

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

% **Date of decision: 27th May, 2016.**

+ **W.P.(C) 9554/2007**

SHRI DAN SINGH BAWA & ORS **Petitioners**

Through: Mr. Rakesh Agarwal, Adv.

Versus

N.D.M.C. **Respondent**

Through: Mr. Arjun Mitra, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition impugns the order / judgment dated 3rd November, 2007 of the Additional District Judge (ADJ) acting as the Appellate Authority under Section 115 of the New Delhi Municipal Council Act, 1994 (NDMC Act) of dismissal of House Tax Appeal (HTA) No.378/2004 preferred by the petitioners against the orders dated 14th August, 2000 and 14th September, 2001 of assessment of rateable value of property known as Marshal House, Hanuman Road, New Delhi-110001 of the petitioners at Rs.1,29,19,300/- with effect from 1st April, 1998 and following the said rateable value for the years 2001-2002.

2. The petition came up for admission on 25th January, 2008 when, in view of the fact that the judgment of this Court was pending consideration

before the Supreme Court in Civil Appeal No.2772/2009 titled ***State Trading Corporation India Ltd. Vs. New Delhi Municipal Council***, the petition was admitted for hearing and the parties were given liberty to have the matter listed once the appeal filed by ***State Trading Corporation India Ltd.*** was decided by the Supreme Court. However, the interim stay sought, of recovery of property tax on the basis of the impugned assessment, was declined and the application for interim relief dismissed.

3. The petition, on 6th September, 2011 was dismissed in default of appearance of the petitioners but upon application for restoration being filed by the petitioners was vide order dated 30th September, 2011 restored to its original position.

4. When the petition was listed on 9th May, 2016, the counsel for the petitioners was apprised of the judgment of the Supreme Court in ***State Trading Corporation India Ltd. Vs. New Delhi Municipal Council*** AIR 2016 SC 1269 as well as my judgment in ***N.D.M.C. Vs. M/s Om Parkash & Co.*** 2016 SCC OnLine Del 2504 and on his request the matter was adjourned to 20th May, 2016. The counsel for the petitioners was orally also informed that may be in view of the judgment of the Supreme Court in ***State Trading Corporation India Ltd.*** supra, it was better for the petitioners to

withdraw this petition. The matter has been taken up for hearing today. The counsel for the petitioners states that he has no instructions to withdraw the petition. The counsels have been heard.

5. The rateable value of the property aforesaid of the petitioners till 31st March, 1997 was Rs.22,62,150/- less 10% on the basis of the rent being fetched by the property. Vide *ex-parte* order dated 8th September, 1999, the rateable value of the property with effect from 1st April, 1998 was enhanced to Rs.1,49,71,000/- less 10%. Upon representation being made by the petitioners, the assessment was reopened and vide impugned assessment order dated 14th August, 2000, the rateable value with effect from 1st April, 1998, on the basis of the rent being fetched by the property was assessed at Rs.1,29,19,300/-. On the plea of the petitioners that some of the tenants have vacated, it was further ordered that the petitioners will be eligible for consideration for vacancy remission. Vide impugned assessment order dated 14th September, 2001, the rateable value for the year 2001-2002 was maintained at Rs.1,29,19,300/-.

6. The grievance of the petitioners with respect to the aforesaid rateable value is (i) that the respondent NDMC has included in the rent the charges which one of the tenants was paying for air-conditioning plant and

machinery separately provided and the reliance by the respondent NDMC on an order dated 10th March, 1999 of this Court in RSA No.33/1989 titled ***Bawa Dan Singh Vs. NDMC*** was misconceived, as this Court vide the said order has merely dismissed the second appeal without deciding the question of inclusion of air-conditioning charges in rent for the purposes of computation of property tax on merits; and, (ii) that the assessment in respect of the vacant portions ought to have been made on cost basis on the principles laid down by the Supreme Court in ***Dr. Balbir Singh Vs. Municipal Corporation of Delhi*** AIR 1985 SC 339.

7. The learned ADJ dismissed the appeal finding/observing/holding (a) that the Full Bench of this Court in ***Dewan Daulat Ram Kapur Vs. New Delhi Municipal Committee*** ILR (1973) 1 Del 363 has clarified that the annual rateable value in respect of premises which are not let and are occupied by the owner in the relevant year of assessment, shall be on the basis of the rent received in the earlier year; (b) that the contention of the petitioners that the vacant premises are to be assessed on the basis of cost of acquisition is erroneous; (c) that in ***Inder Vijay Singh Vs. N.D.M.C.*** 1995 (33) DRJ 299 (DB) it has been held that window air-conditioning would not amount to machinery and inclusion of hire charges with the rent was held to

be proper for the purpose of assessment. It was however observed that the petitioners would be entitled to vacancy remission in accordance with the rules and regulations of the respondent NDMC.

8. The contention of the counsel for the petitioners before me is on the aforesaid two aspects only i.e. the vacant portions of the property being liable to be assessed on the basis of cost of land plus cost of construction and indice whereof is the cost of purchase by the petitioners of the property in the year 1962 for Rs.7.25 lakhs. Secondly, it is contended that the air-conditioning charges are not liable to be included in the assessment of rateable value of let out portions on the basis of rent.

9. Section 63 of the NDMC Act provides for the rateable value of any land or building assessable to any property tax to be the annual rent at which such land or building might reasonably be expected to let from year to year less a sum equal to ten per cent of the said annual rent which shall be in lieu of all allowances for cost of repairs and insurance, and other expenses, if any, necessary to maintain the land or building in a state to command that rent. The proviso thereto provides that in respect of any land or building the standard rent of which has been fixed under the Delhi Rent Control Act, 1958 (DRCA), the rateable value thereof shall not exceed the annual amount

of the standard rent so fixed. The Punjab Municipal Act, 1911 which was applicable to the New Delhi Municipal Council (NDMC) areas prior to the coming into force of the NDMC Act also vide Section 3(1)(b) thereof defined annual value in case of any house or building as the gross annual rent at which such house or building together with its appurtenances and any furniture that may be let for enjoyment therewith may reasonably be expected to let from year to year subject to deductions as mentioned therein.

10. However in the era when the DRCA had application to letting of all properties in Delhi, it was held including in ***Dr. Balbir Singh*** supra that a landlord could not reasonably expect to let out his building at a rent in excess of the standard rent and thus the measure of rateable value had to be the standard rent (even if the building was actually fetching more) and determination of which in turn was on the basis of cost of land plus cost of construction of the building thereon.

11. However with effect from 1st December, 1988, the DRCA ceased to apply to premises, the rent whereof was in excess of Rs.3,500/- per month.

12. However, the Division Bench of this Court in ***New Delhi Municipal Council Vs. The State Trading Corporation of India Ltd.*** 126 (2006) DLT

191 relying on Bye-law 12 of the New Delhi Municipal Committee Bye-laws, 1962 (which were framed when the area now governed by the NDMC Act was governed by the Punjab Municipal Act) providing that the annual value of a building which is in the owner's own occupation and the standard rent of which has not so far been fixed by a competent authority may be calculated under Section 3(1)(b) of the DRCA on the basis of rents of similar accommodation prevalent in the locality and if the same was not feasible, may be calculated under Section 3(1)(c) of the DRCA, set aside the assessment made by the NDMC on the basis of market rent which the property was capable of fetching.

13. The matter as aforesaid reached the Supreme Court and the Supreme Court in *State Trading Corporation of India Ltd.* supra held (i) that since the provision of standard rent under the Delhi Rent Control Act, 1958 had been struck down in *Raghunandan Saran Ashok Saran (HUF) Vs. Union of India* (2002) 95 DLT 508 (DB), no reliance could be placed on the proviso under Section 63(1) of the NDMC Act; (ii) that in any case since the standard rent of the premises of the State Trading Corporation India Ltd. had never been fixed under the Delhi Rent Control Act, the State Trading Corporation India Ltd. was not entitled to invoke the same; (iii) that since

the NDMC Act contains a provision and procedure under Section 63 for calculating the annual rent, one need not refer at all to New Delhi Municipal Committee Bye-laws (which were framed when the area now governed by the NDMC Act was governed by the Punjab Municipal Act) and that the bye-law 12 of the said bye-laws was apparently inconsistent with the provisions of the NDMC Act and it is impermissible to refer to the bye-laws framed under the Punjab Act in view of specific provisions made under the NDMC Act providing for the levy, assessment and collection of property tax; (iv) that under Section 63 of the NDMC Act the only basis for fixation of rateable value is annual rent at which the land or building might reasonably be expected to be let from year to year, subject to deductions provided under the Act; (v) if the property is let out, the actual rent payable by the tenant to the landlord is available for verification by the Assessing Officer; (vi) where the property is self occupied, the annual rent will have to be fixed on the basis of what the landlord might reasonably expect to get from a hypothetical tenant; (vii) such fixation has to be made only as per the NDMC Act; and, (viii) it is for the Assessing Officer to make the fixation in accordance with law.

14. I have, applying the aforesaid law, in *M/s Om Parkash & Co.* supra negated the contention in that case that since the property was self occupied and was constructed way back in 1960s (as the subject property also appears to be), the rent which the owner can expect the property to fetch can only be the standard rent and not anything in excess thereof and have held that “a complete reading of the judgment of Supreme Court leaves no manner of doubt that for self occupied properties and about which there can be no possibility or doubt are capable of fetching rent in excess of Rs.3,500/- per month and above which rent the provisions of Delhi Rent Control Act w.e.f. 1st December, 1988 do not apply, the question of the landlord reasonably expecting to fetch only the standard rent does not arise; rather Supreme Court has expressly negated the same by holding that since the provision of standard rent in the Delhi Rent Control Act itself has been struck down and since no standard rent referred to in the proviso to Section 63(1) of the NDMC Act was fixed qua the property, no reliance could be placed thereon.”

15. It is not the case of the petitioners herein also that the standard rent of their property was fixed at any time. I have in *M/s Om Parkash & Co.* supra also negated the contention that the concept of standard rent having

been incorporated in Section 63 of the NDMC Act (in proviso thereof) striking down thereof in Delhi Rent Control Act would be irrelevant and have held that after 1st December, 1988, the rateable value of the property has to be on the basis of the rent which the property in the relevant year was reasonably expected to be let at and cannot be on the basis of standard rent.

16. The aforesaid takes care of the contention of the petitioners, of the vacant portions of their property being liable to be assessed at rateable value on the basis of standard rent and not the rent which they were capable of fetching in the market.

17. As far as the aspect of air-conditioning charges is concerned, as noticed by the learned ADJ, the Division Bench of this Court in ***Inder Vijay Singh*** supra indeed, referring to the definition of annual value in Section 3 of the Punjab Municipal Act and the dicta of the Supreme Court in ***Karnani Properties Ltd. Vs. Miss Augustine*** AIR 1957 SC 309 held that window air-conditioners supplied by the landlord to the tenant and for which monthly payment in addition to the rent was being charged were appurtenances and furniture, value whereof was to be added to the rent and not machinery, the value whereof was to be excluded from the annual value. However, the assessment year subject matter of that case was 1991 to 1994, when the

NDMC Act had not come into force. The provisions of the NDMC Act are in this respect materially different from the provisions of the Punjab Municipal Act. Under the NDMC Act, the determination of rateable value is as per Section 63 supra of the Act.

18. The counsel for the respondent NDMC however drew my attention to the judgment of Full Bench of this Court in ***Essex Farms Private Limited Vs. Municipal Corporation of Delhi*** 100 (2002) DLT 131. The Full Bench was constituted to consider the challenge to the correctness of the judgment of the Division Bench of this Court in ***Municipal Corporation of Delhi Vs. Pragati Builders*** AIR 1991 Delhi 212 and concluded that the decision of the Division Bench in ***Pragati Builders*** had laid down the law correctly.

19. I had during the hearing drawn the attention of the counsels to ***Krishna Mohan (P) Ltd. Vs. Municipal Corporation of Delhi*** (2003) 7 SCC 151 where the Supreme Court, interpreting Section 116 of the Delhi Municipal Corporation Act, 1957 (DMC Act) as it then existed and was *pari materia* to Section 63 of the NDMC Act, providing that the rateable value of any land or building assessable to property tax shall be the annual rent at which such land or building might reasonably be expected to let from year to year and further referring to sub-section (3) thereof providing as under:

“63(3) All plant and machinery contained or situate in or upon any land or building and belonging to any of the classes specified from time to time by public notice by the Chairperson with the approval of the Council, shall be deemed to form part of such land or building for the purpose of determining the rateable value thereof under sub-section (1) but save as aforesaid no account shall be taken of the value of any plant or machinery contained or situated in or upon any such land or building.”

held (i) that once Section 116(3) itself laid down that no account shall be taken of the value of any plant or machinery contained or situated in or upon any such land or building, unless it has been notified so, the definition of premises in Section 238 of the DMC Act (and which is *pari materia* to Section 233 of the NDMC Act) cannot include plant and machinery which has been specially excluded under Section 116(3), except to the extent notified; (ii) that lifts air-conditioners are not plant or machinery, but fittings and fixtures; (iii) that the concept of rateable value as generally understood does not admit the inclusion of cost of such plant and machinery in the computation of the rateable value of the building; (iv) that cost of plant and machinery situated in or upon any land or building cannot be included in the computation of the rateable value, unless a valid notification contemplated by Sub-section (3) of Section 116 has been issued; (v) declared Section 116(3) as it then stood to the extent empowering the Commissioner to notify

plant and machinery for inclusion in rateable value to be invalid as it delegates unguided and uncanalised legislative powers to the Commissioner; and, overruled the decision of this Court in ***Pragati Builders*** supra.

20. That means that the decision of the learned ADJ, to the extent includes the air-conditioning charges in the computation of the rateable value, is bad.

21. I am however of the view that no case for allowing the petition to the said extent is made out. I say so because, (I) the component of air-conditioning charges vis-à-vis the rent was miniscule; while the rent was Rs.11,58,950/- per month, the air-conditioning charges were only Rs.23,560/- per month; (II) the said miniscule difference is more than made up vis-à-vis the rateable value of the vacant portions which were assessed on the basis of the last paid rent and not on the basis of the prevalent rent as it ought to have been in accordance with the dicta now of the Supreme Court in ***State Trading Corporation India Ltd.*** supra; (III) the matter is now nearly twenty years old and in view of the aforesaid, it is not deemed appropriate to, in exercise of discretionary jurisdiction, upset the assessment which though has remained under-challenge but is twenty years old; (IV) this Court in jurisdiction under Article 226 of the Constitution of India can

always refuse relief, even if the petitioner(s) is/are found entitled thereto, if otherwise in the facts of the case grant of the relief is not found appropriate; (V) it is felt that if the assessment after nearly twenty years is set aside qua the air-conditioning charges as well as qua the vacant portions, to be determined in accordance with the dicta of the Supreme Court in *State Trading Corporation India Ltd.* supra, the petitioners are unlikely to emerge gainers and may become liable for additional property tax; (VI) it cannot also be lost sight of that the petitioners against the assessment orders supra, first availed of a writ remedy (Civil Writ Petition No.1577/2002) which was disposed of vide order dated 16th November, 2004 with liberty to the petitioners to prefer the statutory appeal remedy; it was only thereafter that the appeal from the dismissal whereof this petition arises was filed; (VII) the appeal as well as this writ petition are also not found to have been followed up by the petitioners diligently; both were allowed to be dismissed in default of appearance and the application for restoration of the appeal was filed after considerable delay.

22. In these circumstances, I do not find a case for setting aside of the assessment and for remanding the matter for fresh assessment to have been made out.

The petition is accordingly dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

MAY 27, 2016

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(corrected & released on 21st June, 2016)

