

Supreme Court of India

Municipal Corpn. Of Delhi vs Delhi Urban House Owners Welfare ... on 3 October, 1997

Author: Pattanaik.

Bench: S.C. Agrawal, G.B. Pattanaik

PETITIONER:

MUNICIPAL CORPN. OF DELHI

Vs.

RESPONDENT:

DELHI URBAN HOUSE OWNERS WELFARE ASSN

DATE OF JUDGMENT: 03/10/1997

BENCH:

S.C. AGRAWAL, G.B. PATTANAIAK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T PATTANAIAK. J.

Leave granted This appeal by special leave is directed against the judgment dated 18th September, 1995 passed by the Division Bench of the Delhi High Court in Civil Writ Petition No. 5102 of 1994 and Civil Writ Petition No. 555 of 1995. By the impugned judgment the provisions of Explanation to Bye-law 3(i) (a), Bye-law 3(i)(c)(ii), Bye-law 3(i)(e) of the Delhi Municipal Corporation (Determination of Ratable Valuation) Bye-laws, 1994 ("R.V. Bye-laws" for short) and Bye-law 8 of the Delhi Municipal Corporation (property Tax Return) Bye- laws, 1994 (for short "Property Tax Return Bye-laws") have been struck down. Though the legality of the said judgment had been challenged in appeal but in course of hearing of this appeal the learned counsel for the appellant restricts the challenge only to the declaration of invalidity of Explanation to Bye-law 3(i)(a) of the R.V. Bye-Laws and Bye- law 8 of the property Tax Return Bye-Laws. Consequently, the judgment of the High Court declaring the provisions of Bye- laws 3(i)(c)(ii) and 3(i)(e) of R.V. Bye-Laws as invalid remain unaltered.

Coming to the question, as to whether the High Court was justified in invalidating Explanation to Bye-Law 3(i)(a) of the R.V. Bye-Laws, the High Court is of the opinion that the said provision is repugnant to Section 135 of the Delhi Municipal Corporation Act, 1957 thereafter referred to as

`the Act') inasmuch as it encroaches upon the powers given to the Commissioner under Section 135 to employ valuers to give him advice in connection with the valuation of any land or building. The High Court is further of the opinion that the Explanation to Bye-law 3(i)(a) bind the Assessing Officer to determine the prevalent rent on the basis of a Panel which is not permissible under the Act. The learned counsel appearing for the appellant contends that both the aforesaid reasons indicated by the High Court for invalidating the Explanation is wholly unsustainable in law as the same has been arrived at on a misreading of the relevant provisions of the Act and as such the said conclusion has to be set aside by this Court. Bye-law 3(i)(a) together with the Explanation, is extracted hereunder in extenso for better appreciation of the point in issue:

"(3)(i) For the purposes of sub- section (1) of Section 116 of the Act, the annual rent shall be determined as under:

(a) Where the premises are on rent, the rent actually realised or reasonable, unless the same is collusive or concessional, shall be the annual rent. Where the tenancy commences on or after the 1st day of April, 1995 and where the Commissioner has reason to believe that the declared rent does not represent the prevalent rent of the year of letting and the difference between declared rent and prevalent rent is more than twenty five per cent of the declared rent, the annual rent shall be the prevalent rent;

Explanation:- For the purposes of this clause the prevalent rents shall be determined by a Panel of Assessors to be appointed by the Commissioner. Such Panel shall include a representative from the Government, a representative of any Taxation Department (other than the Corporation) or a valuer and a representative of the Property Owners of the zone of which the prevalent rents are to be determined.

Under the Delhi Municipal Corporation Act power to make Bye-laws has been provided in Section 481. Obviously, no bye-law can be framed which would be contrary to the provisions of the Act. The R.V. Bye-Laws relate to taxation. It may be noticed that under Section 481 A of the Act, Bye- laws framed are required to be laid before the Parliament and thus the Bye-laws also have the legislative sanction of the Parliament itself. Bye-law 3 of the R.V. Bye-Laws prescribed the procedure for determination of annual rent for the purpose of sub-section (1) of Section 116 of the Act. Section 116 indicates the mode of determination of rateable value of any land or building assessable to property taxes. Section 116(1) of the Act does not provide as to how the annual rent of the land or building which might reasonably be expected to be arrived at. Bye-law (3), therefore, provides the mode of determination of such annual rent. The Explanation to Bye-law 3(i)(a) provides that for the clause in question the prevalent rent shall be determined by a Panel of Assessors to be appointed by the Commissioner and such Panel should include a representative of the Government, a representative of any Taxation Department or a valuer and a representative of the Property Owner of the zone of which the prevalent rents are to be determined. The bye-law, therefore, is essentially a safeguard provided for the property owners and the determination thus made by a Panel of Assessors will be a safeguard for the Commissioner to exercise his ultimate power, so that, the exercise of such power cannot be said to be arbitrary or excessive. In this view of the matter, we fail to understand how the

aforesaid Explanation can be said to be repugnant to the independent application of mind of the Commissioner under the Act. The High Court, therefore, was in error to hold such Explanation binds the Assessing Officer and controls the power of such Assessing Officer under the Act. In our considered opinion, the High Court was not right in arriving at the aforesaid conclusion. Further on a plain reading of Section 135 of the Act, we are not in a position to sustain the conclusion of the High Court that the Explanation contravenes the provisions of Section 135 of the Act. Section 135 is an enabling power of the Commissioner to appoint one or more competent persons to give advice or assistance in connection with the valuation of any land or building. The Bye-law in question together with Explanation merely states as to how the persons could be appointed to advice the Commissioner in connection with the valuation of any land or building and we see nothing in that Explanation which can be said to be in contravention of the provisions of Section 135 of the Act. The conclusion of the High Court on this score, therefore, is unsustainable in law. In the aforesaid premises we are of the considered opinion that the Explanation to Bye-law 3(i)(a) of the R.V. Bye-Laws does not suffer from the vice of any invalidity and we accordingly set aside the conclusion of the High Court on this score and hold that the said provision is a valid piece of legislation.

Coming now to the question of validity of Bye-law (8) of the Property Tax Return Bye-Laws, the said Bye-law is quoted hereunder in extenso:

8. Whosoever fails to furnish a true return to the best of his knowledge and belief, shall be:-

(a) liable to penalty which may extend to five hundred rupees. A penalty of Rs. 20/- per day may further be imposed for the period the default continues:

(b) precluded from objecting to any assessment made by the Commissioner in respect of land and building of which the owner or occupier failed to file the return or true return to the best of his knowledge and belief:

Provided that before imposition of penalty or precluding from obtaining to any assessment, the Commissioner shall give a reasonable opportunity of being heard to the owner or occupier, as the case may be.

In the impugned judgment the High Court being of the opinion that the aforesaid Bye-law is in contravention of section 131 of the Act, struck down the said Bye-law. Section 131 of the Act is extracted hereunder in extenso for better appreciation of the point in issue:

131. Power of Commissioner to call for information and returns and to enter and inspect premises- (i) To enable him to determine the rateable value of any land or building and the person primarily liable for the payment of any property taxes leviable in respect thereof, the Commissioner may require the owner or occupier of such land or building, or of any portion thereof to furnish him within such reasonable period as the Commissioner fixes in this behalf, with information or with a return signed by such owner or occupier -

(a) as to the name and place of residence of the owner or occupier, or of both the owner and occupier of such land or buildings;

(b) as to the measurements or dimensions of such land or building or of any portion thereof and the rent, if any, obtained for such land or building or any portion thereof; and

(c) as to the actual post or other specified details connected with determination of the value of such land or building.

(2) Every owner or occupier on whom any such requisition is made shall be bound to comply with the same and to give true information or to make a true return to the best of his knowledge or belief. (3) Whoever omits to comply with any such requisition or fails to give the true information or to make a true return to the best of his knowledge or belief, shall, in addition to any penalty to which he may be liable, be precluded from objecting to any assessment made by the Commissioner in respect of such land or building of which he is the owner or occupier.

Under Section 131, the Commissioner is empowered to call for information or returns to be filed by the owner or occupier of any land or building whenever the Commissioner decides to determine the rateable value of any land or building and under sub-section(2) of Section 131 every such owner or occupier who is required by the Commissioner to give the necessary information or return is bound to comply with the same. Sub-section (3) of the said Section indicates that non-furnishing of such information or return by the person concerned makes him liable to pay the penalty and also is precluded from objecting to any assessment made by the Commissioner in respect of such land or building. Thus under Section 131 an owner or occupier of any land or building is required to file return or information only when the Commissioner requires the same from him. In the Property Tax Return Bye-Laws, however, filing of an annual property tax return by the owner or occupier of land or building is obligatory under Bye-law (3) irrespective of whether the Commissioner requires the same or not. The liability to file the return arises under the Bye-law, if the land or building is assessable to the property tax. The conditions for making such filing of return have been indicated in different paragraphs of Bye-law (3) with which we are actually not concerned in the present appeal. Bye-law (8) provides that if a person fails to furnish a true return to the best of his knowledge and belief, then he shall be liable to penalty which may extend to Rs. 500/- and further a Rs. 20/- per day could be imposed for the period the default continues. The return required to be filed under the Property Tax Return Bye-Laws and the return required to be filed only when the Commissioner requires the same under Section 131 operate in two different fields. The former is in the nature of a statutory return required to be filed by every owner or occupier annually when the conditions mentioned in the Bye- law are attracted whereas, latter only makes it obligatory for the person concerned to file the return when the Commissioner so requires. The two provisions operate in two different fields and the High Court, therefore, was not justified in reaching the conclusion that the Regulation (8) Providing for penalty of Rs. 500/- for non-furnishing of the return as contemplated under the Bye-law is repugnant to Section 131 of the Act. The aforesaid conclusion of the High Court, therefore, is set aside and Regulation (8) of the Property Tax Return Bye-Laws is declared to

be a valid piece of legislation. In view of our aforesaid conclusions these appeals are allowed in part to the extent indicated above but in the circumstances there will be no order as to costs.