
(1980) 04 DEL CK 0051

In the Delhi High Court

Case No : Civil Writ Appeal No's. 21 of 1977 and 219, 220 and 221 of 1980

New Delhi Municipal Committee

APPELLANT

Vs

Little Theatre Group and Another

RESPONDENT

Date of Decision : 09-04-1980

Acts Referred:

Citation : (1980) ILR Delhi 1037

Hon'ble Judges : V.S. Deshpande, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : B.J. Nayar and B.R. Sabharwal, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) How is the annual letting value to be determined in" the case of property constructed on a leasehold land for the purpose of arriving at the amount of house tax to be paid u/s 3 (1) (b) of the Punjab Municipal Act is the question involved in this and connected writ petitions.

(2) A plot of land measuring 0.5 acre or thereabout situate at Ferozeshah Road, New Delhi by lease-deed dated 21st April, 1972 was let out to respondent No. 1 in perpetuity from 6th February, 1962. The consideration in terms of premium which was paid was of Rs. 18,000 "or acquiring the said rights. In addition the respondent in terms of the lease-deed was required to pay yearly rent of Rs. 900 in advance which rent is subject to revision in terms of the said lease after the expiry of every thirty years. It appears that this land has been given to the respondent at a concessional rate and the land user is described in the lease-deed. The purpose for which the land can be used is that of "Theatre Arts Training Centre". One of the relevant clauses of the said lease-deed is clause (14) of para 2, which reads as under :

"THElease shall not sublet, transfer or assign the said premises hereby demised or any part thereof without the sanction of the Lesser or the Chief Commissioner of Delhi in writing first had and obtained and while according to such sanction,

the Lesser or the Chief Commissioner of Delhi, as the case may be, may impose such terms and conditions as they may in their absolute discretion think fit as conditions of such sanction for such sub-letting, transfer or assignment. Such conditions may provide that the lessee or the transferee or assignee as the case may be shall pay to the Lesser enhanced ground rent as may be specified in such sanction provided that the Lesser shall be entitled to claim and recover a portion of the unearned increase (i.e. the difference between the premium already paid and current market value) in the value of the land at the time of transfer (whether such transfer is of an entire site or only part thereof). The amount to be recovered by way of the Lessers' share of the unearned increase will be such as may be specified in such sanction provided further that in case the transfer is made in favor of a person or institution which is not entitled to the same concessional allotment as the lessee then the Lesser shall be entitled to claim hundred per cent of the unearned increase : Provided also the Lesser shall have a pre-emptive right to purchase the demised premises after deducting the amount of the unearned increase as aforesaid."

(3) The respondent constructed a building on the aforesaid land. With a view to levy the house tax u/s 3 (1) (b) of the Punjab Municipal Act, the petitioner published a notice u/s 65 of the Punjab Municipal Act proposing annual value of the said property. The respondent filed objections to the same. The counsel for the respondent were heard by the Committee and it was contended that the rateable value of the property should be fixed u/s 6 of the Delhi Rent Control Act, 1958 (hereinafter referred to as "the said Act"). The Committee, however, vide their resolution No. 8 passed in their ordinary meeting held on 24th February, 1977 did not arrive at the annual value on the basis of the principles contained in section 6 of the said Act. The Committee purported to apply the principles contained in section 9(4) of the said Act but even there it made a mistake inasmuch as it did not take into consideration the standard rent of similar properties in the localities. As per the said resolution the annual value was fixed at Rs. 3,28,920. Against the demand received pursuant to the said fixation of the annual letting value the respondent filed an appeal. The Additional District Magistrate by his order dated 29th September, 1979 allowed the said appeal and directed the petitioner to assess the property keeping in view the lease-deed, the ground rent and the cost of construction. Against the said order the petitioner has filed the present writ petition. The first question which arises for consideration is whether the annual value is to be fixed with reference to the standard rent of the property u/s 6 or 9 of the said Act or whether any other basis is to be taken into consideration for arriving at the annual letting value.

(4) It has been held by the Supreme Court in the case of *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, that the annual value of the property in section 3(1) (b) of the Punjab Municipal Act, 1911 has to be fixed with reference to the standard rent of the property which can be fixed u/s 6 or 9, as the case may be, of the Delhi Rent Control Act, 1958.

(5) The next question which arises is as to the manner in which the said standard rent can be fixed. The relevant portion of section 6 of the Delhi Rent Control Act, 1958 reads as under :

"6.(1) Subject to the provisions of sub-section (2), "standard rent", in relation to any premises means (B) in the case of premises other than residential premises (1) (2) where the premises have been let out at any time on or after the 2nd day of June, 1944 (a) in any case where the rent of such premises has been fixed under the Delhi and Ajmer-Merwaia Rent Control Act, 1947 or the Delhi and Ajmer Rent Control Act, 1952 (i) if such rent per annum does not exceed twelve hundred rupees, the rent so fixed; or (ii) if such rent per annum exceeds twelve hundred rupees, the rent so fixed together with fifteen percent of such rent; in any other case, the rent calculated on the basis of seven and one-half per cent, per annum of the aggregate amount of the reasonable cost of construction and the market price of the land comprised in the premises on the date of the commencement of the construction : Provided that where the rent so calculated exceeds twelve hundred rupees per annum this clause shall have effect as if for the words "seven and one-half percent," the words "'eight and five- eight percent," had been substituted."

(6) The two ingredients while fixing the standard rent are (a) reasonable cost of construction, and (b) market price of the land comprised in the premises on the date of the commencement of the construction. With regard to the first element, namely, the reasonable cost of construction, it will be for the assessed to prove as to what is the amount which it has spent on constructing the premises on the plot of land. The onus of proof would be entirely on the assessed because it is in his personal knowledge as to how much money has been spent on the cost of construction. If evidence has been adduced by the assessed the Municipal Authorities are enjoined to act upon the same unless for a good reason it rejects the evidence which is so produced by the assessed. If the evidence produced by the assessed is not accepted by the Municipal Committee and no further proof of the cost "of construction is adduced by the assessed then the Municipal Committee would be left with no option but to estimate the cost of construction on its own.

(7) The difficulty which arises in this case is retarding determining the second element mentioned in the aforesaid provision, namely, the market price of the land. At the outset it may be pointed out that this price of land is to be on the date when the construction is commenced. In the present case the land was allotted to the respondent in the year 1962 but, we are informed, the construction commenced much later, possibly in the year 1976. The market price of the land has, Therefore, to be the price of land not in the year 1962 but in the year when the construction commenced.

(8) The contention of the respondent which was accepted, in an appeal filed by the respondent by the additional District Magistrate in its order dated 29th September, 1979 was that the price of the land could only be the total premium

of Rs. 18,000 which had been paid by the respondent to the Committee in the year 1962. Shri Nayyar, on behalf of the petitioner has contended that on a correct construction of the aforesaid provisions of section 6 of the Act the market price of the land cannot in every case, and certainly not in the present case, be the premium which had been paid by the respondent. It is contended that the land is to be valued by assuming that there is a hypothetical sale and it is that sale price which is to be taken into consideration in working out the standard rent. In reply the contention of Shri Sabharwal is two-fold. that as the land cannot be alienated at all the question of there being any market price of the land for the purpose of finding out the standard rent does not arise. (2) In the alternative it is submitted by him that at worst the market price of the land can only be the capitalised value of the annual rent plus the premium which had been paid.

(9) In our opinion the question does not call for much argument as the point has really been settled by two Division Bench authorities of this Court. In the case reported as *Madho Lal v. Roop Chand*, 1972 R.C.R. 689 the question arose as to the fixation of the standard rent u/s 6 of the Delhi Rent Control Act. It was held that "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 sale 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." In other words it was held that it was immaterial for the purposes of determining the standard rent u/s 6 as to whether the land had been obtained by the landlord on leasehold basis or he was the absolute owner of the land. To the same effect are the observations of another Division Bench of this Court reported as *M/s. Raghunandan Saran Ashok Saran Joint Hindu Firm and another v. M/s. Pearey Lal and Sons*, 1972 R.C.R. 750. In the said decision it was held that "The lands, subject to restricted covenants against alienation, also command a market value and the purchaser may be willing to purchase such land hoping to obtain sanction of the Lesser for the transfer or he may like to run the risk of action by the Lesser, if any. The market value is understood to mean the price that a willing purchaser would pay to a willing seller for a property including a leasehold land having regard to its existing conditions with all its existing advantages : See *Raghubans Narain v. Government of Uttar Pradesh* AIR 1967 SC465 (4). This can be found in a hypothetical sale in the common market. It is, Therefore, difficult to accept the contention that in the case of leasehold rights, the amount of premium paid is the only market value. The market price of the land is being determined not for an apportionment between the owner of the land and the Lesser of the land but between the landlord who owns the leasehold rights and owns the property and his tenant to whom he has let it out". The aforesaid observations clearly answer the contention of Shri Sabharwal, namely, that a premium paid is not the criteria for the purpose of finding out the market value of the land.

(10) It will be seen that clause (14) of para 2 of the lease-deed permits the sale of land in question. It, inter alia, provides that on permission being obtained the

land can be sold and in that event a portion of the unearned increase, namely, the difference between the premium already paid and current market value, would belong to the Lesser. The said clause further provides that in case the transfer is made in favor of a person or institution which is not entitled to the same concessional allotment as has been made in favor of the respondent then 100 per cent unearned increase would ensure to the benefit of the Lesser. The contention of Shri Sabharwal that the land cannot be alienated is thus clearly belied by the specific provisions of the aforesaid clause (14). The contention of Shri Sabharwal is that it is conceivable that the Government may not grant the permission for sale. This contention, however, is divorced from the reality. The permission for sale, if applied for, cannot be arbitrarily refused or withheld. No instance has been brought to our notice where any such permission has been withheld. It is, of course, true that the transferee will be bound by the same terms and conditions as the transferor subject of course to the conditions being changed by mutual agreement.

(11) One more case which needs to be considered is that of the Supreme Court reported as Commissioner of Wealth Tax, New Delhi Vs. P.N. Sikand, regarding the value of the assets of the assessed. One of the assets which had to be valued was the leasehold interest in a plot of land. According to clause (13) of that lease the assessed could not assign or transfer the demised premises without obtaining the approval in writing of the Lesser. It was further provided by the said clause that the Lesser shall be entitled to claim and recover unearned increase to the extent of 50 percent. The said clause was quite analogous to the present clause (14) of the lease-deed dated 21st April, 1972. The contention of the assesses in that case was that in arriving at the value of the leasehold rights the 50 percent unearned increase should be deducted. It was held by the Supreme Court that the said clause (13) was clearly a covenant running with the land and it would bind whosoever would be lease-holder for the time being. This covenant may have the effect of depressing the value of the leasehold interest which would be fetched if it was sold and the said restriction will have to be taken into account in arriving at the value of the said leasehold interest. The Supreme Court came to the conclusion that the leasehold interest can be valued by taking the market value of the leasehold interest as if it was unencumbered or unaffected by the burden or restriction of clause (13) and by deducting from it 50 per cent of the unearned increase in the value of the land on the basis of the hypothetical sale, as representing the value of such burden or restriction.

(12) In the present case we are not concerned with valuing the leasehold interest. According to section 6 of the Delhi Rent Control Act it is the market price of the land which has to be valued. The market price of the land, on the basis of the principle laid down by the Supreme Court in the aforesaid decision", as also on the basis of the two Division Bench authorities referred to above, can be arrived at on the basis of the hypothetical sale of the land and by deducting there from Lesser's share of the unearned increase as representing the value of the burden contained in clause (14) of the lease-deed in question. It is, of

course, to be kept in view that even in the case of hypothetical sale the restrictions which are contained in the lease-deed cannot, be lost sight of. For example the lease-deed itself contemplates the purpose for which the land can be used. In arriving at the hypothetical value or sale price such restrictions will have to be kept in view in order to arrive at the said value. These restrictions are attached to the land and every hypothetical purchaser would also be bound by it. In our view, Therefore, for the purpose of section 6 the market price of the land would be the price which it would fetch in a hypothetical sale, keeping all the restrictions in the lease-deed in view, and by deducting there from the share of unearned increase which in fact belongs to the Lesser. The basis is as to what the seller will get and not what the buyer will pay as the price of the land.

(13) In the present case we find that the Additional District Magistrate has not adopted this method at all in arriving at the standard rent. Even the resolution of the petitioner has not followed the aforesaid principles. It was the duty of the petitioner to fix the standard rent according to section 6. If the Municipal Committee came to the conclusion that it was not possible to fix the standard rent in accordance with the provisions of section 6 of the Act then it was obliged to fix the same in accordance with the provisions of section 9(4) of the said Act. In the present case we, however, find that this has not been done. Section 9(4) has been sought to be applied by the petitioner in its impugned resolution without first applying the provisions of section 6 of the Delhi Rent Control Act. Even in the application of section 9(4) of the Rent Control Act it has ignored the essential requirements of the said sub-section, namely, the standard rent payable in respect of similar premises.

(14) We are, Therefore, of the opinion that both the impugned resolution as well as the order of the Additional District Magistrate should be quashed and the case remanded to the Municipal Committee for re-assessment in the light of the observations made in this judgment. The Municipal Committee will afford the respondent a reasonable opportunity of producing such evidence as it may like for the purpose of determining the standard rent u/s 6 and/or section 9(4) of the Act. The respondent is directed to appear before the Commercial and Taxation Officer, New Delhi Municipal Committee, New Delhi at 11.00 A.M. on 19th May, 1980 for further proceedings, on which date the respondent will produce all the evidence on which it want to rely.

(15) The writ petition is allowed in the above terms. The parties are left to bear their own costs.