(1962) 05 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 2 of 1962

Inder Mohan — APPELLANT

Vs

The Excise and Taxation Commissioner and Others — RESPONDENT

Date of Decision : 02-05-1962

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Urban Immovable Property Tax Act, 1940 — Section 2, 3, 7, 8, 9
Punjab Urban Immovable Property Tax Rules, 1941 — Rule 4

Citation : (1962) 2 ILR (P&H) 884

Hon'ble Judges : Daya Krishan Mahajan, J

Bench : Single Bench

Advocate : D.C. Gupta, for the Appellant; H.S. Doabia, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Daya Krishan Mahajan, J.—This petition under Article 226 of the Constitution raises an interesting question as to whether the authorities under the Punjab Urban Immovable Property Tax and the rules framed thereunder can fix the rental value of the house more than what is its rental value under the East Punjab Urban Rent Restriction Act. So far as the facts go there is not much dispute. The house in dispute is an old house and adjoining it is a new house built by the family which is admittedly exempt from the provisions of the East Punjab Urban Rent Restriction Act. The old house has been under tenants right up to the year 1954 and the total realisation of rent of this house is in the neighbourhood of Rs. 605 per annum. The rent of the house, which is exempt from the East Punjab Urban Rent Restriction Act, is Rs. 2250. At the time of the revision of the annual letting value of the property the assessing authority fixed the rental value of the old house at Rs. 1,260. Objections were raised to this assessment by the owner and it is not necessary to restate all of them. Suffice it to say that the principal objection was that the owner cam in no circumstance, get Rs. 1,260 as rent for this house in view of the provisions of the East Punjab

Urban Rent Restriction Act. This objection has been negatived by the authorities who considered the objection, the appeal and the revision. The only exception that was made was that the revisional authority reduced the letting valuation from Rs. 1,260 to Rs. 900. It is against these orders that the present petition is directed.

2. Section 2(f) of the Punjab Urban Immovable Property Tax Act, 1940, defines, ''tax''. Section 3 is the charging section. The tax is charged on buildings and lands situate in the rating area at such rate not exceeding twenty per centum of the annual value of such buildings and land, as the State Government may by notification in the Official Gazette direct in respect of each such rating area. Section 7 provides for the making and operation of valuation list and Section 8 deals with the draft valuation list, whereas Section 9 contemplates amendment of current valuation list. Rule 4 of the Rules framed under this Act deals with the preparation of the valuation list and it is this list which really determines the annual valuation of the buildings as contemplated by Section 3. The relevant parts of Rule 4, with which we are concerned, are Clauses (e) and (f) which are in these terms:

(e) An enquiry shall be made about the gross annual rent earned or which could reasonably be earned in respect of the property during the financial year immediately preceding the current financial year.

(f) If in the opinion of the assessing authority the average gross annual rent of any property ascertained under Clause (e), when compared with any other property in that locality, be not fair or reasonable, the assessing authority shall determine, from such other data as may be available, the gross annual rent at which such property may reasonably "be expected to let from year to year.

3. It will be apparent from the combined reading of these two Clauses that it is the actual gross annual rent earned or which could reasonably be earned in respect of the property which will become the annual renting value. Clause (f) permits the assessing authority on the basis of any other property in the locality to revise the annual letting valuation if the average gross annual rent ascertained under Clause (e) be not fair or reasonable. Even in this eventuality it is again the gross annual rent at which such property may reasonably be expected to be let from year to war. Therefore, if the property is subject to the provisions of the East Punjab Urban Rent Restriction Act it must be held that it cannot earn or cannot be reasonably expected to earn more rent than what that Act permits. Therefore, fixing the annual rent in disregard of the restrictions on enhancement of rent by the East Punjab Urban Rent Restriction Act would be a violation of Clauses (e) and (f) of Rule 4. Thus, it was incumbent on the assessing authority to determine the annual rental value for purposes of the assessment of the tax, with reference to the provisions of the East Punjab Urban Rent Restriction Act. This has not been done in this case and, therefore, it must be held that the order of the assessing authority and the consequential orders in appeal and in revision are wholly without jurisdiction. That being, so, this petition is allowed and the

orders of the assessing and other authorities are quashed and they are directed to proceed to assess the annual rental value in accordance with law. The Petitioner will have his costs of this petition, which I assess at Rs. 100.