
(1990) 09 P&H CK 0043

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 190 of 1983

Jagjit Cotton Textile Mills Ltd.

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 13-09-1990

Acts Referred:

Punjab Municipal Act, 1911 — Section 3(1)

Citation : (1991) 99 PLR 117 : (1991) 1 RCR(Rent) 72

Hon'ble Judges : J.V. Gupta, C.J.;R.S. Mongia, J

Bench : Division Bench

Advocate : J.N. Kaushal and Girish Agnihotri, for the Appellant; H.S. Riar, Addl. A.G. for Respondent No. 1 and H.L. Sibal and J.K. Sibal, for the Respondent

Final Decision : Allowed

Judgement

R.S. Mongia, J.—When earlier this Letters Patent Appeal had come up for hearing before a Division Bench of this Court on 8th February, 1989, it was ordered that this appeal is to be listed after the Full Bench decision in C. W. P. No. 2175 of 1986 (Banarsi Dass Mahajan Vs. The State of Punjab and Another, , and other connected cases The obvious reasons for the above -mentioned order was that the correctness of the Division Bench judgment of this Court in Lt Col. Micheal A. K. Skinner and Ors. v. Municipal Committee, Hansi (1969) 71 P. L. R. 205. on which the learned Single Judge had based his judgment in the writ petition, against which the present Letters Patent Appeal has been filed, was under consideration by the Full Bench in Banarsi Dass Mahajan's case (supra), The Full Bench in its judgment in Banarsi Dass Mahajan's case (supra), which is now reported as Banarsi Dass Mahajan Vs. The State of Punjab and Another, , has overruled Skinner's case (supra). Even the judgment of the learned Single Judge against which the present Letters Patent Appeal has been filed, has also been noticed by the Full Bench. In view of the Full Bench judgment overruling Skinner's case (supra) and in which the judgment of the learned Single Judge against which the present Letters Patent Appeal had been filed has noticed, the

only course open to as is to allow the Letters Patent Appeal and to set aside the judgment of the learned Single Judge. However, to be air to the learned counsel for the respondent-Municipal Committee, we wish to notice his arguments and give little details of the case.

2. The ticklish controversy which was raised before the learned Single Judge in the writ petition by petitioner-M/s Jagjit Cotton Textile Mills Ltd., was as to whether "annual value" of the property of the petitioner Company for the purpose of house tax under the Punjab Municipal Act, 1911, (hereinafter called the Act) has to be assessed u/s 3(1)(b) or Section 3 (1) (c) of the Act.

3. The facts giving rise to the - above-mentioned controversy are that the petitioner has constructed textile mills and various other constructions such as residential quarters known as "Thapar Colony" for its staff and labourers and others community utility service buildings and loads etc, in a vast area of about 82 Acres within the municipal limits of Phagwara town. On 20th February, 1973, two notices u/s 67 of the Act were served on the petitioner including that its properties Nos. B-LV-48 and 49 were proposed to be taxed at Rs. 16,200/- and Rs. 64,800/- for the year 1972-73. These numbers were allotted to the properties on the basis of their nature, i.e. residential and non-residential. The petitioner-company filed objections to these notices besides challenging the validity of the proposed tax. One of the objections raised was to the effect that the two sets of properties be treated as one as the entire property of the petitioner was one consolidated unit and was thus assessable as one unit. This objection of the petitioner was accepted and the entire "property was assessed as one unit. The assessment of the tax was to the tune of Rs. 81,000/- in accordance with clause (c) of sub-section (1) of Section 3 of the Act. Section 3(1)(b) and Section 3(1)(c) of the Act may be noticed at this stage, as under :-

"3. Definitions. In this Act, unless there is something repugnant in the subject or context -

(1) Annual value means -

(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 use 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 there with;

(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 of command such gross annual rent. The deduction under this sub- clause shall be calculated of 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 purpose of this clause it is immaterial whether the house or building, and the furniture and the land let for use or enjoyment there with, are let by the same contract or by different contracts, and if different; contracts, whether such contracts; are made simultaneously or at different times.

Explanation II. The terra "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 animated 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."

4. The case as put forth before the learned Single Judge by the petitioners, counsel was that in fact the annual value of the property for the determination of house-tax payable had to be fixed under clause (b) of sub-section (1) of Section 3 of the Act and not under clause (c). For this reliance was placed by the learned counsel for the petitioner on a Supreme Court judgment *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, . According to the learned counsel for the Municipal Committee, who had appeared before the learned Single Judge, it was contended that the annual value of the property for the purpose of determining house tax had been rightly determined under clause (c) of Section 3 (i) of the Act, inasmuch as the properties which have not been rented out and are not reasonably expected to be rented out, had to be assessed under clause (c) and not under clause (b) of Section 3 (1) of the Act. While dealing with the case of *Dewan Daulat Mai Kapoor's case (supra)*, the learned Single Judge observed that no doubt while examining and interpreting the scope and implication of Section 3 (1)(b) of the Act, their Lordships of the Supreme Court had observed that even in the case of self occupied building, the annual value is to be limited by the measure of standard rent determinate under the Rent Restriction Act and in case it has either not been so determined or is not determinable for any reason, even in that case while ignoring the annual

rent being paid by a tenant, it has to be found out what a hypothetical tenant to whom the building is hypothetically let out, would be paying to the landlord. According to the learned Single Judge, there was no controversy before the Supreme Court as to whether annual rental value of the property in question was assessable under clause (b) or clause (c) of Section (1) of the Act, which controversy was in hand before the learned Single Judge. The learned Single Judge after quoting the observations in extenso from the Division Bench judgment in Skinner's case (supra), observed that he had nothing to add further to the reasoning of the Division Bench and after following the same dismissed the writ petition by upholding the assessment of the house-tax under clause (c) of sub-Section 3(1) of the Act. As noticed above, the Skinner's case (supra) was subject matter of consideration before the Full Bench in Banarasi Dass Mahajan's case (supra), which has overruled the said case.

5. It may be noticed that in Skinner's case (supra), Division Bench of this Court had held that the phrase "may reasonably be expected to let" in clause (b) merely indicated that in determining the annual value the Municipal Committee is not bound to fix it at the rate of contractual annual letting and could justifiably determine the annual value at a higher or lower rate than that. It was further held that the Municipality could be justified in holding that the property may reasonably be expected to be let out at the fair rent determined by the Rent Controller though it was actually shown to have been let out at a higher or lower rate. But this principle was confined to those cases where properties were actually let out at one point of time or the other. The Division Bench in Skinner's case (supra) did not apply the ratio of the judgment of the case in The Corporation of Calcutta Vs. Sm. Padma Debi and Others, to those buildings which had never been let out in those cases; fair rent was not determinable sans a tenancy and there was no one who was competent to have it settled from the Rent Controller u/s 4 of the Rent Act, since there never was a landlord or a tenant of the building or rented land. It is under these circumstances that the Division Bench in Skinner's case (supra) ruled that annual value of such property which had never been let out and was in self-occupation of the owner had to be fixed in accordance with the principles laid down in clause (c) of sub-Section 3 (I) of the Act.

6. Thereafter came on the scene a case known as Punjab Concast Steels Ltd, Ludhiana v. The Municipal Corporation Ludhiana 1985 87 P. L. R. 757. which was a decision rendered by a Division Bench. This was a case where the property of a Public Limited Company was in its self-occupation and had never been let out as in the present case. The point arose identically in the same manner as to whether clause (b) or clause (c) of Section 93 of the Corporation Act, applied. (The provisions of Section 3 (i) (b) and Section 3 (1) (c) of the Act are *perimateria* to clauses (b) and (c) of Section 91 of the Punjab Municipal Corporation Act.) The petitioner in Punjab Concast case (supra) pressed into service *Devan Daulat Rai Kapoor's case (supra)*, and the Corporation in defence, relied on Skinner's case (supra), as also the Single Bench judgment of this Court, against which the

present Letters Patent Appeal has been filed. The Bench had decided the case in favour of the petitioner Punjab Concast case (supra), relying upon the ratio of Devan Daulat Rai Kapoor's case (supra) by-passing the Division Bench judgment as also the ratio of Single Bench judgment against which the present Letters Patent Appeal has been filed, since according to the Bench, the Letters Patent Appeal was pending. The Bench in Punjab Concast's case (supra) had held as under:

".....Cl. (b) provides that the rateable value is the gross annual rent at which a building may reasonably be expected to let minus the deductions provided therein. The words, "reasonably be expected to let are very important. These words with regard to the building subject to Rent Act mean the amount of rent which the owner is entitled to charge in accordance with the provisions of the Rent Act from his tenant. It is not necessary that the building should have remained on rent with a tenant or there should be a tenant ready to take it on rent. It is also not necessary that fair rent of the building should have been fixed by the Rent Controller. If there is no tenant to take the building on rent it has to be determined taking into consideration what the landlord can reasonably get from a hypothetical tenant. The relevant consideration is not the rental value of the building in the open market but the rental value which the owner is entitled to realise under the Rent Act. The reason is that in the towns where Rent Acts are applicable, the owner is not entitled to charge anything more than the fair rent Clause (c) is applicable in case the gross annual rent of the building cannot be determined under Clause (b)."

7. Faced with this situation, the Full Bench initiated the consideration of the matter in Banarsi Dass Mahajan's case (supra), by observing as follows in para 18 of the Report: - "

"Now the conflict is evident. One militant view is that in order to avail of the benefit of Dewan Daulat Rai Kapoor's case (supra) and A. R. Skinner's case (supra), the building, like on the facts of that case, must be let out, as otherwise, the jurisdiction of the Rent Controller cannot be invoked u/s 4 of the Rent Act and the other militant view is that it is not necessary that the building should have remained tenanted, or there should be a tenant ready to take it over on rent, even not necessary that fair rent of the building should have been fixed by the Rent Controller. The naked point for consideration before this Bench thus is what is the correct position of law when a building has never been tenanted and is in the self-occupation of an owner or not tenanted by him, when asked to pay house-tax under the provisions of the Corporation Act ?"

The Full Bench has dealt with various authorities cited at the bar and different aspects of the matter. Dealing with Skinner's case (supra), it has observed in para 23 of the report, as follows :-

"Now back to the case law we find that the expression "may reasonably be expected to let" cannot be given a dwarfed meaning as was done in A, R.

Skinner's case (supra) only to mean that such expression gives power to the Municipal Committee to fix assessment of tax at a higher or lower annual rent as compared to the contractual rent when suspicious of collusion, contumacy and the like. But in this sphere as well the Supreme Court stepped in Dr. Balbir Singh and Others Vs. M.C.D. and Others, , to extend this law laid down in Devan Daulat Rai Kapoor's case (supra) Molding that the rateable value of a building, whether tenanted or self occupied, is limited by the measure-of standard rent arrived at by the Commissioner by. applying the principles laid down in the Rent Act. and cannot exceed the figure of the standard rent so arrived at by the Commissioner. This is a direct blow to A. R. Skinner's case (supra). Thus, an upper limit of the standard real has been put to the rateable value."

8. Dealing with the, observations, of the learned Single Judge to the effect that in Devan Daulat Rai Kapoor's case (supra) the controversy which was: before him was not before the Supreme Court in the said case, the Full Bench has observed in paragraphs 24 and 25 as under:--

"It is significant to note that in Devan Daulat Rai Kapoor's case (supra), their Lordships of Supreme Court were declaring the law, even though on the facts of that case the building was let out and the tenants precluded by the bar of limitation from asking the Rent Controller assess the standard rent; yet went far ahead on the supposition that if those tenants were to vacate the premises and the landlord come back in possession, he could not expect and demand from any tenant more than the standard rent due. it is in this situation that their lordships observed that in case of a self occupied building, no hypothetical tenant would ordinarily agree to pay more than the standard rent which he would be liable to pay under the Act and such a presumption was raised in order to determine the annual value of a building in the self occupation of the owner. The ratio of the Supreme Court in these circumstances, cannot even be imagined to be obiter, for their Lordships of the Supreme Court were deciding not the fate of Devan Daulat Rai Kapoor but of others also who were self- occupants of their respective buildings. Even the obiter of the Supreme Court cannot be ignored by a High Court, but there is a positive declaration of law introducing the concept of hypothetical tenant in the context of the expression "may reasonably be expected to let".

25. Interpreted this way, clause (b) is paramount even if the building is self-occupied. As was directed in Devon Daulat Rai Kapoor's case (supra), the Commissioner would be bound in law to arrive at the figure of fair rent by applying the principles of the Rent Act, which provisions undeniably are applicable in the urban area of Amritsar over which the Corporation has jurisdiction. It is only on a positive finding that the gross annual rent of the building cannot be determined under clause (b), that resort can be had to clause (c) to Section 93 of the Corporation Act."

9. After noticing all the judgments, ultimately in para 28, while over-ruling Skinner's case (supra), the Full Bench has observed :

"Even if there is a tenancy, or there is not, the concept of the hypothetical tenant still has a brooding influence in the determination of the fair rent. To repeat we say that clause (b) of Section 93 has first to be exhausted and when gross annual letting value can in no event be determined under clause (c), and both the provisos, and in particular the first proviso cannot be read in isolation so as to render otiose the main provisions of clause (b) and (c). Viewed in this light, we are of the confirmed view that Punjab Concast Steel Ltd's case (supra) was rightly decided and the decisions to the contrary i.e. A. K. Skinner's and Hukam Chand's cases (supra) and other cases of the kind are no good law in view of Devon Daulat Rai Kapoor's case (supra)."

10. It may be observed here that the learned Judges of the Full Bench also noticed in para 16, the judgment of the learned Single Judge, against which the present Letters Patent Appeal has been filed. They noticed the observations of the learned Single Judge to the effect that it was otherwise inconceivable that if the annual rent of every home or building was to be determined on hypothetical basis, then which would be the properties of which annual value or gross rent would be determinable under clause (c) of Section 3 (1) of the Act. They also took notice of the view of the learned Single Judge that if for all buildings whether self occupied or rented out the gross annual rent had to be assessed on hypothetical grounds, clause (c) of Section 3 (1) would sure be rendered otiose, and it was under these circumstances that the learned Single Judge, to avoid that situation had based his decision on Skinners case (supra) Dealing with this aspect of the matter, the learned Judges of the Full Bench have observed as follows in Para 29 of the report : -

"Before parting with the judgment, we deem it necessary to explain the doubt expressed by I. S. Tiwana, J in Mis J. C. T M. Ltd 's case (supra) as he was of the view that if annual rent of every house or building was to be determined on hypothetical basis, then what would be the properties of which annual value or gross annual rent would be determinable under clause (c). Some instances, like, temples, churches etc. were then given by the learned counsel for the property owners, but those did not appeal to him. It is in these circumstances that he adopted for the view expressed in A R. Skinner's case (supra) in order to avoid the provisions of clause (c) being rendered redundant. In our view, the scope of the enquiry before the Commissioner is very wide, For any justifiable reason put on record, he can express his inability, even on introduction of the hypothetical tenant, to say, he could not determine the gross annual rent of the building in the self-occupation of the landowner under clause (b). His order in that regard, supported as it is expected to be, with reasons, is amenable to the jurisdiction of the appellate Courts and this Court under Articles 226/227 of the Constitution. What is not capable of being done under clause (b). has been left to be done under clause (c), the latter being the residuary,"

11. The learned counsel for the Municipal Committee submitted that the question of applicability of Section 3 (1).(b) of the Act would only arise in those cases

where Rent Act is applicable since it is only under that Act that the standard real is determinable by the Rent Controller and if to a building or to a place, Rent Act is not applicable, then the question of invoking the provisions of Section 3 (1) (b) would not arise and it is only the provisions of Section 3 (1)(b) of the Act that would be applicable. He further submitted that since both the buildings were treated as one unit which were the Mills and Rent Act being not applicable, the provisions of Section 3(1) (c) of the Act would be applicable and not Section 3 (1) (b) of the Act. We are afraid we cannot agree with this contention. Under the Municipal Act, it is the Assessing Authority who is to determine the standard rent and it is only the principles which are applicable under the Rent Act, that have to be seen. In *Dewan Daulat Rai Kapoor's case* (supra), it was observed as under : -

"We are, therefore, of the view that 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."

12. In view of what has been stated above, following the Full Bench judgment in *Banarsi Dass Mahajan's case* (supra), we hold that clause (b) of Section 3 (1) of the Act has first to be exhausted and when gross annual letting value can in no event be determined under the said clause, then the gross annual value may be determined under clause (c) of Section 3 (1) of the Act.

13. For the foregoing reason, we allow Letters Patent Appeal and set aside the judgment of the Learned Single Judge and while allowing the writ petition, remit the case back to the Committee constituted u/s 4 (b) (ii) of the Patiala Municipal Executive Officer's Act (which had earlier passed order Annexure P-I) for re-determination of the house tax in accordance with the observations, made above. It will be open to the parties to raise all points, including the one whether the property of the petitioner has to be taken as one unit or two separate.

14. Before parting with the judgment, we may observe that according to the affidavit filed on behalf of the Municipal Committee, the appellant M/s Jagjit Cotton Textile Mills Ltd., is in arrears of tax to the tune of Rs. 17,37,000/-. It is admitted that till date the appellant has only paid to the Municipal Committee, a sum of Rs. 4,50,000/-. In these circumstances, we direct that the appellant M/s Jagjit Cotton Textile Mills Limited shall pay to the Municipal Committee, Phagwara, a sum of Rs. 8,00,000/- tentatively towards the arrears of tax within two months from the date of this judgment, Whatever the tax may now be determined, on the basis of our judgment, the appellant shall be liable to pay 12% interest per annum on that amount from the date that amount of tax

became payable till the date of its payment.