(2005) 12 DEL CK 0185

Delhi High Court

Case No: LPA No. 413 of 2003

New Delhi Municipal Council		APPELLANT
	Vs	
The State Trading Corporation of India Ltd.		RESPONDENT

Date of Decision: Dec. 15, 2005

Acts Referred:

- Delhi Rent Control Act, 1958 - Section 3, 3(1), 6, 8(1)
- New Delhi Municipal Council Act, 1994 - Section 416(2), 63(1), 72
- Punjab Municipal Act, 1911 - Section 188, 199, 201(1)

Citation: (2006) 126 DLT 191 : (2006) 86 DRJ 157 : (2006) 1 RCR(Civil) 672

Hon'ble Judges: Markandeya Katju, C.J; Madan B. Lokur, J

Bench: Division Bench

Advocate: J.M. Sabharwal, P.C. Sen and B.B. Gupta, for the Appellant; S.K. Jain, Archana Vaidyanathan and Rajiv Kumar, for the Respondent

Judgement

Madan B. Lokur, J.

The controversy in this batch of appeals is rather narrow and although we agree with the final direction given by the learned Single Judge remanding the matter back to the assessing authority to re-determine the rateable value of the properties in question, we are of the view that on the legal aspects, there has been an error committed by the learned Single Judge which needs to be rectified.

2. LPA No. 413 of 2003 [arising out of WP (C) No. 7152 of 2001] was taken up as the main case and the facts pertaining to only this appeal are discussed.

3. The admitted position is that the property owned by the respondent that is, Jawahar Vyapar Bhawan in Tolstoy Marg was constructed after 1st December, 1988 on which date the Delhi Rent Control Act, 1958 (the Rent Act) was amended. In terms of Section 3(d) of the Rent Act, it was not to apply to such premises for a period of ten years from the date of completion of construction.

4. It was stated before us by learned counsel for the Appellant that the assessment to property tax in respect of the premises of the Respondent for the moratorium period is not under dispute and is not sought to be reopened or revisited in any manner. The dispute is only concerning the rateable value of the premises after completion of a period of ten years, that is, with effect from 1999-2000. This is so in all the connected appeals.

5. On or about 22nd March, 2000, the Appellant issued a notice to the Respondent u/s 72 of the New Delhi Municipal Council Act, 1994 (the NDMC Act) proposing to amend the assessment list in respect of the building known as Jawahar Vyapar Bhawan which, according to the Appellant, was erroneously valued and under-assessed to property tax. It was proposed to levy property tax in respect of the premises in the following manner:-

Let out portion	Rs.12,09,42,500/- less 10%
Self Occupied portion	Rs.11,63,30,040/- less 10%
Basement 1 & 2	Rs.2,48,49,200/- less 10%
Total	Rs.26,21,21,810/- less 10%

w.e.f. 01.04.1999

6. The Respondent filed interim objections to the notice on 4th May, 2000 followed by detailed objections on 2nd June, 2000 contesting the calculations made by the Appellant.

7. Thereafter, the Respondent was given a hearing by the Appellant on 4th August, 2000 and that was followed by the impugned assessment order dated 24th January, 2001 upholding the proposal and levying property tax on the Respondent after rejecting its objections.

8. Before the learned Single Judge, a large number of writ petitions were listed for hearing and perhaps for this reason the controversy between the parties was got slightly diffused. As mentioned above, learned counsel for the Appellant stated before us that the assessments made for the moratorium period were not sought to be reopened or reconsidered. Therefore, it was not necessary for the learned Single Judge to have gone into the method of assessing the rateable value of the premises in question prior to the assessment year 1999-2000.

9. As regards the method of assessing the rateable value for the period from 1999-2000 onwards, learned counsel for the Appellant made it clear that all that was sought to be done was to assess the self-occupied portion of the property on the basis of the rent received for the remaining property. The controversy in all these cases, Therefore, is centered around the question whether the Appellant could assess the rateable value on this basis or not. The learned Single Judge concluded that all the post-1988 constructions would have to be assessed to property tax after

determining the rateable value in accordance with Section 6 of the Rent Act, that is, on the principles on which standard rent is calculated.

10. Learned counsel for the Appellant brought to our notice the NDMC House Tax Bye-laws, 1962 (the Bye-laws) which have been published in the Delhi Gazette, Part IV, No. 19, dated 7th May, 1964. According to learned counsel for the Appellant, in view of the provisions of Section 63(1) of the NDMC Act read with the Bye-laws, the annual value of a building which is in the owner''s occupation may be fixed on the basis of the rent received in respect of similar properties in the locality.

11. Section 63(1) of the NDMC Act reads as follows:-

"63. Determination of rateable value of lands and buildings assessable to property tax - (1) The rateable value of any lands or building assessable to any property taxes shall 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 costs of repairs and insurance, and other expenses, if any, necessary to maintain the land or building in a state to command that rent.

Provided that in respect of any land or building the standard rent of which has been fixed under the Delhi Rent Control Act, 1958 (59 of 1958) the rateable value thereof shall not exceed the annual amount of the standard rent so fixed."

12. It is not in dispute that in so far as the premises in question are concerned, the standard rent has not been fixed under the Rent Act. Therefore, the proviso to Section 63(1) is not applicable. This is so in all the connected appeals.

13. In so far as the annual rent at which a self occupied property may be expected to be let from year to year, Bye-law 12 of the Bye-laws occupies the field. This reads as follows:-

"12. The annual value of a building or house which is in the owner''s own occupation either for residential purposes or for commercial purposes and the standard rent of which has not so far been fixed by a competent authority may be calculated u/s 8(1)(b) on the basis of rents of similar accommodation prevalent in the locality and in the event of the Committee being of the opinion that the same is not feasible, the annual value may be calculated u/s 3(1)(c)."

14. The learned Single Judge disregarded the Bye-laws on the ground that the Appellant was not able to show when they came into force. For this, the learned Single Judge relied upon Bye-law 2 which states that they shall come into force on and from the date fixed by the State Government. Since the Appellant was not able to show the date fixed, the learned Single Judge proceeded on the basis that the Bye-laws had not yet come into force.

15. Unfortunately, the opening words of the notification by which the Bye-laws were notified were overlooked. These read as follows:-

"No.F.3(61)/62-LSG. - The following bye-laws made by the New Delhi Municipal Committee under the provisions of sections 188(v) and 199(1) of the Punjab Municipal Act, 1911, as in force in the limits of the said Committee, relating to the Assessment and Collection of House Tax, having been confirmed by the Chief Commissioner, Delhi, under sub-section (1) of section 201 of the said Act, are hereby published for general information and shall come into force on the expiry of six weeks from the date of publication of this notification."

16. Since the notification (though dated 24th April, 1964) was published on 7th May, 1964, the Bye-laws came into operation some time in the second half of June, 1964. As such, the Bye-laws are very much in operation and are applicable for the purposes of determining the rateable value of the premises in question.

17. It will be noticed that the Bye-laws were actually framed well before the NDMC Act came into operation. They were in fact framed under the provisions of the Punjab Municipal Act, 1911 but even though that Act has since been repealed, Section 416(2) of the NDMC Act saves the Bye-laws. This provision reads as follows:-

"416. Repeal and Savings. - (1) As from the date of the establishment of the Council, the Punjab Municipal Act, 1911, (Punjab Act 3 of 1911) as applicable to New Delhi, shall cease to have effect within New Delhi.

(2) Notwithstanding the provisions of sub-section (1) of this section, -

(a) any appointment, notification, order, scheme, rule, form, notice or bye-law made or issued, and any license or permission granted under the Act referred to in sub-section (1) of this section and in force immediately before the establishment of the Council, shall, in so far as it is not inconsistent with the provisions of this Act continue in force and be deemed to have been made, issued or granted, under the provisions of this Act, unless and until it is superseded by any appointment, notification, order, scheme, rule, form, notice or bye-law made or issued or any license or permission granted under the said provisions;

(b) to (g) ...."

18. In view of the above, we are of the opinion that all the appeals before us are governed by the provisions of the Bye-laws and this appeal in particular is governed by Bye-law 12.

19. It was pointed out to us by learned counsel for the Appellant that in respect of the self-occupied portion of the premises in question, the annual value is now sought to be determined on the basis of the rent received by the Respondent in respect of other portions of the same premises in question. In other words, it is not as if a comparison is sought to be drawn with rent prevalent in respect of some

other premises in the same or a similar locality, but the basis is rent received in respect of another portion of the same building itself. This is certainly permissible under Bye-law 12 of the Bye-laws. This, we feel, is the correct position in law. However, whether the rateable value has been correctly fixed on facts is for the assessing authority to decide for which, as already mentioned above, the matters have to be remanded back for redetermination.

20. The second question raised by learned counsel for the Appellant arises out of an agreement between the Respondent and the Land and Development Officer who is the principal Lesser, the land being owned by the Union of India. The relevant clause, which is the subject matter of consideration, reads as follows:-

"The intended lessee shall not sub-let or give on rent any part of the said land or building constructed on the demised piece of land without prior permission of the lesser. In case of such permission the State Trading Corporation will pay to the Government 25% of the gross rent fetched in respect of such accommodation as is hired out by the corporation to organisations other than that of the State Trading Corporation and its subsidiaries including Central Cottage Industries Emporium."

21. According to learned counsel for the Appellant, the Respondent is not entitled to get any benefit of paying 25% of the gross rent to the Union of India, while according to learned counsel for the respondent 25% of the gross rent represents "misuse charges" and, Therefore, the Respondent is entitled to claim benefit of this amount.

22. The learned Single Judge has held, and in our opinion rightly, that the 25% payment made by the Respondent to the Union of India cannot be termed as "misuse charges" because it has nothing to do with misuse of the property. While the land has been given by the Union of India to the Respondent with the intention that it will be used for its own purposes, the Union of India has given the Respondent an option of letting out the construction thereon, provided it pays 25% of the gross rent to the Government. This cannot, by any stretch of imagination, be said to amount to a charge for misuse of the property. It is a payment made for user that is otherwise permissible, though conditional.

23. It appears to us that the 25% amount that the Respondent has to pay to the Union of India is inbuilt in the rent that it collects from its tenants and this is merely passed on to the Union of India. Therefore, it cannot be said that it is not a part of the rent that is realised for the premises in question. The rateable value of the premises in question is required to be calculated on the basis of the actual rent received, which means the rent that a landlord receives from a tenant if the transaction is at arm''s length. What the landlord does with the rent received does not really concern anybody. Therefore, even if some other arrangement requires the landlord to pass on a portion of the actual rent received, this would not entitle the landlord to get any remission in this regard nor would it reduce the quantum of rent

that the landlord is receiving. The landlord may be able to claim the benefit of such a payment for some other purpose but not for the purpose of reducing the rateable value of the premises in question. To this extent, we are not in agreement with the learned Single Judge wherein he has directed that the 25% payment made by the Respondent to the Union of India should be discounted for the purposes of calculating the rateable value of the premises in question.

24. Learned counsel for the Appellant made two additional submissions before us. We are mentioning these submissions only to complete the record, and for no other reason.

25. The first additional submission was that certain facilities that are provided in the building such as air-conditioning etc. are required to be included for the purposes of calculating the rateable value of the premises. No such argument was advanced before the learned Single Judge and we do not think it appropriate to permit the Appellant to raise this issue for the first time in appeal. We may note that this additional contention has not even been urged in the grounds of appeal filed before us. The second additional argument was that since the premises in question are governed by the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the question of calculating the rateable value on the basis of standard rent simply does not arise. This contention was given up by the Appellant before the learned Single Judge. We do not think it appropriate under these circumstances to permit the Appellant to raise this question for the first time before us.

26. Having clarified the position in law, we partially modify the judgment of the learned Single Judge but maintain the order remanding back the matters to the assessing authority to redetermine the rateable value in accordance with our decision and after giving the Respondent an opportunity of being heard in the matter.