MANU/SC/0486/1987

Equivalent Citation: AIR1987SC2211, [1987(54)FLR75], JT1987(3)SC352, 1989(2)SCALE541, (1987)4SCC44, [1987]3SCR996, [1987]34TAXMAN152(SC)

IN THE SUPREME COURT OF INDIA

Civil Miscellaneous Petition Nos. 18280 of 1987 and 38833 and 12513 of 1985 in **Writ Petition No. 6945 of 1982** and Civil Miscellaneous Petition Nos. 18199-200 of 1987 in Transferred Cases Nos. 75-76 of 1982

Decided On: 18.08.1987

Appellants: **Common Cause Registered Society**
Vs.
Respondent: **Union of India (UOI) and Ors.**

Hon'ble Judges/Coram:
Ranganath Misra and M.M. Dutt, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: K.L. Rathee, S. Balakrishnan and Harish N. Salve, Advs

For Respondents/Defendant: Ranjit Kumar, Pramod Dayal and R.B. Datar, Advs.

Subject: Municipal Tax

Catch Words

Mentioned IN

Acts/Rules/Orders:
Delhi Municipal Corporation Act, 1957 rateable

Cases Referred:

Citing Reference:

Discussed

Case **Note:**

Municipal Tax - Ratable value - manner for determination of rateable value for assessment of property tax prescribed in prior Order - manner of determination of value of property constructed in stages referred for clarification - market value assesses at time of construction need not be assesses again at time of additional construction - assessment authority liable to consider hypothetical rent expected by landlord for whole premises to fix standard rent - directions given in prior Order not ambiguous and needs no further clarification.

JUDGMENT

1. A three-Judge Bench of this Court in the case of Dr. Balbir Singh and Ors. v. Municipal Corporation, Delhi and Ors. MANU/SC/0222/1984 : [1985]152ITR388(SC) elaborately examined the provisions of the Delhi Municipal Corporation Act of 1957 for the purpose of ascertaining the manner of determination of "rateable value" which was necessary for making assessment of property tax under that Act. this Court classified the properties into four categories.:

(1) self-occupied;

(2) partly self-occupied and partly tenanted;

(3) restrictive lease-hold on which construction is raised; and

(4) where the property has been constructed in stages.

So far as the fourth category is concerned (and these applications are concerned with that) this Court said:

The fourth category of premises we must deal with is the category where the premises are constructed in stages. The discussion in the preceding paragraph of this judgment provides an answer to the question as to how the rateable value of this category of premises is to be determined when the premises at the first stage of construction are to be assessed for rateable value, the assessing

authorities would first have to determine g the standard rent of the premises under Sub-section (2)(a) or 2(b) or (1)(A)(2)(b) or (1)(B)(2)(b) of Section 6 as may be applicable and keeping in mind the upper limit fixed by the standard rent and taking into account the various factors discussed above, the assessing authorities would have to determine the rent which the owner of the premises may reasonably expect to get if the premises are let out to a hypothetical tenant and such rent would represent the rateable value of the premises.

Having said so generally, this Court proceeded to examine the different facets of the question and stated:

When any addition is made to the premises at a subsequent stage, three different situations may arise. Firstly, the addition may not be of a distinct and separate unit of occupation but may be merely by way of extension of the existing premises which are self-occupied. In such a case the original premises together with the additional structure would have to be treated as a single unit for the purpose of assessment and its rateable value would have to be determined on the basis of the rent which the owner may reasonably expect to get, if the premises as a whole are let out, subject to the upper limit of the standard rent determinable under the provisions of Sub-section (1)(A)(2)(b) of Section 6. Secondly, the existing premises before the addition might be tenanted and the addition might be to the tenanted premises so that the additional structure also form part of the same tenancy. Where such is the case, the standard rent would be liable to increase under Section 7 and such increased rent would be the standard rent of the premises as a whole and within the upper limit fixed by such standard rent, the assessing authorities would have to determine the rent which the owner may reasonably expect to get if the premises as a whole are let out as a single unit to a hypothetical tenant and in such a case, the actual rent received would be a fair measure of the rent which the owner may reasonably expect to receive from such hypothetical tenant unless it is influenced by extra-commercial considerations. Lastly, the addition may be of a distinct and separate unit of occupation and in such a case, the rateable value of the premises would have to be determined on the basis of the formula laid down by us for assessing the rateable value of premises which are partly self-occupied and partly tenanted. The same principles for determining of rateable value would obviously apply in case of subsequent additions to the existing premises. The basic point to be noted in all these cases is-and this is what we have already emphasised earlier-that the formula set out in Sub-section (1)(A)(2)(b) and (1)(B)(2)(b) of Section 6 can-not be applied for determining the standard rent of an addition, as if that addition was the only structure standing on the land. The assessing authorities cannot determine the standard rent of the additional structure by taking the reasonable cost of construction of

the additional structure and adding to it the market price of the land and applying the statutory percentage of 7-1/2 to the aggregate amount.

Initially an application was made by Common Cause, petitioner in original Writ Petition No. 6945 of 1982 for clarification of the judgment confined to the last category of the fourth group referred to above. Later the Corporation itself made an application for the same purpose and impleaded the Government Servants Cooperative House Building Society as a party to that application. On October 1, 1985, a little more than 10 months after the original judgment, these cases were listed for directions. A two-Judge Bench consisting of Bhagwati, CJ and Pathak, J., as the learned Chief Justice then was, (both of them being parties to the three-Judge Bench decision) gave the following direction :

The assessments made on the properties involved in these cases are set aside if and only if any appeals were filed against such assessments or objections were raised to the draft or provisional assessments and in such cases, fresh assessments are directed to be made in accordance with the law laid down by this Court, save and except in those cases where the question in regard to the valuation of the land in relation to the subsequently constructed additional structures is involved, which question we have yet to decide in CMP. 12513/83 in Writ Petition No. 6945/82 and other connected matters fixed for hearing on 29.10.85. Where no appeals were preferred against the assessments and no objections were filed against draft or provisional assessments, the assessments will not be liable to be set aside and in such cases, the writ petitions and appeals will, to that extent, stand dismissed.

That is how these applications have now been placed for consideration.

2. Long arguments have been advanced before us by Mr. Datar, appearing for the Municipal Corporation; Common Cause and the Government Servants Cooperative House Building Society have resisted the application by advancing counter arguments through their respective counsel. Mr. Datar stated that clarification is confined to cases of subsequent construction raised upon existing construction and the manner of valuing the land for determination of the value of the property. This question was pointedly examined by the three-Judge Bench and at page 475 of the Reports, this Court held:

The market price of the land cannot be added twice over, once while determining the standard rent of the original structure and again while determining the standard rent of the additional structure. Once the addition is made, the formula set out in Sub-section (1)(A)(2)(b) and (1)(B)(2)(b) of Section 6 can be applied only in relation to the premises as a whole and where the additional structure consists of a distinct and separate unit of occupation, the standard rent would

have to be apportioned in the manner indicated by us in the earlier part of this judgment.

this Court had, therefore, clearly indicated that when at a different stage, additional construction was raised on the property already valued, the market value of the land was not to be taken into account as it had already been considered while fixing the valuation of the pre-existing construction. The Corporation did not challenge the correctness of the decision but only wanted clarification. Since the matter has been directly decided and there is absolutely no ambiguity, an application of this type on behalf of the Corporation does not lie. We were told by Mr. Salve, learned Counsel for Common Cause that their application had emanated when the Corporation wanted to act contrary to the judgment of this Court in regard to this category of constructions. Later on the Corporation wanted the cover of a clarificatory order of this Court for the procedure adopted by it for reflecting the market value of the land more than once in situations appertaining to the category.

3. On our finding that this Court has categorically decided that the market value of land is not to be added over again, there is no ambiguity which requires clarification. We decline to make any clarificatory order as there is no necessity. All the Civil Misc. Petitions are accordingly dismissed.