Supreme Court of India
New Delhi Municipal Committee vs Gymkhana Club Ltd on 8 April, 1994
Equivalent citations: 1994 SCC (3) 498, JT 1994 (3) 352
Author: H B.L.
Bench: Hansaria B.L. (J)

PETITIONER:
NEW DELHI MUNICIPAL COMMITTEE

Vs.

RESPONDENT:
GYMKHANA CLUB LTD.

DATE OF JUDGMENT08/04/1994

BENCH:
HANSARIA B.L. (J)
BENCH:
HANSARIA B.L. (J)
JEEVAN REDDY, B.P. (J)

CITATION:
1994 SCC (3) 498 JT 1994 (3) 352
1994 SCALE (2)589

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by HANSARIA, J.- Leave granted.

2. New Delhi Municipal Committee is the appellant in all the cases. It has felt aggrieved at the judgment of the High Court of Delhi passed in the writ petition filed by it which was taken up for hearing along with some other writ petitions filed, inter aila, by Delhi Gymkhana Club Limited, who is the principal respondent in some of the appeals. The subject-matter of the writ petitions before the High Court related to the fixation of 'annual value' for the purpose of determining house tax to be paid by the respondents herein. The stand of the Municipal Committee before the High Court was hat in fixing annual value under the provisions of Section 3 of the Punjab Municipal Act, the provisions of which Act admittedly apply, the estimated market value of the site and land attached to the house or building has also to be taken into consideration as required by clause (c) of sub-section (1) of the aforesaid section. This contention has not been accepted by the High Court, the result of which is that the annual value of the buildings has come down considerably which has

affected the ultimate amount to be realised as house tax from the respondents.

3. The short point for consideration, therefore, is whether while determining the annual value of the buildings, market value of the land has also to be taken into consideration. According to the contesting respondents, who are, apart from the aforesaid Gymkhana Club, Chelmsford Club and Young Men's Christian Association (YMCA), market value cannot be taken into consideration as they have only leasehold interest in the land which has no market value. It has been contended on behalf of these respondents by heir respective counsel that all the lease deeds, to which we shall advert a little later, show that the land is not transferable without sanction in writing of the authority concerned and use of the land has also been restricted by some terms of the covenants. The contention, therefore, is that such a leasehold land cannot have market and so there cannot be any market value for such a land.

4. The aforesaid question is not res integra inasmuch as a three-judge Bench of this Court itself had examined this question in Balbir Singh v. Municipal Corporation Delhi. That case had however dealt with many categories of properties situate in Union Territory of Delhi and the question of law which this Court was called upon to decide was as how to determine their rateable value. One of the categories of the properties, which was described as third category in that case, was the one where the land on which premises had been constructed was leasehold land, relating to which category a discussion finds place at pp. 468-473 of the Report. Prior to noting as what was stated relating to such premises, it may be pointed out that on earlier occasion in Dewan Daulat Rai Kapoor v. New Delhi Municipal Committee2 it had been held that annual value for the purpose of house tax would be governed by Rent Control Act and must be limited by the measure of standard rent determinable under that Act.

5. The question for determination in Balbir Singh case' was which provision of the Rent Act was relevant to determine the standard rent. The relevant provisions of Rent Act were Sections 6 and 9 which have bee] quoted at pp. 457-58 and 459-60 of the Report. The stand of the Delhi Municipal Corporation then was that as the plot of land on which the premises stood could not be transferred without the previous consent of the Government, it had no market value; and so, standard rent of the premise could not be determined on the principles set out in sub-sections (1)(A)(2)(b or (1)(B)(2)(b) of Section 6; and consequently the provision in sub section (4) of Section 9 applied. This contention was not accepted by the Balbir Singh' Bench by pointing out that despite the aforesaid condition of the lease it did not necessarily mean that there could be no market price for the land. It was pointed out that there was no total prohibition of sale transfer or assignment, so that in no conceivable circumstance the land could be sold, transferred or assigned. It was held that the aforesaid condition was in the nature of restriction on the sale, transfer or assignment. There were some other conditions in the lease deed which had come for consideration in that case, to wit, the Government's entitlement to claim 50% of the unearned increment in the value of plot of land and Government's right to purchase the land. As to these factors it was stated that they would depress the market price.

6. On the question of as to how the market price of such a land has to by determined, the Bench observed that it should be first determined as to what would be the market price of the plot of land

proceeding on the hypothesis 1 (1985) 1 SCC 167: 1985 SCC (Tax) 35: (1985) 2 SCR 439 2 (1980) 1 SCC 685: 1982 SCC (Tax) 1] 6 that prior consent of the Government has been given and the land was available for sale, transfer or assignment; and on that footing to ascertain what price it would fetch on sale, transfer or assignment. Thereafter the limitations or burden attached to the leasehold interest would be required to be taken into account in arriving at the market price of the plot of land. The market price would be discounted keeping in view the restriction or limitation imposed by the lease deed.

7. In coming to the aforesaid conclusion the bench referred to the decision in CWT v. P. Sikand3 which had dealt with valuation of leasehold interest for the purpose of assessing wealth tax. In that case the aforesaid method had been adopted.

8. This shows that even a land taken on lease can have market value; what would be market value would, of course, be determined by the Conditions governing the granting of lease; and after taking into account the limitation or restriction placed on the lease as incorporated in the lease deed, the market value would be reduced or discounted appropriately. Before adverting to the conditions of grant of lease in the present cases, it may be pointed out that though Balbir Singh case' dealt with valuation of land taken on sub-lease from Cooperative House Building Society by its members, which Society had taken lease from the Government, what has been stated about the market value of the sub- leased land would proprio vigore apply to leased land and this aspect of that case does not make a difference in principle insofar as the present cases are concerned regarding determination of market value of leased land. We have mentioned about this aspect because Shri Mehta appearing for Gymkhana Club faintly submitted that what was stated in Balbir Singh case' may not apply to the cases at hand for the aforesaid reason.

9. Let us now come to the facts of the present case. At first, we may note he definition of "annual value" as given in Section 3 of the Punjab Municipal Act, the relevant part of which reads as below :

> "3. In this Act, unless there is something repugnant in the subject or context,- (1) 'annual value' means
>
> (a)
>
> (b) in the case of any house or building the gross annual rent at which such house or building, together with its appurtenances, and/any furniture that may be let for use or enjoyment therewith, may reasonably be expected to let from year to year, subject to the following deductions
>
> (c) in the case of any house or building, the gross annual rent of which cannot be determined under clause (b), 5 per cent on the sum obtained by adding the estimated present cost of erecting the (1977) 2 SCC 798: 1977 SCC (Tax) 368 building, less such amount as the committee may deem reasonable to be deducted on account of depreciation (if any) to the estimated market value of the site and land attached to the house or building:

(The proviso is omitted being not relevant.)

10. It is not in dispute that in the present cases, the annual value of the property has to be calculated under the provision of Section 3(1)(c) which speaks, inter alia, about "the estimated market value of the site and land attached to the house or building". As to the covenants governing the leases in the present cases the main restriction to which our attention has been drawn relates to the non-permissibility of the transfer or assignment "without the sanction of the lessor or the Chief Commissioner of Delhi in writing", a la clause 2(11) of the lease deed granted to Gymkhana Club. This was the very restriction which had come up for consideration in Balbir Singh case; and so, what has been stated in this regard in that case has to be accepted on principle. Shri Sen appearing for the appellant, is fair in drawing our attention to certain other restrictions placed in the lease, one of which is that the land would not be used or permitted to be used for any purpose other than as a club and purposes like holding of banquets, concerts and dances and the lodging and boarding of members resident in the premises. This is what finds place in clause 2(6) of the perpetual lease entered on the TwentyEighth day of February, Nineteen hundred and twenty-eight between Secretary of State for India in Council and the Imperial Delhi Gymkhana Club Limited. Sub-clause (10) requires the lessee to peaceably yield the demised premises and the club building to the lessor on determination of the lease. Clause 3 gives power of re-entry to the lessor or Chief Commissioner of Delhi on being satisfied that the demised premises have ceased to be used for the purpose of a club. Clause 4 is pressed into service by the counsel for the respondents in contending that market value of such a leasehold land cannot be taken into consideration, because that clause has stated that in cast the demised premises would be required for public purpose, the lessor could re- enter the premises and the only liability fastened is to pay compensation to the lessee "which would not exceed the amount or the proportionate part as the case may be, of the premium paid before the execution of these presents", together with the cost or the then value, whichever be less, of the buildings erected on the resumed land by the lessee in accordance with the terms of the lease.

11. The terms of the lease in case of Chelmsford Club are also similar. In case of YMCA, however, the lease conditions are different and Shri Vikramjeet Sen appearing for this. Association has drawn our attention to sub-clause (10) of clause 2, which speaks that the lessee will manage the Association to the satisfaction of the lessor and at all reasonable time would grant access to the demised premises to such officers as the lessor or the Chief Commissioner of Delhi may designate for the purpose of inspecting the building. This condition is not relevant according to us, insofar as the point under consideration is concerned.

12. Relying on the condition as incorporated in clause 4 of the Gymkhana Club lease deed, the submission of the learned counsel for the respondents is that the leasehold should be valued by relating it only to premium paid. We are unable to accept this contention, because clause 4 speaks about payment of proportionate part of premium in the case of lessor re-entering the premises on the same being required for public purpose. This cannot be taken as the market value of the land, though under the general law of acquisition, market value is paid as compensation. That however relates to freehold land; and in case of leasehold land, the compensation payable to the lessee is relatable to the interest of lessee, which is required to be determined as per the principles contained in the acquiring enactment concerned. We would not be justified in departing from the principle laid

down by the three Judge Bench in Balbir Singh case' because of what has been stated in clause 4.

13. A little foray in a foreign land may not be out of place. This foreign land has to be United Kingdom, as our laws were tailored to the laws of that country. The rateable value of the dwelling houses under the English Law is also determined by reference to the rent at which the hereditament might reasonably be expected to let from year to year. For this purpose various methods of valuation are applied to arrive at the hypothetical rent in case of those buildings which have not actually been let out. This was the provision in the Rent Act of 1968 and similar is the position in the Rent Act, 1977. To facilitate matters, Valuation Lists are prepared by Local Governments concerned as per the provisions of Local Government Act, 1948 read with Rating and Valuation Act, 1959. But it is the rent even in case of leasehold properties which determines the rateable value and the annual value. (See paras 97 and 98 of Halsbury's Laws of England, 4th Edn., Vol. 39 and p. 119 of R.E. Megarry's The Rent Act).

14. We would, therefore, conclude by saying that for fixing the annual value of the premises at hand, it is the market value of the site and land attached to the house or building which has to be taken note of. As to what would be the market value is, however, a matter which has to be worked out by the authority concerned keeping in view the restrictive clauses of each of the lease deeds, bearing in mind what has been stated in this regard in Balbir Singh case'. The notional market value shall have to be discounted appropriately, as the restrictions subject to which leases were granted, would undoubtedly depress the same.

15. The appeals are allowed accordingly by setting aside the impugned judgments. In the facts and circumstances of the cases, we leave the parties to bear their own costs.