Mcd Vs. Raj Birbal

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Court : Delhi

Decided On : Aug-10-2009

Reported in : 166(2010)DLT656

Judge : Hima Kohli, J.

Acts : Delhi Municipal Corporation Act, 1957 - Sections 6(1A)(2), 6(1B)(2), 6(2), 126 and 169

Appeal No. : W.P. (C) 2145/2004

Appellant : Mcd

Respondent : Raj Birbal

Advocate for Def. : B.B. Jain, Adv.

Advocate for Pet/Ap. : Amita Gupta, Adv

Disposition : Petition dismissed

Judgement :

Hima Kohli, J.

1. The present writ petition is directed against the order dated 05.09.2003 passed by the learned ADJ in HTA No. 160/2002 entitled 'Raj Birbal v. MCD'. By the impugned order, the learned ADJ allowed the appeal of the respondent/assessee,

filed under Section 169 of the Delhi Municipal Corporation Act, 1957, (hereinafter referred to as 'the Act') against the demand dated 29.11.2001 raised by the petitioner, pursuant to an assessment order dated 09.05.2001 passed by the Assistant Assessor & Collector, MCD, in respect of property No. A-110, Swasthya Vihar, Vikas Marg, Delhi. By the aforesaid assessment order, which was passed on the basis of a notice issued by the petitioner/MCD under Section 126 of the Act, proposing to fix the rateable value of the property at Rs. 1,25,080/- w.e.f. 01.04.2000 on account of 'additions at the first floor and second floor', rateable value of the property was fixed at Rs. 86,980/- w.e.f. 01.04.2000. In the assessment order, the valuation report of the assessee for the second phase of construction, carried out on the first floor and the second floor of the property shown as Rs. 1,73,238/- was accepted and the total capital cost was fixed at Rs. 8,50,000/- (purchase price of the property) + Rs. 1,73,238/- : Rs. 10,23,238/-.

2. Aggrieved by the aforesaid assessment order, the respondent/assessee filed an appeal under Section 169 of the Act, on the ground that the aforesaid order was contrary to the principles of parity as enunciated by the Supreme Court in the case of Dr. Balbir Singh v. MCD reported as : AIR 1985 SC 339 and reiterated in the case of Lt. Col. P.R. Chaudhary etc. v. MCD and Ors. reported as 85 (2000) DLT 223. Upholding the aforesaid contention of the respondent/assessee, the learned ADJ passed the impugned order dated 05.09.2003, by holding that merely on the ground that both the portions of the same property stood in the name of the same person, non-comparison of the newly constructed portion of the premises with the old constructed portion of the same property was highly illogical. While rejecting the report of the Assistant Assessor & Collector, MCD, dated 28.05.2003, the learned ADJ held that the said report did not indicate that the construction of the newly constructed portion is not similar to that of the old constructed portion of the same property. Therefore, the rateable value fixed at Rs. 86,980/- w.e.f. 01.04.2000, vide order dated 09.06.2001, was set aside and the rateable value of the property was fixed at Rs. 40,000/- w.e.f. 01.04.2000.

3. Aggrieved by the aforesaid order of the learned ADJ, the petitioner/MCD has preferred the present writ petition. Counsel for the petitioner/MCD states that the Court below wrongly held that the cost of addition is similar to the earlier

constructed ground floor as additions were made between the year 1991 and February, 2000, whereas the rateable value of the old construction was fixed in the year 1982. She further states that since the property is situated in the same locality and forms a part of the same property, the ground floor constructed in the year 1982 cannot be compared with the construction completed in the year 1999-2000.

4. In the present case, it would be relevant to consider the observations of the Supreme Court in the case of Dr. Balbir Singh (supra), which are reproduced herein below:

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 out 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 rateable value, 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 almost 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 latter 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 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 to a 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 square foot or square 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 favourable 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. Considering the fact that the property in question was already assessed and only additional construction by way of first floor and second floor of the property was carried out by the respondent/assessee, the learned ADJ cannot be faulted in directing that the rateable value of the ground floor of the property, which had already been fixed by MCD, be taken into account for fixing the rateable value for the first floor and second floor of the property, more so, when the type of construction of the additions have been held to be similar to the earlier constructed part of the same property. It is pertinent to note that the said findings of the

learned ADJ have not been assailed by the petitioner/MCD in the present proceedings.

6. Considering the fact that the property of the respondent/assessee itself was available for comparison, to urge that the petitioner/MCD was under an obligation to take into account other properties in the same area for the purpose of comparison, does not stand to reason, particularly, when there is a finding to the effect that there is no variation in the type of construction carried out on the first and second floors of the premises.

7. For all the aforesaid reasons, this Court does not find any illegality, perversity or arbitrariness in the impugned order dated 05.09.2003 which deserves interference. The writ petition is dismissed. The petitioner is directed to issue a fresh revised bill to the respondent in terms of the order dated 05.09.2003 and while doing so, it shall take into consideration, the excess amount, if any, paid by the respondent. A computed statement of account shall be furnished by the petitioner to the respondent/assessee within a period of eight weeks from today. Alongwith the said statement, the petitioner shall also tender the excess amount, if any, to the respondent. In case, the said excess amount is not tendered as ordered above, the same shall attract simple interest @ 8% per annum, from the date of default, till realization.