

(1975) 07 KL CK 0002
In the High Court Of Kerala
Case No : O.P. No. 580 of 1973

NATARAJA GOWDER

APPELLANT

Vs

MUNICIPAL COUNCIL, PALGHAT.

RESPONDENT

Date of Decision : 02-07-1975

Acts Referred:

Kerala Municipalities Act, 1960 — Section 100

Citation : (1976) 5 CTR 174

Hon'ble Judges : P. Subramonian Poti, J

Bench : Division Bench

Judgement

P. Subramonian Poti, J. - S. 100 of the Kerala Municipalities Act, 1960 provides for the method of assessment of property tax. Sub-section (2), leaving out the proviso which may not be necessary for the purpose of this case, reads as follows :-

"The annual value of buildings and lands which are occupied by, or adjacent and appurtenant to buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to let from month to month or from year to year less a deduction in case of buildings of ten per cent of that portion of such annual rent which is attributable to the buildings alone apart from their sites and the adjacent lands occupied as an appurtenance thereto."

Provision in the Municipalities Acts in force in the various States relating to assessment to property tax are more or less similarly worded and there has been longstanding controversy as to the scope and meaning of the term "gross annual rent at which they may reasonably be expected to let." On the side of the Municipalities and Corporations the contention has been raised from time to time that assessment may be made on the gross rental value and such value need not necessarily be determined on the basis of the rent actually obtained by the landlord but the rent that may be realised i.e. the hypothetical rent that may be obtained for the building. It may happen that a building may have been let out by a landlord to a tenant who puts it to a particular use such as that of running a

lodging house and realises a much higher rent than what he pays to the landlord. It has been contended for the Municipalities and Corporations in such cases that the rent realised by the tenant by sub-letting could be said to be the rent that may be reasonably fetched and therefore even if the actual rent paid to the landlord is less, property tax may be levied on the basis of the gross annual rent so determined. The other view which the landlords assessed to property tax have been canvassing for is that it is only the actual rent that is realised by the landlord that should be taken into account for the purpose of determining the gross annual rent. Since this question had reached the Supreme Court on more than one occasion it is sufficient to advert to the decisions of the Supreme Court bearing on controversy.

2. It is evident from the language of sub-section (2) of S. 100 that it is not the rent that is that actually received by the landlord for the building let out by him that should necessarily be taken as rent for determining the gross annual rent. That is because the section refers to rent which may be reasonably expected to be received for the building let from month to month or from year to year. There may be cases where buildings are let out at rents much lower than the reasonable rents and equally well there will be cases where the buildings are let out at rents higher than those at which they may reasonably be let. Higher rent may be obtained in circumstances such as where the tenant may be prepared to take the building as a distress measure or because of some particular importance to him of the building. Similarly a building may be let out at a lower rent because of considerations of close intimacy such as a person letting out his building to a close relative, a brother or a son. It may be that buildings may be constructed by Companies and are let out to their employees at nominal rents. In all these cases due to circumstances what is being received as rent may not be the reasonable rent for which the building could be let out. But where the parties genuinely enter into a rental arrangement and agree upon the rent to be paid it is normal to expect the parties to have entered into a bargain in which the rent fixed is reasonable. It may be that due to lapse of time the rental value of buildings in that area may have considerably risen up and therefore if the buildings are let out afresh to new tenant the rents that may be realised may be several times the rents for which the buildings were let out to the tenant years earlier. But it cannot be said for that reason that the reasonable rents for those buildings should be the rents that could be obtained from that buildings if rented out then for the first time. That is because the law of the land quite often secures safeguards to the tenant against any claim for enhancement of rent subject to certain exceptions. In such cases it is the rental value of the building to the landlord that is material and not the rental value of the building in the abstract. The rent to be obtained by the landlord from the property which is sought to be assessed must be the standard in making the assessment. Therefore any assessment without taking into account this factor may lead to erroneous results. In all cases where the genuineness of the rental arrangement is not in controversy and there are no circumstances to indicate that the rent received by

the tenant is either inflated or deflated due to peculiar circumstances what the parties have agreed to pay and are paying and receiving as rent would normally reflect the reasonable rent for the property. Of course if the parties have approached any court or tribunal to fix the standard or fair rent in accordance with any statute which provides for such fixation it goes without saying that reasonable rent cannot exceed such fair rent or standard rent so fixed.

3. Therefore when, at the time of revision of assessment, any municipality finds that a building has been let out on rent to tenant and there are no circumstances to assume that the letting out was not in the usual course it cannot discard the data relating to the rent received by the landlord and proceed to determine reasonable rent in the abstract, by which term I mean the rent which would be obtainable for the premises at the relevant time if let out afresh or the rent that is being then obtained by the sub-tenant of the properties, To illustrate, it may be that in an important area in a town or city a building had been let out and the rental fixed earlier works out to only a rupee per square foot. The arrangement might be say 20 or 30 years old and tenancy has been continuing. May be that at the time of the revision of assessment the normal rental for similar premises would be much more, say Rs. 4 per square foot. The landlord can, if at all, by invoking the provisions of any law obtain only a marginal increase in the rent but certainly not Rs. 4 per square foot. Simply because buildings in the neighbourhood are let out at the rate of Rs. 4 per square foot and that might be the possible rent for the building if let out afresh at the relevant time. The assessing authority under the Kerala Municipalities Act, 1960, cannot adopt Rs. 4 per square foot as reasonable rent for the building in question. That will be the rent which would reasonably rent for the building in question. That will be the rent which would reasonably be fetched for the building concerned if it is vacant so as to be ready for fresh occupation but the landlord burdened with a tenant paying a lower rent for a number of years cannot get the same rent and therefore it is the reasonable rent for that building.

4. Now I may refer to the decision of the Supreme Court which I believe support the view that I have taken in this judgment. The oft-quoted case of the The Corporation of Calcutta Vs. Sm. Padma Debi and Others, considered the question of the scope of the term reasonable in S. 127 (a) of the Calcutta Municipal Act, 1923, which corresponds to S. 100(2) of the Kerala Municipalities Act, 1960. The crucial words in that section were, "Gross annual rent at which the building might reasonably be expected to let from year to year". The Supreme Court said in that case :

"The word reasonably in the section throws further light this interpretation. The word reasonably is not capable of precise definition, reasonable signifies in accordance with reason. In the ultimate analysis it is a question of fact. Whether a particular act is reasonable or not depends on the circumstances in a given situation. A bargain between a willing lessor and 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. Equally it would be incongruous to consider fixation of rent beyond the limits fixed by penal legislation as reasonable."

5. In the same judgment Subba Rao, J. speaking for the Bench said :

"The standard of value is certainly the value of the property to the owner, which is to be measured, whether he occupies the property himself or lets it out to a tenant, by the amount of rent per annum it would be worth to a hypothetical, tenant. Mukerjee, J., in Corporation of the Town of Calcutta Vs. Ashutosh De, , accepted the said principle and applied the same in construing section 127(a) of the Act though Roy J., differed from him. We would, with respect accept the said principle in the construction of the said section and hold that the value of the property to the owner is the standard in making the assessment thereunder."

6. The principle of the above decision was followed by the Supreme court in Corporation of Calcutta Vs. Life Insurance Corporation of India, . The learned Judges said at page 1419 thus :

"But under the Act the quantum of the consolidated rate depends upon the annual value of land or building on the gross rent for which the land or building might reasonably be expected to let, and not the gross rent at which the subordinate interest of a tenant may be expected to sublet. In determining the assessment of annual value, the assessing authority is not concerned with the rent which the tenant, may receive from his sub-tenant. It is the gross rent which the owner may realise by letting the land or building under a bargain uninfluenced by extraneous considerations which determines the annual value S. 193 only provides for apportionment of consolidated rate. It is irrelevant in determining annual value."

In The Guntur Municipal Council Vs. The Guntur Town Rate Payers" Association etc., the Supreme Court expressed the view that the Municipality was not free to assess any arbitrary annual value and has to lock to and is bound by the fair or standard rent which would be payable for a particular premises, under the Rent Control Act in force. Even where fair rent has not been fixed the court was of the view that the municipal authorities would have to arrive at their own figure of fair rent in accordance with the principles laid down in the Rent Control Act. The principle of the decision in The Corporation of Calcutta Vs. Sm. Padma Debi and Others, was again reiterated by the Supreme Court in the decision in The Anant Mills Co. Ltd. Vs. State of Gujarat and Others, . Khanna, J. speaking for the Court said it that case :

"Similar question thereafter arose in The Corporation of Calcutta Vs. Sm. Padma Debi and Others, . This court in that case was concerned with the provisions of S. 127(a) of the Calcutta Municipal Act, according to which the annual rental value of land and the annual value of any building erected for letting purposes or ordinarily let shall be deemed to be the gross annual rent at which the land or

building might at the time of assessment reasonably be expected to let from year to year, less, in the case of a building, an allowance of ten per cent for cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross rent. It was held by this court that on fair reading of the above provision the rental value cannot be fixed higher than the standard rent under the Rent Control Act in the hands of the tenant. The value of the property to the owner is the standard in making the assessment. The Corporation, it was accordingly concluded, had not power to fix the annual value of the premises higher than the standard rent".

5. A review of these decisions seems to indicate that it is only the rental value of the building to the owner that is material. The value would be what the owner might receive from the tenant or the owner could expect to receive by invoking the provisions of statutes enabling him to seek fair rent where what is being received is less than fair rent.

6. In the case before me challenge is made by the petitioner to Ext. P-5 order passed by the Commissioner of Palghat Municipality disposing of the appeal to the Committee of the Municipality. According to the petitioner the building was let out on a rent of Rs. 375 till November, 1969, and thereafter Rs. 500 per month has been the rent. There is no averment that this is not rent realised by the petitioner. But the case is that the tenant sublet the various rooms of the building and collected rent at a higher rate. In Ext. P5 order an estimate is made of the likely income that might be obtained by the sub-tenant by letting out building. This is more than the rent which is actually realised by the landlord. The approach to the determination of the gross annual value of the rent is erroneous for reasons already indicated. Therefore the petitioners complaint is well-founded. Since the rental value and consequential assessment calls for redetermination in the light of the principles indicated in this judgment the matter has to be remitted back to the authorities. I think in the circumstances it is sufficient to direct the Tax Appeal Committee which passed Ext. P5 order to rehear the matter and dispose of it in accordance with law and in accordance with the observations made here. For that purpose Ext. P5 is quashed. Until fresh determination is made no tax will be collected except under the earlier assessment. Disposed of as above. No costs.