

\$~18

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

+ W.P.(C) 1951/2007

MCD

..... Petitioner

Through: Ms.Amita Gupta, Adv. with Ms.Priti
Yadav, Adv.

versus

CHIEF JUSTICE R. DAYAL & ANR

..... Respondents

Through: Mr. B. B. Jain, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

%

08.02.2018

1. The present petition has been filed by erstwhile Municipal Corporation of Delhi challenging the order passed by the learned Additional District Judge in HTA No. 185/2003 whereby the learned Additional District Judge has remanded the matter back to the Assessing Authority to reconsider the rateable value fixed in respect of the suit property on considering the issue on parity. Some of the facts as noted from the writ petition are that on March 30, 1995 a notice under Section 126 of the Delhi Municipal Corporation Act, 1957 (DMC Act) proposing the rateable value at Rs. 51,720/- w.e.f. April 01, 1994 was issued due to “*addition in the building*” as per return form in respect of property No.132 Dayanand Vihar

1992, Delhi. On March 05, 1997 and January 06, 1998 upon hearing the counsel for the respondents and considering the documents submitted by them the Assessing Authority fixed the rateable value of Rs.49,680/- w.e.f. April 01, 1994 vide assessment order dated January 06, 1998 which was not challenged by the respondents. On March 16, 1999 the Assessing Authority issued another notice under Section 126 of the DMC Act proposing the rateable value of Rs. 1,00,810/- w.e.f. April 01, 1998 due to addition at second floor. The respondents filed their objections against the said notice. After hearing the respondents the Assessing Authority fixed the rateable value as Rs. 77,140/- w.e.f. July 01, 1998 vide order dated January 07, 2002. That against the assessment orders dated January 06, 1998 and January 07, 2002 the respondents filed two different appeals under Section 126 of the DMC Act on the ground that the completion certificate for additions made at the first floor was granted on November 09, 1994 whereas MCD determined the rateable value for addition of the first floor w.e.f. April 04, 1994. It is noted that the respondents had raised the plea of parity in terms of the judgments of the Supreme Court in ***Dr. Balbir Singh vs. M.C.D. AIR 1985 SC 339*** and in ***Lt. Col. P.R. Chaudhary (Retd.) vs. M.C.D. 85 (2000) DLT 223 (SC)***.

2. The learned Additional District Judge vide order dated January 02, 2003 allowed the appeal and set aside the orders dated January 06, 1998 and January 07, 2002 and remanded back the case to the Assessing Authority to re-determine the rateable value after considering the question of parity in accordance with the directions given by the Supreme Court in ***Lt. Col. P.R. Chaudhary (Retd.)*** case (*supra*). The Assessing Authority vide order dated July 03, 2003 on remand re-fixed the rateable value as Rs. 19,920/- w.e.f. April 1, 1994, Rs. 47,190/- w.e.f. November 10, 1994 and Rs. 74,650/- w.e.f. July 7, 1998. This order which was challenged by the respondents before the learned Additional District Judge on the ground that the benefit of parity has not been given to them in view of the judgments of the Supreme Court in the Case of ***Dr. Balbir Singh's (supra) Lt. Col. P.R. Chaudhary (Retd.)***, (*supra*) and the judgment of this Court in the case of ***M.C.D. vs. Dhunshaw Framroz Daruwala*** reported in ***100 (2002) DLT 679***. It is in the said appeal the impugned order has been passed which is under challenge by the erstwhile MCD.

3. Ms. Amita Gupta, learned counsel for the petitioner would submit the MCD having framed the bye-laws w.e.f. October 01, 1994, the assessment having been done by the Authority under the bye-laws, there was no

illegality in the assessment order dated July 03, 2003 and the remand on the ground of parity was unjustified. She states that the plea of parity as held by the Supreme Court in the cases of ***Balbir Singh (supra)*** and ***Lt. Col. P.R. Chaudhary (Retd.) (supra)*** and by this Court in ***Dhunishaw Framroz Daruwala (supra)*** is not applicable in view of the latest judgment of the Supreme Court in the case of ***Municipal Corporation of Delhi and Anr. vs. Mehraons Jewellers Pvt. Ltd. AIR 2015 SC 3121***. She has also drawn my attention to the assessment order in support of her submissions.

4. On the other hand Mr. B.B. Jain, learned counsel for the respondents would submit, even the bye-laws framed by the MCD, postulates the concept of parity. On this he draws my attention to bye-laws 3 (1) (c) (iii) and 2 (1) (b) (i), which relates to determination of rateable value of lands and buildings and the definition of *cost of premises* respectively. He concedes to the fact, the assessment need to be made in terms of the bye-laws as held held by the Supreme Court in the case of ***M.C.D. vs. Mehraons (supra)***. He also states the Assessing Authority in the order dated July 03, 2003 has not assessed the rateable value in terms of the bye-law 3 (1) (c) (iii). He also has refers to a judgment of this Court in the case of ***Municipal Corporation of Delhi vs. The Vaish Co-operative New Bank***

Ltd. in *W.P. (C) 5658/2006* and connected writ petitions decided on February 08, 2016 respectively.

5. Having heard the learned counsel for the parties, I note in the impugned order the learned Additional District Judge has referred to the judgments of the Supreme Court in the case of *Balbir Singh (supra)* and *Lt. Col. P.R. Chaudhary (supra)* and this Court in *Daruwala (supra)* to hold that the respondents are entitled to the benefit of parity. He did not considered the effect of the bye-laws framed on October 24, 1994 effective from October 01, 1994 on the assessment. The issue is now settled by the Supreme Court in the case of *M.C.D. vs. Mehraons (supra)*.

6. The Delhi Municipal Corporation (determination of rateable value) bye-laws 1994 more specifically bye-laws 2 and 3 reads as under:

“2. *Definition-(1) In these bye-laws:-*

(a) *Act means the Delhi Municipal Corporation Act, 1957 (66 of 1957 as amended),*

(b) *‘Cost of premises’ means:-*

(i) *where the premises have been acquired by purchase or through any transaction (whether by way of becoming a member of, or acquiring shares in a Co-operative Society, company or other association of persons or by way of any agreement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of the premises, the cost of paid, or where the cost is partly paid or partly payable, the aggregate of the cost paid or payable for the premises and the cost of additions and improvements, whether made by the owner or by the occupier; or*

(ii) where the premises were to be used for residential purposes are used for non-residential purposes, the cost of premises shall be the aggregate of market value of land comprised in the premises on the date of change in user of the premises and the cost of construction of the premises or the cost paid or payable for the premises, whichever is higher and the cost of additions and improvements in the premises, whether made by the owner or the occupier.

(iii) where the premises are used or to be used for non-residential purposes, and are not covered by clauses (i) and (ii) above, the cost of the premises shall be the aggregate of the market price of land comprised in the premises on the date of the commencement of the construction and the cost of construction of the premises and the cost of additions and improvements in the premises whether made by the owner or occupier.

(iv) in any other case, aggregate of the cost paid for the land and cost of construction of the building or part thereof and the cost of additions and improvements, whether made by the owner or by the occupier.”

"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 realisable, unless the same is collusive or concessional, shall be the 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 or the building or part thereof shall be the aggregate of the annual rent of the land paid or payable in the year of 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, alterations 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, alterations 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 ten 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(l)(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 unauthorised colonies, regularised unauthorised 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 organisations 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 realised or realisable 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."

7. The Supreme Court in ***M.C.D. vs. Mehraons (supra)*** has in paras 12 and 13 held as under:

"12. The present appeals before us refer to assessment years post 1994 and are said to be in a factual scenario where after the amendment of 1988 to the Delhi Rent Control Act, the Delhi Rent Control Act does not apply either for the reason that the rent fixed is more than Rs.3,500/- per month or that the property has been newly constructed and is exempt from its provisions for a period of 10 years. In situations such as the above, an instructive judgment of this Court is contained in Government Servant Cooperative House Building Society Limited & Others v. Union of India & Others, (1998) 6 SCC 381. In this judgment, this Court noticed the 1988 amendment to the Delhi Rent Control Act

and various judgments referred to hereinabove and concluded as under:

“8. Therefore, the annual rent actually received by the landlord, in the absence of any special circumstances, would be a good guide to decide the rent which the landlord might reasonably expect to receive from a hypothetical tenant. Since the premises in the present case are not controlled by any rent control legislation, the annual rent received by the landlord is what a willing lessee, uninfluenced by other circumstances, would pay to a willing lessor. Hence, actual annual rent, in these circumstances, can be taken as the annual rateable value of the property for the assessment of property tax. The municipal corporation is, therefore, entitled to revise the rateable value of the properties which have been freed from rent control on the basis of annual rent actually received unless the owner satisfies the municipal corporation that there are other considerations which have affected the quantum of rent.”

13. Having regard to the aforesaid statement of law, we are of the opinion that the Division Bench of the Delhi High Court in Daruwala’s case (supra), is not correctly decided for the simple reason that this appeal falls within the exception created by the Central Bank judgment, namely, cases where the Municipal Corporation of a particular State itself lays down as to how annual value is to be determined. We, therefore, hold that for assessments made after the 1994 bye-laws came into existence, such assessments shall be governed by these byelaws alone and the principles laid down in Balbir Singh’s case and P.R. Chaudhary’s case, would have no relevance in such a situation. We answer question number 1 accordingly.”

8. So it must be held that the impugned judgment passed by the learned Additional District Judge Delhi is erroneous as the rateable value for the post October 01, 1994 has to be determined on the basis of bye-laws of

1994. Insofar as the submission made by Mr. Jain by referring to bye-laws 3 (1) (c) (iii) is concerned I say nothing. It is for the Assessing Officer to consider the bye-laws and their effect. Liberty is also with the petitioner to contend before the Assessing Officer that, the assessment made vide order dated July 03, 2003, was on the basis of bye-laws of 1994. The impugned judgment of the Additional District Judge is modified by holding that the Assessing Authority will re-determine the rateable value in terms of bye-laws of 1994 and also in keeping view the judgment of the Supreme Court in the case of *M.C.D. vs. Mehrasons (supra)*. To that extent the present writ petition is allowed and disposed of. The parties shall appear before the concerned Assessing Officer on March 01, 2018 at 02:00 P.M.

V. KAMESWAR RAO, J

FEBRUARY 08, 2018/aky