

(1972) 05 DEL CK 0012

In the Delhi High Court

Case No : Second Appeal No's. 56, 57 and 58 of 1970

Madho Lal

APPELLANT

Vs

Ram Das
 Madho Lal Vs Rup Chand
 Madho Lal
Vs Rawel Singh

RESPONDENT

Date of Decision : 05-05-1972

Acts Referred:

Citation : (1972) ILR Delhi 848 : (1972) RLR 98

Hon'ble Judges : V.S. Deshpande, J;S.I. Rangarajan, J

Bench : Division Bench

Advocate : S.N. Marwah and M.L. Kapur, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) u/s 6(1)(A)(b) as well as u/s 6(1)(B)(2)(b) of the Delhi Rent Control Act, 1958 (hereinafter called the Act) the annual standard rent in relation to any premises is to be a percentage of the aggregate amount of (1) the reasonable cost of construction and (2) the market price of the land comprised in the premises on the date of the commencement of the construction". The first factor was considered in Diwan Chand vs. Tirath Ram 1972 R C.R. 88. The second factor was briefly considered in Prem Kumar Bhatia Vs Shiv Dutt Sharma, 1969 R. C. R. 575. It was contended for the appellant that a later decision in Chuni Lal vs. Ram Parkash, 1990 RCR. 67, has impliedly taken a view different from the view expressed in Prem Kumar Bhatia vs Shiv Dutt Sharma. B. C, Misra, J., Therefore, referred the following question to Division Bench, namely :- Whether the market price of lease-held land comprised in the tenanted premises as, on the date of the commencement of construction, is, for the purpose of determining the standard rent u/s 6 of the Delhi Rent Control Act of 1958, to be determined in accordance with the principles laid down in Prem Kumar Bhatia vs Shiv Datt Sharma, 1969 Rent Control Journal 644, or any other.

(2) The landlord in all these three appeals (namely, S. A. Os. 57, 58 and 59 of

1970) is Madho Lal. As a displaced person, he was given lease of plot No. 15/1 of Government land without premium on a ground rent of Rs. 125.00 per annum. In 1952-53. he built on a part of this land three shops each on an area of 10 square yards. These shops were let out to three tenants who are the respondents in the three appeals at Rs. 40.00, Rs. 50.00 and Rs 50.00 per month respectively. Within two years of the commencement of the Act, the Additional Controller Shri B. K. Agnihotri fixed the standard rents of the shops of the tenants Ram Dass, Rawel Singh and Roop Chand at Rs. 11.00, Rs. 10/50 and Rs 8.62 respectively, after finding that the cost of construction of the shops let out to them was Rs. 1,489.00, Rs 1,373.00 and Rs, 1,179.00 and the market price of the land comprised in each shop on the date of the construction was Rs. 265.00, Rs. 260.00 and Rs. 210.00 respectively calculated at the rate of Rs. 21.00 per square yard. In the appeals filed by the landlord, the Rent Control Tribunal Shri P. S. Patter remanded the case for fresh disposal. In further appeals by the landlord to the High Court the cases were remanded back to the Tribunal for disposal in the light of the observations of the judgment of the High Court which is reported in Madho Lal vs. Roop Chaad, 1970 R.C.R. 26.

(3) Shri Gian Chand Jain, Rent .Control Tribunal proceeded to determine the standard rent of the shops u/s 6(1)(B)(2)(b) of the Act which was less than the standard rent fixed by the Additional Controller in the first instance. The appeals of the landlord were, Therefore, dismissed. Hence these second appeals by the landlord.

(4) Firstly, let us consider the evidence regarding the cost of construction of the shops The shops were constructed by the present landlord himself. The amount spent on the construction was Therefore, within his personal knowledge. As pointed out in Diwan Chand vs Tirath Ram, it was the duty of of landlord, Therefore, to adduce evidence of actual expenses incurred by him on construction. He has totally failed to do so. He made a general statement that he spent about Rs. 20,000.00 on the construction of the shops. The learned Rent Control Tribunal characterised this statement as- "absurd on face of it. The area under the shops is hardly 312 square feet. In other words he spent Rs. 92.00 per square ft. which appears to be fantastically high and cannot be accepted. It appears that the appellant has no regard for truth".

(5) We are in agreement with the above remarks of the Tribunal. We have, Therefore, to turn to the evidence of Shri Cbanan Singh, an architect, who was examined by the tenants as AW-1 to prove the cost of construction. His report is Exhibit AW-1/1 and his estimate is at Exhibit AW-1/3. He based his estimate of the cost of construction on the Schedule of the Central Public Works Department for the year 1950 stating the rates at which the Government paid for the construction of Government buildings. It is well known the Central Public Works Department of the Government of India is perhaps the biggest single builder in the whole country. It employs numerous engineers and construction experts. It actually pays large sums of money for building charges. The Schedule of rates of

building charges which is acted upon by the Department in any particular year is Therefore, reliable as a piece to evidence showing what rates were current at the relevant time for payment of construction charges. We agree, Therefore, with the Tribunal that Shri Chanan Singh was entitled to rely on the C.P WD. Schedule of rates for finding out the construction charges Shri Chanan Singh stated that by 1952-53 the rates had increased up to 10 to 15 percent over the rates of 1950. As there was no evidence to the contrary from the landlord, the Tribunal had no alternative but to believe the evidence of Chanan Singh and to determine the cost of construction of these shops on the basis of C.P.W.D. Schedule of rates for 1950 plus an increase of 15 per cent over them. We are also to the same view.

(6) The second constituent of the aggregate amount in section 6(1)(B)(2)(b) is the market price of the land comprised in the premises on the date of the commencement of the construction. The meaning of the expression "market price" or "market value" would differ according to the purpose for which the market price or the market value is to be ascertained. When the whole of the interest in the land is to be acquired by the Government or a public authority under the Land Acquisition Act, compensation has to be paid separately to persons in whom the different interests in the land are vested. Such compensation would, Therefore, be apportioned between the owners of the lands and the tenants thereof. Similarly, if the acquiring authority is itself the owner of the land which is held by tenants, then compensation would be payable only in respect of the interest of the tenants. No compensation would be payable in respect of the interest of the landlord in as much as the acquiring authority is itself the landlord.

(7) The purpose of ascertaining the "market price" of the land in section 6 of the Act is, however, different. It is to give the landlord a fair return on the investment made by him in purchasing the land or taking it on lease and in constructing a house on it or in taking on lease a house already constructed on it. The landlord may be either the owner of the land and the premises or he may be only a lessee in respect of the land or in respect of the premises or in respect of both. It is true that his investment is likely to be larger if he has purchased the land and built the premises or purchased the premises than if he has merely taken the land on lease and taken also the premises on lease. The question is whether the amounts of the standard rent would be larger if the landlord is the owner of the land or the premises and smaller if he is only a lessee thereof. The answer to this question is provided by the language of section 6(1)(A)(2)(b) and section 6(1)(B)(2)(b) itself. It is the "cost of construction" and "the market price of the land which is to determine the aggregate of which the standard rent is a percentage. Therefore, quite irrespective of the question whether the landlord is the owner or the lessee of the land and the premises, the two factors Constituting the aggregate on which the standard rent is to be assessed as a percentage of the same. The reason is obvious. The standard rent is to be paid by a tenant who is occupying the premises at the relevant time. The only right for which the tenant pays is the right of occupation or possession during the

tenancy. Therefore, it makes no difference to a tenant whether the landlord is the owner of the land and the premises or is merely a lessee thereof. In either case, the interest conveyed by the landlord to the tenant would be the same. The standard rent payable for such interest, that is, tenancy, should also, Therefore, be the same. The ultimate reversion preserved to the owner of the land and the premises is irrelevant as a consideration in determining the standard rent. The circumstances under which and the consideration for which the landlord may have obtained the land and the premises from the owner may vary. For instance, an owner may give the land and/or the premises to the landlord for a nominal consideration if the two were friends or if the Government, as in the present case, wanted to help the displaced persons. The tenant of the landlord is not, entitled to the advantage of the concession which the landlord may have obtained from the owner in taking the land and the premises from the owner. The concession was personal to the landlord. Further, a landlord may conceivably be a trespasser or a squatter who has paid no consideration to the owner for the land and/or the premises. This does not mean that the tenant should pay no rent to the landlord. For, the risk and expenses incurred by the landlord are his own look out. It is to avoid such uncertainties that the Legislature has laid down two uniform criteria of "the cost of construction" and "the market price of the land" for the determination of the standard rent in section 6. The investment made by the landlord, in the land and the premises, is Therefore, to be found out only by the application of these two uniform criteria irrespective of the individual differences in the circumstances in which the land and the premises might have been obtained by the landlord from the original owner. We find, Therefore, that it is the "market price of the land" in the sense of the price it would fetch in an open market on sa Ie that alone is to be taken into account whether the land belongs to the landlord as an owner or whether it is held on lease by him.

(8) "MARKET price" means "value in the open market". In 10 Halsbury's Laws of England, paragraph 186, at page 112, it is stated as follows :-

" SUBJECT to the limitation to the existing use, the value of the land is the amount which the land sold in the open market by a willing seller, might be expected to realise"

Market price can, Therefore, exist only if the land is saleable. If it cannot be sold at all either because the sale is prohibited by the terms on which it is held or by some law, then it is impossible to determine its market price. It is only if the land is saleable that evidence can be adduced as to what it would fetch if sold in the open market by a willing seller. Similarly, the sales of similarly situated land in the neighborhood can also afford evidence at which the land in question could be sold by a willing seller.

(9) If in case of inalienable land one were to speculate what price it would fetch in an open market if it is sold. such speculation would be pure imagination which cannot be taken as the basis for the determination of the market price. In Daud Ahmad Vs. The District Magistrate, Allahabad and Others, , the District

Magistrate had to arrive at the finding whether alternative accommodation existed for the landlord on the basis of facts by holding an inquiry and not turning the idea within himself. The formation of the opinion by the District Magistrate without a finding of fact based on evidence was, Therefore, held to be illegal. On the same reasoning it would be unrealistic to imagine what would be the market price of inalienable land if the land were alienable.

(10) In Prem Kumar Bhatia Shiv Dutt Sharma, the land under the premises was not only held by the landlord on lease but it was also inalienable or at any rate assumed to be so, as "it was not for sale" as observed therein. It is for that reason that "it had, Therefore, no market price" as observed therein. In Chuni Lal v Ram Parkash, 1970 R.O.R. 67, the land, though leasehold, was not said to be unsaleable. Its market price could, Therefore, be found out. This decision is not, Therefore, in any way inconsistent with the decision in Prem Kumar Bhatia's case.

(11) It is well known that the market value of land is determined not only by its actual use but also by the potential use to which it can be put. Such potential use means the future use for which the land could have been used by the owner of the land. The compensation for the acquisition of land is paid for the loss caused to the owner of the land by its acquisition. As stated in 10, Halsbury's Laws of England, paragraph 157 at page 94.

" THE loss is tested by the value to the person from whom the land is taken, and not by the value to the persons acquiring it It follows that if the person claiming compensation can make no use of the land, nor obtain any value for it in the market by reason of the restrictions on his ownership, he practically suffers no loss, and is Therefore, entitled to merely nominal compensation".

Stebbing v. Metropolitan Board of Worfcen, 1870-L.R. 6 Q.B. 37 at 42).

(12) If the restriction on such use is removable ,then the possibility of such removal must be considered in ascertaining the market value of the land. (South Eastern Rail Company etc. v. London Country Council, 1915-2-Ch. 252, CA., at 258). The decision in Hilcoat v. Archbishop of Canterbury, 10 C.B. 327, also seems to be based on the possibility of the removal of the restriction on the use of the land. The decision in Stebbing as well as in Hilcoat were considered by Vaughan Williams, L.J. in City and South London Railway v. St. Mary Woolnoth, (1903) 2 K.B. 728. Inalienability is a restriction on the use to which a land can be put by its owner. It vitally affects the value of the land and rules out the test of marketability of the land for ascertaining its value. We are of the view, Therefore, that if the land under the premises cannot be alienated by the owner at all then the market price of the land could not be found out. In such a case, section 6>(1) (A)(2)(b) or section 6>(1)(B)(2)(b) would be inapplicable and the standard rent that should be fixed would not be there under but on some other basis.

(13) There is nothing to show that the owner of the land was prohibited from transferring the land under the premises. On the contrary, the appellant has

deposed that the market price of the land was Rs. 200.00 per square yard. In the cross-examination of A.W. I Kasturi Lal, a suggestion was made that the market price of the land was Rs. 150.00 per square yard. We are unable to agree that a mere suggestion in cross-examination of a witness can be taken to be an evidence or an admission on the part of the cross-examiner. Therefore in our view, the only piece of evidence as to the market price of the land is the deposition of the landlord that its market price was Rs. 200.00 per square yard. When the land lord Madho Lal deposed to the market price of the land, he must have intended to say what price the land would fetch in open market if it is sold. He could not have in his mind a nice distinction between the sale of leasehold and the sale of a freehold. Presumably he was deposing in accordance with the requirements of section 6(1)(A)(2)(b) and 6(1)(B)(2)(b). We Therefore understand him to depose as to the market price of the land as a whole and not merely of the leasehold interest in it. The area of the land under each of the premises is about 10 square yards. The market value of the land under each of the shops is, Therefore, Rs. 2000.00. The aggregate of the cost of construction and the market price of the land under the premises comes to Rs. 3712.35 Rs. 3578.95 and Rs. 3335.65 for the shop of Ram Dass, Rawel Singh and Roop Chand respectively. Seven and one-half per cent of this aggregate being the annual standard rent comes, to Rs. 278.43, Rs. 268.42 and Rs. 251.67 respectively and the standard rent per month would be Rs. 23.20, Rs. 22.37 and 20.97 respectively.

(14) We, Therefore, answer the question referred to Division Bench as follows :- The market price of the land comprised in the premises means the price which a willing seller would obtain for it if the land is put to sale in an open market. Such a market price cannot be ascertained if the land is inalienable by its owner either by the conditions on which it is held or by law. If the land is saleable, then its market price would mean the price of the land as a whole and not merely of the leasehold interest as distinguished from the reversion vested in the owner.