

(1970) 09 SC CK 0041

In the Supreme Court Of India

Case No : Civil Appeal No's. 1650-1652 of 1966

Guntur Municipal Council

APPELLANT

Vs

Guntur Town Rate Payers" Association

RESPONDENT

Date of Decision : 18-09-1970

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 82, 82(2)

Citation : AIR 1971 SC 353 : (1971) 2 MLJ 7 : (1970) 2 SCC 803 : (1971) 2 SCR 423

Hon'ble Judges : J. C. Shah, J;A. N. Grover, J

Bench : Division Bench

Advocate : B.V. Subramanyam and A.V. Rangam, for the Appellant; M. Natesan and K. Jayaram, for the Respondent

Final Decision : Allowed

Judgement

Grover, J.—These appeals have been brought by special leave from a judgment of the Andhra Pradesh High Court.

2. Three suits, namely, O.S. Nos. 222, 223 and 466 of 1960 were filed in the Guntur court in which the relief claimed was for a declaration that the general revision of the rental values of the houses and buildings effected by the Guntur Municipality in the year 1960 for the purpose of assessment of tax was ultra vires and illegal and for a consequential relief of a permanent injunction restraining the municipality from acting on the special notices issued to the tax payers.

3. Section 81 of the Madras District Municipalities Act 1920, hereinafter called the "Municipalities Act" gives the description and classes of property tax and other taxes leviable by the municipality. Section 82 gives the method of assessment. It is provided by Sub-section (2) of that section that the annual value of lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to be let from month to month or from year to year less certain deductions. The District Munsif by a common judgment

delivered in the three suits held that the annual value had to be computed in the context of the rent that was payable under the Rent Control legislation. The suits were decreed and a declaration was granted that the general revision made by the Guntur Municipality in 1960 by increasing the rental value of houses to more than the rental value which prevailed on the dates provided in the Rent Control Acts in force prior to 1960 was ultra vires and illegal and permanent injunctions were granted restraining the municipality from acting upon the special demand notices issued to the rate payers and from collecting the enhanced tax. Appeals were filed and the first appellate court substantially upheld the judgment of the trial court though certain modifications were made in the decrees passed by that court. Appeals were taken to the High Court but the same were dismissed.

4. The only point which we are called upon to decide is whether before the fixation of a fair rent of any premises the municipality was bound to make assessment in the light of the provisions contained in the Rent Acts. A subsidiary question has also arisen whether the courts below were justified in referring to and passing the decrees keeping in view the Rent Acts which were in force prior to the enactment of the Andhra Pradesh Buildings (Lease Rent and Eviction) Control Act, 1960, hereafter called the "Act". Now Section 82(2) of the Municipalities Act, as stated before, makes provision for the fixation of annual value according to the rent at which lands and buildings may reasonably be expected to be let from month to month or from year to year less the specified deduction. The test essentially is what rent the premises can lawfully fetch if let out to a hypothetical tenant. The municipality is thus not free to assess any arbitrary annual value and has to look to and is bound by the fair or the standard rent which would be payable for a particular premises under the Rent Act in force during the year of assessment. In *The Corporation of Calcutta Vs. Sm. Padma Debi and Others*, . it was held that on a fair reading of the express provisions of Section 127(a) of the Calcutta Municipal Act 1923 the annual rent could not be fixed higher than the standard rent under the Rent Control Act. There the Rent Control Act of 1950 came into force before the assessment was finally determined and it was observed that the Corporation had no power to fix the annual valuation of the premises higher than the standard rent under that Act. The learned Counsel for the appellant has not made any attempt nor indeed he could do so to contest the above view. What has been stressed by him is that Section 7 of the Act makes it clear that it is only after the fixation of the fair rent of a building that the landlord is debarred from claiming or receiving the payment of any amount in excess of such fair rent. It is urged that so long as the fair rent of a building or premises is not fixed the assessment of valuation by a municipality need not be limited or governed by the measure provided by the provisions of the Act for determination of fair rent. Logically such buildings or premises as are not let out to a tenant and are in the self occupation of the landlords would also fall within the same principle if no fair rent has even been fixed in respect of them.

5. We are unable to agree that on the language of Section 82(2) of the

Municipalities Act any distinction can be made between buildings the fair rent of which has been actually fixed by the Controller and those in respect of which no such rent has been fixed. It is perfectly clear that the landlord cannot lawfully expect to get more rent than the fair rent which is payable in accordance with the principles laid down in the Act. The assessment of valuation must take into account the measure of fair rent as determinable under the Act. It may be that where the Controller has not fixed the fair rent the municipal authorities will have to arrive at their own figure of fair rent but that can be done without any difficulty by keeping in view the principles laid down in Section 4 of the Act for determination of fair rent. This would of course be with regard to the assessment of valuation for the period subsequent to the coming into force of the Act. For the prior period it would be the Rent Act in force during the year of assessment in the light of the provisions of which the figure of the fair rent would have to be determined and assessment made accordingly.

6. There is a good deal of confusion in the judgments of the trial court and the first appellate court with regard to the Rent Acts the provisions of which would have to be kept in view for the assessment of valuation for the purpose of Section 82(2) of the Municipalities Act. The decrees which have been granted suffer from the same infirmity. It has been pointed out by the learned Counsel for the respondents that according to the rules contained in the fourth schedule to the Municipalities Act the assessment books have to be revised once in every five years and the quinquennial assessment thus made enures for that period. But it appears from the rules that a procedure has been prescribed for changing the assessment whenever a case is made out for doing so. We are not concerned with the procedural difficulties which may be experienced; we have to declare what the law is and as appears to be well settled the assessment of valuation for the purpose of tax must be made in accordance with and in the light of the provisions of the Rent Act which would be in force during the period of assessment.

7. In the result the decrees which have been granted are hereby modified by declaring that the general revision made by the Guntur Municipality by increasing the rental valuation of houses and buildings beyond the fair rent determinable under the Rent Act in force for the period of assessment shall be illegal and ultra vires and a permanent injunction shall issue restraining the municipality from realizing any amount in excess of such tax which may be found due on the valuation fixed according to the principles laid down in our judgment. In view of the entire circumstances the parties are left to bear their own costs in this Court.