CASE NO.:
Appeal (civil) 4125 of 2006

PETITIONER:
Municipal Corporation of Delhi

RESPONDENT:
Rishi Raj Jain & Anr.

DATE OF JUDGMENT: 14/09/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No.17116 of 2004)
With

CIVIL APPEAL NO. 4143/2006
(Arising out of SLP (C) No.17463/2004)

S.B. Sinha, J.

Leave granted.

The Respondent is owner of a farm house. He had constructed a dwelling house therein. The area of the farm house is said to be 2.5 acres. The said land is within the agricultural green belt.

General tax is levied by the Appellant-Corporation in terms of Section 115 of the Delhi Municipal Corporation Act, 1957 ('the Act', for short). Clause (c) of Sub-Section (4) of Section 115 of the said Act exempts agricultural lands and buildings from the purview of levy of General Tax. Dwelling houses, however, are not saved. In terms of the building rules contained in Item II of Appendix 'J' of the Delhi Building Bye-Laws, 1983, construction of dwelling house on agricultural land is permitted with certain restrictions providing :

"II. "Agricultural Green Belt" and "Rural" Use Zones

In order to preserve these Zones in agricultural use certain restrictions on the size of the dwelling units should be imposed. They are as under :-

(i) The minimum size of a farm shall be as under:-
(a) Orchard & Vegetable Farm - 1 hect

(ii) Poultry, Stud, Dairy & other live stock farms \026 2 hect

(iii)The minimum coverage and height of DUs, shall be as under :-

Sr. No.
Size of Farm
Max coverage of DU
Max ht of DU
(a)
1 hect & above but less than 2

hect
100 sq. mtrs.
(including
mezzanine
floor)
Single
storeyed
maximum
ht. 6 mtrs.
(b)
2 hect & above
150 sq. mtrs.
(including
mezzanine
floor)
Single
storeyed
maximum
ht. 6 mtrs.

N.B. (1) Set back for dwelling house should be 50 feet from any boundary line of the property.

(2) Where the property abuts an urban road, the dwelling house building should be set back from the center line of that road by 200 ft. where the property abuts a village road, the building set back from the center line of that road should be 100 feet.

(3) No dwelling unit should be built within two furlongs of the right of way of any National Highway.

(4) In the case of special farms, for example, horse breeding farms covering a large area, Government may allow a larger coverage as may be considered necessary for farm houses to be built on these farms."

The Appellant-Corporation contends that once a dwelling house is built on an agricultural land, the entire area becomes exigible for levy of tax in the event it is found that it is not being used for agricultural purposes.

General Tax was levied accordingly upon the Respondent. He preferred an appeal before the Appellate Authority. The Appellate Authority opined :

".....In the instant case although the covered area of the dwelling unit admittedly does not exceed 196.44 sq. yards yet the assessing authority has taken market price of land measuring 2.5 acres into consideration solely on the grounds that no farm house can be approved if the area of the farm house is less than 2.5 acres. In the eyes of this court, the Assessment Authority is not justified in taking into consideration market price of land measuring 2.5 acres on the aforesaid ground especially when there is nothing such in the impugned Assessment Order itself and that for want of evidence, the Assessment Authority presumed that entire land of 2.5 acres is necessary and is being used for enjoyment of the dwelling house. When the Respondent is having sufficient

field staff for inspection of the appeal farm house, I see no reason why the Assessment Authority should go by presumption against appellant showing an arbitrary attitude of the Assessment Authority."

A writ petition was filed thereagainst. By reason of the impugned judgment, the High Court held :

"While deciding the size of the appurtenant land necessary for a proper and convenient enjoyment of the dwelling unit in a farm house the Court cannot be oblivious of the fact that the dwelling unit on a farm house is not at par with a dwelling unit on a residential plot. Whenever, a person decides to live in a farm house his object and purpose is to live in wide open area with a vast lawn than in the crowded residential area as he wants to enjoy the fruits of unpolluted green expansive area and therefore appurtenant land necessary for a proper and convenient enjoyment of the dwelling unit has to be higher than permissible in plotted residential zone.

After having discussed the matter with the counsel for the MCD as well as the counsel for the respondent and also on the premise of reasonableness and rationality this Court feels as there is consensus that size of the appurtenant land necessary for appropriate and convenient enjoyment of the dwelling unit in a farm house of the minimum size of 2.5 acre and above should be half an acre for appropriate and convenient enjoyment of the dwelling unit. Any area either lower or higher would not be in consonance with the concept of living in a farm house. In the view of this court, this norm should be adopted by every Assessing Authority for the purpose of levying general tax as contemplated under Section 115 of the DMC Act.

For the remaining land the concerned authorities have the powers to take action under various laws viz. Delhi Land Reforms Act and Income Tax Act if it is found being used for non-agricultural/commercial purposes. For instance section 81 of Delhi Land Reforms Act empowers the revenue authority to direct the owner to put the land back into agricultural use of face consequences if agricultural land is found being used for non-agricultural or commercial purposes. Similarly, if any commercial or non-agricultural activity on an agricultural land is carried out such a land looses its character of being agricultural land as the very object of preserving and maintaining the green zone in the farm house as contemplated in Appendix 'J' stands frustrated and any income from such a user ceases to be exempted from tax. Similarly concerned authority, for instance, MCD can levy tax or penalty or take any action permissible under law for using the agricultural land for non-agricultural or commercial purposes.

Upshot of the aforesaid discussion is that size of the land appurtenant to a dwelling unit of maximum permissible limit constructed on a farm house having the minimum size of 2.5 acre and above for proper and convenient enjoyment of the dwelling house shall be 'half an acre' including the land over which the dwelling unit is made for the purpose of levying property/general

tax and the remaining land shall be preserved as an agricultural land. In case the non-agricultural or commercial activities are found to be carried on the said remaining land which has to be necessary preserved as a green zone it shall be subjected to appropriate legal actions as these activities shall take away the agricultural character of the land as contemplated under Section 115 of the MCD Act. This norm shall be applicable with retrospective effect so as to avoid discrimination."

The Appellant is, thus, before us.

Ms. Amita Gupta, learned counsel appearing on behalf of the Appellant submitted that if the land in question is not used for agricultural purposes, the entire land becomes exigible to levy of General Tax.

Mr. Sudhir Nandrajog, learned counsel appearing on behalf of the Respondents, on the other hand, supported the impugned judgment.

Indisputably, building bye-laws framed by the Appellant-Corporation operate having regard to the areas and locations as well as the nature of the lands/premises. Farm houses, although, are primarily meant to be used for agricultural or horticultural purposes; construction of a dwelling house therein is permissible in law.

We have noticed hereinbefore that in terms of the building bye-laws, the permissible limit for construction of a dwelling house would be about 100 sq. mtrs. out of total 11,000 sq. mtrs. of land, i.e., about 4.5% of the total land.

Tax, indisputably, is imposable keeping in view the nature of the land. If the nature of the land is agricultural, the Corporation cannot levy tax only because no agricultural operations are carried out therein.

Sub-Section (4) of Section 115 of the Act provides for an exception as regards payment of tax providing that no tax shall be levied on agricultural lands and buildings. Dwelling house, however, is not within the purview of the exempted category. Buildings on an agricultural land may be constructed for different purposes. They may be built for agricultural purposes. A dwelling house constructed by the owner thereof, however, has a different connotation. Whereas buildings/houses built for agricultural purposes are specifically excluded from levy of tax, dwelling houses are not. What would be the extent of the land, which, however, would be exigible to tax would, in our opinion, be the extent of land upon which it has been constructed and the land appurtenant thereto. What would be the meaning of the land appurtenant thereto came up for consideration before this Court in Maharaj Singh vs. State of Uttar Pradesh & Ors. [(1977) 1 SCC 155], wherein it was opined :

"The heated debate at the bar on this and allied aspects need not detain us further also because of our concurrence with the second contention of the Solicitor General that the large open spaces cannot be regarded as appurtenant to the terraces, stands and structures. What is integral is not necessarily appurtenant. A position of subordination, something incidental or ancillary or dependant is implied in appurtenance. Can we say that the large spaces are subsidiary or ancillary to or inevitably implied in the enjoyment of the buildings qua buildings? That much of space required for the use of the structures as such has been excluded by the High Court itself. Beyond that may or may not be necessary for the hat or mela but not for the enjoyment of the chabutras as such. A hundred acres may spread out in front of a clubhouse for various games like golf. But all these

abundant acres are unnecessary for nor incidental to the enjoyment of the house in any reasonable manner. It is confusion to miss the distinction, fine but real. "Appurtenance", in relation to a dwelling, or to a school, college ... includes all land occupied therewith and used for the purposes thereof (Words and Phrases Legally Defined \027 Butterworths, 2nd edn.):

"The word 'appurtenances' has a distinct and definite meaning ... Prima facie it imports nothing more than what is strictly appertaining to the subject matter of the devise or grant, and which would, in truth, pass without being specially mentioned. Ordinarily, what is necessary for the enjoyment and has been used for the purpose of the building, such as easements, alone will be appurtenant. Therefore, what is necessary for the enjoyment of the building is alone covered by the expression 'appurtenance'. If some other purpose was being fulfilled by the building and the lands, it is not possible to contend that these lands are covered by the expression 'appurtenances'. Indeed 'it is settled by the earliest authority, repeated without contradiction to the latest, that land cannot be appurtenant to land. The word 'appurtenances' includes all the incorporal hereditaments attached to the land granted or demised, such as rights of way, of common ... but it does not include lands in addition to that granted'" (Words and Phrases, supra). In short, the touchstone of 'appurtenance' is dependence of the building on what appertains to it for its use as a building. Obviously, the hat, bazar or mela is not an appurtenance to the building. The law thus leads to the clear conclusion that even if the buildings were used and enjoyed in the past with the whole stretch of vacant space for a hat or mela, the land is not appurtenant to the principal subject granted by Section 9 viz. buildings."

Yet again, in Municipal Board, Saharanpur vs. Shahdara (Delhi) Saharanpur Light Rail Co. Ltd. [(1999) 1 SCC 586] the question which arose for consideration was : 'As to whether for imposition of house tax, all the buildings of the Respondent situated in the "common compound" and forming part of one complex could be treated as one unit for imposing house tax?' Section 128(1)(i) of U.P. Municipalities Act, 1916 reads as under :

"128. Taxes which may be imposed.- (1) Subject to any general rules or special orders of the State Government in this behalf, the taxes which a municipality may impose in the whole or any part of a municipality are \026

(i) a tax on the annual value of buildings or lands or of both;"

Interpreting the said provision, it was held :

".....For imposing house tax on buildings under Section 140(1)(a), it has to be shown that the buildings with their common appurtenant land or the land in common appurtenance to several buildings situated nearby are available for imposing such a tax thereon. It is only such appurtenant land which can form part of the buildings for attracting house tax assessment proceedings. But if the "common compound" in which such buildings with appurtenant lands are situated also includes land which cannot be said to be a common appurtenance to several buildings situated therein or separately appurtenant to

any given building, such land would be outside the sweep of the term "building". Such land, however, on its own could be legitimately made the subject-matter of separate levy of house tax as an independent unit being open land, as seen from Section 140(1)(b) itself as the Board can impose the tax on annual value of lands which may not be covered by the sweep of the definition of the term "building". Once that conclusion is reached, it becomes obvious that all the buildings situated along with their appurtenant lands in one "common compound" belonging to the same owner cannot be treated as one unit for the purpose of imposing house tax under Section 128(1)(i). The reasoning of the High Court in this connection cannot be found fault with on the scheme of the Act. It is pertinent to note that "common compound" which is relevant for the water tax as per Section 129 of the Act to which we have made a detailed reference while deciding the companion Appeal No. 1218 of 1976 is conspicuously absent in connection with imposition of house tax on the annual value of buildings or lands or both as found in Section 128(1)(i)."

Our attention has been drawn to a decision of this Court in Municipal Corporation of Delhi & Anr. vs. Shri Naresh Kumar & Ors. [JT (1997) 3 SC 436 : (1997) (4) SCC 766], wherein this Court opined :

"The next question is \027 if a "dwelling house" is exigible to levy of general tax, how much of the adjacent land should be treated as an integral part of the dwelling house. In other words, the question is whether the entire land surrounding or abutting a farm house is subject to general tax along with the dwelling house. The answer to this question is: a dwelling house includes within its ambit such appurtenant land as is necessary for a proper and convenient enjoyment of the dwelling house. The extent of such appurtenant land is naturally a question of fact to be decided in each case. We have only stated the test. It is for the appropriate assessing authority to determine the extent of land which can be called appurtenant land to a given dwelling house."

The findings we have arrived at do not militate against the said dicta. In fact, the judgments of this Court support the same.

It was, thus, not for the High Court to issue any directions in this behalf, as has been sought to be done by reason of the impugned judgment. Each case has to be considered on its own facts. The superior courts, although, can interpret a statute, cannot issue a guideline which would be contrary to the provisions of the statute or the rules framed thereunder. The directions issued by the High Court, therefore, are set aside. We direct that only the extent of land, on which the dwelling house has been constructed, together with the land appurtenant thereto in terms of the building bye-laws, would be exigible to General Tax under Section 115 of the Delhi Municipal Corporation Act.

The appeals are disposed of in terms of observations and directions incorporated in the preceding paragraphs. Parties shall, however, pay and bear their own costs.