**(1997) 01 P&H CK 0055**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No''s. 4761 and 4911 of 1983 and etc. etc.

Jainti Parshad Jain APPELLANT

Vs

Municipal Committee Ferozepore City and another RESPONDENT

**Date of Decision :** 17-01-1997

**Acts Referred:**

Haryana Municipal Act, 1973 — Section 2, 2(1), 4
Punjab Municipal (Executive Officer) Act, 1931 — Section 4
Punjab Municipal Act, 1911 — Section 3, 3(1), 84
Punjab Municipal Corporation Act, 1976 — Section 2, 93

**Citation :** AIR 1997 P&H 287 : (1997) 117 PLR 487 : (1997) 3 RCR(Civil) 390

**Hon'ble Judges :** N.K. Agrawal, J

**Bench :** Single Bench

**Advocate :** Ravinder Chopra and R.S. Chauhan, for the Appellant;

## Judgement

1. Since common question of law arises in Civil Writ Petitions Nos. 4761 and 4911 of 1983, No. 1801 of 1985 No. 5604 of 1981, Nos. 2257, 3181. 3182, 3183, 3184 and 4573 of 1982 and Civil Revision No. 1833 of 1984, these are all being decided by this common order.

2. Levy of house lax has been challenged in the aforesaid writ petitions. Some petitions have been filed by the petitioners whose properties are situated in the State of Punjab and some petitions arise from the State of Haryana. It will be convenient to discuss the two sets of petitions, one belonging o the State of Punjab and the other belonging to the State of Haryana, separately inasmuch as the question of applicability of the relevant rent control law would be decided differently.

3. Civil Writ Petitions Nos. 4761 and 4911 of 1983, No. 2257 of 1982 and No. 1801 of 1985 relate to the properties situated in the State of Punjab. Civil Revision No. 1833 of 1934 also relates to a property situated in the State of Punjab. House tax was levied after assessing the annual rental value at a higher rate by the respective Municipal Committees and Corporations on the basis of the

prevalent market rate of rent. The petitioners, being the owners of the properties subjected to house tax, had claimed before the assessing authority of the Municipal Committee that annual rental value should be determined on the basis of the standard rent determinable under the East Punjab Urban Rent Restriction Act, 1949 (for short, "Punjab Rent Act"). The claim, however, was rcjectedby the respective Municipal Committees and also by the appellate authority.

4. In Civil Writ Petitions Nos. 4761 and 4911 of 1983, filed by two brothers, namely. Jainti Parshad Jain and Bimal Parshad Jain, orders dated 21-9-1981 and 18-1-1983 passed by the House Tax Sub-Committee, Ferozepore, and the appellate order dated 30-8-1983 passed by the Additional Deputy Commissioner, Ferozepore, in respect of house properties Nos. 111 and 112 situated at Basti Tankarwali, in Ferozepore City, relating to the assessment year 1981-82, have been challenged. The shops in question were proposed to be assesseed at Rs. 150/- per month by the Tax Committee and, therefore, objections were invited. The petitioners filed their objections against the proposed increase in the annual rental value of the shops with the plea that the previous assessment was made at Rs. 20/- only and no additions and alterations had been effected in the properties. It was also pleaded that the property was in occupation of the tenant on a rent of Rs. 30/- per month only. Assessment was. however, finialized at Rs. 150/- per month and house tax of Rs. 243/- was imposed for the assessment year 1981-82, Appeal was filed and thereupon the case was remanded to the Municipal Committee, Ferozepore, vide order dated 4-6-1982 for fresh decision, keeping in view the provisions of Section 4 of the Punjab Rent Act. The Municipal Committee, however, again affirmed its earlier order dated 21-9-1981 without any further discussion. An appeal was again filed u/s 84 of the Punjab Municipal Act. 1911, but that appeal was dismissed.

5. The petitioners'' case is that the annual rental value of the properly was not properly assessed because the gross annual rent, at which the property could reasonably be expected to let out, should have been limited to the standard rent determinate under the Punjab Rent Act. The said Act was applicable to the town of Ferozepore and, therefore, in view of Section 4 of the Act, standard rent was to be fixed. The Municipal Committee, However, did not advert to the provisions of the Punjab Rent Act.

Shri Ravinder Chopra, learned counsel for the petitioners, has urged that it was necessary to apply the provisions of the punjab Rent Act so as to determine the annual rental value on the basis of the standard rent. Assessment of the shops could not be made at more than the amount of standard rent. It is also argued that, in the order passed on 18-1-1983, two members of the Committee appended their signatures and the Executive Officer of Ihe Municipal Committee did not participate while the said order was passed. It is said to be in contravention of Section 4(b), proviso (ii), of the Punjab Municipal (Executive Officer) Act, 1931. It is also contended that the House Tax Committee failed to comply with the remand order passed by the Additional Deputy Commissioner, Ferozepore, wherein annual rental value was required to be fixed on the basis of the standard rent. The Municipal Committee did not consider the question of standard rent at all and, thus, the direction of the appellate authority was totally ignored.

6. Civil Revision No. 1833 of 1984 has been filed by the petitioner, Bimal Parshad Jain, to challenge the order dated 30-6-1982 passed by the Senior Sub Judge, Ferozepore, whereby the petitioner''s suit for Ihe recovery of Rs. 494/- and Rs. 437.40 along with interest was dismissed. The pelitioner''s case was that the amount of house tax, levied for the assessment year 1980-81, had been deposited and, after the plaintiff''s appeal was accepted by the Deputy Commissioner vide order dated 23-1-1981 and the case was remanded to the Municipal Committee for fresh decision on the question of ownership of the shops, the plaintiff became entitled to recover the amount of tax from the Municipal Committee. It was for that purpose that the civil suit was filed claiming the recovery of the house tax paid by the plaintiff. The plaintiff filed an appeal against the order of dismissal but that too was dismissed, vide judgment dated 7-5-1984. Shri Ravinder Chopra, learned counsel for the petitioner, has urged that, in case the writ petilionsare accepted, he will not press the present civil revision.

7. . The respondents have opposed the petitioners'' plea about the applicability of the Rent Control Act. It is stated that the shop in question was in self-occupation and had not been given on rent. The petitioners had appeared before the Tax Committee and had put forward their objections against the proposed annual rental value of the property. It is stated that no standard rent was fixed by the Rent Controller under the Punjab Rent Act in respect of the two shops in question and, therefore, there was no occasion nor any necessity for the Municipal Committee to fix the standard rent. It is pointed out that rental value of Rs. 150/- per month was determined after the Tax Superintendent had visiled the locality and had noticed that the average rent of a shop was Rs. 200/- per month in that locality. Since the shop was in self-occupation of the petitioner and since no fair rent had been determined so far by the Rent Controller, the present market rental value was taken on the basis of the market rate.

8. Attention has been drawn to a decision of the Supreme Court in The Corporation of Calcutta Vs. Sm. Padma Debi and Others, . That was a case where gross annual rent was required to be determined at the amount at which the building might reasonably be expected to let. The question had arisen whether the rental value could be fixed higher than the standard rent under the Rent Control Act. It was held that the law of the land must necessarily be taken as one of the circumstances obtaining in the open market placing an upper limit on the rate of rent for which a building can reasonably be expected to let. Section 127(a) of the Calcutta Municipal Act did not contemplate the actual rent received by a landlord but a hypothetical rent which he can reasonably be expected lo receive if the building is let. A statutory limitation of rent circumscribed the scope

 

of the bargain in the market. In no circumslances, the hypothetical rent can exceed the limit. The rental value u/s 127( 1) of the aforesaid Act could not be fixed higher than the standard rent tinder the Rent Control Act.

A similar question was examined by this High Court in Smt. Urmila Devi Gupta v. The Municipal Committee, Faridabad. now Faridabad Complex, 1982 Rev I.R 64. That was also a case under the Punjab Municipal Acl, relating to the annual rental value of the property for the purposes of assessment of house tax. It was held that, where a building was governed by the provisions of the RentControl legislation, the assessment of annual value, as defined in section 3(1)(b) of the Punjab Municipal Act, 1911, has to be determined in accordance with the rent law. The decision of the Supreme Court in Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others, , was relied upon.

9. It has to be noticed that the town of Ludhiana was governed by the Punjab Municipal Corporation Act, 1976, and the house tax was levied by the Municipal Corporation, Ludhiana, after determining the annual rent in CWP No. 2257 of 1982 in accordance with the provisions of Section 93 of the said Act. u/s 93, rateable value of the land and building, assessable to taxes, has to be determined, in the case of land, at the gross annual rent at which it may reasonably be expected to let and, in the case of a building, at the gross annual rent at which such building together with its appurtenances and furniture that may be let for use for enjoyment therewith, may reasonably be expected to let. Section 3 of the Punjab Municipal Act, 1911, reads as under :--

"3. Definitions -- In this Act, unless there is something repugnant in the subject or context, (1) "annual value" means -

(a) in the case of land or building which is in the occupation of a tenant, the gross annual rent at which the land or building has actually been let :

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(b) In the case of land or building which is occupied by the owner, the annual value shall be five per cent on the sum obtained by adding the present market value of the land and estimated cost of erecting the building less ten per cent depreciation :

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10. Section 93 of the Punjab Municipal Corporation Act. 1976, reads as under :--

"93. Determination of rateable value of lands and buildings assessable to taxes-- Subject to the rules, if any, made by the State Government in this behalf, the rateable value of any land or building assessable to taxes specified in section 91 shall be -

(a) in the case of land, Ihe gross annual rent at which it may reasonably be expected to let;

 

(b) in the caseof any building, the gross annual rent at which such building, together with its appurtenances and any furniture that may be let for use for enjoyment therewith, may reasonably be expeclcd to let, subject to the following :--

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In neither of the aforesaid two provisions, namely, section 3(1) of the Punjab Municipal Act, 1911, and section 93 of the Punjab Municipal Corporation Act, 1976, there is any non obstante clause, thereby excluding the applicability of the Punjab Rent Act. Since there is no non obstanle clause in Section 93 and, in that light. Rent Control law is held to be attracted and not excluded from consideration.

11. The question as to whether existence of a non obstante clause in the provisions of any Municipal Act would make a difference has been examined in detail by the Supreme Court in Assistant General Manager, Central Bank of India etc. v. Commissioner, Municipal Corporation for the City of Ahmedabad JT (1995) 4 (SC) 310. That was a case of house tax under the Municipal Corporations Act. Thequestion had arisen whether standard rent was required to be determined u/s 11 of the Bombay Rent Act in respect of a building, land or premises. It was noticed that the relevant provision contained in proviso (aa) to sub-clause (ii) of clause (1-A) of Section 2 of the Municipal Corporations Act, incorporated a non obstante clause whereby the provisions of any other law, for the lime being in force, were excluded. In that light, it was held that standard rent was not required to be fixed underSection 11 of the Bombay Rent Act. Earlier decisions of the Supreme Court in The Corporation of Calcutta Vs. Sm. Padma Debi and Others, ; Corporation of Calcutta Vs. Life Insurance Corporation of India, and The Guntur Municipal Council Vs. The Guntur Town Rate Payers'' Association etc., were distinguished on the ground that those cases had decided that standard rent was required to be determined under the relevant Rent control law because, under the relevant Municipal Act, there was no non obstante clause in the provisions in respect of the annual rental value. An earlier decision in Municipal Corporation, Indore and Others Vs. Smt. Ratnaprabha and Others, was also referred to, wherein Section 138(b)of the Madhya Pradesh Municipal Corporation Act was examined. In that case, a plea was taken by the property''s owner that the standard rent should be fixed in accordance with the provisions of section 7 of the Madhya Pradesh Accommodation Control Act. It was held that, in a case where the standard rent of a building has been fixed under S. 7 of the Madhya Pradesh Accommodation Control Act and there was nothing to show that there has been fraud or collusion, that would be its reasonable letting value but. where this is not so and the building has never been let out and is being used in a manner where the question of fixing its standard rent did not arise, it would be permissible lo fix its reasonable rent without regard to the provisions of the Madhya Pradesh Accommodation Control Act. This view was taken in the light of the non obstante clause existing in clause (b) of S. 138 of the Madhya Pradesh

 

Municipal Corporation Act.

12. Tn the case of a property situated in the State of Punjab, the decision of the Supreme Court in the case of The Corporation of Calcutta Vs. Sm. Padma Debi and Others, shall be applicable inasmuch as mere is no non obstante clause in S.93 of the Punjab Municipal Corporation Act or in S. 3(1) of the Punjab Municipal Act, 1911.

13. In Civil Writ Petitions No. 2257 of 1982 and No. 1801 of 1985. similar plea has been raised by the learned counsel for the petitioners to the effect that annual rental value should have been fixed on the basisof the standard rent determinable under the Punjab Rent Act. In Civil Writ Petition No. 1801 of 1985 the property is situated within the municipal limits of Jullundur and, in Civil Wril Petition No. 2257 of 1982, it is a case of property in Ludhiana. In CWP No. 1801 of 1985 in the case of Nasib Singh, notice to enhance the assessment of property and its net annual rental value was given to the assessee and the assessec thereupon filed objections with the plea that a portion of the property had been let out at Rupees 600/- per month only and not at Rs. 800/- per month as specified in the proposal. The annual value was, however, fixed by the Municipal Corporation at Rs. 48,360/-. Appeal against the said order was dismissed by the Divisional Commissioner, Jullundur. Earlier the rental value had been fixed at Rs. 7560/- and its enhancemenl lo Rs. 45,360/- was said to be entirely unjustified and unreasonable.

14. In CWP No. 2257 of 1982 (M/s. Sanjeev Woollen Mills, Ludhiana and another v. The Municipal Corporation, Ludhiana, through its Commissioner and another), the petitioner has challenged the enhancement of the annual rental value at Rs. 25,728/- for the assessment year 1981-82. Here, also, the petitioner''s plea, that standard rent as determinable under the Punjab Rent Act should be fixed, was rejected.

15. In the cases relating to the properties in the State of Punjab, the annual rental value has to be determined on the basis of the standard rent in the light of the decision of the Supreme Court in The Corporation of Calcutta Vs. Sm. Padma Debi and Others, .

16. The second bunch of petitions, namely, Civil Writ Petition No. 5604 of 1981 and Nos. 3181, 3182, 3183, 3184 and 4573 of 1982 relates to the properties situated in the State of Haryana. In CWP No. 5604 of 1981 (The New Picture Company Pvt. Ltd., Rewari, Dislrict Mohindergarh v. The Municipal Committee, Rewari, District Mohindergarh, through its Administrator and another), the Municipal Committee, Rewari, gave a notice to the petitioner, proposing enhancement of the annual rental value. The petilioner filed objections and thereafter the Administrator of the Municipal Committee; Rewari, assessed the annual rental value at Rs, 9,600/-. An appeal was filed before the Depuly Commissioner, Narnaul, but it was dismissed. Acivil suit was also filed by the petitioner, challenging the reassessment and that was decreed in favour of the

 

petitioner. However, in appeal, the order of the Sub-Judge was set aside by the Additional Dislrict Judge, Narnaul, holding that the civil Court had no jurisdiction in the matter of assessment of house tax.

17. In CWP No. 3181 of 1982 (Tara Chand son of Tek Chand v. The Municipality. Rewari, District Mohindergarh, and another), a show cause notice was given by the Municipalily and thereafter, considering the objections filed, the annual rental value was fixcd at Rs. 36,000/- in appeal, the Depuly Commissioner, Narnaul, reduced the annual rental value to Rs. 30,000/-.

18. In CWP No. 3182 of 1982 (Kalyan Singh son of Shri Kirpa Ram v. The Municipality, Rewari, District Mohindergarh, through its Administrator, and another), annual rental value Was fixed by the Administrator of the Municipality Rewari, at Rs. 19,000/- which was reduced to Rs. 15,000/- in appeal.

In CWP No. 3183 of 1982 (Murari Lal son of Ram Jiwan v. The Municipality, Rewari, District Mohindergarh, through its Administrator, and another), annual rental value was fixed at Rs. 22,000/- and it was reduced to Rs. 18.000/- in appeal.

In CWP No. 3184 of 1982 (M/s. Parveen Perforalers and Allied Industries, Delhi Road, Rewari v. The Municipality, Rcwari, District Mohindergarh, through its Administrator, and another), the annual rental value was fixed at Rs. 29,000/- for the assessment year 1980-81 and it was reduced to Rs. 24,000/- in appeal.

19. In CWP No.4573 of 1982 (Raja Ratti Ram son of L. Munshi Lal v. The Municipality, Rewari, District Mohindergarh. through its Administrator), the annual rental value was fixed at Rs. 10,800/- and the. appeal against the said determination of rental value was dismissed. Here also, a civil suit was filed by the petitioner, which was decreed and the Municipality was restrained from recovering the house tax. However, in appeal the said order was set aside.

20. Section 2 of the Haryana Municipal Act, 1973, reads as under :

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

(1) "annual value", notwithstanding anything contained in any other law for the time being in force, means

(a) in the case of land, the gross annual rent -

(i) to be calculated on the basis of fair rent fixed under the law relating to rent restriction for the time being in force; or

(ii) where no fair rent referred to in item (i) is fixed, at which il is expected to be let or it is actually let, whichever is greater;

xx xx xx xx xx"

21. It is evident from the above provision that it contains non obstante clause.

 

As has been seen earlier, the Supreme Court in Municipal Corporation, Indore and Others Vs. Smt. Ratnaprabha and Others, has examined a similar case of annual rental value and has held that standard rent was not required to be determined in view of the non obstanle clause in the relevant provisions of the Municipal Act. The decision has been endorsed with approval by the Supreme Court in Asstt. General Manager, Central Bank of India and Others Vs. Commissioner, Municipal Corporation for the City of Ahmedabad and Others, It has been held as under :--

"The decisions in The Corporation of Calcutta Vs. Sm. Padma Debi and Others, , Corporation of Calcutta Vs. Life Insurance Corporation of India, and The Guntur Municipal Council Vs. The Guntur Town Rate Payers'' Association etc., were distinguished on the ground that the municipal enactments concerned therein did not contain a non obslante clause like the one contained in S. 138(b) of the M.P. Act and that the said non obstante clause makes all the difference.

Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others, arose under the Punjab Municipal Act, 1911 (asapplicable to Delhi) and the Delhi Rent Control Act, 1958. A three-Judge Bench, speaking through P.N. Bhagwati, J. considered the aforesaid decisions and followed the ratio in Padma Debi, Life Insurance Corporation of India and Guntur Municipal Council in view of the fact that the definition of "annual value" in S. 3( 1 )(b) of the Punjab Municipal Act, 1911, was similar to those in the enactments considered in the above decisions; it did not contain a non obstante clause as the one contained in M.P. Accommodation Control Act. When the decision in Ratna Prabha was cited, Bhagwati, J. distinguished it by saying that it is based wholly and exclusively upon the non obstante clause found in the Madhya Pradesh Act and was, therefore, distinguishable. Having so said, the Bench expressed the following opinions as well :

''We are not at all sure whether this decision represents the correct interpretation of S. 138(b) because it is rather difficult to see how the non obstante clause in that section can possibly affect the interpretation of the words "annual value of any building shall... be deemed lo be the gross annual rent at which such building..... might reasonably .....be expected to be let from year to year.'' The meaning of these words cannot be different in S. 138(b) than what it is in S. 127(a) of the Calcutta Municipal Corporation Act, 1923 and S. 82(2) of the Madras District Municipality Act, 1920, and the only effect of the non obstante clause would be that even if there is anything contrary in any other law for the time being in force, that should not detract from full effect given to these words according to their proper meaning.

The learned Judge added further,

''(B)ut it is not necessary for the purpose of the present appeals to probe further into the question of correctness of this decision, since there is no non obstanle clause either in S. 3(1)(b) of the Punjab Municipal Act, 1911 or in S. 116 of the

 

Delhi Municipal Corporation Act, 1957 and this decision has, therefore, no application."

22. We may mention that both Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others, and Rama Prabha AIR 1977 SC 308 were decided by Benches of three learned Judges."

23. It would thus be apparent that, in the cases of the properties situated in the State of Haryana and governed by the HaryanaMunicipal Act, question of applicability of the standard rent under the Rent Control Act would not arise. The Supreme Court in Srikant Kashinath Jituri and others Vs. Corporation of the City of Belgaum, has observed as under :-- (at pp. 4458 and 4459 of AIR SCW) :

"Before parting with this appeal, we feel compelled to express our doubts as to the soundness and continuing relevance of the view taken by this Court in several earlier decisions that the property tax must be determined on the basis of fair rent alone regardless of the actual rent received. Fair rent very often means the rent prevailing prior to 1950 with some minor modifications and additions. Property tax is the main source of revenue to the municipalities and municipal corporations. To compel these local bodies to levy and collect the property tax on the basis of fair rent alone, while asking them at the same lime to perform all their obligatory and discretionary functions prescribed by the statute may be to ask for the impossible. The cost of maintaining and laying roads, drains and other amenities, the salaries of staff and wages of employees -- in short, all types of expenditure have gone up steeply over the last more than forty years. In such a situation, insistence upon levy of property tax on the basis of fair rent alone --disregarding the actual rent received -- is neither justified nor practicable. None of the enactments says so expressly. The said principle has been evolved by Courts by a process of interpretation. Probably a time has come when the said principle may have to be reviewed. In this case, however, this question does not arise at this stage and, therefore, it is not necessary to express a final opinion on the said issue."

24. In the result, the bunch of writ petitions, namely, Civil Writ Petitions Nos. 4761 and 4911 of 1983, No. 2257 of 1982 and No. 1801 of 1985, relating to the properties situated in the State of Punjab, stands allowed and it is held that annual rental value of the properties shall be determined, for the purposes of levy of house lax, on the basis, ofthe standard rent determinable under the Punjab Rent Act. Civil Revision No. I833of 1984 stands dismissed, being infructuous.

25. The bunch of writ petitions, namely. Civil Writ Petitions Nos. 5604 of 1981 and Nos. 3181, 3182, 3183, 3184 and 4573 of 1982, relating to the properties situated in the State of Haryana is dismissed. No order as to costs.

26. Order accordingly.

 