
(1975) 05 DEL CK 0023

In the Delhi High Court

Case No : Civil Writ Petition No. 374D of 1966

M.N. Soi

APPELLANT

Vs

New Delhi Municipal Committee and Another

RESPONDENT

Date of Decision : 30-05-1975

Acts Referred:

Citation : AIR 1975 Delhi 236 : (1975) 2 ILR Delhi 765

Hon'ble Judges : Yogeshwar Dayal, J;V.S. Deshpande, J;T.V.R. Tatachari, J

Bench : Full Bench

Advocate : F.C. Bedi and B.J. Nayar, for the Appellant;

Judgement

T.V.R. Tatachari, J.

(1) This Civil Writ Petition came up initially for hearing before B. C. Misra J. who considered that it should be heard by a larger Bench. The Civil Writ Petition then came up before a Division Bench consisting of V. S. Deshpande and H B. C. Misra JJ. who referred it to a Full Bench. Although the Division Bench framed certain questions, which will be referred to later, for consideration by the Full Bench, the counsel arc agreed that the entire Writ Petition has been referred for being heard and decided by the Full Bench.

(2) The Civil Writ Petition has been filed by the petitioner. M. v. Soi, praying that certain orders passed by the New Delhi Municipal Committee assessing the annual value of the petitioner"s house for purposes of house-tax for the year 1963-64. 1964.65 ?"J 1965-66 be quashed. The respondents to the Writ Petition are (1) The New Delhi Municipal Committee, and (2) Shri S. C. Vaish, Additional District Magistrate, Delhi.

(3) It is necessary at this stage to state the facts in a chronological order gathered from the Writ Petition, the counter affidavit filed on behalf of the first respondent the annexure to the said Writ Petition and counter affidavit, and certain documents which the petitioner was allowed to place on record subject to just exceptions by an order. dated August 27, 1974, in C. M. No. 1441 of 1974,

filed by him.

(4) The petitioner is the owner of House No. 15, Prithvi Raj Road, New Delhi, bearing Municipal No. III-P/H/46 (old number being M. C. 8389), which devolved on him from his father.late Rai Bahadur M. R. SoL The petitioner stated in his application, C. M. 1441 of 1974, that prior to 1939, the house was let out to the Reserve Bank of India for the residence of its Manager at Rs. 200.00 per month inclusive of house-tax and charges for unfiltered water supply. that in May, 1939, a new arrangement was entered into with (he Reserve Bank of India by his father, who was the then landlord. by which the house was taken by the Reserve Bank of India on lease for a period ("I" three years with effect from September 1, 1939, with an option for extension for another two years, and the rent was reduced from Rs, 200.00 per month to Rs. 185.00 per month including house-lax and unfiltered water charges, that the petitioner's father. in reply to a letter, dated October 26, 1940, from the Controller enquiring about the rate of rent for the house in question, wrote a letter (Annexure N) dated November 1, 1940, to the Controller, mentioning the reduced rate of rent of Rs. 185.00 , that the petitioner's father thereafter received a letter (Annexure O), dated August 8. 1941, from the Controller with which was forwarded an extract from the list of rents published under clause 10(1) of the Notification No. B. 52, (i.e. the New Delhi Rent Control Order, 1939). showing the fair rent that had been fixed for the house in question, that the petitioner's father was required by that letter to make a representation if he had any objections to the fair rent fixed, and was also informed that any rent charged in excess of the said fair rent would make the petitioner's father liable to prosecution under Rule 81(4) read with Rule 5 of the defense of India Rules, but the petitioner's father did not do anything further as he had already supplied the information regarding the rate of rent, that it was on the basis of the rate of rent of Rs. 185.00 that the then Controller fixed the fair rent for the house under clause 10(1) of the New Delhi Rent Control Order, 1939, at R.s. 170.00 per month exclusive of house-tax and irrigat.ion water charges, and that thereafter the petitioner's father was sent an order, dated September 25, 1941, to that effect- According to the petitioner, the original order, i.e., a copy of the order of the Controller signed by the Controller was shown to the second respondent and also to B. C. Misra J. On our asking for the same, he produced before us the copy of the order signed by the Controller. We directed the same to be kept on the record of this Writ Petition lor referenee.

(5) According to the petitioner, the New Delhi Municipal Committee (hereinafter referred to as the Committee) which came into existence in 1957. assessed the building at an annual value of Rs. 2,673.75 nP. for purposes of house-tax for the years 1956-57, 1957-58, and 1958-59, and the tax levied on the basis of that value was paid by the petitioner. However, the Committee later issued three notices, dated December 4, 1958, u/s 67 of the Punjab Municipal Act, proposing to increase the annual value of the building from Rs. 2,673.75 to Rs. 24,000.00 for each of the periods, November 1, 1956, to March 31. 1957, April 1, 1957 to March 31, 1958, and April 1, 1958 to March 31, 1959. The petitioner filed

objections to the said proposal to increase the value with retrospective effect, and also pleaded that in any case the tenant at the time of the objections, M/s. Mitsubishi Shoji Kaisha Ltd., was paying rent at the rate of Rs. 1,500.00 per month, and on that basis the annual value would be Rs. 18,000.00 minus 10 per cent on account of repairs, i.e. Rs. 16,200.00. The Committee, by three separate resolutions, Nos. 95, 96 and 97, for the three aforesaid periods respectively, passed in its Ordinary Meeting held on February 20, 1959, fixed the annual value at Rs. 22,008.00 for each of the three periods.

(6) Against the said assessment, the petitioner preferred appeals to the Court of Shri Yousuf Zai, Additional District Magistrate, u/s 84 of the Punjab Municipal Act. The appeals were dismissed by the Additional District Magistrate on February 24, 1959. The Committee assessed the annual value at Rs. 22,008.00 for the next two years 1959-60 and 1960-61 and levied a house-tax of Rs. 2023.92 nP. The petitioner then filed a suit. No. 64 of 1960, in the court of the Senior Subordinate Judge, Delhi, challenging the validity of the assessment and levy and praying for a permanent injunction restraining the Committee from Realizing the tax demands at the enhanced rate for the aforesaid periods from April 1, 1956, to March 31, 1961. By his judgment, dated July 29, 1961, Shri Joginder Singh Mander, Subordinate Judge 1st Class, Delhi, held (1) that he had jurisdiction to try the suit and the suit was not barred by Section 86 of the Punjab Municipal Act, (2) that the Committee had no jurisdiction to assess the annual value with retrospective effect. and (3) that the gross annual rent of the building was Rs. 18,000.00 and not Rs. 24,000.00 as assessed by the Committee. The Subordinate Judge accordingly issued an injunction restraining the Committee from Realizing the house-tax at the enhanced rate for the years 1956-57, 1957-58 and 1958-59. As for the years 1959-60, and 1960-61, the Subordinate Judge ordered that house-tax be realised for those two years also on an annual value of Rs. 18,000.00 less 10 per cent on account of repairs.

(7) Against that judgment and decree, the Committee filed Regular Civil Appeal No. 375 of 1961 in the court of the Senior Subordinate Judge, Delhi. By his judgment, dated December 26, 1963, Shri K. S. Sidhu, Senior Subordinate Judge, Delhi, held that except for the years 1956-57 and 1957-58, the Committee was entitled to realise house-tax from the petitioner at the increased value of Rs. 22,008.00, and accordingly allowed the appeal in part.

(8) There is no material on the record to show what the assessments were for the years 1961-62 and 1962-63.

(9) The assessments for the years 1963-64, 1964-65 and 1965-66 are the subject matter of the present Writ Petition. Acting u/s 3(l)(b) of the Punjab Municipal Act, 1911, the Committee assessed the annual value at Rs. 24,000.00 for the years 1963-64 for the purposes of house-tax by a resolution passed on March 30, 1963, and levied a tax of Rs. 2,529.90 nP. It is stated "in the Writ Petition that the said assessment was made without notice to the petitioner. The petitioner filed an appeal against the said assessment order in the Court of the

Additional District Magistrate, Delhi. Again, the Committee assessed the annual value at Rs. 24,000.00 for the year 1964-65 by resolution No. 110 passed on March 20, 1964, and levied a tax of Rs. 2,259.90 nP. The petitioner filed objections to the said assessment and later filed an appeal against the said assessment order in the court of the Additional District Magistrate, Delhi. Similarly, for the year 1965-66 also, the Committee assessed the annual value at Rs. 24,000.00 by a resolution passed on March 15, 1965, and levied a tax of Rs. 2,529.90. The petitioner filed objections, and later an appeal against the said order of assessment in the court of the Additional District Magistrate, Delhi. By a common order, dated February 11, 1966, Shri S. C. Vaish, Additional District Magistrate, Delhi, allowed the three appeals partly, and held that in view of the fact that the house was admittedly let out during the years in question for rent at Rs. 1,500.00 per month, the annual value of the house in question would be Rs. 18,000.00 minus 10 per cent for maintenance.

(10) According to the petitioner, by an order, RC/1361, dated September 25, 1941, the Controller, New Delhi, had fixed the fair rent for the house in question under the New Delhi Rent Control Order, 1939, at Rs. 170.00 per month exclusive of house-tax and irrigation water charges, and the Committee could not fix the annual value for purposes of house-tax at a figure determined otherwise than on the basis of the fair rent fixed for the house under the Rent Control legislation applicable to Delhi. It is stated in the Writ Petition that the original order of the Controller fixing the fair rent at RS. 170.00 per month was shown to the Additional District Magistrate during the course of the arguments in the appeals, and the Court asked the petitioner to place a copy of the said order on the record in the appeals. It is stated in the Writ Petition that on the next date of hearing the Additional District Magistrate called upon the petitioner to file an affidavit in support of the fair rent and the actual rent received by him, and accordingly the petitioner filed an affidavit, dated September 1, 1965. A typed copy of the order of the Rent Controller dated September 21, 1941, and a copy of the affidavit, dated September 1, 1965, have been filed with the Writ Petition as annexures D and F. The petitioner stated, in that affidavit (a) that the fair rent was fixed for the house by Mr. F. T. Jones, the then Controller under the New Delhi House Rent Control Order 1939, at Rs-. 170.00 per month, a copy of which was filed along with the affidavit, and that the name of the landlord was shown in that copy as R. B. M. R. Soi, father of the petitioner, who was the then owner of the house, and (b) that on the date of the affidavit, the house had been let out to M/s. Mitsubishi Shoji Kaisha Ltd. at a rental of Rs. 1,500.00 per month, that the tenant wrote a letter to the Committee slating the said fact, and that a letter obtained by the petitioner from the tenant showing the rate of rent had been filed with the affidavit. In his common order, dated February 11, 1966, passed on the appeals the Additional District Magistrate observed that the appellant before him (the petitioner herein) had pressed upon him an order alleged to have been issued by the Court of the Controller, Delhi, on September 25, 1941, assessing the fair rent of the premises at Rs. 170.00 per month that it was a more typed

copy, and that he could not rely upon it.

(11) Aggrieved by the said common order in the three appeals the petitioner has filed the present Writ Petition praying

(1) that the three orders of the Committee assessing the annual value at Rs. 24,000.00 for purposes of house-tax for the years 1963-64, 1964-65, and 1965-66, and the common order of the Additional District Magistrate assessing the annual value at Rs. 18,000.00, be quashed, and (2) that the respondents, i.e., the Committee and the Additional District Magistrate, Delhi, be directed to assess the annual value of the said house at the rate of the standard rent, viz. Rs. 2,818.00 minus 10 per cent.

(12) In opposition to the Writ Petition, the first respondent filed a counter affidavit of Mr. P. S. Saxena, Secretary, New Delhi Municipal Committee. -It was stated in the counter affidavit that prior to the year 1963-64, the building of the petitioner was assessed at an annual value of Rs. 22,008.00 for the years 1958-59, 1959-60, and 1960-61, calculating on the basis of a monthly rent of Rs. 2,000.00, and that the same was confirmed by the Court of Senior Subordinate Judge in his judgment, dated December 26, 1963, in appeal No. 375 of 1961. It was also stated that in the Suit No. 64 of 196C, filed by the petitioner against the Committee challenging the assessment for the years 1956-57, 1957-58, and 1958-59, 1959-60, and 1960-61, the petitioner did not plead or agitate that the standard rent of the premises had been fixed by the competent authority. It was further stated that in all his objections filed before the Committee up to the year 1964-65, the petitioner never agitated the question of standard rent, and had been only pointing out that the annual value be calculated at the rate of Rs. 1,500.00 per month as per his letters, dated September 8, 1962, April 24, 1963, and July 17, 1963, and that even while filing the objections- before the Committee for the year 1965-1966, the petitioner never filed the certified copy of the alleged order of the Controller and never showed the original order of the Controller to the Committee, and the same was, Therefore, not taken into consideration by the Committee- It was pleaded that since the petitioner never substantiated his allegation with respect to the fixation of the standard rent by any cogent proof before the appellate authority (respondent 2), and since the petitioner had been admittedly getting a rent of Rs. 1,500.00 per month, he was estopped from agitating the matter regarding the standard rent for the purpose of the assessment for the years up to 1965-66. It was submitted that the alleged order of the Controller on which the petitioner wanted to rely was not in consonance with the provisions of law and was without jurisdiction and, Therefore, not binding on the respondents, and that the petitioner was not entitled to any of the reliefs prayed for in the Writ Petition.

(13) The questions framed by the Division Bench for consideration by this Full Bench are as follows :-

"1. Whether standard rent fixed by the Rent Controller under the Delhi Rent

Control Order, 1939, is a decisive or only a persuasive consideration in determining the gross annual rent at which the premises are reasonably expected to be let within the meaning of Section 3(1) of the Punjab Municipal Act, 1911, in the same way as standard rent fixed under the Delhi Rent Control Act, 1958? 2. Whether the actual rent paid by a willing lessee to a willing Lesser is a consideration which prevails over the standard rent in determining the fair letting value of the premises? 3. Whether the standard rent will prevail over the agreed rent in the determination of the fair letting value only if either the tenant or the landlord wishes to avail himself of it? 4 What is the effect of the illegality of the agreement to pay rent in excess of standard rent on the determination of fair letting value ? 5. Whether the order of Mr. Jones, Rent Controller, was in the circumstances of the case without jurisdiction, void and ineffective? 6. Whether the petitioner is in the circumstances of the case, particularly in view of their failure to raise this plea before the Municipal authorities, entitled to have the annual letting value assessed on the basis of the order of Mr. Jones ?

We shall consider these questions in the course of our dealing with the contentions of the parties in the Writ Petition 13. As stated earlier, the case of the petitioner is that the Controller, by his order, R. C/R/1361, dated September 25, 1941, had fixed the fair rent for the house in question under the New Delhi Rent Control Order, 1939 at Rs. 170.00 per month exclusive of house tax and irrigation water charges, and the Committee could not, Therefore, fix the annual value for purposes of house-tax at a figure determined otherwise than on the basis of the fair rent fixed for the house under the Rent Control legislation applicable to Delhi.

(14) The first question that arises for determination is as to whether the Controller had in fact fixed the fair rent at Rs. 170.00 per month under the New Delhi Rent Control Order, 1939. As pointed out in the course of the narration of the facts, the petitioner's counsel has produced a document which purports to be a copy of the order passed by the Controller on September 25, 1941, and forwarded to the father of the petitioner. It reads as under :-

"RENTCONTROL Office No. RC/1361 Dated, New Delhi, the 25th Sept. 1941. Order After the consideration of all the facts and circumstances a fair rent of Rs. 170.00 (Rupees one hundred and seventy P.M.) (unfurnished) on annual tenancy, exclusive of House Tax and Irrigation Water charges, is hereby fixed for House No. 15, Prithvi Raj Road, New Delhi, under clause 5 of the Rent Control Order 1939. sd/- F. T. Jones, Rent Controller. Copy forwarded to R. B. M. R. Soi 22, Darya Ganj, Delhi, with rickrack to his No.--dated the 14th August, 1941, in continuation of the Office letter No. R/C..... dated the 8th August, 1941. sd/- F. T. Jones, 21-9-1941. Rent Controller."

Sd..00 20/9 The document purports to bear the signature of F. T. Jones, Rent Controller. It also purports to have come into existence on September 25, 1941, and it bears the impress of an old document. The document purports to be 30 years old and has been produced by the petitioner from his custody. His custody

has to be considered as proper as the document purports to have been sent to his father. In the circumstances, we are satisfied that a presumption can be drawn u/s 90 of the Evidence Act that the signature of the Controller thereon is that of the Controller. We, Therefore, proceed on the basis that the document is a genuine one and is the copy of the order of the Controller forwarded to the petitioner's father, and that it establishes that a fair rent of Rs. 170.00 per month exclusive of house-tax and irrigation water charges was fixed for House No. 15, Prithvi Raj Road, New Delhi, under clause 5 of the New Delhi Rent Control Order 1939.

(15) The next question for consideration is whether the said order of the Controller was a valid order. Mr. Bikramajit Nayyar, learned counsel for the Committee contended that even assuming that the Controller passed the aforesaid order on September 25, 1941, it was not valid for five reasons.

(16) The first reason mentioned by the learned counsel is that the order is silent as to whether the house was let out and was under the tenancy of any tenant at the time of the order. The petitioner has placed on record a letter (Annexure P) dated August 8, 1941, written by the Manager of the Reserve Bank of India, Delhi, to the petitioner's father in which it was clearly stated that the petitioner's father had agreed to let out the house to the bank for a period of three years from September 1, 1939. The house was thus under tenancy in 1941 when the order of the Controller was passed, and there is thus no substance in the reason mentioned by Mr. Nayyar.

(17) The second reason mentioned by Mr. Nayyar is that the order does not show as to who had applied for the fixation of the fair rent. This reason also has no force since the Controller could act *vo mc.tu* under clause 5 of the New Delhi Rent Control Order, 1939, and in fact it was stated in the order that the Controller fixed the fair rent under clause 5.

(18) The third reason suggested by the counsel is that even if the Controller is assumed to have acted *suo motu* under clause 5 of the New Delhi Rent Control Order, 1939, the order does not contain a finding that the rent of the house was excessive as required under clause 3. This reason also is not tenable. Clause 3 of the Rent Control Order provided that when the Controller, on a written complaint or otherwise, had reason to believe that the rent of any house was excessive, he should hold a summary inquiry and record a finding. Clause 4 of the Rent Control order provided that

(19) The fourth reason mentioned by Mr. Nayyar is that the order did not state how the Controller arrived at the figure of Rs. 170.00. It is true that the order does not set out the manner in which the fair rent of Rs. 170.00 was arrived at. But, clause 8 of the Rent Control Order sets out the basis on which the fair rent had to be fixed by the Controller, and it has, Therefore, to "be presumed in the absence of anything to the contrary, that the Controller had fixed the amount on that basis-

(20) The fifth reason is that the New Delhi Rent Control Order, 1939, was made under the defense of India Rules, and should, Therefore, be taken to have been made for a specific and a limited period, namely, for the duration of the war, and that the order fixing the rent cannot, Therefore, be regarded as having any validity subsequent to the ending of the war. There is no substance in this reason also. It is true that the New Delhi Rent Controller Order, 1939, was made by the Central Government in exercise of the powers conferred by clause (bb) of sub-rule (2) of Rule 81 of the defense of India Rules. But, sub-rule (2) clearly states that the Central Government could make such an order "for securing the defense of British India or the efficient prosecution of the war or for maintaining supplies and services essential to the life of the community". Clause (bb) provides for the making of the Rent Control Order for regulating the letting of residential accommodation, controlling the rent's for such accommodation, and preventing unreasonable eviction of tenants from such accommodation. The Rent Control Order could thus be for maintaining supplies and services essential to the life of the community, and not necessarily for only securing the defense of British India or the efficient prosecution of the war. There is no provision in the New Delhi Rent Control Order limiting its own operation or the operation of the fixation of fair rent there under to the duration of the war. It cannot, Therefore, be said that the order passed by the Controller under the New Delhi Rent Control Order ceased to be valid on the ending of the war.

(21) It has also to be noted that the New Delhi Rent Control Order, 1939, was repealed in 1947 by Section 15 of the Delhi and Ajmer Merwar Rent Control Act, 1947, but everything duly done under the repealed Rent Control order was saved. The said Act of 1947 was repealed by Section 46 of the Delhi and Ajmer Rent Control Act, 1952, which in its turn was repealed by Section 57 of the Delhi Control Act, 1958. It has further to be noted that the Delhi Rent Control Act of 1958 makes reference to the New Delhi Rent Control Order of 1939 only for the purpose of computation and determination of standard rent which we shall refer to again in detail at a later stage.

(22) Thus, none of the reasons mentioned by the learned counsel is tenable, and the contention of the learned counsel that the order passed by the Controller fixing the fair rent under the New Delhi Rent Control Order, 1939, was invalid, cannot be accepted. The result is that the present case has to be considered on the footing that a fair rent of Rs. 170.00 per month was duly fixed by the Controller under the New Delhi Rent Control Order, 1939.

(23) The next question for consideration is as to whether the Committee can fix the annual value of a building or house for the purposes of levy of house-tax at a figure higher than the fair rent fixed by the Controller under the New Delhi Rent Control Order, 1939, adding of course the permitted increase under the Delhi Rent Control Act, 1958, i.e. at a figure higher than the standard rent under the said Act of 1958 as the house happens to be within the area governed by the said Act. For a proper consideration of the said question, reference has to be

made to the relevant statutory provisions regarding the assessment of annual value for the purposes of levy of house-tax. Section 3(l)(b) of the Punjab Municipal Act, 1911, defines "annual value" as meaning-

"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:-- Section 3(l)(c) of the Act provides :- 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 account of depreciation (if any) to the estimated market value of the site and any land attached to the house or building:

(24) Thus, the annual value of a house or building is to be fixed under clause (b) at the "gross annual rent at which such house or building..may reasonably be expected to let from year to year" subject to certain permissible deductions, or if the gross annual rent cannot be determined under clause (b), it has to be fixed at five per cent on the sum obtained by adding the estimated present cost of erecting the building less certain permissible deductions. For fixing the annual value under clause (b) the Committee has thus to determine the gross annual rent at which the house or building in question may reasonably be expected to let from year to year. It has to be noted that the legislature does not make a reference to the actual rent agreed between the parties, but insists on the gross annual rent at which the house or- building may reasonably be expected to let from year to year. In other words, the Committee is not bound to fix the annual value at the actual rent agreed between the parties, but should find out the gross annual rent at which the house or building may reasonably be expected to let. It is, however, implicit in the provision that it is open to the Committee to take into consideration the agreed annual rent as a circumstance in finding out the rent at which the house or building may reasonably be expected to let.

(25) The above would be the position if the Punjab Municipal Act, 1911, alone governs the fixation of the annual value. But, there is also the Rent Control legislation, viz. the Delhi Rent Control Act, 1958, which applied to and governed the rent for which the petitioner's house or building could be let in the relevant years 1963-64, 1964-65, and 1965-66. In this connection, reference may be made to", the decision of the Supreme Court in the *The Corporation of Calcutta Vs. Sm. Padma Debi and Others*, . The effect of local rent control legislation on the fixing of annual value was considered by the Supreme Court while dealing with the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, and the Calcutta Municipal Act, 1923, Section 127(a) of the Calcutta Municipal Act, 1923, defined annual value of rent and the annual value of any building erected for letting purposes or ordinarily let to be "the gross annual rent at which the land or building might at the time of assessment reasonably be expected to be let from year te year, less, in the case of a building, an allowance 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 rent". Explaining the word "reasonably" in the said provision, the Supreme Court observed:

"A bargain between a willing Lesser and a willing lessee uninfluenced by any extraneous circumstances may afford a guiding test of reasonableness. An inflated or deflated rate of rent based upon fraud, emergency, relationship, and such other considerations may take it out of the bounds of reasonableness."

The Supreme Court also observed:

"Equally it would be incongruous to consider fixation of rent beyond the limits fixed by penal legislation as reasonable."

Then, after examining the provisions of the aforesaid rent Act, the Supreme Court observed as follows:-

"A combined reading of the said provisions leaves no doubt that a contract for a rent at a rate higher than the standard rent is not only not enforceable but also that the landlord would be committing an offence if he collected a rent above the rate of the standard rent. One may legitimately say under those circumstances that a landlord cannot reasonably be expected to let a building for a rent higher than the standard rent. A law of the land with its penal consequences cannot be ignored in ascertaining the reasonable expectations of a landlord in the matter of rent. In this view, 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 2(10)(b) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, defines "standard rent" as meaning-

"Where the rent has been fixed u/s 9, the rent so fixed; or at which it would have been fixed if application were made under the said section."

Thus, standard rent under the said rent Act meant not only the standard rent that may actually be fixed by the Controller, but also the standard rent which would have been fixed if application were made for the purpose.

(26) The decision in Padma Debi's case (supra) was referred to and considered by a Full Bench of this Court in Dewan Daulat Ram Kapur Vs. New Delhi Municipal Committee and Another, , and the principles laid down in Padma Debi's case were summarised by the Full Bench at page 369 as under:-

"1. A bargain between a willing Lesser and a willing lessee which is not tainted by fraud, emergency relationship and such other considerations affords a guiding test of reasonable letting value; 2. Fixation of annual value beyond the limits of rent fixed by penal Rent Control legislation cannot be considered reasonable and a landlord cannot reasonably be expected to let a building for a rent higher than the standard rent; 3. According to the definition in the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, standard rent is the rent which

has actually been fixed by the Rent Controller u/s 9 or at which it would have been fixed if application were made under the said section; and 4. An express prohibition in the Municipal Act like the one contained in Section 26 of the Calcutta Municipal Act, 1923, was immaterial because such a prohibition was implicit in the -definition of annual value."

(27) Padma Debi's case (supra) was followed in Corporation of Calcutta Vs. Life Insurance Corporation of India, and The Guntur Municipal Council Vs. The Guntur Town Rate Payers' Association etc., . A Division Bench of this Court, following the decisions in Padma Debi's case and Guntur Municipal Council's case, observed in Municipal Corporation of Delhi v. Gauri Shankar Gupta, Civil Revision No. 31 of 1966, decided on July 14, 1972, (5) as under:-

"As the landlord cannot be lawfully expected to get more than the standard rent, the assessment or rateable value by the Municipal Corporation should have taken into account the measure of standard rent as determinable under the Delhi Rent Control Act, 1958 (Act No. 59 of 1958) by keeping in view the principles laid down in the said Act for fixation of standard rent."

After a consideration of all the aforesaid decisions, the Full Bench in Dewan Daulat Ram Kapur's case (supra) observed at page 373 as under:-

"It seems to us that if the basis of valuation by the Municipal authority is the agreed rent "of any premises whose fair rent has not been fixed and if such agreed rent is legally recoverable under the provisions of the Rent Act, the principles of Padma Debi's case will not be attracted. In other words, if the Rent Act permits or does not prohibit the recovery of agreed rent in the absence of fixation of fair rent, it cannot be said that agreed rent in such cases is not rent for which the premises cannot reasonably be expected to let and that such agreed rent cannot be the basis of assessing the annual value of any premises."

(28) It is clear from the various observations set out above, that "in fixing the annual rent at which the petitioner's house or budding might reasonably be expected to let, in the relevant years, the Committee could not ignore the provisions in the Delhi Rent Control Act, 1958". The relevant provisions in the Delhi Rent Control Act are Sections 2(k), 4, 5 and 48. Section 2(k) of the Delhi Rent Control Act, 1958, defines "standard rent" as meaning-

"The standard rent referred to in Section 6 or the increased standard rent u/s 7."

(29) -SECTIONS 4 and 5 prohibit the recovery of payment of rent in excess of the standard rent, and Section 48 imposes penalties, inter alia, for the contravention of Section 5. Referring to these sections, the Full Bench observed in Dewan Daulat Ram Kapur's case (supra) at page 376 as under:-

"Because of the provisions of Sections 4, 5 and 48, the dictum of the Supreme Court in Padma Debi's case (supra) fully applies and rent in excess of the standard rent where fixed by the Controller or statutorily determined cannot be treated as reasonable rent for which the premises can be expected to be let from

year to year."

The Full Bench, however, further observed as under:-

"At the same time, it is clear that under the Delhi Rent Act, "agreed rent" is legally recoverable where standard rent has not been fixed by the Controller or statutorily determined by the provisions of the Act. In fact, Section 12 of the Delhi Rent Act provides a period of limitation for making an application to the Controller for fixing, inter alia, the standard rent of the premises. If the period of limitation expires in a given, case and standard rent cannot be fixed, the agreed rent remains legally recoverable."

The Full Bench then referred to the following observations of the Supreme Court in M.M. Chawla Vs. J.S. Sethi, .

".....THE prohibition in ss. 4 & 5 operates only after the standard rent of premises is determined and not till then. So long as the standard rent is not determined by the Controller, the tenant must pay the contractual rent; after the standard rent is determined the landlord becomes disentitled to recover an amount in excess of the standard rent from the date on which the determination operates".

and

"We are unable to agree that standard rent of a given tenement is by virtue of s.6 of the Act a fixed quantity, and the liability for payment of a tenant is circumscribed thereby even if the standard rent is not fixed by order of the Controller. Under the scheme of the Act standard rent of a given tenement is that amount which the Controller determines. Until the standard rent is fixed by the Controller the contract between the landlord and the tenant determines the liability of the " tenant to pay rent. That is clear from the terms of s. 9 of the Act. That section clearly indicates that the Controller alone has the power to fix the standard rent,, and it cannot be determined out of Court. An attempt by the parties to determine by agreement the standard rent out of Court is not binding. By section 12 in an application for fixation of standard rent of premises the Controller may give retrospective operation to his adjudication for a period not exceeding one year before the date of the application. The scheme of the Act is entirely inconsistent with standard rent being determined otherwise than by order of the Controller. In our view, the prohibition against recovery of rent in excess of the standard rent applies only from the date on which the standard rent is determined by order of the Controller and. not before that date",

and concluded that the said decision was a clear pronouncement to" say that-

"Agreed rent is legally recoverable in spite of the provisions of the Delhi Rent Act if standard rent of the premises has not been fixed by the Controller",

and that-

"THEREFORE, the limit placed by the Supreme Court in Padma Debi's case

(supra) on rent for which premises can reasonably be expected to let will apply in Delhi only if standard rent has been either fixed by the Controller or is statutorily determined under the Delhi Rent Act."

The Full Bench then set out various provisions of the Delhi Rent Control Act which statutorily determined the standard rent. They are-

1. Section 6(1)(A)(1). 2. Section 6(1)(A)(2)(a). 3. Section 6(1)(B)(1). 4. Section 6(1)(B)(2)(a). 5. Section 6(2).

(30) It has to be noted that the Supreme Court observed in M. M. Chawla's case (supra) that "they were unable to agree that standard rent of a given tenement is by virtue of Section 6 of the Act a fixed quantity", that "under the scheme of the Act standard rent of a given tenement is that amount only which the Controller determines", that "until the standard rent is fixed by the Controller the contract between the landlord and the tenant determines the liability of the tenant to pay rent", that section 9 of the Act clearly indicates that "the Controller alone has the power to fix the standard rent, and it cannot be determined out of Court", and that "an attempt by the parties to determine by agreement the standard rent out of Court is not binding". It can be seen that all the said observations were obviously made as regards the fixation of standard rent under the Delhi Rent Control Act as between the landlord and the tenant, and that it was pointed out that section 9 of the Act clearly indicates that it is only the standard rent which is fixed by the Controller under the Delhi Rent Control Act which will bind the landlord and the tenant, and not the standard rent fixed by agreement between the parties outside the Court. It must be noted that the said proposition was based on Section 9 and not on Section 6.

(31) However, one of the said observations was that the standard rent of a given tenement is not by virtue of Section 6 a fixed quantity. The Full Bench in Dewan Daulat Ram Kapur's case (supra) referred to certain provisions in Section 6 as statutorily determining the standard rent. Mr. Nayyar sought to suggest that this was contrary to or inconsistent with the aforesaid observation of the Supreme Court. But, it is not so. Section 6 consists of two sets of provisions. One set consists of the provisions referred to by the Full Bench viz. those in Sections 6(1)(A)(1), 6(1)(A)(2)(a), Section 6(1)(B)(1), Section 6(1)(B)(2)(a) and Section 6(2). The other set consists of the provisions in Section 6(1)(B)(2)(b) and Section 6(2)(B)(2)(b). The first set of provisions refer to "basic rent" and lay down that standard rent in each of the cases dealt with in the said provisions means the basic rent together with certain specified percentage thereof. "Basic rent" is defined in Section 2(a) of the Act as meaning the basic rent of the premises in question "as determined in accordance with the provisions of the Second Schedule to the Act". A perusal of the Second Schedule shows that it prescribes that the basic rent in relation to any premises is the "original rent" of such premises referred to in paragraph 2 of the Second Schedule (viz., either the fair rent fixed under the New Delhi House Rent Control Order, 1939, or the Delhi Rent Control Ordinance, 1944, if premises was let out before June 2, 1944, and

in any other case either the rent at which the premises was let on November 1, 1939, or if the premises was not let on that date, the rent at which it was first let out at any time after that date but before June, 2, 1944) increased by such percentage of the original rent as is specified in paragraph 3 or paragraph 4 or paragraph 5 as the case may be. The second set of provisions in Section 6 does not refer to "basic rent", but provides for the calculation of standard rent on the basis of the aggregate of the reasonable cost of construction and the market price of the land comprised in the premises. It can be seen that under the first set of provisions in Section 6 read with the Second Schedule, for finding the standard rent of a premises, one has merely to add a certain specified percentage to its original rent and then add to the aggregate a further specified percentage. The original rent also is just the rent at which the premises was let at the relevant date. Thus, the first set of provisions in Section 6 merely involve a simple arithmetical calculation, while the second set involves not a mere arithmetical calculation but the determination of the cost of construction and the market price of the land after which determination alone the standard rent of the premises can be known. This apparently was the sense in which the Full Bench in *Dewan Daulat Ram Kapur* case regarded the first set of provision as statutorily determining the standard rent as contrasted with the second set of provisions in Section 6. The Full Bench seems to have used the word "determined" simply because the said word was used in Section 2(a) in describing the calculation of basic rent in accordance with the provisions of the Second Schedule. Further, the Full Bench was dealing with the fixation of the annual value under the Punjab Municipal Act and referred to the said standard rent determined statutorily only as a basis for the fixation of the annual value. It was not dealing with the fixation of the standard rent under the Rent Control Act as between the landlord and the tenant for the purposes of that Act. On the other hand, in *M. M. Chawla's* case, the Supreme Court was dealing with the fixation of standard rent between the landlord and the tenant under the Delhi Rent Control Act for the purposes of that Act. That was why it referred to Section 6 as a whole without referring to the difference between the two sets of provisions therein and the Second Schedule, and emphasised that the landlord and the tenant could not determine the standard rent for the premises by agreement among themselves outside the Court as if the standard rent was a fixed quantity by virtue of Section 6, and that as between the landlord and the tenant the standard rent has to be determined by the Controller under the Rent Control Act and then only it would be binding on the landlord and the tenant. Having regard to the context in which the observation of the Supreme Court was made in *M. M. Chawal's* case, we consider that the reference by the Full Bench to the first set of provisions in Section 6 as statutorily determining the standard rent was not contrary to or inconsistent with the said observation of the Supreme Court.

(32) In the present case, the New Delhi Rent Control Order, 1939, under which fair rent was fixed for the petitioner's house or building, was repealed by the Delhi, Ajmer and Merwar Rent Control Act, 1947. It is common ground that no

standard rent was fixed by the Controller under the provisions of the Delhi Rent Control Act, 1958, after it came into force. It has, Therefore, to be seen whether standard rent has been statutorily determined in respect of the petitioner's house under the Delhi Rent Control Act, 1958. Section 6(1)(A)(1) is one of the provisions mentioned by the Full Bench in, Dewan Daulat Ram Kapur's case which statutorily determined the standard rent. It reads as follows :-

"6(1) Subject to the provisions of sub-section (2) "standard rent" in relation to any premises means- (A) in the case of residential premises- (1) where such premises have been let out at any time before the second day of June, 1944,- (a) if the basic rent of such premises per annum does not exceed six hundred rupees, the basic rent; or (b) if the basic rent of such premises per annum exceeds six hundred rupees, the basic rent together with 10 per cent of such basic rent,

(33) In the present case, the petitioner's house or building is covered by the provision in Section 6(1)(A)(1)(b). Section 2(a) of the Act defines "basic rent"- in relation to premises let out before the second day of June, 1944, as meaning-"the basic rent of such premises as determined in accordance with the provisions of the Second Schedule."

(34) Paragraph I of the Second Schedule provides that "basic rent" in relation to any premises let out before the Second June, 1944, means-

"The original rent of such premises referred to in paragraph 2 increased by such percentage of the original rent as is specified in paragraph 3 or paragraph 4 or paragraph 5, as the case may be."

Paragraph 2 provides that "original rent", in relation to premises referred to in paragraph I, means- (a) where the rent of such premises has been fixed under the New Delhi Rent Control Order, 1939, or the Delhi Rent Control Ordinance, 1944 (25 of 1944), the rent so fixed; or (b) in any other case- (i) (ii) The petitioner's house or building is cover by clause (a) of paragraph 2. According to it, the fair rent of Rs. 170.00 fixed by the Controller under the New Delhi Rent Control Order, 1939, would be the "original rent", and the "basic rent" would be the said "original rent" increased by certain percentage as specified in paragraph 3 or paragraph 4 or paragraph 5, as the case may be. According to Section 6(1)(A)(1)(b), the aforesaid basic rent together with 10 per cent of such basic rent would be "standard rent" for the petitioner's house or building. Thus, Section 6(1)(A)(1)(b) read with the paragraphs in the Second Schedule statutorily determined the standard rent for the petitioner's house or building. Therefore, according to the principles pointed out by the Full Bench in Dewan Dairlat Ram Kapur's case (supra), the petitioner's case is one in which agreed rent is not legally recoverable, as the standard rent has been statutorily determined. Consequently, the Committee had to fix the annual value on the basis of the aforesaid standard rent .statutorily determined u/s 6(1)(A)(1)(b) read with the Second Schedule of the Delhi Rent Control Act, 1958, and not on the

basis of the actual or agreed rent between the petitioner and his tenant.

(35) Mr. Nayyar sought to argue that under the Delhi Rent Control Act, 1958, standard rent could be fixed only by the Controller appointed under the Act, and not by the Committee, and if it had not been so fixed by the Controller under the 1958 Act as in the present case, the only basis for the Committee for fixing the annual value was the actual or agreed rent for the house or building. As pointed out by the Full Bench in *Dewan Daulat Ram's case* (supra), actual or agreed rent would be legally recoverable and hence would form the basis for the fixation of the annual value only if standard rent has not been fixed by the Controller under the 1958 Act or it has not been statutorily determined. We have pointed out already that the present case is one in which the standard rent had been statutorily determined. That being the case, "the Committee had to fix the annual value on the basis of the standard rent which had been so determined statutorily. In doing so, the Committee would not be fixing the standard rent under the Act as between the landlord and the tenant taking up the function of the Controller, but would only be assessing the annual value, and for that assessment it would merely be adopting the standard rent which had been statutorily determined as a basis."

(36) In this connection, Mr. Nayyar drew our attention to the observations of the Supreme Court in the case of *M. M. Chawla* (supra) which we have already set out earlier. The said observations were obviously made as regards the determination or fixation of standard rent under the Rent Control Act as between the landlord and the tenant. In the case of the fixation of the annual value by the Committee on the basis of the standard rent calculated according to Section 6(I)(A)(I)(b) read with the Second Schedule, the Committee is not determining or fixing the standard rent under the Rent Control Act as between the landlord and the tenant usurping the function of the Controller under the Rent Control Act, and the tenant is in no way bound by it as he is not a party to the fixation of the annual value by the Committee. The learned counsel cannot Therefore, derive any assistance from the observations of the Supreme Court extracted above. We find that a similar view was expressed by a Division Bench of the Bombay High Court, *Chandrachud and Wagle JJ.*, in *Filmistan Private Limited v. The Municipal Commissioner*, 1970 BLR 461. (7) In that case, the Chief Judge distinguished the decision of the Supreme Court in *Corporation of Calcutta v. Smt. Padina Debi* (supra) on the ground that in the instant case before him the standard rent had not been fixed and since under the Bombay Rent Act the standard rent could be fixed only by a court constituted under that Act, he had no jurisdiction to go into the question as to what would be the standard rent of the premises. *Chandrachud J.*, who spoke for the Court held at page 464 that the said distinction was unsustainable, and observed as follows:-

"The ratio of the decision of the Supreme Court is that the rateable value of a property cannot be fixed higher than its standard rent under the Rent Control Act. This is not dependent upon whether the standard rent has been actually

fixed under the Rent Control Act. It is true, as observed by the learned Chief Judge, that in Bombay, the Small Cause Court alone could fix the standard rent and sitting as a *persona designata* he could not arrogate to himself that power. But once it is clear that for the purpose of determining the annual letting value of a property, regard must be had to the standard rent of that property under the Rent Control Act, it must follow that while fixing the rateable value one must consider what would be the standard rent of the property. As *persona designata* the learned Chief Judge could not fix the standard rent under the Bombay Rent Act but there- is a distinction between fixing the standard rent under the Rent Control Act and considering for the purpose of fixing the rateable value as to what the standard rent would be. The result of the enquiry conducted by the Chief Judge for ascertaining the standard rent may not bind the parties for the purposes of the Rent Act, but in order to determine what is the rateable value of the property the learned Judge must apply his mind to the question as to what would be the standard rent of the property".

The above observations are quite opposite in the context of the view taken by us above.

(37) In the observations extracted above, Chandrachud J. pointed out that while the Chief Judge, as *persona designata*, could not fix the standard rent under the Bombay Rent Act, he could consider for the purpose of fixing the rateable value as to what the standard rent would be, and that there is a distinction between the said two functions or processes. After making the said observations, Chandrachud J. made another set of observations as regards the circumstances in which, the Chief Judge, in the process of considering for the purpose of the fixing the annual value what the standard rent would be under the Bombay Rent Act, could or could not take agreed rent into consideration. The said two sets of observations dealt with different aspects. The Full Bench in *Dewan Daulat Ram Kapur's* case (*supra*) referred to both the sets of observations, but expressed its inability to accept the second set of observations. So far as the first set of observations are concerned, the Full Bench did not dissent from them. On the other hand, the Full Bench gave effect to the said first set of observations in holding that the Municipal Committee had to consider what the standard rent would be for the purposes of fixing the annual value. In the present case, we are not concerned with the second set of observations. We are only concerned with the first set of observations which we extracted above. We referred to the said observations only to show that even according to the Division Bench of the High Court of Bombay, there is a distinction between fixing the standard rent under the Rent Control Act and taking into consideration for the purpose of fixing the annual value what the standard rent would be, as it accords with the view taken by us in the present case that in fixing the annual value on the basis of the standard rent calculated according to Section 6(1)(A)(1)(b) read with the second Schedule, the Committee would not be determining or fixing the standard rent under the Delhi Rent Control Act as between the landlord and the tenant usurping the function of the Controller under the said Rent Control Act.

(38) We shall now advert to the six questions mentioned in the order of reference. We have already set out the said questions earlier in this judgment. As regards the first question, the answer is that on the facts of the present case the fair rent fixed by the Controller under the New Delhi Rent Control Order, 1939, forms the basis for calculating the standard rent for the house or building in question u/s 6(I)(A)(I)(b) read with the Second Schedule to the Delhi Rent Control Act, 1958, which standard rent would in its turn be the basis for the fixation of the annual value of the house or building in question turn the purpose of levy of house-tax under the Punjab Municipal Act, 1911. As regards the second, third and fourth questions, the answer is that they do not arise in the present case as we have held that the present case is one in which agreed rent is not legally recoverable in-as-much as the standard rent was statutorily determined u/s 6(I)(A)(I)(b) read with the Second Schedule to the Delhi Rent Control Act, 1958, and the annual value of the house or building in question had to be fixed on the basis of the said standard rent.

(39) The fifth question has to be answered in the negative as we have held that the order of Mr. Jones, Controller, fixing the fair rent under the New Delhi Rent Control Order, 1939, for the house or building in question was valid. As regards the sixth question, it is true that the petitioner did not rely upon the order of the Controller whereby fair rent was fixed under the house or building in question under the New Delhi Rent Control Order, 1939, when the Committee fixed the annual value and levied the house-tax for the years 1956-57 to 1960-61. But, so far as the years 1963-64, 1964-65 and 1965-66 are concerned, he pleaded that the Committee assessed the annual value without notice to him, and relied upon the aforesaid order fixing the fair rent in the appeals preferred by him to the Court of the Additional District Magistrate against "the assessment made by the Committee. In other words, he did rely upon the said order in questioning the validity of the impugned assessments. "The fact that he did not rely upon the said order in the previous orders cannot preclude him from relying upon it in questioning the impugned assessments for the subsequent years, as it is a well settled principle that there cannot be any estoppel against a statute". When "once it is held that fair rent was duly fixed under the New Delhi Rent Control Order, 1939, it forms the basis for the determination of the standard rent under the Delhi Rent Control Act, 1958, by virtue of the statutory provisions in Section 6(I)(A)(I)(b) read with second Schedule to the said Act, and the annual value has to be fixed in accordance with the said standard rent for the purposes of levy of house-tax under the Punjab Municipal Act, 1911," as held in the various decisions. That being so, "the omission on the part of the petitioner to rely upon the order of the Controller and take the benefit of it during some years, does not and cannot estop him from relying upon the same in subsequent years". Thus, the sixth question has to be answered in the negative.

(40) For the foregoing reasons. Civil Writ Petition No. 374-D of 1966 is allowed, the three orders of the Committee assessing the annual value at Rs. 24,000.00 for purposes of house-tax for the years 1963-64, 1964-65 and 1965-66, and the

orders of the Additional District Magistrate in appeals there from are all quashed, and respondent I, i.e. the New Delhi Municipal Committee, is directed to assess the annual value of the petitioner's house or building in question for the purposes of house-tax for the years 1963-64, 1964-65 and 1965-66 in the light of our judgment. In the circumstances of the case, we direct the parties to bear their own costs in the Writ Petition.