

S.P. Pandey Vs. Mcd

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Court : Delhi

Decided On : Aug-01-2005

Reported in : 122(2005)DLT529; 2005(83)DRJ643

Judge : Mukul Mudgal, J.

Acts : Delhi Municipal Corporation Act - Sections 6(2), 6(1)(A), 6(1)(A)(2) and 6(1)(B)(2) and 169

Appeal No. : W.P.(C) 14150/2004

Appellant : S.P. Pandey

Respondent : Mcd

Advocate for Def. : R.K. Yadav, proxy counsel for ; Ashok Bhasin, Adv.

Advocate for Pet/Ap. : B.B. Jain, Adv

Judgement :

Mukul Mudgal, J.

1. Rule. With the consent of the learned counsel for the parties, the petition is taken up for final hearing.

2. The dispute which arose in the present writ petition relates to the valuation of the petitioner's property situated at 177, Sukhdev Vihar. New Delhi-11025(in short

the `said property') which was originally constructed to the extent of 2357.60 sq. ft. on the ground and first floor in 1979 and thereafter added upon in the year 1999 by 2858 sq. ft., on the 1st and 2nd Floor. The challenge by the present writ petition is to the order of learned Additional District Judge, Delhi dated 5th April, 2004 passed in HTA. No. 56/03 (hereinafter referred to as the `appellate Court').

3. The Joint Assessor & Collector of the respondent/Corporation (in short `the Assessing Authority') passed the order dated 5th March, 2003, amending the assessment list for the year 2001-02 in respect of the petitioner/asseesee's property at 177, Sukhdev Vihar which led to an appeal by the petitioner under Section 169 of DMC Act before the Additional District Judge, Delhi. By the impugned judgment the appellate Court observed as follows:-

'14. To support his contention Id. Counsels for the appellant have also sought to rely upon the judgment of Hon'ble Supreme Court in Lt. Col. P.R. Chaudhary and Ors. v. MCD and Ors. 85 (2000) DLT 223, to argue that principle of parity has to be applied to the newly constructed portion of the subject property. While there can be no doubt that the principle of parity has to be applied by the assessing authority while assessing the rateable value of the property but it is not the ratio of the judgment of Hon'ble Supreme Court that the newly constructed portion should be assessed at par with the RV of the old portion of the same property.'

4. In Dr. Balbir Singh v. MCD reported as : [1985]152ITR388(SC) , the following ratio has been laid down by the Hon'ble Supreme Court:-

'The rateable value of the premises whether residential or non-residential, cannot exceed the standard rent, but as already pointed out above it may in a given case be less than the standard rent, the annual rent which the owner of the premises may, reasonably expect to get if the premises are let would depend on the size, situation, locality and condition of the premises and the amenities provided therein and all these and other relevant factors would have to be evaluated in determining the RV keeping in mind the upper limit fixed by the standard rent. If this basic principle is borne in mind it would avoid wide disparity between the rateable value of similar premises situate in the same locality, where some premises are old premises constructed many years ago when the land prices were not high and the

cost of construction had not escalated and others are recently constructed premises when the prices of land have gone up 40 to 50 times and the cost of construction has gone up almost 3 to 5 times in the last 20 years. The standard rent of the former category of premises on the principles set out in sub section (1)(A)(2) (b) or (1)(B)(2)(b) of Section 6 would be comparatively low while in case of later category of premises the standard rent determinable on these principles would be unduly high. If the standard rent were to be the measure of rateable value, there would be huge disparity between the rateable value of old premises and recently constructed premises, though they may be similar and situate in the same or adjoining locality. That would be wholly illogical and irrational. therefore, what is required to be considered for determining rateable value in case of recently constructed premises is as to what is the rent which the owner might reasonably expect to get if the premises are let out to and that is bound to be influenced by the rent which is obtainable for similar premises constructed earlier and situate in the same or adjoining locality and which would necessarily be limited by the standard rent of such of premises. The position in regard to the determination of rateable value of self occupied residential and non-residential premises may thus be stated as follows. The standard rent determinable on the principles set out in sub-section (2)(a) or (2) (b) or (1)(A)(2)(b) or (1)(B)(2)(b) of Section 6 as may be applicable would fix the upper limit of the rateable value of the premises and within such upper limit, the assessing authorities would have to determine as to what is the rent which the owner may reasonably expect to get if the premises are let out to hypothetical tenant and for the purpose of such determination the assessing authorities would have to evaluate factors such as size, situation, locality and condition of the premises and amenities therein provided. The assessing authorities would also have to take into account the rent which the owner of similar premises constructed earlier and situate in the same or adjoining locality, might reasonably expect to receive from a hypothetical tenant and which would necessarily be within the upper limit of the standard rent of such premises, so that there is no wide disparity between the rate of rent of per sq. foot or sq. yard which the owner might reasonably expect to get in case of the two premises. Some disparity is bound to be there on account of the size, situation, locality and condition of the premises and the amenities provided therein. Bigger size beyond

a certain optimum would depress the rate of rent and so also would less favorable situation or locality or lower quality of construction or unsatisfactory condition of the premises or absence of necessary amenities and similar other factors. But after taking into account these varying factors, the disparity should not be disproportionately large.'

5. In an earlier judgment dated 17th August, 1990 passed by the learned Additional District Judge in TA. No. 278 of 1988 titled 'Shanti Prasad Jain v. MCD', the following observations were made while applying the Balbir Singh's case (supra):-

'5. According to the above referred judgment the assessing authority has also to take into account the rent which the owner of similar constructed earlier and situated in the same or adjoining locality might reasonably expect to receive from a hypothetical tenant, so that there is no wide disparity between the rate of rent per sq. ft. or per sq. yd., which the owner might reasonably expect to get in cases of the two premises. As in the present case the RV of the ground floor of the property has already been fixed at 2700 per annum, so in my opinion, in view of the law laid down by Hon'ble Supreme Court of India in the judgment referred to above, the same should have been taken into account for fixing the RV in respect to first floor and second floor of the property when the construction of the first and second floors of the property in dispute is similar in the type of construction and situated in the same locality especially when the same forms part of the same very property. As RV in respect to first and second floor of the property if calculated on the standard rent basis will come more than the RV of the similar constructed property, i.e., ground floor of the property, so to avoid wide disparity to the RV fixed in respect to the ground floor of the property should have been taken into account. The area of the ground floor on the one hand and of the first and second floors on the other hand, is almost the same. So, in my opinion on the RV in respect to the first floor and the second floor of the property could not have exceed Rs.2700 per annum which RV had already been fixed for ground floor of the property. In these circumstances, I fixed the RV in respect to first and second floors, at Rs.2700 per annum and the RV of the whole property should come to Rs.5400 per annum.'

In my view the above findings of the learned Additional District Judge in Shanti Prasad Jain v. MCD amounts to misreading the ratio of the Balbir Singh's case (supra) and do not lay down the correct position of law. To that extent no fault can be found with the impugned judgment which in my view rightly differs from the S.P. Jain's judgment of the learned ADJ quoted above. The learned ADJ in SP Jain's case (supra) appears to have limited the rateable value of a later construction to not more than the rateable value of previous construction. The observations made in the Balbir Singh's case (supra) do not indicate that there have to be absolute parity between the rateable value of an earlier and later construction. The Hon'ble Supreme Court had only held that there should not be wide disparity between the earlier and later construction though this was in the context of adjoining properties. However, the Hon'ble Supreme Court noticed that there was bound to be some disparity on account of factors such as what the hypothetical tenant may be expected to pay for the later construction (within the limit of standard rent) and factors such as size, situation, locality and the condition of the premises and the amenities provided. A tenancy even though, hypothetical, coming into being at a later point of time is bound to secure a higher rent leading to a higher rateable value and to have absolute parity in rateable value would tantamount to misreading the judgment of Balbir Singh (supra). Accordingly in my view the correct position of law does not stand reflected in the ADJ's judgment in the Shanti Prasad Jain's case (supra). In this view of the matter, I am of the view that without referring to the observations of the impugned order, it will be appropriate that the assessing authority proceeds strictly in accordance with the ratio contained in the judgment of Balbir Singh's case (supra) as extracted above. Accordingly, the judgment of the appellate court is affirmed and the remand of the matter to the assessing authority for fresh consideration is upheld. The assessing authority shall naturally apply the ratio in Balbir Singh's case (supra) and ensure that there is no wide disparity between the rateable value and the later construction. Accordingly no cause for interference with the impugned order is made out. Parties to appear before the Assessing Authority on 26th October, 2005.

6. The writ petition stands disposed of accordingly.

