

कार्यालय नगर आयुक्त
नगर निगम, कानपुर

पत्रांक :- 2204/3/4

दिनांक :- 26-2-04

मुख्य अभियंता
अनगर आयुक्त जोन 1,2,3,4,5 व 6
अधिसाधी अभियंता जोन 1,2,3,4,5 व 6

नगर निगम अधिनियम की धारा 174(क) के अन्तर्गत भवनों के वार्षिक मूल्य की गणना अभियंत्रण विभाग द्वारा लोक निर्माण विभाग की दरों पर भवन की आयु के अनुसार डेप्रीशिएशन देते हुए की जाती है तथा संलग्न भूमि का मूल्य जिलाधिकारी द्वारा निर्धारित सर्किल रेट को आधार मान कर मूल्यांकन किया जाता है।

अनावासीय भवनों में पुरानी आबादी वाले क्षेत्रों में पूर्व निर्धारित कर तथा उपरोक्त विधि द्वारा निर्धारित कर में भारी अन्तर आ रहा है तथा इस विषय में भुझे दिन प्रतिदिन नागरिकों के प्रार्थना पत्र प्राप्त हो रहे हैं। इन प्रकरणों का विश्लेषण करने पर पाया गया कि इन क्षेत्रों में भूमि का जिलाधिकारी द्वारा निर्धारित मूल्य पूर्व कर निर्धारण के समय के सापेक्ष कई गुना बढ़ गया है, किन्तु उसके सापेक्ष किराया दरों में वृद्धि नहीं हुयी है।

ऐसे भवनों के पूर्व निर्धारित व नव निर्धारित करों में 100 गुने तक अधिक वृद्धि हो जाने के कारण कर निर्धारण के प्रकरण नागरिकों को स्वीकार नहीं हैं। वे न्यायालयों में चले जा रहे हैं, जिससे वसूली प्रभावित हो रही है। अतः ऐसे कर निर्धारण को व्यावहारिक एवं स्वीकार योग्य बनाने की आवश्यकता है ताकि लगाये गये कर की वसूली सम्भव हो सके। इसे दृष्टिगत रखते हुए कर निर्धारण की कार्यवाही व प्राप्त आपत्तियों की सुनवाई में निम्न पहलुओं को दृष्टिगत रखा जाय।

वार्षिक मूल्य की गणना भवन के साथ संलग्न भूमि का अभिप्राय निम्न रखा जाय

1-नगर भूमि (अधिकतम सीमा और विनियमन) अधिनियम 1976 की धारा (2) (छ) में संलग्नक (एपार्टीनेन्ट) भूमि की परिभाषा निम्न प्रकार से की गयी है :-

किसी ऐसे क्षेत्र में जहाँ निर्माण विनियम है वहाँ ऐसे भवन के उपयोग के लिए खुले स्थान के रूप में रखे जाने के लिए ऐसे विनियमों के अधीन अपेक्षित भूमि का न्यूनतम विस्तार, जो किसी भी दशा 500 वर्गमीटर से अधिक नहीं होगा।

"land appurtenant" in relation to any building, means -
in an area where there are building regulations, the minimum extent of land required under such regulations to be kept as open space fore to enjoyment of such building, which in no case shall exceed five hundred square metres.

2-शासनादेश संख्या 2014/नी-9-2000-793/97 दिनांक 23 जून 2000 के पैरा 5 के अनुसार अनावासीय भवनों के वार्षिक किराया मूल्यांकन के निर्धारण में यदि भवन का 3 वर्ष के भीतर आय कर विभाग में मूल्यांकन दाखिल किया हो तो वही मान्य होगा। अतः कर निर्धारण की नोटिस में एक पैरा जोड़ते हुए भवन स्वामी से उक्त सूचना अवश्य मांगी जाये तथा सुनवाई के दौरान शासनादेश के अनुसार निर्णय दिया जाये।

3-आपत्तियों की सुनवाई में केन्द्र व राज्य सरकार के सरकारी/अर्द्धसरकारी कार्यालय जो किराये पर उठे हैं उनके निर्धारित किराये को भी संज्ञान में लेते हुए वार्षिक मूल्यांकन निर्धारण में उपयोग किया जा सकता है।

उपरोक्त के बावजूद यदि किसी प्रकरण में आपको अप्रत्याशित वृद्धि प्रतीत होती है तो उसे अवश्य संज्ञान में लाया जाये, उसमें विचार योग्य बिन्दुओं को भी अवगत कराया जाये ताकि विचार कर निर्णय लिया जा सके।

22/12/2004
(एसओ पीओ मिश्र)
नगर आयुक्त

प्रतिलिपि :-

अपर नगर आयुक्त (प्रथम) व (द्वितीय) को आवश्यक कार्यवाही हेतु सूचनार्थ।

22/12/2004
(एसओ पीओ मिश्र)
नगर आयुक्त

कार्यालय - नगर आयुक्त
नगर निगम, कानपुर ।
आदेश

पत्रांक :- 2320/3/4

दिनांक :- 25 03 04

कानपुर नगर निगम में कारारोपण हेतु अनावासीय भवनों के मूल्यांकन में एक रूपता लाने के दृष्टिकोण से जारी किये गये आदेश संख्या 1889/3/प दिनांक 02.01.04 के विन्दु-02 को निस्तारित करते हुये निम्नानुसार संशोधन किया गया है। पिछले वर्ष की भौति भवन के निर्माण मूल्य का मूल्यांकन हेतु निर्माण लागत दर ₹0 4,500/- प्रति वर्ग मीटर तथा टीन/ एरबेस्टरा शेड से निर्मित भवन की लागत दर ₹0 3,000/- प्रति वर्ग मीटर होगी। उपरोक्त सन्दर्भित निर्मित आदेश के शेष विन्दु यथावत रहेंगे।

[Handwritten Signature]
(एसओ पीओ मिश्र)
नगर आयुक्त

प्रतिलिपि :-

1. अपर नगर आयुक्त (प्रथम/ द्वितीय) को सूचनार्थ।
2. मुख्य अभियन्ता को सूचनार्थ एवं आवश्यक कार्यवाही हेतु।
3. समस्त उप नगर आयुक्त को सूचनार्थ एवं आवश्यक कार्यवाही हेतु।

[Handwritten Signature]
(एसओ पीओ मिश्र)
नगर आयुक्त

- (ii) Under the second head, if the building has been constructed before the 'appointed day' with a 'dwelling unit' in it, then apart from the land given in (i) (a) or (i) (b) as 'land appurtenant' for that building, an additional area of 500 square metres of land (if there is any) contiguous to the land given in (i) (a) or (i) (b) will also be included in 'land appurtenant'. Here it must be emphasised that an additional area of 500 square metres will be given only for such a building which has been constructed before the 'appointed day' with a 'dwelling unit' in it. The meanings of the terms 'appointed day' and 'dwelling unit' have already been seen.

An illustration will make the point clear. Suppose under head (i), 'land appurtenant' for a building is found to be equivalent to 500 square metres. Further, suppose the building has been constructed before the 'appointed day' with a 'dwelling unit' in it. Now in such a case apart from the said 500 square metres, an additional area up to the maximum extent of 500 square metres, if available, will also be included in the 'land appurtenant' to the particular building. Accordingly, 'land appurtenant' for the said building will be equal to 500 square metres *plus* 500 square metres, i. e., 1000 square metres.

It will be noticed that head (i), discussed above, does not speak of the date of the construction of the building, while head (ii) requires that building must have been constructed before the appointed day with a dwelling unit in it. Hence, if there is no dwelling unit in a building, then the case will be covered by only head (i) whatever may be the date of construction of the building, and no benefit under head (ii) will be given. Further, if a building has been constructed on or after the appointed day with a dwelling unit therein, then too the case will be covered by head (i) alone, and no benefit under head (ii) will be given. However, in the guide-lines contained in letter No. 1/132/76-UCU dated 12-11-76 issued by the Ministry of Works and Housing, the Government of India has advised the State Governments that if a building *with a dwelling unit* is being constructed *on the appointed day* with the approval of the appropriate authority, then requests for the additional extent of 500 square metres under head (ii) above should be favourably considered by the State Governments under Section 20 (1) (b) of the Act. (Under Section 20 (1) (b) the State Government has power to exempt the vacant land in excess of ceiling limit in case of undue hardship. Hence, although a building with a dwelling unit which is being constructed on the appointed day is not entitled to additional extent of 500 square metres, but the State Government may grant the same under Section 20 (1) (b); and according to the said guidelines, such a request by a person should be favourably considered by the State Government). A gist of the said guide-lines is being reproduced below :—

"Land appurtenant to a building with a dwelling unit which is being constructed on the appointed day :—

"Should the additional extent of land of 500 sq. mts. referred to in Section 2 (g) be allowed also in the case of a building (with a dwelling unit therein) which was being constructed on the appointed day with the approval of the appropriate authority ?

"The Government of India advises the State Governments to consider such requests favourably under Section 20 (1) (b) and allow the additional land contiguous to the open space not exceeding 500 sq.

- (ii) in an area where there are no building regulations, an extent of five hundred square metres contiguous to the land occupied by such building,

and includes, in the case of any building constructed before the appointed day with a dwelling unit therein, an additional extent not exceeding five hundred square metres of land, if any, contiguous to the minimum extent referred to in sub-clause (i) or the extent referred to in sub-clause (ii), as the case may be :

(h) to (q)

COMMENTS

Generally speaking "land appurtenant" to building means land which is needed for the enjoyment of the building and is enjoyed with it being part of the same.^{6d}

Now clause (g) gives the meaning of the words "land appurtenant" in relation to any building for the purposes of the Act. This clause can be studied in two heads :

- (i) In this head there may be two types of cases :

(a) If the building is situated in an area where there are building regulations, then the "land appurtenant" means the minimum extent of land required under such regulations to be kept as open space for the enjoyment of such building, subject to a maximum of five hundred square metres. While dealing with the definition of "building regulations" in Section 2 (b), it has been seen that these regulations have been made under various laws as well as in master plans for achieving better town-planning by preventing haphazard constructions of buildings in urban areas. In these regulations a minimum area around the building is required to be left open for the convenient enjoyment of building (as also for town planning and environmental purposes). If the minimum area fixed under regulations is less than five hundred square metres, then the land appurtenant will be equivalent to the minimum area only (and not five hundred square metres). On the other hand, if the minimum area fixed under regulations is more than five hundred square metres, then the land appurtenant will be only 500 sq mts. (and not the entire minimum area).

(b) If the building is situated in an area where there are no building regulations, then "land appurtenant" will be equivalent to five hundred square metres of land "contiguous to the land occupied by such building."

6d. *State v. Smt. Ram Sri*, AIR 1976 All. 121 (Pr. 38), *Maharaj Singh v. State of U. P.*, AIR 1976 SC 2602 (Prs. 23, 25 to 27).

as a tenant in common. We, therefore, do not find anything wrong in excluding a joint Hindu family. The impugned Act applies to Hindus, Mohamedans and Christians alike. By the exclusion of a joint Hindu family the members of a joint Hindu family, whether governed by the Mitakshara School or the Dayabhaga School, were brought at par with others. The contention that the impugned Act offends against Art. 14 must, therefore, fail."

Before parting with the topic of "family" it will not be out of place to mention certain guide-lines :

(1) "Property held by husband and wife.

In case both husband and wife hold property the property they hold should be stubbed together for the statement under Section 6".^{6a}

(Min. of W. & H. letter No. 1/72/76-UCU dated 21.5.1976).

(2) "Aggregation of vacant land held by a family.

Since the "family" is treated as a unit on which the ceiling is imposed, vacant lands held severally by the individual members of a family have to be added together and the ceiling fixed in relation to the family as a unit".^{6b}

(Min of W. & H. letter no. 1/132/76-UCU dated 29.12.1976).

(3) "Status of the HUF (Hindu Undivided Family).

A person as defined in Section 2 (i) does not include a H.U.F.

Only shares of individual members of the Hindu undivided family are to be added together in calculating the extent of land held by the individual members".^{6c}

(Min. of W. & H. letters No. 1/266/76-UCU dated 16.11.1976 and No. 1/132/76-UCU dated 29.12.1976).

Land Appurtenant [Sec. 2 (g)]

Section 2. In this Act, unless the context otherwise requires,—

(a) to (f)

(g) "**land appurtenant**", in relation to any building, means—

(i) in an area where there are building regulations, the minimum extent of land required under such regulations to be kept as open space for the enjoyment of such building, **which in no case shall exceed five hundred square metres ; or**

6a. Compendium of the Urban Land (Ceiling & Regulation) Act, 1976 (No. 33 of 1976) p. 9.

6b. *Ibid.*

6c. *Ibid.*