

(1995) 04 DEL CK 0037

In the Delhi High Court

Case No : Civil Writ Appeal No's. 3908 and 4938 of 1993

Inder Vijay Singh

APPELLANT

Vs

N.D.M.C

RESPONDENT

Date of Decision : 16-04-1995

Acts Referred:

Punjab Municipal Act, 1911 — Section 3(1)

Citation : (1995) 1 AD 1389 : (1995) 33 DRJ 299 : (1995) RLR 254

Hon'ble Judges : Y.K. Sabharwal, J;K. Ramamoorthy, J

Bench : Division Bench

Advocate : Aman Lekhi and B.B. Gupta, for the Appellant;

Judgement

Y.K. Sabharwal, J.

(1) In these two writ petitions the question involved is about the assessment of house tax under the provisions of Punjab Municipal Act, 1911 (for short the Act) in respect of Flat No.3, Gauri Apartments, 3 and 4, South End Lane, New Delhi. In CW.3908/93, the assessment years in question are 1991-92 and 1992-93. In CW.4938/93, the assessment year is 1993-94.

(2) The flat in question has been assessed by the assessing authority at the annual value of Rs.3,24,000.00 on the basis of actual rent fetched by the flat at the rate of Rs.27,000.00 per month. The appeals filed by the petitioner in respect of the assessments for the years 1991-92, 1992-93 were dismissed by Additional District Magistrate by a common order dated 12th February, 1993 which is impugned in C.W.3908/93. The Appellate order, however, directed that the petitioner is free to seek rebate for moveable furniture under N.D.M.C. House Tax Bye-laws. Since the appeals as afore- said had been dismissed and orders of assessing authority maintained, the petitioner did not file any appeal against assessment order for the year 1993-94, and challenged the same in C.W.4938/93. The petitioner seeks quashing of the impugned orders and issue of direction to the respondent to make assessment in accordance with law.

(3) The flat was let out in terms of lease agreement dated 19th October, 1990. Under the lease agreement the monthly rent agreed to be paid by lessee to the petitioner/Lesser is Rs.15,000.00.

(4) By an another agreement entered into between the parties on the same day, namely., 19th October, 1990 the parties agreed that the lessee/hirer would pay Rs.12,000.00 per month to the petitioner as hire charges for the fittings and fixtures as per the list attached with the agreement. This agreement also stipulates that the two agreements shall run concurrently and the agreement for hire of fittings and fixtures will automatically stand terminated once the lease agreement for the flat is terminated. The fittings and fixtures as per the list attached to the agreement are these:

(5) Details of Premises at Flat No.3, Gauri Apartment, South End Lane (Ground Floor), New Delhi-65., (including fittings/fixtures etc.).

SL. No. Description Nos. 1. Drawing/Dining Ceiling Fan 2 Wall Light 3 Ceiling Light 3 2. Kitchen Wall Fan 1 Wall Light 1 Tube Light 3 Geyser 1 Exhaust Fan 1 Wall Light 1 Store Tube Light 1 3. Bedroom-II Ceiling Fan 1 Wall Light 2 Attached Bathroom Wall Light 3 Geyser 1 Washbasin with Hot & Cold mixture arrangement 1 Mirror 1 4. Bedroom-II Ceiling Fan 1 Wall Light 2 Attached Bathroom Wall Light Geyser Bath Tube Washbasin with Hot & Cold mixture arrangement Exhaust Fan Mirror 5. Bedroom-II Ceiling Fan 1 Wall Light 2 Attached Bathroom Ceiling Light 1 Wall Light 3 Geyser 1 Washbasin with Hot & Cold mixture arrangement 1 Exhaust Fan 1 Mirror 1 6. Front (Lawn) Light 1 7. Servant Quarter Ceiling Fan 1 Wall Light 1 Ceiling Light 1 Attached Bathroom Light 1 List of Furniture Flat No.3. 4. Air Conditioners Drawing Room 1. Sofa 3 Seaters 1 Book Case 3. Chairs Arm 1. Center Table 4. Peg Tables Dinning Room 1. Dinning Table for 4 4. Dinning Chairs 1. Side Board 1. Side Table Bed Rooms (2) 4.Beds 4. Side Tables 2. Cup Boards 3rd Bed Room 1. Writing Table 1.Upright Chair 2.Table Small 1.Steel Cup Board 1.Cup Board Kitchen 4.Wall Cup Board 1.Store Cup Board 1.Clock

(6) The only contention urged before us is that the rent of the flat is Rs.15,000.00 per month as recorded in the lease deed and in law the annual letting value could not be determined by adding to this rental amount, sum of Rs.12,000.00 which was hire charges for fittings and fixtures. The main thrust of the contention of learned counsel for the petitioner is that the hire charges of four air-conditioners cannot be taken into consideration while determining the "Annual Value" within the meaning of the Section 3 of the Act. Reliance has been placed by Mr. Lekhi on first proviso to Section 3(1)(c) which provides that in the calculation of the annual value of any premises no account shall be taken of any machinery thereon. The term "Annual Value" has been defined in Section 3(1) of the Act. Section 3(1)(a) deals with "Annual Value" in case of land with which, we are not concerned in these matters. We are concerned with Section 3(1) (b and c), which read as under:-

"SECTION-3.DEFINITIONS-In this Act, unless there is something repugnant in

the subject or context - (1) "annual value" means- (a) (b) in the case of any house or building, the gross annual rent at which such house or building together with its appurtenances and any furniture that may be let for or enjoyment therewith, may reasonably be expected to let from year to year subject to the following deductions: (i) such deduction not exceeding 20 per cent of the gross annual rent as the committee in each particular case may consider a reasonable allowance on account of the furniture let therewith. (ii) a deduction of 10 per cent for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross annual rent. The deduction under sub-clause shall be calculated on the balance of the gross annual rent after the deduction (if any) under sub-clause (i); (iii) where land is let with a building, such deduction, not exceeding 20 per cent of the gross annual rent, as the committee in each particular case may consider reasonable on account of the actual expenditure, if any, annually incurred by the owner on the upkeep of the land in a state to command such gross annual rent. Explanation I - For the purposes of this clause it is immaterial whether the house or building, and the furniture and the land let for use or enjoyment therewith, are let by the same contract or by different contracts and if by different contracts whether such contacts are made simultaneously or at different times. Explanation Ii - The term "gross annual rent" shall not include any tax payable by the owner in respect of which the owner and tenant have agreed that it shall be paid by the tenant. (c) in the case of any house or building, the gross annual rent of which cannot be determined under clause (b), 5 per cent on the sum obtained by adding the estimated present cost of erecting the building less such amount as the committee may deem reasonable to be deducted on account of depreciation (if any) to the estimated market value of the site and any land attached to the house or building": Provided that - (i) in the calculation of the annual value of any premises no account shall be taken of any machinery thereon; (ii) when a building is occupied by the owner under such exceptional circumstances as to render a valuation at 5 per cent on the cost of erecting the building, less depreciation, excessive, a lower percentage may be taken."

(7) It is not the case of the petitioner that any central air conditioning plant/unit has been provided for in the flat. According to the petitioner, four window type air conditioners have been given on hire in terms of the agreement referred above. The short question for determination, Therefore, is whether these air conditioners can be said to be "machinery" within the meaning of Proviso-1 to Clause-"C" of Section 3(1) of the Act. Learned counsel for the petitioner laid strong reliance on a Division Bench decision of this Court in Bansi Dhar Vs. The New Delhi Municipal Committee 1973 Mcc 495 in support of the contention that these air-conditioners are "machinery". This decision has no applicability to the present case. The cited decision was not a case where window type air-conditioners, as in the present case, had been let on hire. That was the case of central air-conditioning units. Further, the main question in issue in the case of "Bansi Dhar" was whether Proviso-1 to Clause "C" would be applicable for

determination of annual value under Clause "b" of Section 3(1) of the Act. The Bench held that the said proviso is applicable not only to Clause "C" but entire sub-Section-1. In that decision the Appellate Authority held that air- conditioning plant, fans etc. did fall in the category of machinery but the relief was not given to the assessed as the Appellate Authority was of the view that first proviso was applicable only to Clause "C" and did not govern Clause "b" and, Therefore, no allowances could be made for the machinery in assessment under Clause "b". The Bench also held that the word "furniture" will also not include machinery and electrical appliances and that the expression "appurtenant and any furniture" does not include machinery and electrical appliances. Thus, the case relied upon is of no assistance for determining the point in issue.

(8) We may look to the matter from another angle also. Section 3 (1) (b) of the Act, inter alia, provides that annual value means in the case of any house or building, the gross annual "rent" at which such house or building together with its appurtenances and any furniture that may be let for or enjoyment therewith. The term "rent" has not been defined in the Act. The question, Therefore, is whether the rent of these air-conditioners, can be taken into consideration while determining the annual value under clause "b" of Section 3(1) of the Act. As to what all is included in "rent" came to be considered by Supreme Court in *Karnani Properties Ltd. Vs. Miss Augustine and others* Air 1957 309. After noticing English decisions the apex Court said:

"THOSE English decisions are authorities for the proposition that "rent" included not only what is ordinarily described as rent in an agreement between a landlord and a tenant but also payment in respect of special amenities provided by the landlord under the agreement between him and his tenant. The term "rent" has not been defined in the Act. Hence it must be taken to have been used in its ordinary dictionary meaning. If, as already indicated, the term "rent" is comprehensive enough to include all payments agreed by the tenant to be paid to his landlord for the use and occupation not only of the building and its appurtenances but also of furnishing, electric installations and other amenities agreed between the parties to be provided by and at the cost of the landlord, the conclusion is irresistible that all that is included in the term "rent" is within the purview of the Act and the Rent Controller and other authorities had the power to control the same."

(9) The term "rent" is comprehensive to include all payments agreed by the tenant to be paid to the landlord for the use and occupation not only of building and its appurtenances but also of other amenities agreed between the parties to be provided by and at the cost of the landlord, in terms of aforesaid decision. Further, this Court can also take judicial notice of the prevailing practice of parties entering into agreements, like the one in the present case, bifurcating the rent and showing a part as rent of the premises and a part as rent of furniture and fixtures, with a view to circumvent law relating to assessment of House Tax. As already noticed, in this case both the agreements were entered into on the

same date and the hire agreement was to stand automatically terminated once the lease agreement is terminated. On the facts of the case, in our view, there is no illegality in determining the annual value on the basis of rent of Rs.27,000.00 per month.

(10) In respect of the assessment of annual value for the year 1993-94 it was also contended, on the basis of a letter said to have been written by the lessee to the petitioner, that furniture and fittings had been returned and the agreement of hire had been terminated. We, however, do not find that this objection was raised before the authorities while filing objection and it cannot be allowed to be raised for the first time in the writ petition.

(11) For the reasons aforesaid, we do not find any merit in the writ petitions. Both the writ petitions are, accordingly, dismissed. No costs.