MUNICIPAL CORPORATION OF DELHI

v.

M/S EXPRESS NEWSPAPERS LTD.

JULY 16, 1998

[SUJATA V. MANOHAR AND S. RAJENDRA BABU, JJ.]

Delhi Municipal Corporation Act, 1957/Delhi Rent Control Act, 1958:

S. 114/s. 6.(1) (B)—Property Tax—New building constructed on a portion of land of a pre-existing building—Rateable value of new building—Determination of—Held, While determining rateable value of new construction market value of land is not to be taken into account again, as it has already been considered while fixing value of pre-existing construction.

The respondent assessee acquired lease hold rights in respect of certain land in the city of Delhi and constructed a building on a portion thereof. On completion of the construction the rateable value of the property was determined in the year 1958-59 and was subsequently revised. Later, in 1978, the assessee started constructing a new building on the remaining portion of the said land and the construction completed in 1981, the assessee received notices proposing higher rateable value in respect of both the buildings for subsequent assessment years. In respect of the new building, assessment years involved were 1981-82 to 1986-87. The assessee challenged the notices in the writ petitions before the High Court.

Single Judge of the High Court held that in order to fix the rateable value under Delhi Municipal Corporation Act, 1957, the appellant-Corporation was not justified in applying the provisions of s.9(4) of Delhi Rent Control Act, 1958 for determining the standard rent of the new building and it should have determined the standard rent under s.6 of the Delhi Rent Control Act. The Single Judge, applying the ratio laid down by this Court in the case of *Balbir Singh, held that since the value of the land as in 1958 had been added to the cost of construction of the old building for arriving at its standard rent, the market price of a part of the same land as in 1978, when construction of the new building started, could not be added to the cost of construction of the new building while determining its standard rent. The appeals filed before the Division Bench of the High Court were dismissed. Aggrieved, the Corporation filed the present appeals.**

A It was submitted for the appellant-Corporation that the ratio of *Balbir Singh's* case would be applicable only when any addition was made to the existing structure and not in the case like the present one where a separate structure was erected subsequently on the same plot of land. It was also contended that when the new building camp up on the plot the lessors were entitled to levy conversion charges for change of user, and such conversion B charges levied in 1978 should be added to the market price of land at the commencement of the old construction for arriving at the standard rent/ rateable value.

Dismissing the appeals, this Court

C HELD : 1.1. The High Court has rightly held that the correct section which has to be applied in the instant case is s.6 of Delhi Rent Control Act, 1958. Since it is possible to calculate standard rent under s.6, there is no question of resorting to s.9 (4). [692-G-H]

D 1.2. The High Court was right in holding that the ratio of ***Balbir Singh's**** case applied to the instant case. In that case, this Court has considered the situation where premises are constructed in stages and has expressly dealt with different kinds of additions which may be made to the original structure at a subsequent stage. It has observed that in such additions three different situations may arise, in one of them the additions being of E a distinct and separate unit of occupation. It was observed that the basic point to be noted in such cases is that the formula set out in sub-sections (1)(A)(2)(b) and (1) (B) (2)(b) of s.6 could not be applied for determining the standard rent of an addition as if that addition was the only structure standing on the land. A distinct and separate unit of occupation can be either constructed on the F old existing structure or adjoining it on the same plot of land. [694-C-G]

**Balbir Singh and Ors.* v. *M/s M.C.D. and Ors.*, [1985] 1 SCC 167, relied on.

1.3. In the present case, the premises were constructed in stages. G When the premises at the first stage of construction were to be assessed for rateable value, the assessing authority was to determine the standard rent of the premises then constructed under the applicable sub-section of s.6. In the instant case the relevant provision is contained in s.6(1)(B)(2)(b) subject to the application of sub-section (2), where sub-sections 1(1) (A) (2) (b) or (1) (B) (2) (b) of s.6 are attracted the standard rent will be on the basis of H the cost of construction and the market price of land. 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. Keeping in mind the upper limit fixed by the standard rent and taking into account the various factors discussed in the judgment in *Balbir Singh,* the assessing authority would then have to determine the rent which the owner of the premises may reasonably expect to get if the premises are let out to a tenant. Such annual rent would represent the rateable value of the premises. [693-D, H, E-F] A B

Balbir Singh and Ors. v. *M/s M.C.D. and Ors.,* [1985] 1 SCC 167; *Dewan Daulat Raj Kapoor and Ors.* v. *New Delhi Municipal Committee and Ors.,* [1980] 1 SCC 685 and *Common Cause Registered Society* v. *Union of India and Ors.,* [1987] 4 SCC44, referred to. C

1.4. In the instant case, the addition being a distinct and separate unit of occupation raised at a different stage on the property already valued, the market value of the land was not to be taken into account again as it had already been considered while fixing the valuation of the pre-existing construction. [695-B-C] D

2.1. The Division Bench of the High Court has observed that the point that the lessor was entitled to levy conversion charges for change of user was not taken in the counter affidavit filed before the Single Judge nor was it so argued; and therefore, a disputed question of fact which was not taken or urged before the Single Judge could not be allowed to be taken for the first time in the Letters Patent Appeals . This would apply with even more force to the present appeals form the Letters Patent Appeals. [695-E] E

2.2. Besides, the quantum of conversion charges in the present case was the subject matter of dispute before this Court in the case of *Express Newspapers Pvt. Ltd. and Ors.* ** In view of the fact that the exact nature of the conversion charges has not been placed before the High Court or before this Court and no claim was made by the appellant in the present case on the basis of such conversion charges in the writ petitions, there is no reason to entertain this Plea at this stage. [695-A; 696-C] F G

***Express Newspapers Pvt. Ltd. and Ors* v. *Union of India and Ors.,* [1986] 1 SCC 13, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3832-3837 of 1989. H

A From the Judgment and Order dated 26.8.87 of the Delhi High Court in L.P.A. Nos. 78-83 of 1987.

Ranjit Kumar and Ms. Anu Mohla for the Appellant.

Anoop G. Choudhary, P.H. Parekh, Sanjay Bhartari and Ms. R. Deepamala
B for the Respondent.

The Judgment of the Court was delivered by

MRS. SUJATA V. M.\NOHAR, J. These appeals arise from decision rendered by the Delhi High Court in a group of writ petitions which were filed
C by the respondent M/s. Express Newspapers Ltd. before the Delhi High Court. These writ petitions challenged the rateable value of the property of the respondent consisting of two buildings on land bearing plot nos.9 and 10, Bahadur Shah Zafar Marg, New Delhi.

Under a lease deed dated 17th of March, 1958 executed between the
D respondent and the Secretary (Local Self-Government) to the Chief Commissioner of Delhi, the respondent acquired lease hold rights in respect of plot bearing nos. 9 and 10, Bahadur Shah Zafar Marg, New Delhi. The premium paid by the respondent for acquiring lease hold rights of this land was Rs. 96,955. A building was constructed on these plots. Construction
E commenced in 1958 and when it was completed the total cost of construction came to Rs.31,78,945.47 (excluding the cost of the land). Under the provisions of the Delhi Municipal Corporation Act, 1957, the rateable value of this property was first determined in the year 1958-59. It has been subsequently revised. There were several disputes as to the revision of the rateable value of this building which have been referred to in the judgment of the learned
F Single Judge of the Delhi High Court in these proceedings. We are, however, not concerned with these disputes pertaining to the old building in the present appeals.

At the time when the first building was constructed, an area of 2740 sq.
G yards out of the said plot was required to be kept as an open area because of some drainage pipes passing through that portion. Drainage pipes were subsequently realigned and shifted. Thereafter the respondent commenced construction of a new building on the said portion of the plot, which, for the sake of convenience, can be called the new building, in the year 1978. This construction was completed on 10th April, 1981. On that date, a notice was
H issued by the respondent to the appellant intimating the appellant that the

building had been completed, and permission was sought for use and occupation of the building under Section 346(2) of the Delhi Municipal Corporation Act. This permission was not granted. A

In fact prior to 10th April, 1981, a notice had been served on the respondent to the effect that this new construction was illegal and the respondent should show cause why the same should not be demolished. The show cause notice was challenged and has been ultimately set aside by this Court in separate proceedings which were taken by the respondent in that connection (See *Express Newspapers Pvt. Ltd. and Ors.* v. *Union of India and Ors.*, [1986] 1 SCC 133). B C

In respect of assessment year 1981-82, the respondent received a notice dated 1st of March, 1982 from the appellant in which the respondent was told that the rateable value of the said property was proposed to be substantially increased to Rs. 1,01,02,910. Subsequent notices were received proposing higher rateable values in respect of these buildings for subsequent assessment years. The rateable values so proposed to be fixed have been challenged by the respondent in this group of writ petitions filed by the respondent before the Delhi High Court. This group of writ petitions pertains both to rateable value of the first building as also the rateable value of the new building. The present appeals, however, pertain only to the rateable value of the new building. D E

In respect of the new building, assessment years involved are 1981-82 to 1986-87. Learned Single Judge who heard these writ petitions, has in his common judgment, dealt with the challenge with regard to the assessment of the old building separately and the challenge with regard to the assessment of the new building separately. In respect of the new building the learned Single Judge came to the conclusion that the appellant was not justified in applying the provisions of Section 9(4) of the Delhi Rent Control Act, 1958 in order to determine the standard rent of the new building on the basis of which rateable value has to be fixed under the Delhi Municipal Corporation Act, 1957. The learned Single Judge has held that the standard rent has first to be determined under Section 6 of the Delhi Rent control Act; and that in doing so, the ratio laid by this Court in the case of *Balbir Singh and Ors.* v. *M/s. M.C.D. and Ors.*, [1985] 1 SCC 167 must be applied. So that in determining the standard rent of a new building the cost of land cannot be again taken into account when the cost of the same land has already been taken into account in determining the standard rent for the old building. He F G H

A has held that since the value of the land as in 1958 had to be added to the cost of construction of the old building for arriving at its standard rent and rateable value, the market price of a part of the same land as in 1978 (when construction of the new building started) cannot be added to the cost of construction of the new building while determining the standard rent of the new building. This view has been upheld by a Division Bench of the Delhi B High Court while dismissing Letters Patent Appeals filed before the Division Bench challenging the findings given by the learned Single Judge relating to the determination of the rateable value of the new building. The present appeals are filed from the decision of the Division Bench. We are, therefore, confined to the manner of determination of the rateable value of a new C building constructed on the same plot of land on which an old building already stands.

Under Section 114 of the Delhi Municipal Corporation Act, 1957, property taxes shall be levied on lands and buildings on Delhi and shall consist, inter alia, of a general tax of not less than 10% and not more than 30% of the D rateable value of lands and buildings within urban areas. Under Section 116 of the said Act, the rateable value of any lands or buildings assessable to property taxes shall be the annual rent at which such land or building might reasonably be expected to be let from year to year - less certain amounts which are specified in that section. We are not concerned with other parts of Section 116. Property tax, therefore, is leviable as a percentage of the rateable E value of lands and buildings. Such rateable value has to be determined on the basis of the annual rent at which such land or building might reasonable be expected to be let from year to year.

Where, however, the building whose rateable value is to be determined is subject to any Rent Control legislation, this Court has held in the case of F *Balbir Singh* (supra) that the rateable value of a building is limited by the measure of standard rent arrived at by the assessing authority by applying the principles laid down in the Rent Act and cannot exceed the figure of the standard rent so arrived at by the assessing authority. This Court relied upon its earlier decision in *Dewan Daulat Rai Kapoor and Ors.* v. *New Delhi* G *Municipal Committee and Ors.*, [1980] 1 SCC 685 for this purpose. Therefore, in the present case, we must examine the provisions of the Delhi Rent Control Act, 1958 which are applicable to the old as well as the new building in question.

Section 6 of the Delhi Rent Control Act, 1958 deals with standard rent. H The relevant provisions of Section 6 and Section 7 as they stood at the

relevant time are as follows: A

"6. Standard rent:

(1) Subject to the provisions of subsection (2), 'standard rent', in relation to any premises, means-

(A) in the case of residential premises- B

(1) .....

(2) Where such premises have been let out at any time on or after the 2nd day of June, 1994,-

(a) C

(b) in any other case, the rent calculated on the basis of seven and one-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. D

Provided.....

(B) In the case of premises other than residential premises-

(1) ..... E

(2) Where the premises have been let out at any time on or after the 2nd day of June, 1994,-

(a) .....

(b) in any other case, the rent calculated on the basis of seven and one-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. F

Provided..... G

(2) Notwithstanding anything contained in sub-section (1),-

(a) .....

(b) In the case of any premises, whether residential or not, constructed on or after the 9th day of June, 1955, including H

A premises constructed after the commencement of this Act, the annual rent calculated with reference to the rent agreed upon between the landlord and the tenant when such premises were first let out shall be deemed to be the standard rent for a period of five years from the date of such letting out.

B (3) .....

7. *Lawful increase of standard rent in certain cases and recovery of other charges.*- (1) Where a landlord has at any time, before the commencement of this Act with or without the approval of the tenant or after the commencement of this Act with the written approval of C the tenant or of the Controller, incurred expenditure for any improvement, addition or structural alteration in the premises, not being expenditure on decoration or tenantable repairs necessary or usual for such premises, and the cost of that improvement, addition or alteration has not been taken into account in determining the rent of the premises, the landlord may lawfully increase the standard rent D per year by an amount not exceeding seven and one-half per cent of such cost.

(2) ....."

E In the present case, the relevant provision is contained in Section 6(1)(B)(2)(b) subject to the application of sub-section (2). Under Section 9(4), however, it is provided as follows:

"9(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 F 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."

G The appellant has purported to fix the standard rent of the new building under Section 9(4). Both the Single Judge as well as the Division Bench have, however, rightly held that the correct section which has to be applied is Section 6 and the relevant parts thereof. As it is possible to calculate standard rent under Section 6 there is no question resorting to Section 9(4).

H The entire question of fixation of rateable value in the cases where the

Delhi Rent Control Act is applicable to the premises, has been considered at length by this Court in the case of *Balbir Singh* (supra). After considering in detail the provisions of the Delhi Rent Control Act and the Delhi Municipal Corporation Act this Court has given its findings in respect of four different categories of cases. It has dealt with:

(1) Determination of rateable value of self-occupied residential and non-residential premises;

(2) Determination of rateable value of premises which are partly self-occupied and partly tenanted;

(3) Building whose rateable value is to be determined stands on land which 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 premises are constructed in stages.

The fourth category directly covers the present case. In the fourth category of premises, when the premises at the first stage of construction are to be assessed for rateable value, the assessing authority has to determine the standard rent of the premises then constructed under the applicable sub-section of Section 6. Where sub-sections (1)(A)(2)(b) or (1)(B)(2)(b) of Section 6 are attracted the standard rent will be on the basis of the cost of construction and the market price of land. Keeping in mind the upper limit fixed by the standard rent and taking into account the various factors discussed in the judgment in *Balbir Singh* (supra) the assessing authority would then have to determine the rent which the owner of the premises may reasonably expect to get if the premises are let out to a tenant. Such annual rent would represent the rateable value of the premises.

However, this Court has observed in the above judgment that, "The formula set out in sub-section (1)(A)(2)(b) and (1)(B)(2)(b) of Section 6 cannot 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 land and applying the statutory percentage of 7 1/2 to the aggregate amount. 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

A 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 for occupation, the standard rent would have to be apportioned in the manner indicated in this judgment".

B It was contended before us that the ratio of *Balbir Singh's* case (Supra) would be applicable only when there is any addition made to the existing structure. It will not apply where a separate structure is erected later on the same plot of land. This contention is not borne out by the ratio of the decision in *Balbir Singh's* case (Supra). In paragraph 19, while dealing with C the fourth category of cases, this Court has expressly dealt with different kinds of additions which may be made to the original structure at a subsequent stage. It has observed (page 194) that 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 D structure would have to be treated as a single unit for the purpose of assessment. 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 forms part of the same tenancy and thirdly, the addition may be of a distinct and separate unit of occupation and in such a E case the rateable value of the premises would have to be determined on the basis of the formula earlier laid down in the judgment for assessing the rateable value of the premises which are partly self-occupied and partly tenanted. It is observed thereafter, "The basic point to be noted in all these cases is - and this is what we have already emphasised earlier -that the F formula set out in sub-sections (1)(A)(2)(b) and (1)(B)(2)(b) of Section 6 cannot be applied for determining the standard rent of an addition, as if that addition was the only structure standing on the land". A distinct and separate unit of occupation can be either constructed on the old existing structure or adjoining it on the same plot of land. The ratio of *Balbir Singh* (Supra) will apply in either case.

G The Single Judge as well as the Division Bench have rightly come to the conclusion that the ratio of *Balbir Singh's* case (Supra) applies to the present case. It is also pointed out before us that an application for clarification in *Balbir Singh's* case (Supra) has been dismissed by this Court. In the case of *Common Cause Registered Society* v. *Union of India & Ors.*, [1987] 4 SCC H 44, this Court, after citing the relevant passages from *Balbir. Singh's* case

(Supra), and noting that an application for clarification was already dismissed on certain other aspects and the remaining applications were before it, observed that no clarification is required in cases relating to subsequent construction as a separate unit. This Court rejected the contention that the ratio of *Balbir Singh's* case (Supra) was confined only to cases of subsequent construction upon existing construction and would not apply to a separate construction on the same land. It observed, (at page 47) "This Court had, therefore, 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". This Court, therefore, said that there was no ambiguity in the ratio laid down by *Balbir Singh's* case (Supra).

It was also contended before us that when the additional construction came up on the said plot, the lessors were entitled to levy conversion charges for change of user. Such conversion charges levied in 1978 should be added to the market price of land at the commencement of the old construction for arriving at the standard rent/rateable value. This contention was not raised before the Single Judge. The Division Bench in its judgment has observed that this point does not appear to have been taken in the counter affidavit filed before the Single Judge nor was it so argued. Therefore, a disputed question of fact which was not taken or urged before the learned Single Judge could not be allowed to be taken for the first time in the Letters Patent Appeals. This would apply with even more force to the present appeals from the Letters Patent Appeals.

The quantum of such conversion charges in the present case was the subject matter of dispute before this Court in the case of *Express Newspapers Pvt. Ltd. and Ors.* (Supra). This Court in its judgment (from paragraphs 185 to 198) has dealt with the determination of the amount of such conversion charges. It has, inter alia, said that such conversion charges should be determined by a duly constituted Tribunal or in a suit. We fail to see how these conversion charges can be considered as a part of the market price of land at the commencement of old construction. Under Clause 2(7) of the Lease Deed dated 17th March, 1958 the Lessee will not, inter alia, permit the said premises to be used for any purpose otherwise than as a Newspaper Press with such number of residential flats on the topmost floor as the Chief Commissioner of Delhi, may in his absolute discretion, allow for bona fide staff of the Press. From the limited material available on record, conversion charges appear to have been claimed by the lessees under this clause.

A The lessees also appear to have claimed conversion charges for the change the use of 2740 Sq. yds. of open area originally required to be kept open because of the drainage lines running through it. The respondent, after diverting the drainage pipes was permitted to built on this area. These charges were, therefore, for a change in the use of the land or buildings at a point of time subsequent to the lease. They are not by way of additional price of B the land. In view of the fact that the exact nature of these conversion charges has not been placed before the High Court or before us, and no claim was made by the appellant in the present case on the basis of such conversion charges in the writ petitions, we do not see nay reason to entertain this plea at this stage.

C The appeals are, therefore, dismissed with costs.

R.P. Appeals dismissed.