. For these reasons, we allow the writ petition and set aside the order of house- tax assessment. It will be open to the respondent-Committee to fix a date of hearing and proceed with the case of re-assessment of the house. The parties are left to bear their own costs."

(8) While it is true that every assessment in respect of different assessment years totally different and independent but it cannot be said that the assessment of the previous year would have no bearing on the assessment of subsequent years. according to Section 62, the procedure to impose tax is laid down u/s 61 of the Punjab Municipal Act. Under Sub-section (1) of Section 62, Resolution is required to be passed proposing the imposition of any tax. Sub-section (2) requires publication of a notice about the amount or rate of tax to be imposed and the system of assessment to be adopted; Sub-section (3) relates to inviting of objections and filing of those objections within 30 days; Sub-section (4) relates to publication of amended proposal indicating the modifications of the previously published notice inviting objections. Any objections which may within 30 days be received to the amended proposals are also required to be dealt with in the manner prescribed in Sub-section (3) of Section 62. Then these proposals are required to be sent to the Dy. Commissioner or to the State Government, as may be required. These proposals could be modified by the Deputy Commissioner or the State Government under Sub-section (7) and (8) and the State Government may sanction or revise to sanction the same or return them to the Committee for further consideration. However, Tax is livable only after sanction, under Sub-section (10) of Section 62. Section 62(1) provides power to the Government for taxation. Sections 61 and 62 cover all kinds of taxes including assessment of immovable property. For assessing immovable property Section 63 requires preparation of assessment list; section 64 requires publication and completion of the assessment list; Section 65 provides for public

notice of the time fixed for revising assessment list; Section 66 relates to settlement of that list; Section 67 relates to further amendments of assessment list; Section 68 provides that new lists need not be prepared every year, and Section 68-A provides for power to amend the assessment list in certain circumstances.

(9) In the light of the above, it would appear that any revision of the assessment for the year 1980-81 would make it incumbent upon the respondent-NDMC to give public notice to revise that assessment u/s 65. Objections to the assessment could be made before the time fixed in the notice or early in writing at that time. Thereafter, list would be settled u/s 66. It would, Therefore, be relevant to reproduce Sections 65 and 66 of the Act:

"65. Public notice of the time fixed for revising assessment list.-(1) The Committee shall at the time of the publication of such assessment list give public notice of a time, not less than one month thereafter, when it will proceed to revise the valuation and assessment; and in all cases in which any property is for the first time assessed, or the assessment thereof is increased, it shall also give notice thereof to the owner or occupier of the property. (2) All objections to the valuation and assessment shall be made in writing before the time fixed in the notice or orally or in writing at that time. 66. Settlement of list.-(1) After the objections have been enquired into and the persons making them having been allowed an opportunity of being heard either in person or by authorised agent, as they may think fit, and the revision of the valuation and assessments has been completed, the amendments made in the list shall be authenticated by the signatures of not less than two members of Committee, who shall at the same time certify that no valid objection has been made to the evaluation and assessment contained in the list, except in the cases in which amendments have been entered therein; and, subject to such amendments as may thereafter be duly made, the tax so assessed shall be deemed to be the tax for the year commencing on the first day of January, or first day of April next ensuing as the Committee may determine, or in the case of a tax then imposed for the first time for the period between the date on which the tax comes into force and such first day of January, or April, as the case may be. (2) The list when amended under this section shall be deposited in the Committee's office and shall there be open during office hours to all owners or occupiers of property comprised therein or the authorised agents of the persons, and a public notice that it is so open shall forthwith be published."

(10) Sections 67 and 68-A provide for amendments of the lists. In an eventuality of modification of assessment list under the Court's orders subsequently after giving notice and to invite objections and to give an opportunity of being heard in support of the same in person or by authorisation before actually disposing of the same. If the assessment of the previous year remains unsettled one could not be sure as to which of the aforesaid provisions would be applicable to the matter. It is notable in this connection that the judgment was passed by a Division Bench

of this Court on 16th October, 1980 while the Resolution No. 33 is dated 16th March, 1981. It is further notable that in their counter, the respondent in regard to giving an opportunity had mentioned just as under:

15-17."In reply to paras 15 to 17 it is submitted that the assessment has been finalised in terms of the Supreme Court's decision after following the correct procedure and afforded the sufficient opportunity to the petitioner. The assessment is absolutely legal and justified and there is no ground for setting aside the same.

(11) The reply from paras 15 to 17 does not disclose that any call letter was sent to hear the petitioner on the objections filed by them whether that call letter was served or not.

(12) As regards the plea that the respondent has taken into consideration the extraneous matters, conditions of the premises and the amenities provided therein without giving the details of the same, it is apparent from the assessment order that the particulars required u/s 9(4) are not mentioned in the order itself. For fixing standard rent u/s 9(4) of the Drc Act, the first requirement is that there has to be a finding that it is not possible to determine the standard rent of any premises on the principles set forth u/s 6. Secondly, there has to be a finding that it would be reasonable to fix a specified standard rent having regard to (i) situation, (ii) locality, (iii) condition of the premises; and (iv) amenities provided therein and where there are similar or nearly similar premises in the locality, having regard also to standard rent payable in respect of such premises. It would thus appear that it is rather more difficult procedure to assess a property u/s 9(4) than u/s 6 for numerous additional factors are required to be considered including assessment of standard rent of similar or nearly similar premises. Apart from the situation, locality and the conditions of the premises and the amenities provided thereunder. In the absence of these particulars, it would not be possible to say that the assessment u/s 9(4) is justified.

(13) As regards the plea that it was not possible to assess the property u/s 6, we feel that it is not so for following reasons:

(I)The evidence about the cost of the land on which a building has been constructed, would be available in the shape of sale deeds of comparable land of date nearest to the date of commencement of the construction. Such sale deeds may be available in the office record of the respondent themselves filed in connection with mutation of properties in Municipal records. (ii) A Division Bench of our own High Court in Municipal Corporation of Delhi Vs. N.C. Jain and Another, has taken into consideration some additional sources of evidence in this regard in following words : "...One of the basis for arriving at the market price of land is by invoking the principles contained in Section 24 of the Land Acquisition Act while determining the market price of land which is acquired by way of acquisition. The 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 situated. If this evidence which would be primary evidence, is not available, then reference and reliance can be placed on such circulars which are issued by various Government departments. If the said circulars are contradictory, as they appear to be in the present case, then it would be the duty of the Assessor and Collector to try and ascertain from those Government departments the basis on which the said Government departments have fixed the land rates." (iii) Similarly, in the absence of the actual cost of construction, the Cpwd rates could be used to ascertain the cost of construction. In *Madho Lal v. Roop Chand*, 1972 Rcr 689 on this point, a Division Bench of our own High Court has taken the following similar view : "It is well known that the Central Public Works Department of the Government of India is perhaps the biggest single builder in the whole country. It employs numerous engineers and construction experts. It actually pays large sums of money for building charges. The Schedule of rates of building charges which is acted upon by the Department in any particular year is, Therefore, reliable as a piece of evidence showing what rates were current at the relevant time for payment of construction charges. We agree, Therefore, with the Tribunal that Shri Chanan Singh was entitled to rely on the Cpwd Schedule of rates for finding out the construction charges. Shri Chanan Singh stated that by 1952-53 the rates had increased up to 10 to 15 per cent over the rates of 1950. As there was no evidence to the contrary from the landlord, the Tribunal had no alternative but to believe the evidence of Chanan Singh and to determine the cost of construction of these shops on the basis of the Cpwd Schedule of rates for 1950 plus an increase of 15 per cent over them. We are also of the same view". (iv) Similar views were expressed in *Diwan Chand v. Tirth Ram* 1972 Rcr 88.

(14) In view of the foregoing, it is not possible for us to accept the view that it was impossible for the Ndmc to calculate the value of the land and the cost of construction.

(15) As regards the contention of the learned Counsel for the Ndmc that it was the duty of the assessed to produce the primary evidence about the cost of construction and the value of the land, we feel that while it is true that failure of the owner of the property to furnish the requisite data should lead to draw an adverse inference against the owner that in case such data had been produced, it might have gone against the stand taken by the respondent. But this would not be sufficient to absolve the Ndmc from its statutory duty to assess the property tax in accordance with the direction of the Supreme Court in the case of *M.N. Soi Dewan Daulat Rai Kapur* (supra).

(16) As regards the objection taken by the Ndmc that the appellant has not filed any appeal against the judgment, the writ should not be entertained, we may mention that the rule of exhaustion of alternative remedy is a rule of policy, convenience and discretion rather than the rule of law and a person is not barred from approaching the High Court under Article 226 of the Constitution. Ordinarily, the writ jurisdiction of the High Court should not be invoked to

convert itself into an appeal or Revisional Court to interfere with the intervening and miscellaneous orders of the civil Court as the writ jurisdiction is meant for doing justice between the parties where it cannot be done in the nature of Forum. But it has also been held that where statutory remedies are entirely ill-suited to meet the demands of extraordinary situation, as for instance where the very virus of the statute is in question or where private or public grounds or so inextricably mixed up and the prevention of public injury and the vindication of public justice required that recourse may be had to Article 226. The Court may also have good and sufficient reason to bye-pass the alternative remedy provided by the statute. The other side of the view is that in matters involving the revenue were statutorily available or not in such matters. The ground realities in assessment of house tax are such that despite the repeated observations of the Supreme Court and our High Court, have not brought about any change in the approach in assessment of house tax of the Ndmc and MCD. They are just adopting short cut methods and violating the directions of the Supreme Court. Time and again it has been felt that some officials of the respondents some time receive bills in respect of properties where even completion certificate has not been issued, where neither water nor electric connection has been provided. Sometimes, property tax is increased by 10 to 15 times for adding one room, if the property owned is not worldwide. In such circumstances, filing of appeal may not be deemed to be equally efficacious remedy, as a man on the street may not be in a position to purchase a right of appeal, by depositing the amount of tax imposed, and by availing services of an Advocate. We have two Hobson's choices either to watch helplessly massive flagrant violation of the directions of the Supreme Court in cases of M.N. Soi (supra), Dewan Daulat Rai Kapur (supra) and Balwant Rai (supra) and refuse the relief which the property owners are entitled to under law; or to treat it as a good and sufficient reason to bye-pass the alternative remedy of appeal provided by the statute.

(17) Besides, in this case, the rule was issued on 29th May, 1981. After keeping the matter pending for more than 15 years, it would not be appropriate to refuse the relief on this technical ground.

(18) In view of the above, we allow this writ, set aside the impugned order of house tax vide Resolution No. 33 dated 16th March, 1981. It will be open to the respondent-NDMC to fix the date of hearing and proceed with the case of reassessment of property tax relating to premises No. 175 Jor Bagh, New Delhi. The parties are left to bear their own costs.