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Wendger and Co. and Others Vs. District Valuation Officer, New Delhi and Others.

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Court : Delhi

Decided On : Aug-30-1978

Reported in : (1978)8CTR(Del)16; [1978]115ITR648(Delhi)

Appeal No. : Civil Writ petition No. 1099 of 1974

Appellant : Wendger and Co. and Others

Respondent : District Valuation Officer, New Delhi and Others.

Judgement :

PRAKASH NARAIN J. - By this petition under art. 226 of the Constitution of India what is challenged is a valuation report dated July 20, 1974, submitted by the District Valuation Officer to WT/ITO, Special Circle XI, New Delhi in pursuance of the reference made to him by the WT/ITO under the provisions of s. 16A of the W.T. Act, 1957. The fair market value assessed at Rs. 32,80,000 by the impugned report is of a property known as 'Wenger Building' in Block A, Connaught Place, New Delhi.

The aforesaid building was constructed by one Sobha Singh of New Delhi on a plot of land leased to him by the then Secretary of State for India in 1924. The lease was in perpetuity. After constructing the building Sobha Singh let out diverse portions of the billing to different persons. Wenger & Co., predecessor-in-interest

of the petitioners, took on rent from Sobha Singh the following portions of the said building :

(a) Confectionery shop on the ground floor.

(b) A hall with veranda on the first floor, and

(c) A kitchen on the first floor.

The confectionery shop on the ground floor and the hall and veranda on the first floor bear Municipal No. A-16. The kitchen on the first floor bears Municipal No. A-33. The rest of the building was with other tenants. In 1956, a small space under the main staircase leading to the hall in the tenancy of Wenger & Co. was also taken on rent by the petitioners from Sobha Singh at a rent of Rs. 100 p.m. The rent for the confectionery shop on the ground floor was Rs. 402.18 p.m., for the hall and veranda on the first floor Rs. 625 p.m. and for the kitchen on the first floor Rs. 75 p.m. Sobha Singh sold the said building and his leasehold rights by different sale deeds to Dayal Singh Library Trust Society and Shri Moolchand Kharaiti Ram Trust. The petitioners purchased the entire building by two sale deeds, one executed by Dayal Singh Library Trust Society on March 9, 1962, and the other by Mool Chand Kharaiti Ram Trust executed on September 27, 1973. It may be noticed by a deed of partnership firm was constituted (petitioner No. 1). This firm took over the business of Wenger & Co., which was being previously run by a partnership constituted by petitioners 2, 3, 4 and 6.

By October, 1963, the position was that the owners of the building and leasehold rights were in occupation of the confectionery shop on the ground floor, a hall with veranda on the first floor, a kitchen on the first floor and a space underneath the staircase leading to the hall on the first floor. The rest of the building was with tenants inducted by Sobha Singh who attorney to petitioner No. 1. On April 27, 1966, Jaswant Kaur, a tenant in the flat bearing Municipal No. A-30, was evicted through court and the possession of these premises also came to be with petitioner No. 1. In 1967, petitioner No. 1 after taking municipal sanction constructed a mezzanine floor on its confectionery shop bearing Municipal No. A-15. This mezzanine floor was rented out to the American Express International

Banking Corporation (Travel Division) on a rent of Rs. 6,187.50 p.m. The older tenants continued to pay the same rent as before on account of rent restriction laws.

For the purposes of municipal taxes computed under the provision of the Punjab Municipal Act, as in force in New Delhi, the annual letting value of the aforesaid building had been fixed on the basis of rent received by petitioner No. 1 from its tenants and the rent that was being paid to Sobha Singh. The annual letting value of the portions let out had been fixed at Rs. 82,612.56 while the annual letting value in the occupation of the petitioners had been fixed at Rs. 89,391.66.

The petitioner submitted a wealth-tax return of the partnership. The WT/ITO, Special Circle XI, New Delhi, respondent No. 2, in exercise of the powers conferred on him by s. 16A(1)(a) of the W.T. Act, 1957, referred the matter of valuation of the said building to the District Valuation Officer on May 7, 1974. The District Valuation Officer, respondent No. 1, issued a notice dated June 11, 1974, under s. 16A(4) of the W.T. Act to B. M. Tandon, petitioner No. 2, indicating that while he proposed to accept the existing annual allotting value for the portions in the occupation of the tenants, he proposed to estimate the fair market value of the portions in the occupation of petitioner No. 1 at Rs. 27,96,000 as on March 31, 1972. Though the notice was spent in the name of M. Tandon, petitioner No. 1 filed objection to the proposed revision of the fair market value of the premises in its occupation. Thereafter, the premises were inspected and the petitioners were heard by the District Valuation Officer but he maintained the proposed valuation which he had indicated in his notice dated June 11, 1974. The fair market value of the entire building was thus assessed by respondent No. 1 at Rs. 32,80,000 as on March 31, 1972. It is this report which is challenged before us.

The grounds of challenge are that respondent No. 1 had no cogent evidence or basis in fixing the fair market value of the portion in the occupation of the petitioners at Rs. 27,96,000. Further, respondent No. 1 has relied on some information which he had but which was never disclosed to the petitioners and the source of that information is still not disclosed. Alternatively, it has been submitted that the impugned information is with regard to rents or prices of newly constructed

flats in multi-storeyed building near about Connaught Place and the same could not be a valid basis for finding out at the fair market value of the premises in the occupation of the petitioners.

The respondents have failed an affidavit sworn by N. C. Jayaraman, District Valuation Officer (respondent No. 1), by way of return to the rule nisi. It has been urged that no petition under art. 226 of the Constitution is maintainable and no writ of certiorari can be issued against the report of respondent No. 1 because the report is not a final order. The said report, it is contended, is submitted to the WTO who then has to pass an order under the W.T. Act making an assessment in respect of the said building of the petitioner. Against the order of assessment the petitioners can prefer an appeal. The assessment order may affect the rights of the petitioners but, it is contended, the impugned report does not, and the order is also appealable making the writ unavailable. On merits, respondent No. 1 has stated that the computation of annual letting value for the purpose of house-tax under the Punjab Municipal Act is no criterion for the purpose of fixing the valuation of the property for the purposes of W.T. Act. Further, it is stated that though the report given by the District Valuation Officer is binding on the WTO it is not binding on the appellate authorities under the Act and so, the report does not, in any way, affect the rights of the petitioners. He asserts that he acted within his jurisdiction and in accordance with law. He gave opportunity to the petitioners who not only participated in the inspection of the property but submitted oral and written argument against the proposed assessment by him. He states that he valued self-occupied property separately from let out properly with restrictions placed on evictions. According to him, he ascertained the market value keeping in view as to what price it would fetch if it was sold in open market with possession and without possession. According to him, this was not the rent that the property would fetch if let out to a hypothetical tenant but the price it would fetch if sold in open market to a hypothetical buyer which was relevant. He adopted two methods to value the property. For the owner occupied portion he calculated the value on the bases of what were the rates prevailing for sale of commercial flats in Connaught Place Extension Area. For the tenanted portion he capitalised the rental value. As far as the value of land is concerned, he took note of that fact that it was a lease in perpetuity and the building thereon would last for another 25 years. Thereafter, the

land value was added at Rs. 3,200 per square yard. This land value he worked out on the basis of sale of an adjacent property bearing No. 9-A in Connaught Place, New Delhi. That property was sold in August, 1973, for Rs. 8 lakhs. It is constructed on 212 sq. yds. of land and is a double-storeyed structure with a plinth area of 4,188 sq. ft. The construction was a of the same specifications as the property in question. The depreciated cost of the structure, according to respondent No. 1, was Rs. 15 per sq. ft. After deducting the depreciated cost of structure from the total sale price, he arrived at a figure of Rs. 7,37,180 for 212 sq. yds. of land. This works to Rs. 3,477 per sq. yyard. Respondent No. 1, however, adopted a lesser figure of Rs. 3,200 per sq. yard in the case of land of the petitioners property.

The petitioners filed a rejoinder and asserted that petition under art. 226 of the Constitution was maintainable. They further said that the basis of fixing the market price at the rate of Rs. 275 per sq. ft. was not disclosed at the hearing and there was no material before respondent No. 1 to adopt that. They reiterated that the whole basis of the report was conjectural and, thereforee, illegal and invalid.

S. 3 of the W.T. Act, 1957, provides that subject to the other provisions in the Act there shall be charged for every assessment year commencing on and from the first day of April, 1957, a tax in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in the Schedule to the Act. Every person, if his net wealth is liable to tax under the said Act, is required by s. 14 of the said Act to submit return in the prescribed form to the prescribed authorities. The computation of net wealth is to be made in accordance with certain other provisions of the Act. S. 16 provides that if the WTO is satisfied without requiring the presence of the assessed or production by him of any evidence that a return made by the assessed is correct and complete he shall assess the net wealth of the assessed and determine the amount of the wealth-tax payable by him or the amount refundable to him on the basis of such return. If he is not satisfied with the return filed, he has to give notice to the assessed to appear in person or produce or cause to be produced such evidence as he may have in support of the return. After hearing the evidence produced and such other evidence as he may require,

the WTO is to then make an assessment. S. 16A of the W.T. Act reads as under :

'16A. Reference to valuation officer - (1) For the purpose of making an assessment including an assessment in respect of any assessment year commencing before the date of coming into force of this section under this Act, the wealth-tax Officer may refer the valuation of any asset to a Valuation Officer -

(a) in case where the value of the asset as returned is in accordance with the estimate made by a registered value, if the Wealth-tax Officer is of opinion that the value so returned is less than its fair market value;

(b) in any other case, if the Wealth-tax Officer is of opinion -

(i) that the fair market value of the asset exceeds the value of the asset as returned by more than such percentage of the value of the asset as returned or by more than such amount as may be prescribed in this behalf; or

(ii) that having regard to the nature of the asset ad other relevant circumstances, it is necessary so to do.

(2) For the purpose of estimating the value of any asset in pursuance of a reference under sub-section (1) the Valuation Officer may serve on the assessed a notice requiring him to produce or cause to be produced on a date specified in the notice such accounts, records or other documents as the Valuation Officer may require.

(3) Where the Valuation Officer is of opinion that the value of the asset has been correctly declared in the return made by the assessed under section 14 or section 15, he shall pass an order in writing to that effect and send a copy of his order to the Wealth-tax Officer and to the assessed.

(4) Where the Valuation Officer is of opinion that the value of the asset is higher than the value declared in the return made by the assessed under section 14 or section 15, or where the asset is not disclosed or the value of the asset is not declared in such return or where no such return has been made, the Valuation Officer shall serve a notice on the assessed intimating the value which he

proposes to estimate and giving the assessed an opportunity to state, on a date to be specified in the notice, his objections either in person or in writing before the Valuation Officer and to produce or cause to be produced on that date such evidence as the assessed may rely in support of his objections.

(5) On the date specified in the notice under sub-section (4) or as soon thereafter as may be, after hearing such evidence as the assessed may produce and after considering such evidence as the Valuation Officer may require on any specified points and after taking into account all relevant material which he has gathered, the Valuation Officer, shall, by order in writing, estimate the value of the asset and send a copy of his order to the Wealth-tax Officer and to the assessed.

(6) On receipt of the order under sun-section (3) or sub-section (5) from the Valuation Officer, the Wealth-tax Officer shall, so far as the valuation of the asset in question is concerned, proceed to complete the assessment in conformity with the estimate of the Valuation Officer.'

S. 23 of the Act, inter alia, provides that any person objecting to the amount of net wealth determined under this Act or objecting to the amount of wealth-tax determined as payable by him under the Act may appeal prescribed form. The AAC is to then dispose of the appeal after giving a hearing to the assessed. From the order of the AAC a further appeal is provided by s. 24 to an Appellate Tribunal which again has to afford a hearing to the assessed. S. 27 of the Act provides for a reference to the High Court by the Appellate Tribunal of any question of law arising out of its order. An appeal is provided from the decision of the High Court by s. 29 of the Act.

The preliminary objection raised by the respondents to the maintainability of the petition is that because the impugned report is not an order and an appeal is provided for against an order of assessment, there is an alternative remedy available to the petitioners and so, a petition under art. 226 of the Constitution is not maintainable. In our opinion, the objection cannot be sustained. The petitioners are not coming against an assessment order. Their complaint is in respect of a report which respondent No. 1 has submitted to respondent No. 2 and which report must be accepted by respondent No. 2 by virtue of the provisions of sub-s.

(6) of s. 16A. The report is, no doubt, a step in the final process of assessment but the assessment order that respondent No. 2 has to pass cannot be anything except the valuation determined by the impugned report. If the report is based on no evidence, is arbitrary, is fanciful or is based on undisclosed material, the writ of certiorari will be available to the petitioners. No doubt it is only after respondent No. 1 has passed an order of assessment that the petitioners would be obliged to pay wealth-tax, all the same in view of the provisions of sub-s. (6) of s.. 16A, it cannot be said that the impugned report does not affect the rights of the petitioners. The scheme of s. 16A is such that respondent No. 1 must be held to be acting not merely administratively but in somewhat quasi-judicial manner. If that is correct, then he has to arrived at his conclusion in accordance with norms postulated by the principles of natural justice. The petitioners are entitled to show that respondent No. 1 has based his report on irrelevant material or that it was based on no material germane to the issue. They are also entitled to show that his approach is conjectural and not objective. It may, perhaps, be going too far to say that the proceedings before respondent No. 1 are quasi-judicial proceedings but it may not be inappropriate to hold that the power exercised by respondent No. 1 is a quasi-judicial power and not mere administrative power. Indeed, the dividing line between administrative power and quasi-judicial power is gradually being obliterated. As was observed by the Supreme Court in A. K. Kraipak v. Union of India : [1970]1SCR457 :

'The dividing lien between as administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. In a welfare State like ours it is inevitable that the organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is evitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirements of acting judicially in essence

is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power.'

In the same case, the Supreme Court noticed with approval the observations of Lord Parker C.J., Reg v. Criminal Injuries Compensation Board, Ex parte lain [1967] 2 QB 864 to the following effect : [1970]1SCR457 :

'With regard to Bridges second point I cannot think that Atkin L.J. intended to confine his principle to cases in which the determination affected rights in the sense of enforceable rights. Indeed, in the Electricity Commissioners case [1924] 1 KB 171 , the rights determined were at any rate not immediately enforceable rights since the scheme laid down by the Commissioners had to be approved by the Minister of Transport and by resolutions of Parliament. The Commissioners nevertheless were held amenable to the jurisdiction of this court. Moreover, as can be seen from Rex v. Postmaster-General, Ex parte, Carmichael [1928] 1 KB 291 and Rex v. Boycott, Ex parte Keasley [1939] 2 KB 651 the remedy is available even though the decision is merely a step as a result of which legally enforceable rights may be affected.

The position as I see it is the exact limits of the ancient remedy by way of certiorari have never been and ought not to be specifically defined. They have varied from time to time being extended to meet changing conditions. At one time the writ only went to an inferior court. Later its ambit was extended to statutory Tribunals determining a lis inter parts. Later again it extended to cases where there was no lis in the citizen were affected. The only constant limits throughout were that it was performing a public duty. Private or domestic Tribunals have always been outside the scope of certiorari since their authority is derived solely from contract, that is, from the agreement of the parties concerned.

Finally, it is to be observed that the remedy has now been extended, see Reg v. Manchester Legal Aid Committee, Ex parte R. A. Brand and Co. Ltd. [1952] 2 QB

413 , to cases in which the decision of an administrative officer in only arrived at after an inquiry or process of a judicial or quasi-judicial character. In such a case, this court has jurisdiction to supervise that process.

We have as it seems to me reached the position when the ambit of certiorari can be said to cover every case in which a body of persons of a public as opposed to a purely private or domestic character has to determine matters affecting subjects provided always that it has a duty to act judicially. Looked at in this way the board in my judgment comes fairly and squarely, within the jurisdiction of this court. It is, as Bridge said, 'a servant of the Crown charged by the Crown, by executive instruction with the duty of distributing the bounty of the Crown'. It is clearly, thereforee, performing public duties.'

Respondent No. 1 is performing a statutory duty in giving a report under s. 16A of the Act. He is obliged by the statute to give notice to the assessed requiring him to produce or cause to be produced on a date specified in the notice, accounts, records and other documents. If the valuation officer does not agree with the valuation given by the assessed he has to intimate the assessed the value which he proposes to estimate and after giving an opportunity to the assessed to contest the proposed valuation and produce evidence in support of his contest, fix a valuation. The very nature of proceedings, thereforee, persuades us to hold that certiorari would be available against such a report.

Coming now to the impugned report, as we have noticed earlier, respondent No. 1 has adopted the rate for sale of ownership flats of nee buildings in the Connaught Place Extension Area to fix the valuation of the owner-occupied portion of the petitioners building. This is challenged. The valuation fixed by respondent no. 1 and the basis adopted by him for fixing the valuation of the tenanted portions is not under challenge. Respondents No. 1 has fixed the rate of Rs. 3,200 per square yard for the land calling it 'the reversionary value of the land'. This is challenged. We have already notice earlier how he had arrived at this valuation.

According to the petitioners the valuation should have been done on the basis of the annual letting value fixed for the tenanted portions and self-occupied portion by the New Delhi Municipal Committee in consonance with the principles laid down

by a Full Bench of this court in Dewan Daulat Ram Kapur v. New Delhi Municipal Committee [1973] 1 Delhi 363. The contention is that the fair market value is dependent on the standard rent which can be charged for the various portions of the building and a hypothetical purchaser would keep that in view in quoting his price. Though some portions of the building are self-occupied the major part of this portion was originally on rent with the petitioners and, thereforee, the rent that the hypothetical purchaser would be able to get for that portion would be the same as was the standard rent. Capitalisation of the standard rent would thus, according to the petitioners, be the best way of finding out the fair market value. As we have noticed earlier, the standard rent and the annual letting value been taken as the basis for fixing the fair market value by respondent No. 1 of the tenanted portion. But that basis is not adopted for the owner occupied portion.

In our opinion, that the contention of the petitioners that valuation of the self-occupied portion should have been done on the basis of standard rent or annual letting value is not well founded. It is a well-known fact that giving vacant possession of buildings, though previously rented out, fetches better market price. It cannot be assumed that the hypothetical purchaser would let out the self-occupied portions which he buys from the hypothetical seller or would let out such portions in the condition in which he buys them. thereforee, the very portions on which the argument is founded is faulty. In any case, respondent No. 1 rejecting this contention cannot be said to have acted in such an unreasonable or so unconscionable a manner as to invite interference by this court.

As far as the basis adopted by respondent No. 1 is concerned, here again it cannot be said that the approach was irrational, based on no material or unconscionable. It is one of the settled principles of valuation that market value has to be ascertained by considering sales of similar properties in the same neighborhood or similar environment. If there are no such instances of sales available then capitalisation of rent or making some sort of comparative evaluation of sales of other properties is an acceptable mode of valuation. A certain amount of guesswork would be there if no exact tally similar instance of sale is available. In that case an estimate has to be made which need not necessarily be a mathematical calculation. As we find it, the basic market relied upon by

respondent No. 1 is the sale price of a similar building in Connaught Place for Rs. 8 lakhs. The calculation arrived at has been cross-checked by him by referring to transactions of ownerships of commercial flats in Connaught Place Extension Area and the resolutions of a conference of 200 valuers in India held at Bombay in June, 1972. The estimated rental method adopted by respondent No. 1 was not his innovation but an accepted method.

The petitioners had full opportunity to give evidence of valuation and contest the proposed valuation by respondent No. 1. They could have produced tangible evidence of what could be the fair market value. Instead they relied only on the annual letting value. This contention was not accepted vis-a-vis self-occupied property. In our view the method adopted by respondent No. 1 and his approach is not only acceptable but in keeping with principles of evaluation. Thus, the report of respondent No. 1 cannot be said to be ne based merely on conjectures and sumrises.

The result is that the petition fails and we hereby discharge the rule. In the circumstances of the case we make no order as to costs.

Petition dismissed.

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