(2008) 08 P&H CK 0187

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 80 of 1988

Harinder Kaur and Others	APPELLANT
Vs	
The Municipal Committee, Bhatinda and Another	RESPONDENT

Date of Decision : 13-08-2008

Acts Referred:

Delhi Rent Control Act, 1958 — Section 3(1)(b), 4

Citation : (2010) 1 RCR(Civil) 564 : (2010) 1 RCR(Rent) 20

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : K.G. Chaudhary, for the Appellant;

Judgement

Rajesh Bindal J.—The challenge in the present petition is to order dated 27.03.1985 (Annexure P1) passed by respondent No.1, whereby the annual rental value of the property of the petitioners was increased from Rs.2000/- to Rs.24,240/- and order dated 11.06.1985 (Annexure P2), passed by respondent No.2, whereby the appeal against order (Annexure P1) was dismissed.

2. Learned counsel for the petitioners submitted that the petitioners are owners of property No. 192/A, 11/2 situated at Shant Nagar, Bhatinda. The property in question was assessed to house tax for the first time in the year 1983 at annual rental value of Rs.2000/-. The annual rental value, so assessed, continued upto the year 1984-85. For the year 1985-86, respondent No. 1 served a notice for enhancement of annual rental value from Rs.2000/- to Rs.24240/-. The petitioners filed objections to the proposed enhancement. However, rejecting the same and ignoring the provisions of law, assessment of annual rental value was made at Rs.24240/-. Aggrieved against the order, the petitioners preferred appeal before respondent No.2 which was dismissed on 11.06.1985 upholding the assessment.

3. On 06.01.1988, notice of motion was issued and recovery of enhanced amount was stayed. The petition was admitted on 26.09.1988. It was listed for hearing

on 11.01.2006. However, no one appeared for the parties. On 15.02.2006, no one appeared on behalf of the respondents. Even today, when the case was called for hearing, no one appeared for the respondents. In the circumstances, the case was taken up and heard.

4. The contention raised by learned counsel for the petitioners is that for the purpose of determination of annual rental value, the principles laid down under the Rent Control Legislation were to be applied, which the respondents have failed to do. He referred to the judgments in Kehar Singh v. The Municipal Committee, Phagwara & Anr., 1980 RLR 491, Punjab Concast Steels Ltd. v. The Municipal Corporation, Ludhiana & Anr., 1984 RLR 394 and Indian Oil Corporation Ltd. v. Commissioner, Jalandhar Division, Jalandhar & Anr., 1997(1) PLR 545.

5. Having heard learned counsel for the petitioners, I find merit in the contention raised by him. Hon''ble the Supreme Court in Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others, , while dealing with an identical issue, held as under:

Where a building is governed by the provision of Rent Control Legislation, the landlord cannot reasonably be expected to receive anything more than the standard rent from a hypothetical tenant and the annual value of the building cannot therefore exceed the standard rent. Even in case of a building in respect of which no standard rent has been fixed within the prescribed period of limitation and thus the tenant is precluded from making an application for fixation of standard rent with the result that landlord is lawfully entitled to continue to receive the contractual rent, the annual value must be limited to the measure of standard rent determinable under the Rent Act and cannot be determined on the basis of the higher rent actually received by the landlord from the tenant. Even if the standard rent has not been fixed by the Controller, the landlord cannot reasonably expect to receive from a hypothetical tenant anything more than the standard rent determinable under the Act and this would be so equally whether the building has been let out to a tenant who has lost his right to apply for fixation of the standard rent or the building is self-occupied by the owner. The assessing authority would, in either case, have to arrive at its own figure of the standard rent by applying principles laid down in the Delhi Rent Control Act, 1958 for determination of standard rent and determine the annual value of the building on the basis of such figure of standard rent.

6. Following the same, a Division Bench of this Court in Kehar Singh''s case (supra) held as under:

It cannot be disputed that the conclusion arrived at by the Deputy Commissioner is not sustainable in law. It has been authoritatively held by their Lordships of the Supreme Court that under the provisions of Section 3(1)(b) of the Act, the annual value of a building would be the gross annual rent at which such house or building may reasonably be expected to let from year to year. It has been held that if the property is situate in a town where the provisions of the East Punjab

Urban Rent Restriction Act are applicable in that case, the annual letting value shall have to be determined keeping in view the provisions of Section 4 of the Act, i.e., the standard rent which can be fixed even though no order has beer passed for fixing the standard rent because the property is self occupied. Reference in this connection may be made to the decision of their Lordships of the Supreme Court in Devan Daulat Rai Kapoor and others v. New Delhi Municipal Committee and others.

7. Besides in the cases referred to above, in C.W.P. No.8569 of 1987 - Indian Oil Corporation Ltd. v. Municipal Committee, Patiala & Anr., decided on 17.09.2007 also, this Court reiterated the legal issue raised by the petitioner regarding fixation of annual rental value in terms of the judgment of Hon''ble the Supreme Court in Devan Daulat Rai Kapoor''s case (supra).

8. Following the dictum of law laid down in Devan Daulat Rai Kapoor''s case (supra), I am of the considered opinion that the impugned orders are contrary to the law laid down by Hon''ble the Supreme Court. The same are, accordingly, set aside and the case is remitted back to respondent No. 1 for re-determination of the annual rental value in accordance with law after affording an opportunity of hearing to the petitioner.

The writ petition is disposed of in the manner indicated above.

