

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 27th January 2016
Date of decision: February 08th, 2016

+ W.P.(C) 5658/2006

MUNICIPAL CORPORATION OF DELHI Petitioner
Through: Ms.Amita Gupta, Advocate

versus

THE VAISH CO-OPERATIVE NEW BANK LTD. Respondent
Through: Mr.B.B.Jain, Advocate

+ W.P.(C) 5675/2006

MUNICIPAL CORPORATION OF DELHI Petitioner
Through: Ms.Amita Gupta, Advocate

versus

THE VAISH CO-OPERATIVE NEW BANK LTD. Respondent
Through: Mr.B.B.Jain, Advocate

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

J U D G M E N T

1. These two petitions are directed against the judgment dated 21.11.2005 passed by learned Additional District Judge, Delhi in HTA No.404/2004 and HTA No.403/2004 titled as 'The Vaish Co-operative New Bank Ltd. vs. Municipal Corporation of Delhi', whereby the appeals

filed by respondent herein was allowed and the matter was remanded back to the assessing authority for re-determination of the rateable value, taking into consideration the principle of parity.

2. Since both the petitions are between the same parties and involve similar question of law, therefore, both the petitions are being disposed of by this common order.

3. The facts as culled out from W.P.(C) No.5658/2006, germane for the adjudication of the present petitions are summarised below: -

- (i) The respondent is a Co-operative Society registered under the Delhi Cooperative Societies Act, 1972. The respondent purchased shop No.39, 40, 41 and 42 B-Block, Pushpanjali Enclave, CSC, Pitampura, Delhi.
- (ii) The rateable value of Shop No.39 was fixed at Rs.80,000/- w.e.f. 01.04.1998 vide assessment order dated 25.11.1999. The respondent appeared and produced demand letter dated 23.02.2000 showing that the Shop No.39, B-Block, Pushpanjali Enclave, CSC, Pitampura, Delhi was auctioned for Rs.7,06,000/- and the possession was taken on 06.03.2000.
- (iii) The assessing authority vide assessment order dated 02.01.2001 fixed rateable value at Rs.60,010/- @ 10% and after giving 15% statutory rebate as per the then prevailing Delhi Municipal Corporation (Determination of Rateable Value) Bye-Laws 1994. The rateable value was fixed w.e.f. 06.03.2000 i.e. the date of taking over of possession of Shop

No.39, B-Block, Pushpanjali Enclave, CSC, Pitampura, Delhi by the petitioner.

- (iv) A notice under Section 126 of the Delhi Municipal Corporation Act, 1957 (DMC Act) proposing the rateable value at Rs.85,000/- w.e.f. 01.04.1998 was issued by petitioner. The respondent produced allotment letter and demand letter dated 23.02.2000 and possession letter showing consideration of Rs.8,65,000/-. The assessing authority fixed the rateable value of Shop No.42, B-Block, Pushpanjali Enclave, CSC, Pitampura, Delhi at Rs.73,530/- w.e.f. 06.03.2000 @ 10% and after giving 15% statutory rebate as per the then prevailing Bye-laws, 1994 vide assessment order dated 02.01.2001.
- (v) A notice dated 29.03.2004 under Section 126 of the DMC Act in respect of Shop No.39, 40, 41 and 42, B-Block, Pushpanjali Enclave, CSC, Pitampura, Delhi was served on the respondent thereby proposing consolidated rateable value at Rs.2,92,910/- w.e.f. 01.04.2001 on the ground of amalgamation and coverage of corridor of Shop No.39, 40, 41 & 42 B-Block, Pushpanjali Enclave, CSC, Pitampura, Delhi.
- (vi) The Director of the petitioner appeared before the assessment authority and stated that the units be treated as separate and not amalgamated as the different shops were purchased by the respondent separately.

(vii) The Zonal Inspector of the concerned area inspected Shop No.39, 40, 41 & 42 B-Block, Pushpanjali Enclave, CSC, Pitampura, Delhi and found that said shops have been amalgamated and the respondent bank is being run in the amalgamated premises. Relying upon the provisions of Section 132 and 133 of the DMC Act, the Assessing Officer amalgamated the property and fixed consolidated rateable value. The rateable value of Shop No.39, B-Block, Pushpanjali Enclave, CSC, Pitampura, Delhi was fixed at Rs.60,010/- Shop No.40 at Rs.60,010/-, Shop No.41 at Rs.82,370/- and Shop No.42 at Rs.73,530/-. Thus, the total rateable value of all the four shops was fixed at Rs.2,75,920/- w.e.f. 01.04.2001 vide assessment order dated 29.03.2004.

(viii) Aggrieved by the said assessment order dated 29.03.2004, respondent preferred an appeal under Section 169 of the DMC Act, bearing HTA No.404/2004 in respect of aforesaid Shop Nos.39, 40, 41 & 42 B-Block, Pushpanjali Enclave, CSC, Pitampura, Delhi for the year 2001-02.

4. Vide impugned order dated 21.11.2005, the appeal filed by the respondent was allowed and the matter was remanded back for re-determination of the rateable value, taking into consideration the principle of parity.

5. Aggrieved by the said order dated 21.11.2005, the petitioner has filed the present petitions.

6. Learned counsel for the petitioner urges that the rateable value of Shop Nos.39, 40, 41 & 42 B-Block, Pushpanjali Enclave, CSC, Pitampura, Delhi were fixed on the basis of the sale considerations paid to DDA as per the provisions of the DMC Act and prevailing Bye-laws of 1994 at the relevant time.

7. Learned counsel for the petitioner further submits that the respondent did not produce any evidence to show the rateable value at a lesser amount in respect of the shops situated in the same vicinity and, therefore, the respondent is not entitled to the principle of parity.

8. Learned counsel for respondent urged that the respondent filed objections to the notice under Section 126 of the DMC Act which were not considered by the Assessing Officer.

9. I have heard learned counsel for both the parties and carefully perused the material on record.

10. Before examining the merits of the case, it is necessary to consider the relevant provisions for determination of the rateable value. Under Section 116 of the DMC Act, 1957, the corporation is to determine the rateable value of any land or building assessable to property taxes at the annual rent at which such land or building might reasonably be expected to let from year to year. Section 116 of the DMC Act, 1957 reads as under: -

“116. Determination of rateable value of lands and buildings assessable to property taxes.

(1) The rateable value of any land or building assessable to property taxes shall be the annual rent at which such land or building might reasonably be expected to let from year to year less –

(a) a sum equal to ten per cent of the said annual rent which shall be in lieu of all allowances for costs of repairs and insurance, and other expenses, if any, necessary to maintain the land or building in a state to command that rent, and

(b) the water tax or the scavenging tax or both, if the rent is inclusive of either or both of the said taxes:

Provided that if the rent is inclusive of charges for water supplied by measurement, then, for the purpose of this section the rent shall be treated as inclusive of water tax on rateable value and the deduction of the water tax shall be made as provided therein:

Provided further that in respect of any land or building the standard rent of which has been fixed under the Delhi and Ajmer Rent Control Act, 1952 (38 of 1952), the rateable value thereof shall not exceed the annual amount of the standard rent so fixed.

Explanation – The expression “water tax” and “scavenging tax” shall mean taxes of that nature as may be levied by an appropriate authority.”

11. The Delhi Municipal Corporation (Determination of Rateable Value) Bye-laws, 1994 were published in the Gazette on 24.10.1994. The relevant Bye-law reads as under: -

“3. Determination of rateable value of lands and buildings. –
(1) For the purposes of sub-section (1) of section 116 of the Act, the annual rent shall be determined as under: -

(a) where the premises are on rent, the rent actually realised or realizable, unless the same is collusive or concessional, shall be annual rent. Where the tenancy commences on or after the 1st day of April, 1995 and where the commissioner has reason to believe that the declared rent does not represent the prevalent

rent of the year of letting and the difference between declared rent and the prevalent rent is more than twenty five percent of the declared rent, the annual rent shall be the prevalent rent;

Explanation – For the purposes of this clause the prevalent rents shall be determined by a Panel of Assessors to be appointed by the Commissioner, Such Panel shall include a representative from the Government, a representative of the Corporation, a representative of any Taxation Department (other than the Corporation) or a Valuer and a representative of the property owners of the zone of which the prevalent rents are to be determined.

(b) in the case of the premises which are sub-let, the rent paid or payable by the occupier shall be the annual rent.

Explanation – For the purposes of clause (a) and clause (b), it is immaterial whether the building and the fixtures and fittings affixed to the building and the land let for use and enjoyment therewith, are let by the same contract or by different contracts, and if by different contracts, whether made simultaneously or at different times;

(c) in case premises are used and occupied or are lying vacant for use and occupation by the owner himself –

(i) where the building has been erected or land which is on rent and no premium has been paid, the annual rent of the building or part thereof shall be the aggregate of the annual rent of the land paid or payable in the year or assessment and an amount calculated at ten percent of the cost of construction of the building, cost of fixtures and fittings and cost of additions, alternations and improvements;

(ii) where the building or part thereof, is used or to be used as a banquet hall, cinema hall club, guest house, hotel, nursing home or as house for marriages and such other functions, the annual rent shall be the amount calculated at ten percent of the market price of land in the year of assessment and the cost of construction of the building, cost of

fixtures and fittings and cost of additions, alternations and improvements, or the prevalent rent, whichever is higher;

(iii) where the premises are not covered by sub-clause (i) and (ii) above, the annual rent shall be the amount calculated at tent percent of the cost of the premises upto the year of assessment or the prevalent rent, whichever is lower;

Provided that where the premises are used for residential purposes and cost of the premises is determined under Bye-law 2(1)(b)(iv), the annual rent of the portion of the building completed upto the year 1993-94 shall not be more than the annual rent determined for the year 1993-94;

(d) where the building or part thereof, is lying vacant for letting, the annual rent of such building or part thereof, shall be ten percent of the cost of the premises;

(e) in respect of the properties in the unauthorized colonies, regularized unauthorized colonies, on plot allotted under Economically Weaker Section and Low Income Group schemes and in respect of flats used for residential purposes upto a covered area of 75 sq. mts., where the Commissioner feels that determination of value of land, cost of construction or the prevalent rent is difficult, he may determine the annual rent by Unit Area Method.

Explanation I - Where the premises has an illuminated or non-illuminated advertisement on the walls, hoardings, posts or structures affixed to the premises, the annual rent of the premises shall include the rent from such advertisement.

Explanation II – For the purposes of this bye-law, the annual rent of the premises includes the annual rent of the land and building thereon, and such other fixtures and fittings as are considered necessary for the use and enjoyment of the land and building for the purpose for which they are intended to be used and shall include lifts, elevators, storage tanks, pipelines, railways lines, runways, underground cables, air-conditioning plant in centrally air-conditioned buildings, swimming pools, chairs and screen in cinema halls, theatres and auditoria, cost of

insulations and racks in cold storage buildings, but, save as aforesaid, no account shall be taken of the value of any fixtures and fittings contained or situated in or upon any land or building.

(2) Where the premises, as per prevalent practice, are let or transferred by charging pugree or through some other arrangement on nominal rents, the Commissioner may estimate the annual rent of the premises after taking into consideration the rents paid or payable by public undertakings or the government organisations or the premises let by such undertakings or organizations either in the same locality or in the nearby similar locality.

(3) In the case of premises to which rent restriction legislation is applicable, the annual rent determinable under sub-bye law (1) above, shall not be more than the rent realized or realizable under the rent restriction legislation.

(4) Where the annual rent of the building is determinable under more than one clauses of sub-bye law (1), the annual rent of the building shall be the aggregate of the annual rent determined under various clauses of that sub-bye law.

(5) Where the premises have been provided with any fixtures and fittings, the deduction for the maintenance of such premises shall be fifteen per cent of the annual rent and not ten per cent of the annual rent as provided under sub-section (1) of section 16 of the Act.

(6) When any land is purchased or new building is erected or any building is rebuilt or enlarged or where there is change in the ownership of the land or building, change in tenancy or increase in rents, after the 31st of December of the year the increase in the rateable value shall be effective from the commencement of the succeeding year.”

12. The validity of the aforesaid Bye-laws, 1994 was upheld by the Hon’ble Supreme Court in ‘**Municipal Corporation of Delhi vs. Delhi Urban House Owners’ Welfare Association**’, (1997) 8 SCC 335.

13. A Division Bench of this Court in '**Municipal Corporation of Delhi vs. Dhunishaw Framroz Daruwala**', 2002 (100) DLT 679, after considering the judgments in **Dr. Balbir Singh & Anr, etc. vs. Municipal Corporation of Delhi & Ors.**', (1985) 1 SCC 167; and '**Lt. Col. P.R. Chaudhary (Retd.) vs. Municipal Corporation of Delhi**', (2001) 4 SCC 577, held that notwithstanding the advent of 1994 Bye-laws, 'annual value' has to be determined on the principles laid down in the said two judgments.

14. The short controversy involved in the present petitions is whether the rateable value is to be fixed on the principle of parity or not. This issue is no more *res integra* in view of law laid down by the Hon'ble Supreme Court in Civil Appeal No.6718/2014 titled as '**MCD & Ors. vs. Mehrasons Jewellers (P) Ltd.**', decided on 11.08.2015. Hon'ble Supreme Court after considering the judgments of the Division Bench of this Court in **Dhunishaw Framroz Daruwala's** case, **Dr. Balbir Singh's** case and **Lt. Col. P.R. Chaudhary's** case (supra), held that for assessments made after the existence of the Bye-laws, 1994, such assessments shall be governed by the Bye-laws, 1994 alone and the principles laid down in **Balbir Singh's** case and **P.R. Chaudhary's** case, would have no relevance.

15. Applying the law laid down in **Mehrasons Jeweller's** case (supra), it is clear that the rateable value is to be fixed on the basis of Delhi Municipal Corporation (Determination of Rateable Value) Bye-laws, 1994 and the principle of parity is not applicable.

16. In view of the facts and circumstances of the case and the judgment in **Mehrasons Jeweller's** case (supra) the impugned judgment dated 21.11.2005 passed by learned Additional District Judge, Delhi is modified

to the extent that the assessing authority will re-determine the rateable value according to the Bye-laws, 1994.

17. The respondent is directed to appear before the concerned Assessor & Collector on 24.02.2016 at 3:00 p.m.

18. With the aforesaid observations, both the petitions stand disposed of.

(VED PRAKASH VAISH)
JUDGE

FEBRUARY 08th, 2016
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