
(1996) 09 DEL CK 0008

In the Delhi High Court

Case No : Civil Writ Petition No. 1907 of 1982

T.K. Marwah

APPELLANT

Vs

New Delhi Municipal Committee and Another

RESPONDENT

Date of Decision : 13-09-1996

Acts Referred:

Delhi Rent Control Act, 1958 — Section 6, 9, 9(4)
Punjab Municipal Act, 1911 — Section 65, 84(2)

Citation : (1996) 5 AD 59 : (1996) 64 DLT 549

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

Bench : Division Bench

Advocate : Nilima Thakur, for the Appellant;

Judgement

S.N. Kapoor, J.

(1) The petitioner seeks a writ of certiorari quashing the judgment and order of learned Additional District Magistrate (South and New Delhi) dated 30th April, 1982 confirming annual value in respect of property No. 14 (No. 14-P /A 18) Jor Bagh, New Delhi and a mandamus commanding the Ndmc to calculate the annual value in the manner provided under the Delhi Rent Control Act (hereinafter referred to as "DRC Act" for short).

(2) (I) According to the petitioner, the said property was constructed in the year 1955-56 at a total cost of Rs. 1,00,000.00 including cost of the land. The respondent fixed annual value at Rs. 20,857.00 with effect from 1.6.1958. Ndmc sought to increase it to Rs. 83,000.00 vide order dated 2/7.11.1970. This was set aside and the Ndmc was prohibited from recovering House Tax at an annual value higher than Rs. 24,000.00 up to 31st March, 1976. For 1976-77 again it was assessed at Rs. 83,000.00. It was further raised to Rs. 1,05,000.00 for 1977-78, 1978-79 and 1979-80. Suits were filed followed by appeal by Ndmc which were dismissed. Ndmc filed RSAs No. 72/79, 142/81 and 165/81. Notices u/s 65 of the Punjab Municipal Act (hereinafter called the "PM Act" for short) proposing to assess annual value at Rs. 94,500.00 for the years 1980-81 and

1981-82 were issued. The petitioner filed objections. The annual value was fixed at Rs. 94,500.00. The petitioner filed two appeals but the Adm dismissed the same. (ii) The petitioner has assailed the judgment (Annexure VIII) inter alias on the ground that it is not in consonance with the law of land as declared by the Supreme Court in *The Corporation of Calcutta Vs. Sm. Padma Debi and Others*, , *The Guntur Municipal Council Vs. The Guntur Town Rate Payers' Association etc.*, , and *Ndmc v. M.N. Soi. & Am.* 1977(1) Rcr 174. Neither provisions u/s 6 nor Section 9 of the Drc Act have been complied with. It is contented that while fixing annual value, total cost of construction of Rs. 1,00,000.00 including value of the land, confirmed by long drawn yearly litigation, has not been considered. There was no occasion to raise annual value. Objections were not considered by NDMC. Learned Adm exceeded her jurisdiction by upholding the assessment u/s 9(4) of the Drc without there being any objective data on record. Hence the writ seeking above said reliefs.

(3) The Ndmc has contested this petition inter alias on the ground that since petitioner has only given approximate figure of Rs. 1,00,000.00 as total cost of construction, without giving exact figures of the value of the land and cost of construction, it was not possible to assess annual value in terms of Section 6 of the Drc Act. Civil suits challenging the validity of the assessment are not maintainable in view of recent decisions. They claim that assessments have been made by applying Section 9(4) of Drc Act and after considering the objections, the assessment for the year 1980-81 was finalised at Rs. 94,500.00 They have also taken the objection that the petitioner should have moved an application u/s 84(2) of the Pm Act.

(4) None has appeared for the petitioner despite the fact that it was mentioned in the cause list with a note that these cases will not be adjourned. Ms. Nilima Thakur appeared for the respondents and she has been heard.

(5) Having heard the learned Counsel for the respondent and having gone through the record, we feel that following points need our consideration : (i) Effect of the judgment of the Civil Courts on the assessment of subsequent years; (ii) Applicability of Section 9(4) and/or Section 6 of the Drc Act; and (iii) Objection relating to bar of exhaustion of alternative efficacious remedy by way of appeal u/s 84(2) of the Pm Act.

(6) As regards the effect of the judgment of the Civil Court, if any injunction is granted by the Civil Court in such like matters, that would be confined to that particular year. However, certain aspect of that judgment by the Civil Court may operate as *res judicata*, say judgment relating to the liability of a person who disputed liability to pay the tax or to exemption from the property tax on account of the fact that it is exempt under certain provision of law. But assessment of annual rent, annual value and yearly tax payable is totally independent and in that respect, judgment of Civil Court would not operate as *res judicata* or a bar to assess yearly property tax. The matters are bound to be different if additions and alterations have been made or if on account of legislative changes, rates of

tax are different or assessment of previous years has become redundant, and ceased to be a good precedent.

(7) However, in this case, an interesting question has arisen : whether the finding of Civil Court that the total cost of construction including value of the land at the commencement of construction was Rs. 1,00,000.00, would operate as res judicata. In the present case, it would not operate as res judicata so long these matters are not finally decided. It is very much evident that three RSAs 72/79,42/ 81 and 165/81 were filed by the Ndmc and the learned Counsel could not tell us the fate of these three RSAs. But if it is or has been accepted as total cost of construction by the Civil Court finally and the respondents suffer or have suffered a final finding then the respondent cannot get rid of the said finding, so long additions and alterations are not made. However, it is obvious that it is an approximate figure and no accounts are being produced. However, we feel that the judgment in this matter should not await the decision in those cases for it would be a finding of fact and it would further be required to be seen whether in any subsequent year any addition or alteration has been made or not. If any addition or alteration had been made, then fresh cost of construction would be required to be taken into consideration for assessing the property tax. If no addition or alteration was made, then it would be difficult to accept that Ndmc would not be bound by the finding of the Civil Court about the cost of construction and the value of the land howsoever erroneously it might have been given.

(8) As regards the applicability of Section 9(4) or 6 of the Drc Act, we feel that the impugned order of assessment and order of Appellate Authority have not been made in accordance with the principles laid down in *Dewan Daulat Rai Kapur v. Ndmc* (supra) and *Dr. Balbir Singh and Others Vs. M.C.D. and Others*, . In *Bhagwant Rai and others Vs. State of Punjab and others*, again it has been held that the actual rent is not the measure of arriving at annual value for the purpose of deciding reasonably expected rent.

(9) One of the contentions raised by the petitioner is that the assessment does not even comply with the provisions of Section 9(4) of the Act, for appropriate details relating "to the situation, locality and condition of the provisions and the amenities provided therein" along with standard rent of similar premises thereof, have not been given. The submission is very much substantiated by Annexure Viii at p.48 copy of the impugned judgment of Smt. B. Prasad, Adm (South & New Delhi).

(10) Besides it is not possible for us to accept the contention of the learned Counsel for the Ndmc that the standard rent could be fixed u/s 9(4) of the Drc Act for the petitioner has herself failed to furnish the appropriate data and evidence about the cost of construction and value of the land at the commencement of construction it was not possible to estimate the annual value and annual rent in accordance with the principles of Section 6(1)(A) of the Drc Act.

(11) Even if for the sake of argument, it is accepted that the respondent-NDMC could have any valid objection not to accept the cost of construction and the value of the land at Rs. 1,00,000.00 and they felt that the petitioners have also failed to furnish appropriate data and evidence regarding value of the land at the time of commencement of construction and the actual cost of construction, the Ndmc would certainly not be absolved from its statutory duty to assess the property u/s 6 of the Drc Act in view of the judgment of *Dewan Daulat Rai Kapur v. Ndmc* (supra) and *Dr. Balbir Singh & Ors. v. Mcd & Ors.*, (supra). So far as the value of the land is concerned, the value of the land could be ascertained from the sale deeds of similarly situated comparative land of the date(s) nearest to the date of commencement of the construction in the vicinity. Such sale deeds would be available in the record of the office of the respondent also as they are filed in connection with mutation of properties in the names of transferees. If the construction has been raised on the lease-hold land the elaborate method is given in *Dr. Balbir Singh & Others v. Mcd & Others* (Supra) and that has to be followed to evaluate the value of the land.

(12) As regards the cost of construction, in absence of any data provided by the petitioner the respondent could act upon the Cpwd rates of cost of construction in the relevant year to have a fair estimate of the cost of construction.

(13) In view of the above, it cannot be said that the value of the land at the commencement of the cost of construction and the cost of construction could not be fairly estimated for the present purpose though it may be slightly cumbersome.

(14) As regards the objection regarding the plea of non-exhaustion of remedy available u/s 84(2) of the Pm Act, the Section 84(2) reads as under :

"If on the hearing of an appeal under the section, any question as to the liability to, or the principle of assessment of, a tax arises on which the officer hearing the appeal entertains reasonable doubt, he may either of his own motion or on the application of any person interested draw up a statement of the facts of the case and the point on which doubt is entertained, and refer the statement with his own opinion on the point for the decision of the High Court."

(15) It is notable that this plea appears to be slightly misconceived. The appeal had already been filed and the order in appeal dated 30th April, 1982 is being challenged. Consequently, that stage is over. After decision of the appeal, no application drawing up a statement of facts of the cases and the points on which doubt is entertained could be moved by the petitioner nor the Appellate Authority on such an application after disposal of the appeal could have referred the statement with his own opinion on the point for decision of the High Court. As such, this objection has to be rejected. Besides, in this case, rule was issued on 2nd July, 1982 and after 14 years, it would be improper to dismiss the writ only on this hyper technical ground.

(16) In view of the foregoing, we are unable to approve the impugned

assessment order u/s 9(4) of the Drc Act nor we can approve findings of Mrs. B. Prasad, Adm (South and New Delhi) in Appeal Nos. 263/78,83/80 and 114/81 for the years 1978-79, 1979-80, 1980-81 and 1981-82.

(17) Consequently, we allow the writ, quash the impugned order and judgment in the appeal and direct the Assessing Authority to calculate the gross annual rent and annual value in terms of the judgment in *Dewan Daulat Rai Kapur v. Ndmc* (supra). *Dr. Balbir Singh v. Mcd* (supra), after giving an opportunity to the petitioner of being heard.

(18) Parties are left to bear their own costs.