CASE NO.:
Appeal (civil) 4104 of 1998

PETITIONER:
LT. COL. PR. CHAUDHARY (RETD.) ETC.

RESPONDENT:
MUNICIPAL CORPORATION OF DELHI AND ANR.

DATE OF JUDGMENT: 26/04/2000

BENCH:
D.P WADHWA & N. SANTOSH HEGDE

JUDGMENT:
JUDGMENT

2000 (3) SCR 607

The Judgment of the Court was delivered by

D.P. WADHWA, J. Appellant in Civil Appeal No. 4104 of 1998 is aggrieved by judgment dated July 7, 1997 of the Division Bench of Delhi High Court dismissing his writ petition wherein he had sought setting aside the order of assessment dated March 12, 1991 assessing the rateable value of his property for the purpose of property tax under Section 116 of the Delhi Municipal Corporation Act, 1957 (for short the "Act"). The property of the

I. 116. Determination of rateable value of lands and buildings assessable to property taxes. (1) The rateable value of any land or building assessable to 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) 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, and

(b) the water tax or the scavenging tax or both, if the rent is inclusive of either or both of the said taxes :

Provided that if the rent is inclusive of charges for water supplied by measurement, then, lor the purpose of this section the rent shall be treated as inclusive of water tax on rateable value and the deduction of the water tax shall be made as provided therein :

Provided further that in respect of any land or building the standard rent of which has been fixed under the Delhi and Ajmer Rent Control Act, 1952 (38 of 1952), the rateable value thereof shall not exceed that annual amount of the standard rent so fixed. appellant comprised of his house constructed on a plot of land bearing No. 11-1787 Chitranjan Park, New Delhi, measuring 311 Sq. yards. The writ petition was dismissed by the High Court relying on its earlier judgment in the case of Ravish Chander Rastogi v. Municipal Corporation of Delhi decided by the same Division Bench on May 29, 1997. Civil Appeal No. 4105 of 1998 is against that judgment of the High Court. It would, therefore, be appropriate to refer to the facts in the case of Ravish Chander Rastogi.

The appellant Ravish Chander Rastogi is the owner of the property bearing No. 55, Anand Lok, New Delhi. He was served with a notice dated March 20, 1986 under Section 126 of the Act proposing to enhance rateable value for the purpose of property tax from existing Rs. 1280 to Rs. 1,79,000 with effect from April 1, 1985. The reason for increase in the proposed rateable

value was that the appellant had made new construction. Appellant filed his objections to the proposed rateable value. The assessing officer proceeded to assess the rateable value on the basis that the property was in the self-occupation of the appellant and rateable value, therefore, had to be determined under Section 6(1)2 of the Delhi Rent Control Act, 1958 (for short the 'Rent Act'). For this two components are necessary: (1) market value of the land on the date of commencement of construction and (2) reasonable cost of construction. The assessing officer arrived at the market value of the plot,

[Explanation. - The expression "water tax" and "scavenging tax" shall mean such taxes of that nature as may be levied by an appropriate authority] (inserted by Act No. 67 of 1993 - w.e.f. 1.10.1993)

(2) The rateable value of any land which is not built upon but is capable of being built upon and of any land on which a building is in process of erection shall he fixed at five per cent of the estimated capital value of such land.

(3) All plant and machinery contained or situate in or upon any land or building and belonging to any of the classes specified from time to time by public notice by the Commissioner with the approval of the Standing Committee, shall be deemed to form part of such land or building for the purpose of determining the rateable value thereof under sub-section (1) but save as aforesaid no account shall be taken of the value of any plant or machinery contained or situated in or upon any such land or building.

2. Section 6(1) Subject to provisions of sub-section (2) 'standard rent' in relation to any premises means -

(A) in the case of residential premises -

(2) where such premises have been let out at any time on or after the 2nd day of June. 1944. -

(b) in any other case, the rent calculated on the basis of seven and a-half per cent, per annum of the aggregate amount of the reasonable cost of construction and the market price of the land comprised in the premises on the date of the commencement of the construction.

Provided that where the rent so calculated exceeds twelve hundred rupees per annum, this clause shall have effect as if for the words "seven and a-half per cent", the words "eight and one-fourth per cent" had been substituted;

(B) ..which measured 812 sq. yards at Rs. 6,00,000 as on the date when building plans were sanctioned. He then estimated the reasonable cost of construction at Rs. 12,98,000. Keeping in view the provisions of the Rent Act he arrived at the aggregate of market value of the land and the cost of construction at Rs 18,98,000. Standard rent of the property at the rate of 8.25% was thus Rs. 1,56,585. After 10% rebate for repairs, rateable value was arrived at Rs. 1.40.930. The effective date of fixation of rateable value was taken as March 17. 1986 when the appellant applied for the occupancy certificate of the premises. Objections of the appellant that the principles laid by this Court in Dr. Balbir Singh and Others v. Municipal Corporation, Delhi and Others3 be taken into consideration while fixing the rateable value, were not consid-ered relevant as it was observed that the observations of this Court were made in the context of the applicability of Section 9(4)4 of the Rent Act and that provisions of Section 9(4) would be applicable only where it was not possible to determine the standard rent of the premises on the principles set froth in Section 6 of the Rent Act. From the assessment order the appellant filed an appeal before the District Judge under Section 169 of the Act, which came for decision before Mr. P.K. Dham, Additional District Judge, Delhi. Learned Additional District Judge noticed three houses in the neighbourhood of the appellant where rateable

value of the property was fixed at Rs. 12,660 (house No. 52), Rs. 21,660 (house No. 15) and Rs. 40,800 (house No. 6). According to learned Additional District Judge principles laid by this Court in Dr. Balbir Smell's case were fully applicable, which were ignored by the assessing officer. He, therefore, set aside the assessment order and remanded the matter buck to the assessing authority to decide the case afresh in accordance with law after giving opportunity to the appellant to be heard. Now, it was the respondent Municipal Corporation of Delhi, which felt aggrieved and sought to challenge the order of the learned Additional District Judge by filing a writ petition in the High Court under Article 226 of the Constitution. Submission of the appellant that principles laid by this Court in Dr. Balbir Singh's case were applicable did not find favour with the High Court when it observed:

[1985] 2 SCR 439 9. Controller to fix standard rent, etc. - (1) to (3) ....

(4) Where for any reason it is not possible to determine the standard rent of any premises on the principles set forth under Section 6. the Controller may fix such rent as would be reasonable having regard to the situation, locality and condition of the premises and the amenities provided therein and where there are similar or nearly similar premises in the locality having regard also to the standard rent payable in respect of such premises.

(5) to (7)....

"It appears that in Dr. Balbir Singh's case there are certain observa-tions made which appear to lend support to the contention raised on behalf of the assessee that the figure of standard rent having been arrived at has to be further scaled down. These observations made in Dr. Balbir Singh's case display only an anxiety on the part of their Lordships to see that as far as practicable the properties situated in one locality are assessed by uniform standard so as to avoid the criticism of invidious discrimination. The observations have to be read in the light of the statutory provisions. The judgment in Dr. Balbir Singh's case cannot be read as laying down something which is not contemplated by the law itself, when the field is entirely covered by the statutory law."

The argument of the appellant was that after having arrived at the figure of standard rent the assessing authority should have treated that to be the upper limit and thereafter he should have proceeded to apply the principle of parity. This principle meant that the assessing authority must proceed to find out the standard rent of similarly situated properties in the locality whose construction might be older than that of the property of the appellant and after having done this exercise the assessing authority should reduce the standard rent of the premises in question so as to bring it at par with the standard rent of other older premises in the locality. It would be only on that basis there would be equality and parity in the assessment of rateable value of the property tax as amongst all the properties situated in one locality which would be more or less same. This submission was also negatived by the High Court by making the following observations :

"For several reasons, the submission of the learned counsel for the assessee does not appeal to us. The learned counsel for the MCD has rightly pointed out that firstly there is no warrant in law to support the submission of the learned counsel for the assessee. Secondly, if the proposition canvassed by the assessee was to be accepted, it would be expecting the assessing authority to perform an exercise nearing impossibility. Rarely it would be possible to expect two premises having similar nature of construction and accommodation. The as-sessing authority is not possessed of any machinery under the law which would enable it to collect and record such evidence. There is no adversary system of deciding assessment matters before the assessing authority. There is no independent agency available to assessing authority which would go out searching and

collecting evidence and then bring on the record of the assessing authority such material as would enable the principle of parity canvassed by the learned counsel for the assessee being applied. If the assessing authority was itself to undertake that exercise, it would be busy collecting evidence in the field left with hardly any time to sit in the office and finalise the assessments. The time and energy which the assessing authority would be required to spend in finalising individual assessments of the properties would be so much that the imposition of such a tax would be counter productive and may persuade the Municipal Corporation to drop the tax itself instead of undertaking extremely onerous task of assessing and realising the tax. There is yet another flaw inherent. For the purpose of assessing one house property, the assessing authority must conduct survey of the entire locality to find out the property least valued and then scale down the value of property under assessment. It was also submitted by the learned counsel for the MCD that by a series of decisions of the Supreme Court it is well settled that for the purpose of finding out reasonable rent, the assessing authority has to keep in view the principles of standard rent as deducible form the provisions of Rent Control Law which permits cost of construction being adopted as basis for calculating the rateable value in the case of self-occupied properties. It is fair and reasonable if the assessing authority works out the cost of land by reference to the date of commencement of construction and the reasonable amount spent in construction. That exercise is by itself time consuming exercise, yet once it is done the facts found would be relatable to the facts as actually exist. Where is then the occasion for going a step ahead and then finding out the value of land and cost of construction of comparable properties of the locality so as to scale down the rateable value and standard rent determined of the properties under assessment? The Delhi Rent Control Act nowhere contemplates such an exercise being undertaken for the purpose of finding out standard rent so as to ascertain the reasonable letting value."

High Court allowed the writ petition, set aside the order of learned Additional District Judge and restored that of the assessing authority.

On grant of leave to appeal by the appellant these matters have come before us. We are concerned in these appeals as the law existed prior to the amendment of the Rent Act in 1988. By the Act 57 of 1988 the Rent Act was not to apply to certain premises as provided in Section 35 of the Rent Act.

In Dr. Balbir Singh’s case this Court was concerned with the determi-nation of rateable value in respect of properties situated in Delhi and governed by the provisions of the Delhi Municipal Corporation Act, 1957 and the Punjab Municipal Act, 1911. The Court considered four different categories of properties, namely (1) where the properties are self-occupied, that is, occupied by the owners; (2) where the properties are partly self-occupied and partly tenanted; (3) where the land on which the property is constructed is lease hold land with a restriction that the lease hold interest shall not be transferable without the approval of the lessor and (4) where the property has been constructed in stages. Under provisions of Delhi Municipal Corporation Act as well as Punjab Municipal Act, the criteria for determining rateable value of building is the annual rent at which such building reasonably be expected to let from year to year. The word ’reasonably’ in the definition is very important. What the owner might reasonably expect to get form a hypothetical tenant, if the building were let from year to year, affords the statutory yardstick for determining the rateable value. Now what is reasonable is a question of fact and it depends on the facts and circumstances of a given situation. The Court considered various provisions of the Delhi Municipal Corporation Act and the Punjab Municipal Act as well as that of the Delhi Rent Control Act, 1958. Delhi Rent Control Act was amended in 1988 when certain properties were taken out of the purview of that Act. The four categories have been considered at pages 461, 466, 468 and 473 of the Report. The statement of law laid by this Court after considering various statutory provisions made in respect of the first category we quote :

3. Act not to apply to certain premises. - Nothing in this Act shall apply:

(a) to any premises belonging to the Government;

(b) to any tenancy or other like relationship created by a grant from the Government in respect of the premises taken on lease or requisitioned by the Government:

Provided that where any premises belonging to Government have been or are lawfully let by any person by virtue of an agreement with the Government or otherwise, then, notwithstanding any judgment, decree or order of any court or other authority, the provisions of this Act shall apply to such tenancy.

(c) to any premises, whether residential or not, whose monthly rent exceeds three thousand and five hundred rupees; or

(d) to any premises constructed on or after the commencement of the Delhi Rent Control (Amendment) Act, 1988. for a period of ten years from the date of completion of such construction. "The retable value of the premises, whether residential or non-residential cannot exceed the standard rent, but, as already pointed out above, it may in a given case be less than the standard rent. The annual rent which the owner of the premises may reasonably expect to get if the premises are let out would depend on the size, situation, locality and condition of the premises and the amenities provided therein and all these and other relevant factors would have to be evaluated in determining the rateable value, keeping in mind the upper limit fixed by the standard rent. If this basic principle is borne in mind, it would avoid wide disparity between the rateable value of similar premises situate in the same locality, were some premises are old premises constructed many years ago when the land prices were not high and the cost of construction had not escalated and others are recently constructed premises when the prices of the land have gone up almost 40 to 50 times and the cost of construction has gone up almost 3 to 5 times in the last 20 years. The standard rent of the former category of premises on the principles set out in sub-section (l)(A)(2)(b) or (l)(B)(2)(b) of Section 6 would be comparatively low, while in case of latter category of premises, the standard rent determinable on these principles would be unduly high. If the standard rent were to the measure of rateable value, there would be huge disparity between the rateable value of old premises and recently constructed premises, though they may be similar and situate in the same or adjoining locality. That would be wholly illogical and irrational. Therefore, what is required to be considered for determining rateable value in case of recently constructed premises is as to what is the rent which the owner might reasonably expect to get if the premises are let out and that is bound to be influenced by the rent which is obtainable for similar premises constructed earlier and situate in the same or adjoining locality and which would necessarily be limited by the standard rent of such premises. The position in regard to the deter-mination of rateable value of self-occupied residential and non-residential premises may thus be stated as follows : The standard rent determinable on the principles set out in sub-section (2)(a) or (2)(b) or (l)(A)(2)(b) or (l)(B)(2)(b) of Section 6, as may be applicable, would fix the upper limit of the rateable value of the premises and within such upper such upper limit, the assessing authorities would have to determine as to what is the rent which the owner may reasonably expect to get if the premises are let to a hypothetical tenant and for the purpose of such determination, the assessing authorities would have to evaluate factors such as size, situation, locality and condition of the premises and the amenities therein provided. The assessing authorities would also have to take into account the rent which the owner of similar premises constructed earlier and situate in the same or adjoining locality, might reasonably expect to receive from a hypothetical tenant and which would necessarily be within the upper limit of the standard rent of such premises, so that there is no vide disparity between the rate of rent per square fool or square yard

which the owner might reasonably expect to get in case of the two premises. Some disparity is bound to be there on account of the size, situation, locality and condition of the premises and the amenities provided therein. Bigger size beyond a certain optimum would depress the rate of rent and so also would less favourable situation or locality or lower quality of construction or unsatisfactory condition of the premises or absence of necessary amenities and similar other factors. But after taking into account these varying factors the disparity should not be disproportionately large."

We find ourselves unable to subscribe to the reasoning of the High Court and the views expressed by it. Law as interpreted by this Court cannot be brushed aside by saying to the effect that it is not in conformity with the statutory provisions. Law laid by this Court is explicit and admits of no doubt. For the purpose of arriving at the rateable value the basic principle is the annual rent which the owner of the premises may reasonably expect to get if the premises were let out to a hypothetical tenant. It would depend on the size, situation, locality and condition of the premises and the ameni-ties provided therein. All these and other relevant factors would have to be followed in determining the rateable value. That, however, cannot be in excess of the standard rent which would be the upper limit. But then con-sidering the run away prices of land and building materials, if the standard rent were to be the measure of rateable value, there would be a huge disparity between rateable value of old premises and those recently constructed though they may be similar and situated in the same or even adjoining locality. Considering the same and similar services which are provided by the local authority if there is vast disparity between the rateable value of the old premises and the new premises that would be wholly illogical and irrational. To avoid such a situation, Dr. Balbir Singh’s case laid the principles which have to be followed in arriving at the rateable value of the newly constructed premises. Of course, rateable value cannot be the same but then at the same lime a wide disparity would certainly be irrational, unreasonable and unfair which situation could be avoided by following the principles laid by this Court, otherwise the rateable value recording wide disparity would be struck down. There cannot be any ambiguity as to the principles laid by this Court in arriving at the rateable value.

We also find that the reasoning of the High Court is flawed that the Municipal Corporation of Delhi has no machinery if required to follow the principles laid by this Court. No two premises can be similar, in all revenue matters, there is no adversary system. Assessment records of the rateable value of the premises in the locality are certainly available in the records of the Municipal Corporation of Delhi. It has a field stall" on the reports of which notices for enllancement of the rateable value are issued. Assessing authority hears the objections to the fixation of rateable value and acts in quasi-judicial capacity. Is orders are appealable. It cannot act in arbitration fashion ignoring principles of law laid by the Court. It cannot fall back on the spacious plea that it has no means to act on the principles of law laid by this Court. Even notice for enllancement of rateable value has to be based on reasons which must exist on record and the owner is entitled to be apprised of those reasons. High Court lent its support to the plea of the Municipal Corporation of Delhi which is contrary to the principles laid by this Court.

The appeals are allowed with costs. Judgments of the High Court in both the appeals are set aside. Matter will go back to the Assessing Officer of the Municipal Corporation of Delhi to arrive at the rateable value in accordance with law keeping in view the principles laid by this Court in the case of Dr. Balbir Singh and Others v. Municipal Corporation, Delhi and Others*.