Supreme Court of India
State Trading Corpn. India Ltd vs New Delhi Municipal Council on 3 February, 2016
Author: .....J.
Bench: Kurian Joseph, Rohinton Fali Nariman

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2772 OF 2009

STATE TRADING CORPN. INDIA LTD. APPELLANT

VERSUS

NEW DELHI MUNICIPAL COUNCIL RESPONDENT

WITH

CIVIL APPEAL NO.787 OF 2016
(Arising out of SLP (C) No.18110 of 2006)

WITH

CIVIL APPEAL NO. 2773 OF 2009

WITH

CIVIL APPEAL NO. 2774 OF 2009

WITH

CIVIL APPEAL NO. 2775 OF 2009

WITH

CIVIL APPEAL NO. 2777 OF 2009

WITH

CIVIL APPEAL NO. 2778 OF 2009

WITH

CIVIL APPEAL NO. 2779 OF 2009

WITH

CIVIL APPEAL NO. 2780 OF 2009

WITH

CIVIL APPEAL NO. 2781 OF 2009

J U D G M E N T

KURIAN, J.

1. Leave granted in SLP (C) No. 18110/2006.

2. The basis of assessment of property tax under the New Delhi Municipal Council Act, 1994 (in short the "NDMC Act") is the subject matter of these appeals. In Chapter VIII of Taxation, Section 60 of the NDMC Act has dealt with the subject. Under Section 60(1)(a), the Municipal Council is entitled to levy the property tax. Under sub-section (3) the property tax shall be levied, assessed and collected in accordance with the provisions of the Act and the bye-laws made thereunder. Section 61 of the NDMC Act speaks about the rates of property tax and it is provided that unless otherwise specified under the Act, the property tax shall not be less than 10% and not more than 30% of the rateable value of lands and buildings. Section 63 of the NDMC Act deals with the determination of rateable value of lands and buildings. The provision 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."

3. Though the learned senior counsel appearing for the appellants sought to place reliance on the proviso under section 63(1) of the NDMC Act, we are afraid the contention cannot be appreciated. The concept of standard rent is no more available under the Delhi Rent Control Act, 1958, since the said provision has been struck down in the case of Raghunandan Saran Ashok Saran (HUF) Vs. Union of India & Others reported in 95 Delhi Law Times 508 (2002)(DB). Additionally, it is also to be noted that the standard rent in the case of the appellants has never been fixed under the Delhi Rent Control Act, 1958.

4. In the cases before us there are two categories of buildings 1)self- occupied and 2) out of the leased premises a portion which is self occupied and the rest let out on sub-lease under due permission from the Government of India. In case the premises is sub-let, there is a condition that the lessee should pay to the Government 25% of the gross rent fetched out of the sub-lease.

5. In the impugned judgments, the High Court has taken the view that since there is already a payment of rent by the sub-lessee, there need not be any other exercise for assessment of the reasonable rent. The High Court has based its decision under bye-law 12 of the New Delhi Municipal Committee Byelaws Relating to the Assessment and Collection of House Tax. For the purpose of reference, we may extract the provision of bye-law 12:

"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 under section 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 under section 3(1)(c)."

6. However, it is pointed out that the Punjab Municipal Act, 1911 has been repealed and as per Section 416(2) of the NDMC Act what is saved is only the provisions under the bye-laws which are not otherwise inconsistent with the provisions of the NDMC Act. Since there is a provision and procedure under Section 63 the NDMC Act for calculating the annual rent, one need not refer at all to the bye-laws as quoted above since they are apparently inconsistent with the provisions of the NDMC Act. In short, it is impermissible to refer to the bye-laws framed under the Punjab Act in view of specific provisions made under the NDMC Act providing for the levy, assessment and collection of property tax.

7. Therefore, the only basis for fixation of rateable value is the annual rent at which the land or building might reasonably be expected to be let from year to year, subject to the deductions provided under the Act.

8. The basis of the impugned judgments which was wholly based on the bye- laws having been thus knocked down, we have to get back to the provisions under the NDMC Act for the purposes of the fixation of the rateable value which is based on the rent which can be reasonably fetched by letting out the premises.

9. Our attention has been invited to a three Judge Bench decision of this Court in Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others reported in (1980) 1 SCC 685 wherein this Court has dealt with in detail as to what is the scope of the expression "reasonably be expected to let from year to year". The whole consideration is available in paragraph 2 of the Judgment which reads as under:

" 2. It is obvious from this definition that unlike the English Law where the value of occupation by a tenant is the criterion for fixing annual value of the building for rating purposes, here it is the value of the property to the owner which is taken as the standard for making assessment of annual value. The criterion is the rent realisable by the landlord and not the value of the holding in the hands the tenant. The rent which the landlord might realise if the building were let is made the basis for fixing the annual value of the building. The word "reasonably" in the definition is very important. What the landlord might reasonably expect to get from a hypothetical tenant, if the building were let from year to year, affords the statutory yardstick for determining the annual value. Now, what is

reasonable is a question of fact and it would depend on the facts and circumstances of a given situation. Ordinarily, as pointed out by Subba Rao, J., speaking on behalf of the Court in Corporation of Calcutta v. Padma Devi(1); "a bargain between a willing lessor and a willing lessee uninfluenced by any extraneous circumstances may afford a guiding test of reasonableness. An inflated or deflated rate of rent based upon fraud, emergency, relationship and such other considerations may take it out of the bounds of reasonableness". The actual rent payable by a tenant to the landlord would in normal circumstances afford reliable evidence of what the landlord might reasonably expect to get from a hypothetical tenant, unless the rent is inflated or depressed by reason of extraneous considerations such as relationship, expectation of some other benefit etc. There would ordinarily be in a free market close approximation between the actual rent received by the landlord and the rent which he might reasonably expect to receive from a hypothetical tenant...."

10. In the second category of cases before us the actual rent payable by a tenant to the landlord is available for verification by the assessing officer. But the question is whether that rent paid by the sub-lessee is in normal circumstances and whether it is either inflated or depressed by reason of any other consideration or relationship. Having regard to the agreement with the Government of India for payment of 25% of the gross rent fetched from the sub-lessee, we are inclined to hold that the 25% that is being paid to the Government of India by the lessee out of the rent collected from the sub-lessee is inflated to include the extra 25% since the rent actually available to the lessee is only 75% of the amount actually paid by the sub-lessee to the lessee. Therefore, going by the principle settled by this Court in the case of Dewan Daulat Rai Kapoor (supra), the rateable value under section 63 of the NDMC Act, in the case of the appellants coming under the second category has to be fixed on the basis of 75% of the amount received from the sub-lessee by the appellants. On that basis, the rateable value of the premises both tenanted and self- occupied will be fixed by the assessing officer. This is however, subject to the production of proof of payment/adjustment/ appropriation of the 25% by the lessee with the Government of India.

11. As for the first category, where the building is self-occupied and where there is no sub-lease, the annual rent will have to be fixed as held by this Court in the case of Dewan Daulat Rai Kapoor (supra) and in the case of India Automobiles Ltd. Vs. Calcutta Municipal Corporation and Another reported in (2002) 3 SCC 388 on the basis what the landlord might reasonably expect to get from a hypothetical tenant. Such fixation has to be made only as per the NDMC Act. It is for the assessing officer to make the fixation in accordance with law. The assessment for the disputed period shall be completed within three months from today.

11. The impugned judgments are hence set aside. The appeals are allowed as above with no order as to costs.

.....J.

[KURIAN JOSEPH] .....J.

[ROHINTON FALI NARIMAN NEW DELHI;

FEBRUARY 03, 2016