

PETITIONER:
MUNICIPAL CORPORATION OF DELHI & ANOTHER

Vs.

RESPONDENT:
SHRI NARESH KUMAR AND OTHERS

DATE OF JUDGMENT: 10/03/1997

BENCH:
B.P. JEEVAN REDDY, K.S. PARIPOORNAN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

B.P. JEEVAN REDDY, J.
Leave granted.

This appeal involves the interpretation of clause (c) of sub-section (4) of Section 115 of the Delhi Municipal Corporation Act, 1957. Sub-Section (4) levies, what is called, a "General Tax" on "all lands and buildings" in Delhi except "(C) agricultural lands and buildings (other than dwelling houses)". The question is whether the farm houses within in the Delhi Municipal Corporation area are exigible to general tax as "dwelling houses".

The respondent owns an extent of about 13 bighas in the Revenue estate of village Bijwasan, Tehsil Mehrauli, New Delhi. According to him, he carries on agricultural operations thereon. He constricted building on the said land, which, according to him, is occupied for purposes connected with agricultural operations on the said land and wherein the respondent and his family members stay whenever they visit the farm. According to the respondent, further the building is not occupied on a permanent basis farm. The contention of the respondent before the High Court was that since the said building is connected with the agriculture being carried on over the said extent of 13 bighas, it is exempt from tax under Section 115 (4)(c) notwithstanding the fact that it is a "dwelling house". On the other hand, the case of the Corporation was that since the said building is a "dwelling house" within the meaning of Section 115(4)(c), it is subject to general tax. According to the corporation, it is immaterial whether the dwelling house is occupied on a permanent basis or only occasionally. It is equally immaterial says the corporation, whether the dwelling house is occupied for the purpose of agriculture being carried on over the adjacent lands or otherwise. it is enough that it is a dwelling unit, says the corporation. It is taxable. The High Court has not accepted the contention urged by the corporation. The High Court has opined that a dwelling unit is exempted from general tax if it is mainly or pre-dominantly occupied or use for agricultural purposes. This is what the High Court said:

"We are therefore of the view that

so far as the exemption provision in Section 115(4)(c) is concerned, the test is not whether buildings or Farm houses are used 'solely' in connection with agricultural operations. In Our view, the said exemption, In our view, the said exemption applies to 'buildings' or farm houses used "substantially", if not solely, for agricultural purposes. If this test is satisfied, the building or farm house falls outside the tax-net. So far as the exclusionary words 'other than dwelling houses ' are concerned, we are again of the view that the buildings or farm houses must be solely or substantially used for 'dwelling purposes, that is to say, with a degree to continuity and permanency, and not solely or substantially for agricultural purpose, then such buildings will fall inside the tax net. We do not visualise any third category of 'buildings' or farm houses which do not fall into one or other categories above stated. Assuming however that any such intermediate category arises, we are of the view that the person claiming the exemption will not be entitled to exemption from property tax unless he proves that the building is solely or substantially used for 'agricultural purpose'. Whether a given building is used substantially for agricultural purpose, is a question depending upon the facts and circumstances of each case and on what, according to general principles of law could be said to be the meaning of the words 'agricultural purpose'."

With respect we are unable to agree with the High Court. Clause (c) exempts "agricultural lands and buildings" from the levy imposed by Section 115(4). Clause (c), however, contains an exception within itself. The "dwelling houses" are excluded from the purview of agricultural lands and buildings. In other words, once it is a "dwelling house" it is outside the purview of exempted category. The very context in which the expression "dwelling houses" occurs shows that even the dwelling houses situated on, over or in the midst of agricultural lands were sought to be excluded from the exempted category of "agricultural lands and buildings". An agricultural building may be a godown where the agricultural produce is stored, it may be warehouse or it may be a building housing the machinery used for purpose of agriculture. A dwelling house can also be occupied by persons carrying on the agriculture i.e., to carry on or supervise the agricultural operation. But according to Section 115(4) (c), the "dwelling houses" as such are excluded from the category of agricultural buildings. In other words, even if it possible to say that a dwelling house is an "agricultural building", yet it is excluded

specifically by the statute from the fold of agricultural buildings. Applying the test evolved by the High Court would remove the distinction between "agricultural buildings" and "dwelling houses" which are mentioned together in clause (c). an agricultural building is a building used mainly or pre-dominantly for the purpose of agricultural. If the same test is applied to dwelling houses than the very purpose and object behind excluding dwelling houses from the purview of agricultural buildings would disappear. We, therefore, agree with the Corporation that once a building is a dwelling house, no further enquiry need be made whether it is used mainly or pre-dominantly for agricultural purpose or not. It is enough that it is a dwelling house. It becomes exigible to general tax. This would be so even if the dwelling house is situated in the midst of a farm or is a part of the farm or it may be, what is called, a "farm house".

So far as the argument of occasional (as contrasted with regular) occupation is concerned, we may refer to the decision of this court in the Tata engineering And Locomotive Company Limited v. The Gram Panchayat, Pimpri Waghere [1976 (4) S.C.C. 177]. In Para 18, the following statement occurs: It may be stated generally that the word "house" is a structure of a permanent character. It is structurally severed from other tenements. It is not necessary that a house if adapted for residential purposes should be actually dwelt in (see Daniel v. Coulsting - (1845) 14 LJ CP 70: 135 ER 53). A building in Covent Garden had formerly been a dwelling house but was converted into a fruitstore warehouse and office in which no one slept and was held to be a 'house' as regards assessment to the rector's rate within the provisions of the relevant statute."

The next question is - 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 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 third question urged before us is as to the meaning of the expression "agricultural land". This question has not been really gone into by the High Court. When can a land be called an agricultural land has been the subject matter of good amount of debate under various enactments including the Income Tax Act and the Wealth Tax Act. Whether a land is an agricultural land or not is a mixed question of fact and law, which has to be decided in the facts and circumstances of the each case. We are not prepared to go into details, to determine whether the land involved in this appeal is "agricultural land", since that question has not been gone into by the High Court. The three issues set out by the High Court do not take in this issue. It is enough to say for the purpose of this appeal that a dwelling house situated on an agricultural land is not exempt from general tax and that a dwelling house exempt from general tax and that a dwelling house includes within its ambit such appurtenant land as is necessary for a proper and convenient enjoyment of the dwelling house.

No more can be said, or need be said, in this appeal.

The appeal is allowed in the manner indicated above. The matter should go back to the Assessing Authority for appropriate orders in the light of the law laid down herein. No order as to costs.

JUDIS