(1986) 02 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4106 of 1977

Gurdial Singh APPELLANT

Vs

The Municipal Corporation, Jullundur and Another RESPONDENT

Date of Decision : 03-02-1986

Acts Referred:
East Punjab Urban Rent Restriction Act, 1949 — Section 4
Punjab Municipal Corporation Act, 1976 — Section 83, 93, 93(c)

Citation : (1986) 02 P&H CK 0012

Hon'ble Judges : D.V. Sehgal, J

Bench : Single Bench

Advocate : G.R. Majithia and Mr. Sanjay Majithia, for the Appellant; J.S. Chahl, for the Respondent

Judgement

D.V. Sehgal, J.—This judgment will dispose of C. W. Ps. Nos. 4106 of 1977 and 2152 of 1983 as common questions of law and fact are involved therein.

2. Gurdial Singh Petitioner owns property No. B. IX/1-255 situate in Civil Lines, Jalandhar within the municipal limits. By taking resort to the provisions of the Punjab Municipal Act, 1911 (hereinafter called ''the Act''), the Municipal Committee, Jalandhar, assessed the gross annual rental value of this property at Rs. 11,880/- vide order dated 30.3.1971 Annexure P. 1 for purposes of house-tax. He filed an appeal which was, however, dismissed by the Commissioner, Jalandhar Division, vide order dated 30.10.1972 Annexure P. 3 on the ground that he has not appended with the appeal a certificate from the Municipal Committee in proof of having paid the tax. He asserts that this order was erroneous in view of the judgment dated 23.11.1972 Annexure P. 3 of this Court in C. W. P. No. 2951 of 1972 (M/s Preet Palace Theatres v. Municipal Committee, Ludhiana C.W. P. No. 2951 of 1972). A New assessment was prepared vide Resolution No. 13-A dated 7.3 1975 by the Municipal Committee and the assessment already made was adopted A notice dated 26.3.1975 Annexure P. 4 was issued to him. He preferred an appeal to the Deputy Commissioner,

Jalandhar, but the same was dismissed vide order dated 31.5.1977 Annexure P. 6 on the ground that it was barred by limitation. He has accordingly challenged the aforesaid assessment through C. W. P. No 4106 of 1977.

3. Later, the Punjab Municipal Corporation Act, 1976 (hereinafter called the ''Corporation Act'') came into force and the property of the Petitioner came within the limits of the Municipal Corporation, Jalandhar. Assessment for purposes of house-tax was to be made in accordance with provisions of Section 83 of the Corporation Act However, the gross annual rental value was determined at Rs. 13,200/- vide order dated 25.10.1979 Annexure P 1 to C. W. P No. 2152 of 1983. His objections dated 3.10.1979 to the proposed enhancement of annual rental value were rejected. He filed an appeal before the Commissioner, Jalandhar Division, Respondent No 2 in the said petition but the same was dismissed vide order dated 29.9.1982 Annexure P. 4 to C. W. P. No. 2152 of 1983. He, thus, challenged the aforesaid order of assessment and the order passed in appeal through C. W. P. No. 2152 of 1983.

4. The learned Counsel for the Petitioner Shri G. R. Majithia, Senior Advocate, and Shri Roshan Lal Sharma Advocate have not disputed the assessment of the annual rental value with respect to a part of the property which is given on rent to the Dona Bank. It is admitted on both sides that when the impugned order of assessment in C. W. P. No. 4106 of 1977 was passed Dena Bank was paying Rs. 600/- per month as rent to the Petitioner. This rent was enhanced to Rs. 750/- per month by time the impugned order Annexure P. 1 was passed in C. W. P. No. 2152 of 1983. Both the orders of assessment have determined the annual rental value of the portion of the property given on rent to the Dena Bank on the basis of the rent actually being received by the Petitioner. So, the dispute that subsists between the Petitioner and the Municipal Corporation Respondent No. 1 is with regard to the remaining portion of the property which is in his self-occupation. The learned Counsel contends that the actual rental value of this self-occupied portion of the property could be assessed in ascordance with the provisions of Section 93 of the Corporation Act and could not be fixed arbitrarily as has been done by the Respondents.

5. The learned Counsel for the Respondents, on the other hand, contends that the portion of the property being self-occupied the same did not come within the purview of the East Punjab Urban Rent Restriction Act, 1949, and therefore its reasonable letting value could not be determined in accordance with Section 4 of the said Act.

6. I have heard the learned Counsel for the parties. The contention of the learned Counsel for the Petitioner is well merited. It is now well settled by the Supreme Court judgments in Corporation of Calcutta Vs. Life Insurance Corporation of India, and Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others, that even in respect of self-occupied property the gross annual rental value has to be determined by taking the reasonable letting value as its basis, which in its turn can be determined only in accordance

with the provisions of the Rent Restriction Act for determination of fair rent. The learned Counsel for the Respondents contended that the proviso (ii) to Section 93(c) of the Corporation Act lays down that when a residential building is occupied by the owner and is not let out, the ratable value shall be 50 per centum of the annual market rent prevalent at the time of assessment in the locality for similar accommodation. This proviso came up for consideration before a Division Bench of this Court in Punjab Concast Steels Ltd. v. The Municipal Corporation, Ludhiana 1984 Rev.L.R.394, and it was held that the existence of this proviso in Section 93 of the Corporation Act in no way detracts from the principles laid down by the Supreme Court in Life Corporation of India''s case and Devan Daulat Rai Kapoor''s case (supra). In this view of the matter, it is imperative on the Municipal Corporation Respondent No. 1 to determine fair rent in respect of the self-occupied portion of the property of the Petitioner and then the annual rental value thereof on its basis.

7. I accordingly allow these writ petitions, sustain the orders of assessment in respect of the portion of the property let out to the Dena Bank but set aside the same as regards the self-occupied portion of the property of the Petitioner and direct the Municipal Corporation Respondent to redetermine the annual rental value thereof on the basis of the fair rent to be arrived at in accordance with the principles laid down in Section 4 of the East Punjab Urban Rent Restriction Act, 1949. There shall be no order as costs.

R. M. S. Petition allowed.

