
(1997) 05 DEL CK 0040

In the Delhi High Court

Case No : Civil Writ Appeal No"s. 2557, 2558, 2559, 2560, 2561, 3076, 4278, 4279, 4280, 4281, 4282 and 5162 of 1995

Ravish Chandra Rastogi and Others

APPELLANT

Vs

Municipal Corporation of Delhi and Others

RESPONDENT

Date of Decision : 29-05-1997

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 116

Delhi Rent Control Act, 1958 — Section 6(1)(A), 6(2)

Citation : (1997) 67 DLT 713

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

Bench : Division Bench

Advocate : B.B. Jain and Madhu Tawetia, for the Appellant;

Judgement

R.C. Lahoti, J.

(1) This order shall govern the disposal of the following six civil writ petitions.

(1) Cw 2557/95 - M.C.D. v. R.C. Rastogi & Ors. (2) Cw 2558/95 - M.C.D. v. R.C. Rastogi b Ors. (3) Cw 2559/95 - M.C.D. v. R.C. Rastogi & Ors. (4) Cw 2560/95 - M.C.D. v. R.C. Rastogi & Ors. (5) Cw 2561/95 -M.C.D. v. R.C. Rastogi & Ors. (6) Cw 3076/95 - R.C. Rastogi v. M.C.D.

(2) A common question of law arises for decision in all the writ petitions. The property of the assessed being self-occupied has been assessed on cost of construction basis u/s 6(1) of the Delhi Rent Control Act, 1958 by taking into consideration market value of land on the commencement of construction and reasonable cost of construction. The Assessing Authority has determined the date of commencement of construction and then found out the market value of the land on that date plus the reasonable cost of construction as determined by an approved valuer and then arrived at the assessment of "standard rent" in terms of Section 6(1) of the Delhi Rent Control Act, 1958.

(3) There were in all six assessments which were challenged in appeal. The six

appeals have been disposed of by a common judgment dated 7J.1.94 by Shri P.K. Dham, Addl. Distt. Judge, Delhi who has allowed the appeals and set aside the orders of assessment. In 5 matters the Mcd has come up to this Court by filing these writ petitions.

(4) In Cwp 3076/95, the petitioners are challenging the assessment for the subsequent year submitting that the assessment for the earlier years having been set aside, the assessment for subsequent year based on the previous years' assessment must fall to the ground as the bottom itself has been knocked out. Thus Cw 3076 / 95 is one in which the decision would depend on the assessment for the previous years being sustained or not.

(5) Before the Appellate Authority the assessed did not dispute the figures of the value of the land and the value of construction as adopted by the Assessing Authority. The only contention raised was that the rateable value fixed for other properties in the same locality which have been constructed at earlier points of time and whose rateable value were correspondingly much lower than the assessor's property should have been taken into consideration by the Assessing Authority and then the rateable value of the property in question should have brought down so as to be at par with the rateable value of other properties in order to maintain parity. Reliance was placed on several observations made by the Supreme Court in Dr. Balbir Singh and Others Vs. M.C.D. and Others, . This contention has prevailed with the Appellate Authority resulting into setting aside the order of assessment and remanding the cases back to the Assessing Authority for assessment afresh.

(6) It is submitted by the learned Counsel for the Mcd that the Appellate Court was not justified in setting aside the orders of assessment which were based on reality and actual state of affairs. It is further submitted that the view taken by the appellate Court if sustained would result in the Assessing Authority grouping into the dark, driving the Assessing Authority to the necessity of entering into enquiry of hypothetical facts which do not exist or at least do not provide any perceptible data for basing the assessment. This will lead to uncertainty and create such difficulties for the Assessing Authority as would not be capable of solution.

(7) On the other hand, the learned Counsel for the assessed has supported the order of the learned Additional Distt. Judge by submitting that the view taken by the learned Addl. Distt. Judge finds support from the law laid down by the Supreme Court in the case of Dr. Balbir Singh (supra).

(8) The submission of the learned Counsel for the assessed is that the Assessing Authority has not followed the principle of parity as deducible from the case of Dr. Balbir Singh (supra) vide para 11 pages 345 - 346, 349 to 351. Reliance was also placed on the decisions of the Supreme Court in Bhagwant Rai and others Vs. State of Punjab and others, , New Delhi Municipal Committee v. Mis. Gymkhana Club Ltd. & Ors. , Morvi Municipality Vs. State of Gujarat and others,

and Express Newspapers Ltd. Vs. Municipal Corporation of Delhi, .

(9) The learned Counsel for the assessed submitted that the order of assessing authority to the extent to which it finds out the value of the land at the date of commencement of construction and the reasonable cost of construction may not be found fault with, but what the assessing authority has thereafter failed to do needs consideration. It is submitted that having thus arrived at the figure of standard rent, the Assessing Authority should have treated it as the upper limit where after the Assessing Authority should have proceeded to apply the principle of parity. It must proceed to find out the standard rent of similarly situated properties in that locality whose construction may be older than that of the property in question. Having done that exercise, the Assessing Authority should reduce the standard rent of the premises in question so as to bring it at par with the standard rent of the older premises of that locality. The standard rent of the premises which were constructed older in point of time would be much on the lower side and hence less. Thus there would be equality and parity in the assessment of the rateable value and the tax as amongst all the properties situated in one locality.

(10) For several reasons, the submission of the learned Counsel for the assessed does not appeal to us. The learned Counsel for the Mcd has rightly pointed out that firstly there is no warrant in law to support the submission of the learned Counsel for the assessee. Secondly, if the proposition canvassed by the assessed was to be accepted, it would be expecting the Assessing Authority to perform an exercise nearing impossibility. Rarely it would be possible to expect two premises having similar nature of construction and accommodation. The Assessing Authority is not possessed of any machinery under the law which would enable it to collect and record such evidence. There is no adversary system of deciding assessment matters before the Assessing Authority. There is no independent agency available to Assessing Authority which would go out searching and collecting evidence and then bring on the record of the Assessing Authority such material as would enable the principle of parity canvassed by the learned counsel for the assessed being applied. If the Assessing Authority was itself to undertake that exercise, it would be busy collecting evidence in the field left with hardly any time to sit in the office and finalise the assessments. The time and energy which the Assessing Authority would be required to spend in finalising individual assessments of the properties would be so much that the imposition of such a tax would be counter productive and may persuade the Municipal Corporation to drop the tax itself instead of undertaking extremely onerous task of assessing and Realizing the tax. There is yet another flaw inherent. For the purpose of assessing one house property the Assessing Authority must conduct survey of the entire locality to find out the property least valued and then scale down the value of property under assessment. It was also submitted by the learned counsel for the Mcd that by a series of decisions of the Supreme Court it is well settled that for the purpose of finding out reasonable rent, the Assessing Authority has to keep in view the principles of standard rent as deducible from

the provisions of Rent Control Law which permits cost of construction being adopted as basis for calculating the rateable value in the case of self-occupied properties. It is fair and reasonable if the Assessing Authority works-out the cost of land by reference to the date of commencement of construction and the reasonable amount spent in construction. That exercise is by itself time consuming exercise, yet once it is done the facts found would be relatable to the facts as actually exist. Where is then the occasion for going a step ahead and then finding out the value of land and cost of construction of comparable properties of the locality so as to scale down the rateable value and standard rent determined of the properties under assessment? The Delhi Rent Control Act nowhere contemplates such an exercise being undertaken for the purpose of finding out standard rent so as to ascertain the reasonable letting value.

(11) We find substance in the submission of the learned Counsel for the MCD. The tax is to be levied on the rateable value of any land or building which is" . determined on finding out the annual rent at which such land or building may reasonably be expected to be let from year to year less a sum equal to 10% of such annual rent. The learned Counsel for the Mcd has very rightly pointed out that the annual rent at which a building may reasonably be expected to let would be higher in case of a building the construction whereof is recent compared to the building the construction whereof is older and there is nothing wrong either in law or in principle if the properties having higher value are required to pay more tax then the properties having lesser value. While setting aside a fairly assessed rateable value on the basis of provision of Section 6 of Drc Act and remanding the matter, the Appellate Court was supposed to see whether any prejudice was caused to the party aggrieved. The order of remand is silent on this aspect.

(12) Section 114 of the Delhi Municipal Corporation Act, 1957 contemplates tax being levied on "the rateable value of lands and buildings". Section 116 defines the rateable value assessable to property taxes to be "the annual rent at such land and building might reasonably be expected to let from year to year". The phrase "might reasonably be expected to let" has been subject matter of several decisions by the Supreme Court.

12.1. As early as in the year 1962, in the case of The Corporation of Calcutta Vs. Sm. Padma Debi and Others, their Lordships had held that the word "reasonably" was not capable of precise definition. It signifies "in accordance with reason". It is not the actual rent received by the landlord but a hypothetical rent which he can reasonably be expected to receive if the building is let. 12.2. In Corporation of Calcutta Vs. Life Insurance Corporation of India, assessment of annual value on the basis of the "standard rent as statutorily determined" was upheld. 12.3. In Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others,) their Lordships have held that the Assessing Authority was obliged to arrive at its own figure of standard rent by applying principles laid down in the Delhi Rent Control Act, 1958 for determination of standard Rent and then

determining the annual value of the building on the basis of such figure of standard rent. 12.4. In *Mrs. Shiela Kaushish Vs. Commissioner of Income Tax, Delhi*, it was held that annual value had to be determined on the basis of the standard rent. 12.5. The above said and several other decisions have invariably equated "reasonable rent with standard rent" as determinable by applying the principles enacted in the Rent Control Law applicable to the property. Neither their Lordships of the Supreme Court had ever stated the figure of the standard rent so arrived at being further scaled down nor do the provisions of the Municipal Law or the Rent Control Law contemplates such exercise being indulged into by the Assessing Authority for the purpose of determining the rateable value. 12.6. It appears that in *Dr. Balbir Singh's case (supra)* their are certain observations made which appear to lend support to the contention raised on behalf of the assessed that the figure of standard rent having been arrived at has to be further scaled down. These observations made in *Dr. Balbir Singh's case (supra)* display only an anxiety on the part of their Lordships to see that as far as practicable the properties situated in one locality are assessed by uniform standard so as to avoid the criticism of invidious discrimination. The observations have to be read in the right of the statutory provisions. The judgment in *Dr. Balbir Singh's case (supra)* cannot be read as laying down something which is not contemplated by the law itself, when the field is entirely covered by the statutory law.

(13) Moreover, we are not satisfied from the material placed on record that the acceptance of the contention of the assessed would result into any such substantial reduction in the amount of tax as could have persuaded the Appellate Authority or as may persuade this Court to set aside the order of assessment which is most reasonable, just and fair otherwise. Upsetting the order of assessment for any year results into unsettling the state of affairs for year after year and Therefore the orders of assessment should not be set aside merely for technicalities or for the purpose of expecting such performance by the Assessing Authority as would be practically impossible or not worth being undertaken otherwise, though it is true that gross illegality or unconstitutionality in the matter of taxation is not to be sustained or upheld.

(14) No other point was urged by either party. It was conceded at the bar that if the sole a.rgument advanced before this Court on behalf of the assesseees was not to be accepted then on facts the impugned orders of assessment are flawless.

(15) For the foregoing reasons, Cwp Nos. 2557 to 2561/95 filed by the Mcd are allowed. The appellate order passed by the learned Addl. Distt. Judge dated 7.11.94 insofar as these petitions are concerned is set aside and the orders of assessment by the Assessing Authority are restored and sustained. Cwp 3076/95 filed by the assessed is dismissed. No order as to the costs.