* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved On: December 01, 2011*
Judgment Delivered On: December 08, 2011

\+ **LPA 12/2011**

B.S.VERMA ..... Appellant
Through: Appellant in person.

versus

MUNICIPAL CORPORATION OF DELHI ....Respondent
Through: Ms.Mini Pushkarna, Ms.Prerna Verma & Mr.Rajesh Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE S.P. GARG

PRADEEP NANDRAJOG, J.

1. The appellant is aggrieved by the judgment and order dated 1st July, 2010 passed by the learned Single Judge dismissing WP(C) No.1065/2010 upholding the rateable value, determined by MCD, of Property No.E-305 East of Kailash, New Delhi at ₹1,07,700/- with effect from 01.04.1999.

2. Since the appellant appeared in person, and as would be evident from the facts noted here-in-after, has the habit of resiling from what ever he says, we would prefer to note the relevant facts with reference to the assessment file maintained by the Corporation in respect of the property in question.

3. The dispute began when the Municipal Corporation of Delhi proposed to enhance, with effect from 01.04.1999, the rateable value from the existing rateable value of ₹11,400/- to

₹1,50,000/- on account of letting of the ground floor. It be highlighted that the rateable value in sum of ₹11,400/- was on cost basis and on the assumption that the entire property was self occupied. At an inspection statedly carried out on 21.1 2000 and in respect whereof the relevant form was filled up by the Inspector at serial No.86774, it was recorded that the Inspector had found two tenants occupying the ground floor whose names were Vijay and Neeru Singh who were statedly paying a monthly rent of ₹5,000/- each for the two portions on the ground floor under their tenancy i.e. the total monthly rent of the ground floor was ₹10,000/-.

4. The file of the Corporation shows that the appellant filed objections on 25.4.2000 in which he denied that the property was let out.

5. The file shows that a call letter was sent to the appellant to enable him to make oral submission before the assessment order was finalized and that at the hearing held, he denied that the ground floor of the property was let out. Preferring to rely upon the report of the Inspector, vide order dated 14.8.2002, the Assistant Assessor & Collector confirmed the proposed revision and thus with effect from 1.4.1999 enhanced the rateable value to ₹1,50,000/-.

6. Since appellant made constructions on the second floor and the third floor on 25.11.2002 another notice was issued proposing to enhance the rateable value to ₹2,27,000/- with effect from 1.4.2002 and the said notice was finalized vide order dated 30.3.2006 determining the rateable value at ₹1,64,080/- and not at the figure it was proposed to be enhanced.

7. The appellant sought a rectification of the two orders notwithstanding he having challenged the same; and proceeding to rectify the first, the Assessing Officer passed an order on 6th January 2002 reducing the rateable value to ₹1,07,700/- with effect from 1.4.1999 and the logic for the same is that qua the ground floor it was treated on rent @₹10,000/- per month and qua the rest of the building it was treated as self-occupied and hence property tax required to be fixed on proportionate cost basis relatable to the self-occupied area.

8. The rectification order dated 30.3.2006 is preceded by a recording in the order-sheet dated 26.12.2005, which would reveal that the grievance of the appellant was that the rateable value in sum of ₹1,50,000/- with effect from 1.4.1999 was wrong not on account of the ground floor not being on rent but on account of the fact that for the remainder property correct principle of proportionate cost of land and proportionate cost of construction to the basis to determine the standard rent was not adopted and as per the same, though not recorded in the order-sheet but what need to be highlighted by us is that the previous rateable value of ₹11,400/- had to be apportioned qua the ground floor and the remainder; for the reason it was determined on cost basis. The rateable value qua the ground floor on cost basis had then to be replaced with rateable value determined on rental basis and thereafter adding the remainder of the rateable value determined on cost basis, the gross rateable value had to be arrived at. This has been done when the rectification order was passed.

9. The rectification order has been upheld by the Tax Tribunal as also by the learned Single Judge.

10. The reasoning is that the file of the Corporation would show that on 15th November 2002, when a hearing was held, the appellant admitted that Neeru Singh and Vijay were occupying the ground floor but claimed that the two were not paying any rent as they were his niece and nephews respectively. It has been noted that the appellant had refused to sign the proceedings. The stand of the appellant was rejected consistently, being that, the Inspector had demanded a bribe from him and thus had recorded incorrect facts while inspecting the property and even the Assessing Officer had acted dishonestly, upon the reasoning that it would be difficult to presume that the entire department was against the appellant. The learned Single Judge, in para 12 of the impugned order, has noted another fact. The said fact was that the order dated 22.2.2010 passed by the learned Single Judge recorded that the petitioner stated in Court that apart from he, his wife, his married son with his family as also his unmarried daughter were occupying the entire property which as of the year 2010 consisted of a ground floor, a first floor, a second floor and a third floor and when the writ petition was finally heard he disowned said statement. Therefrom the habit of the appellant making and disowning statements has been inferred. But, the decision rests upon the well known principle of law that unless shown to be perverse or a result of relevant material being ignored or irrelevant material considered, findings of fact arrived at by Tribunals would not be interfered by Writ Courts. It has been opined by the learned Single Judge

that the finding pertaining to the ground floor being let out was a finding of fact and the material to support the same was the inspection report as also the proceedings recorded on 26.12.2005; albeit without the signatures of the appellant thereon.

11. At the hearing of the appeal, learned counsel for the respondent highlighted the relevance of the learned Single Judge noting the conduct of the appellant to resile from what was recorded by the learned Single Judge in the order dated 22.2.2010 when the writ petition was finally heard. Learned counsel highlighted that in the context of the building consisting of a ground floor, a first floor, a second floor and a third floor on a plot of land ad-measuring 182.55 sq.yd. it would be difficult to believe that a family consisting of the appellant, his wife, a married son having a wife and children (number whereof appellant refused to furnish) and an unmarried daughter would be occupying four floors and when this was sought to be quizzed from the appellant he resiled even from the statement that he, his wife, his married son along with the family and his unmarried daughter were occupying the building.

12. If not cantankerousness, aforesaid would show the habit of the appellant to adopt a stand of convenience at a given point of time, ignoring the illogic of the said stand of convenience taken. We have a ready illustration. If the appellant did not tell the learned Single Judge on 22.2.2010 that he, his wife, his married son with his family and his unmarried daughter were occupying the entire building, and ignoring that the learned Single Judge so recorded in the order,

and upon the assumption that the learned Single Judge did so of his own as stated by the appellant, the position would be that the appellant would now be admitting that he alone is occupying the property. Appellant hardly realizes that the strength of his case is weakened if number of his family members occupying the property decreases.

13. We are of the opinion that the appellant is avoiding to pay property tax at the correct rateable value.

14. We highlight that the writ petition and the appeal has enough annexures by way of newspaper reports highlighting rampant corruption in the bureaucracy where-from the appellant seeks to urge that this Court should proceed on the assumption that everything is corrupted in India, an assumption which this Court cannot assume.

15. We concur with the view taken by the learned Single Judge that there is enough material to show that the ground floor of the property was rented and thus we dismiss the appeal imposing costs in sum of ₹20,000/- upon the appellant clarifying that MCD would be entitled to recover the same as a charge on the property if the appellant does not pay the same within six weeks from today.

(PRADEEP NANDRAJOG)
JUDGE

(S.P.GARG)
JUDGE

DECEMBER 08, 2011
dk