

(2010) 07 P&H CK 0265

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 487 of 2006 with CWP No. 16669, 16681, 16682 of 2009 and CWP No. 799 of 2010

Kultar Singh Pabla and Another

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 21-07-2010

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 4
Land Acquisition Act, 1894 — Section 23
Punjab Municipal (Executive Officer) Act, 1931 — Section 4
Punjab Municipal Act, 1911 — Section 3(1)

Citation : (2011) 164 PLR 140 : (2011) 3 RCR(Civil) 135

Hon'ble Judges : Mukul Mudgal, C.J;Ajay Tewari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mukul Mudgal C. J.—This judgment shall dispose of Civil Writ Petitions No. petitions No. 487 of 2006, 16669, 16681 and 16682 of 2009 and 799 of 2010, as the common question of law and facts and also the properties as well as the Petitioners involved therein are the same.

2. Brief facts giving rise to the present petitions are that the Petitioners are co-sharers in the properties assessed to the house tax by the Municipal Council, Hoshiarpur. They had rented out certain portion of those properties to H.D.F.C. Bank, M/s. Fullerton India Credit Co. Ltd., Bhartiya AXA Life Insurance Co. Ltd. and Reliance General Insurance Co. It is averred in the writ petitions that Municipal Council, Hoshiaipur has levied house tax on these properties owned by the Petitioners on the basis of actual rent received by them whereas the house tax ought to have been assessed on the basis of fair rent. Hence these writ petitions, wherein vires of amended Section 3(1)(b) of the Punjab Municipal Act, 1911 (for short the Act of 1911") have been questioned, with a prayer to quash the notices issued for recovery of house tax.

3. Upon notice, the State of Punjab filed its reply in main writ petition No. 487 of 2006 wherein an objection has been taken that the appeals filed by the Petitioners against the orders of assessments have already been dismissed by Respondent No. 3 and present writ petitions have been filed with a view to get rid of order of assessment. It is further averred in the written statement that as per Sub-clause (a) of Sections 61 and 67 of the Act of 1911 read with Section 4(b)(ii) of the Punjab Municipal (Executive Officers) Act, 1931, House Tax Committee is competent to assess the house tax on any property for the purpose of levy of house tax. In the written statement filed on behalf of Respondent No. 2 i.e. Municipal Council, Hoshiarpur, an objection has been taken that prior to the present assessment, these properties were assessed to the house tax on the same pattern and predecessors-in interest of present Petitioners after depositing the house tax did not initiate any proceedings. It is further averred that even the present Petitioners have deposited the house tax as per their shares, therefore, the present writ petitions are not maintainable.

4. Learned Counsel appearing for the Petitioners sought to challenge the vires of Section 3(1)(b) of the Act of 1911. In that regard, he placed reliance upon the judgment of Hon"ble Supreme Court in *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, , to contend that determination of house tax could be made on the basis of fair rent to be determined as per Section 4 of the East Punjab Urban Rent Restriction Act, 1949 (the Act of 1949), which provides a mechanism for assessing the fair rent and not on the basis provided for u/s 3(1)(b) of the Act of 1911 as amended in the year 1994. He further placed reliance upon the judgment of Hon"ble Supreme Court in case *Bhagwant Rai and others Vs. State of Punjab and others*, to contend that annual ratable value should be determined on the basis of standard rent expected to be received under Rent Act and not on actual rent received by the landlord. In this respect, he strongly relied upon the following observations of the Hon"ble Supreme Court:

When similar contention was raised that the actual rent received will form the basis to determine annual value of the building, another bench of this Court in *New Delhi Municipal Committee Vs. M.N. Soi and Another*, held thus as stated in the Headnote:

It is not the actual rent received by the landlord but the "hypothetical rent which can reasonably be expected if the building is to be let", which has to be the legal yardstick of a "reasonable expectation" in an "open market". The municipal authorities cannot take advantage of the defiance of the law by the landlord. "Rating cannot operate as a mode of sharing the benefits of illegal rack-renting indulged in by rapacious landlords for whose activities the law prescribes condign punishment." The prudence of the landlord has to be assumed and judged by normal standards to determine his reasonable expectation

Hence rating is to be governed by the fixation of rent by rent control authorities and not by the test of actual income derived by the landlord. The concept of

reasonableness of expectation of rent must take the penal-law of the State into account. It is not the expectation of a landlord who taken the risk of prosecution and punishment which the violation of the law involves, but the expectation of the landlord who is prudent enough to abide by the law that serves as the standard of reasonableness for purpose of rating.

This question was further examined by a bench of three Judges in *Dr. Balbir Singh and Others Vs. M.C.D. and Others*, .This Court said that "The ratable value of a building, whether tenanted or self occupied, is limited by the measure of standard rent arrived at by the assessing authority by applying the principles laid down in the Rent Act and cannot exceed the figure of the standard rent so arrived at by the assessing authority. The standard rent determinable on the principles set out in the Rent Act is the upper limit of the rent which the landlord may expect to received from a hypothetical tenant, but it may in a given case be less than the standard rent having regard to various attendant circumstances and considerations.

(emphasis supplied)

5. On the basis of the findings recorded in the aforesaid judgments, learned Counsel for the Petitioners further contended that the provisions of Section 3(1) (b) of the Act of 1911 introduced by way of Amending Act of 1994 are ultra vires the provisions of Section 4 of the Rent Act of 1949, and thus, no assessment could be made on the basis of actual rent received by the landlord but should have been made on the basis of fair rent assessed by the Rent Controller.

6. On the other hand, learned Counsel appearing for the State of Punjab contended that the decision rendered by the Hon"ble Supreme Court in *Dewan Daulat Rai Kapoor's* case (supra) and *Bhagwant Rai's* case (supra), would not be applicable to the present case because those decisions were based on the unamended Act. He further states that the vires of Section 3(1)(b) of the Act of 1911 introduced by way of Amending Act of 1994 has already been tested and upheld by the Hon"ble Supreme Court in case *Municipal Committee, Patiala Vs. Model Town Residents Asson. and Others*, . Thus, the present writ petitions being fully covered by that decision are liable to be dismissed.

7. Mr. Khosla further contended that the State had introduced the Amending Act of 1994 because the decision in *Dewan Daulat Rai's* case (supra) and *Bhagwant Rai's* case (supra) and many other judgments rendered by this Court had created situation whereby the process of assessing the properties for levying house tax was being adversely effected and lot of litigation was cropping up, therefore, to avoid the ambiguity created by the various judgments and the flow of litigation, the present amendment was made which lies within the competence of the State and is not ultra vires to the provisions of the Constitution or the list attached thereto in the VI Ith Schedule.

8. Before taking up the pleas raised by learned Counsel for the parties, it is necessary to reproduce the provisions of Section 3(1)(b) of the unamended Act

of 1911 which are to the following effect:

Definition: In this act, unless there is something repugnant in the subject or context:

1) "annual value "means-

a) in the case of land, the gross annual rent at which it may reasonably be expected to let from year to year.

Provided that in the case of land assessed to land revenue or of which the land revenue has been wholly or in part released, compounded for, redeemed or assigned, the annual value shall if, the State Government so direct, be deemed to be double the aggregate of the following amounts.

9. Thereafter, the definition of Section 3(1)(b) of the Act was amended by way of the Amending Act of 1994 and the annual value of the rent was defined as under:

3. Definition in this Act, unless there is something repugnant in the subject or context.

i) "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.

Provided that in the event of increase in rent, the Committee may make corresponding increase in the annual value.

Provided further that where the land or building has been let by the owner to any of his relations, and the committee is of the opinion that the rent fixed does not represent the true rent, the rent fixed under the agreement of lease shall not be taken into consideration and the annual value shall be determined in accordance with the principles contained in Clause (b).

10. The reading of unamended Section 3(1) shows that prior to the amendment brought in the year 1994, the gross annual rent reasonably expected to let from year to year was to be taken as a value for assessing the house tax whereas by introducing the amendment in the year 1994 a change was brought in and a provision made in the Act itself that actual rent received should be taken as a value for assessing the house tax. It is not in dispute that the pleas advanced by the learned Counsel for the Petitioners Shri Vipul Jindal are based on the decisions of the Supreme Court in Dewan Daulat Rai's case (supra) and Bhagwant Rai's case (supra) which were based on the unamended Section 3(1) (b) of the Act of 1911 and the effect and validity of Section 3(1)(b) introduced by the Amending Act of 1994 was not an issue before the Hon"ble Supreme Court, when those decisions were rendered. Therefore, the ratio laid down in those cases is of no application to the facts of the present cases. The vires of Section 3(1)(b) of the Act of 1911 introduced by way of Amending Act of 1994 challenged by the Petitioners have already been tested by the Hon"ble Supreme

Court in Municipal Committee, Patiala Vs. Model Town Residents Assn. and Others, and upheld in the following terms:

10. In the case of Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad, , the Constitutional Bench of this Court took the view that there was no authority for the proposition that the word "rate" indicated a levy on the basis only of annual value of property. In our country, the words "tax" and "rates" have been used by the Legislatures to indicate the impost and in some cases the Legislature has permitted a local authority to levy "property tax" at a percentage of its (land and building) capital value. In the said judgment, the Constitutional Bench of this Court has held that there were three methods for arriving at rateable value. Where the land or building was actually let, the valuation based on the rent actually charged is the proponent. Where land or building is not let, then there were two methods for finding out the rateable value. The first was to assume a hypothetical tenancy and to find out the rent at which the premises would be let. The second was based on capital value of the premises. However, in the second case the tax is not levied on the capital value itself, the capital value of the house to be assessed by contractors method, in addition to the market value of the land. This second method has been accepted as constitutionally valid in the above decision of this Court in the case of Patel Gordhandas (*supra*). It is this second method which has been introduced in the Punjab Municipal Act, 1911 by insertion of Punjab Amending Act 11 of 1994. Therefore, the word "rate" has always been construed to mean a tax on the annual value or rateable value of lands or buildings and it is this annual value or rateable value which is arrived at by one of the modes indicated above.

11. Applying the above tests to the present case, we find that prior to the Amending Act of 1994, annual value was defined to mean the gross annual rent at which the house or building could be let from year to year subject to statutory deductions [see unamended Section 3(1)(b)].

Therefore, under the unamended section the tenanted as well as self-occupied premises stood equated in the matter of determination of the gross annual rent. However, even under the unamended Act, vide Section 3(1)(c) it was stipulated that if in a given case it was not possible for the municipality to determine the gross annual rent, then, 5% of the total sum obtained by adding the estimated present cost of construction, less such amount as the Committee may deem fit to be deducted on account of depreciation to the estimated market value of the land (site). Therefore, even under the unamended section, in marginal cases, it was open to the municipality to fix the annual value at 5% of the sum obtained by adding the cost of construction to the market value of the land. It appears that on account of increase in the market price of the land in question that the State Legislature amended Section 3(1) by Punjab Amending Act 11 of 1994 by which it had been stipulated vide Section 3(1)(b) that in cases where land or building is self occupied, the annual value shall be 5% of the sum obtained by adding the present market value of the land and the estimated cost of

construction less 10% deduction on account of depreciation. By the said amendment it had been laid down u/s 3(8aa) that the words "market value" of the land or building shall be determined in accordance with the principles in Section 23 of the Land Acquisition Act, 1894 or in accordance with the provisions of the Registration Act, 1908.

12. Analysing the unamended and amended Section 3(1)(b) of the said Act, we are of the view that the Legislature has given a great amount of leeway in the matter of taxation. Article 14 does not prohibit classification. As stated above, in cases where the property is actually let out and it is possible to decide the annual value on the basis of actual rent then the annual value is equated to the gross annual rent at which the land or building has actually been let [see Section 3(1) (a) as amended. The difficulty comes in when the land or building is self-occupied by the owner and it is not possible to arrive at the annual value in the absence of actual rent and it is in those cases that the Legislature has prescribed the method of calculating the annual value at 5% on the sum obtained by adding the present market value of the land plus the estimated cost of construction of the building minus 10% as deduction on account of depreciation.

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19. On behalf of the Assesseees, a number of judgments of this Court were cited in the matter of fixation of standard rent. In our opinion, the said citations are not relevant. In this case we are concerned with constitutional validity of the impugned Sections 3(1)(b) and 3(8aa). In the present case, we have held that it is open to the Legislature to introduce the composite scheme for determination of annual value based on cost of construction plus market value of the land, therefore, the judgments of this Court in the matter of fixation of standard rent has no relevance. (emphasis supplied).

11. In our view, the judgment of Hon''ble Supreme Court in Model Town Residents case (supra) fully covers the issue involved in the present writ petition. So far as the position of law laid down in De-wan Daulat Rai's case (supra) and Bhagwant Rai's case (supra) is concerned, they have no application to the facts of the present cases because those were based on the unamended provisions of the Act and on different premises.

12. At this stage, learned Counsel for the Petitioner urged that Hon''ble Supreme Court while upholding the vires of the Amending Act of 1994 in Municipal Committee, Patiala's case (supra) did not take into consideration the pleas being raised now that the rent taken as value for assessing the house tax should be the fair rent which is assessed under the Rent Act of 1949. We are unable to agree with the plea raised by learned Counsel for the Petitioners and are of the view that validity of the provisions having once been uphold by the Hon''ble Supreme Court cannot be questioned again even on different grounds. Moreover, the provisions of a given Act could not be said to be ultra vires the other provisions of the same Act. Section 3(1)(b) introduced by way of the Amending Act of 1994

was enacted to simplify and create transparency in the procedure for assessing the value for the purpose of levy of house tax. In fact, the amended Act remedies the evil which was postulated in the following terms by the Hon''ble Supreme Court in Bhagwant Rai's case (supra) relied upon by the Petitioner:

Rating cannot operate as a mode of sharing the benefits of illegal rack-renting indulged in by rapacious landlords for whose activities the law prescribes condign punishment.

13. In this view of the matter, the challenge to the constitutional validity of Section 3(1)(b) of the Act of 1911 is rejected and we do not find any ground to interfere in these petitions which are accordingly dismissed with no order as to costs.