

(1984) 05 P&H CK 0031
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 97 of 1982

Punjab Concast Steels Ltd.	Vs	APPELLANT
The Municipal Corporation, Ludhiana and Another		RESPONDENT

Date of Decision : 01-05-1984

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 116, 93
Punjab Municipal Corporation Act, 1976 — Section 103

Citation : AIR 1985 P&H 287 : (1985) 2 RCR(Rent) 562

Hon'ble Judges : Rajendra Nath Mittal, J; M.M. Punchhi, J

Bench : Division Bench

Judgement

R.N. Mittal, J.—Briefly the facts are that the petitioner is a Public Limited Company and is manufacturing steel ingots and other alloy and mild steels. It is the owner of property No. B. XXX/939 located at Focal point, Ludhiana which is in its self-occupation. No part of the building has been let out to anyone. The Municipal Corporation (hereinafter called "the Corporation") in 1973-74 assessed the rateable value of the building at Rs. 1,25,460/- on which the amount of tax came to Rs. 15,795/-. From 1975 to 1977 the Corporation maintained the same rateable value of the building and assessed the same amount of tax as was done by it in 1973-74. In 1977-78 the rateable value of the building was proposed to be enhanced to Rs. 2,29,997/- by the Corporation. The petitioner filed objections against the proposed rateable value. It is alleged that the matter was compromised between the parties and the building was assessed at rateable value of Rs. 1,30,000/-.

2. In the year 1980-81 the petitioner was served with a notice on behalf of the Corporation that the rateable value of the property was proposed to be enhanced to Rs. 2,61,700/- under S. 103 of the Punjab Municipal Corporation Act (hereinafter referred to as "the Act"). The petitioner filed objections against the rateable value of the property to the Commissioner of the Corporation. It is averred that no proper hearing was given to the petitioner and it was directed to file written arguments. The main objection of the petitioner was that the rateable

value of the property could be determined in accordance with the provisions off the East Punjab Urban Rent Restriction Act (hereinafter referred to as the Rent Act). The Commissioner dismissed the objections and maintained the same rateable value vide order dt. 19th Mar. 1981 (copy Annexure P. 1). Against the order of the Commissioner the petitioner filed an appeal before the Commissioner, Patiala Division, who affirmed the order dt. 19th Mar., 1981, vide his order dt. 2nd Nov. 1981, and dismissed the appeal. The said orders have been challenged by the petitioner through this writ petition.

3. The writ petition has been contested by respondent No. 1 which has inter alia pleaded that after 1973 additions have been made to the building and floor area of ten thousand and odd sq. feet has been added to the building. It is alleged that it was not possible to fix the rateable value under the provisions of the Rent Act as there was no such building in existence in the locality. It is further stated that the provisions of the Rent Act are not applicable as the fair rent of the premises cannot be determined on the basis of the criteria indicated therein.

4. In order to appreciate the contention of the learned counsel it will be advantageous to refer to some provision of the Corporation Act. Clause (46) of S. 2 defines rateable value and it means the value of any land or building fixed in accordance with the provisions of this Act and the bye-laws made thereunder for the purpose of assessment to property taxes. S. 93 deals with determination of rateable value of lands and buildings assessable to taxes. The section reads as follows:-

"Subject to the rules, if any, made by the State Government in this behalf, the rateable value of any land or building assessable to taxes specified in S. 91 shall be--

(a) * * * * *

(b) in the case of any building, the gross annual rent at which such building, together with its appurtenances and any furniture that may be let for use for enjoyment therewith may reasonably be expected to let, subject to the following deductions:--

(I) such deduction not exceeding 20 per cent of the gross annual rent as the Commissioner in each particular case may consider a reasonable allowance on account of the furniture let therewith;

(ii) a deduction 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 annual rent. The deduction under this sub-clause shall be calculated on the balance of the gross annual rent after the deduction (if any) under sub-clause (I);

(iii) where land is let with a building, such deduction, not exceeding 20 per cent, of the gross annual rent, as the Commissioner in each particular case may consider reasonable on account of the actual expenditure, if any, annually incurred by the owner on the upkeep of the land in a state to command such

annual rent.

* * * * *

"(c) in the case of any 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 Commissioner may deem reasonable to be deducted on account of depreciation (if any), to the estimated market value of the site and any land attached to the building;

Provided that--

(i) in the calculation of the rateable value of any premises no account shall be taken of any machinery thereon;

(ii) when a residential building is occupied by the owner or is not let the rateable value shall be fifty per centum of the annual market rent prevalent at the time of assessment in the locality for similar accommodation;

Provided further that in respect of any land or building the fair rent whereof has been fixed under the law relating to rent restriction for the time being in force, the rateable value thereof shall not exceed the annual amount of the fair rent so fixed or the actual rent for which the same has been let, whichever is higher".

5. It is contended by Mr. Aggarwal that in fixing the rateable value of the property in dispute, the principles laid down in clause (b) of S. 93 should alone be taken into consideration. He submits that gross annual rent means the fair rent of the building under the Rent Act whether the building is under the occupation of the owner or tenant. According to him, in deterring the gross annual rent of the property the Commissioner of the Corporation and the Appellate Authority did not adopt the said principle. Consequently the rateable value in the present case is liable to be struck down. On the other hand, Mr. Doabia has urged that the rateable value of the property, which is in self-occupation of the petitioner, could not be determined under Clause (b) and, therefore, it should be determined under Clause (c). He also urges that in the present case the provisions of the Rent Act are of no assistance as its fair rent cannot be found out under them. In support of his contention he places reliance on Lt. Col. Micheal A. R. Skipper v. The Municipal Committee, Hansi (1969) 71 PLR 205 and Hukam Chand v. State of Punjab. Civil Writ Petition No. 7940 of 1976, decided on 23rd March, 1979 since reported as 1979 LLR 124.

6. We have given due consideration to the argument of the learned counsel. The composite question which arises for determination is how the rateable value of the property in dispute should be determined as also whether Clause (b) or Clause (c) will apply to this case Clause (b) provides that the rateable value is the gross annual rent at which a building may reasonably be expected to let minus the deductions provided therein. The words, "reasonably be expected to let" are very important. These words with regard to the building subject to Rent

Act mean the amount of rent which the owner is entitled to charge in accordance with the provisions of the Rent Act from his tenant. It is not necessary that the building should have remained on rent with a tenant or there should be a tenant ready to take it on rent. It is also not necessary that fair rent of the building should have been fixed by the Rent Controller. If there is no tenant to take the building on rent it has to be determined taking into consideration what the landlord can reasonably get from a hypothetical tenant. The relevant consideration is not the rental value of the building in the open market but the rental value which the owner is entitled to realise under the Rent Act. The reason is that in the towns where Rent Acts are applicable, the owner is not entitled to charge anything more than the fair rent. Clause (c) is applicable in case the gross annual rent of the building cannot be determined under Clause (b). According to the clause rateable value is to be worked out on the basis of the formula given in the clause after determining the cost of the building and value of the plot. However, if rateable value can be determined under Clause (b), Cl.(c) does not come into operation. We are, therefore, of the view that the rateable value of the property in dispute can be determined under Clause (b) and that clause and not Clause (c) will apply to the case.

7. In the above view, we are fortified by the observations of the Supreme Court in Corporation of Calcutta Vs. Life Insurance Corporation of India, and Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others, . In the former case S. 168(1) and the proviso, of Calcutta Municipal Corporation Act came up for interpretation. The sub-section provides that for the purpose of assessment to the consolidated rate the annual rent of any rented building shall be deemed to be gross annual rent at which the land or building reasonably be expected to let from year to year. Under the sub-section there is a proviso in similar terms as second proviso is under S. 93. Shah. J. speaking for the Court observed that in determining the gross annual rent of which the land or building might at the time of assessment reasonably be expected to let from year to year, the statutory limitation of rent circumscribes the scope of the bargain in the market and in no circumstances the hypothetical rent may exceed the limit. In determining the annual value of the land or building for the purpose of ascertaining the consolidated rate, therefore the standard rent is the maximum amount which can be taken into account. It cannot be said that the gross rent for which the land or building might reasonably be expected to let is subject to the maximum limit of the annual standard rent, only in those cases in which standard rent is fixed by the order of the Controller, as envisaged by proviso of S. 168 and that where no such standard rent is fixed by order of the Controller, the assessing authority is in determining the annual value, competent to take into account all relevant circumstances including the rent at which the premises were or could be sublet. It may be highlighted that it was argued in that case that the annual value could be equal to the standard rent only in such cases where the rent was fixed under S. 9. It was further argued that as the standard rent of the building had not been fixed, the proviso had no application and the

assessing authority could not take into account the limitation of the standard rent. The argument was repelled by the Court observing that by the addition to proviso, the meaning of expression "gross rent at which the rent or building might reasonably be expected to let" was not altered. A similar matter was dealt with by the Supreme Court in *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, . The provisions of law which were interpreted by their Lordships were S. 3(i)(b) of the Punjab Municipal Act, 1911 which defines annual value to mean in the case of any house or building, the gross annual rent at which the building might reasonably be expected to let from year to year, subject to certain specified deductions and S. 116 of the Delhi Municipal Corporation Act which also made a similar provision. A Proviso was added to S. 116 which is in similar terms as second proviso to S. 93 of the Corporation Act. The observations in the case as extracted in the headnote may be read with advantage:

"It is the value of the property to the owner which is taken as the standard for making assessment of annual value".

"The criterion is the rent realisable by holding in the hands of the tenant. The rent which the landlord might realise if the building were let is made the basis for fixing the annual value of the building. What the landlord might reasonably expect to get from a hypothetical tenant, if the building were let from year to year, affords the statutory yardstick for determining the annual value. There would ordinarily be in a free market close approximation between the actual rent received by the landlord and the rent which he might reasonably expect to receive from hypothetical tenant. But where the rent of the building is subject to rent control legislation, this approximation may and often does get displaced.

Where a building is governed by the provision of Rent Control Legislation the landlord cannot reasonably be expected to receive anything more than the standard rent from a hypothetical tenant and the annual value of the building cannot therefore exceed the standard rent. Even in case of a building in respect of which no standard rent has been fixed within the prescribed period of limitation and thus the tenant is precluded from making an application for fixation of standard rent with the result that landlord is lawfully entitled to continue to receive the contractual rent, the annual value must be limited to the measure of standard rent" determinable under the Rent Act and cannot be determined on the basis of the higher rent actually received by the landlord from the tenant. Even if the standard rent has not been fixed by the Controller, the landlord cannot reasonably expect to receive from a hypothetical tenant anything more than the standard rent determinable under the Act and this would be so equally whether the building has been let out to a tenant who has lost his right to apply for fixation of the standard rent or the building is self-occupied by the owner. The assessing authority would, in either case, have to arrive at its own figure of the standard rent by applying principles laid down in the Delhi Rent Control Act, 1958 for determination of standard rent and determine the annual

value of the building on the basis of such figure of standard rent.....".

This case was followed by the Supreme Court in *Mrs. Shiela Kaushish Vs. Commissioner of Income Tax, Delhi*, and by this Court in two Division Bench judgments in *Kehar Singh v. Municipal Committee, Phagwara* 1980 RLR 491 and *Raman Rai v. Commr. Jullundur Division, Jullundur* 1981 Cri. LJ 214.

8. The learned counsel for the respondent referred to *Municipal Corporation Indore v. Smt. Ratnaprabha* AIR 1977 SC 308 . That was a case under the M. P. Municipal Corporation Act. In that case, a different view seems to have been taken. However, that case has been dealt with in *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, and distinguished. In the circumstances, it is not necessary to deal with the said case. In *Lt. Col. Micheal's* case 1969 71 PLR 205 (supra), it was held that Clause (b) intended to apply to premises which were actually rented out to some tenant at the relevant time. Gross rent of a house or a building could not be determined under Clause (b) if it had not been rented out at any time. It was further observed that normally rent of a building which had never been let out could not be fixed under Clause (b) and, therefore, the annual value of such property has to be fixed in accordance with the principles laid down in Clause (c) of sub-section (1) of the Punjab Municipal Act. The above observations were followed by another Division Bench in *Mukam Chand v. Deputy Commr. Ludhiana* 1979 LLR 124 (supra). However, after the decision by the Supreme Court in *Devan Daulat Raj Kapoor's* case (supra) the above cases stand impliedly overruled and thus no longer hold the field. Therefore, no reliance can be placed on the ration in the said cases. We are fortified in the above observations by *Kehar Singh's* case 1980 RLR 491 (supra). Mr. Doabia also made reference to a judgment of this Court in *C. W. P. No. 2892 of 1980 (Jagjit Cotton Textile Mills, Ltd. Phagwara v. State of Punjab)* decided on 22nd February, 1983*. We have been informed that a Letters Patent Appeal has been filed against this judgment and the same is pending decision. In the circumstances it will not be proper to express any opinion with regard to the said judgment.

9. Faced with the situation, Mr. Doabia sought to urge that in view of Clause (ii) of First proviso, it is not necessary to fix the fair rent of a residential house if it is in self-occupation of the owner. He after referring to Second proviso contended that even if fair rent of a building had been fixed and it was let subsequently on a higher rent, the fair rent could not be taken into consideration for the purpose of determining the rateable value. He further contended that the only inference that could be drawn from these provisos was that the fair rent could be taken into consideration for determining the rateable value if it had been fixed by the Rent Controller and not otherwise.

10. We have duly considered the argument of the learned counsel but regret our inability to accept the same. No doubt the two provisos say that for determining the rateable value in certain circumstances the fair rent fixed by the Court is to

be ignored. However, the present case is not covered by either of the said provisos. From these provisos it cannot be inferred that the provisions of Rent Act are only applicable to the cases where fair rent of the building has been fixed and not otherwise. In Clause (b) the words "reasonably be expected to let" are a pointer to the fact that the provisions of Rent Act are to be taken into consideration for determining the rateable value and existence of the provisions is immaterial. The provisions of Calcutta Municipal Corporation Act and Delhi Municipal Corporation Act which contained somewhat similar provisos were similarly construed by their Lordships in Corporation of Calcutta Vs. Life Insurance Corporation of India, and Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others, cases (supra) respectively. Reference has already been made to the observations of the Supreme Court in Life Insurance Corporation's case above. Bhagwati J. while dealing with this matter in Devan Daulat Rai Kapoor's case (supra) referred to Life Insurance Corporation's case and observed as follows (at p. 544):-

"..... It may be pointed out that an attempt was made on behalf of the Corporation to distinguish the decision in The Corporation of Calcutta Vs. Sm. Padma Debi and Others, by contending that that decision was based on the interpretation of S. 127(a) of the Calcutta Municipal Act, 1923 while the provision which fell for interpretation in this case was S. 168 of the Calcutta Municipal Corporation Act, 1951 which was different from S. 127(a), in that it contained a proviso that "in respect of any land or building the standard rent of which has been fixed under S. 9..... the annual value thereof shall not exceed the annual amount of the standard rent so fixed" which was absent in S. 127(a). The argument was that under the proviso the annual value was limited to the standard rent only in those cases where the standard rent was fixed under S. 9 and since in the case before the Court the standard rent of the building was not fixed under S. 9, the proviso has no application and the "assessing authority was not bound to take into account the limitation of the standard rent. This argument was negatived by the Court and it was held that the enactment of the proviso in S. 168 of the Calcutta Municipal Corporation Act, 1951 did not alter the law and by the addition of the proviso, the meaning of the expression "gross rent at which the land or building might reasonably be expected to let" was not changed. It was for this reason that we pointed out at the commencement of the judgment that the existence of the proviso in S. 116 of the Delhi Municipal Corporation Act, 1957 is immaterial and we may proceed to deal with the appeals arising under that Act as if the definition of "annual value" did not contain that proviso".

From the above observations, it is clear that the provisions of the Rent Act are not to be ignored for determining the rateable value of the properties in spite of such provisos.

11. Mr. Aggarwal has next argued that the Corporation had fixed the rateable value in 1973-74 and 1975 to 1977 at Rs. 1,25,460/-. He submits that in the

year 1977-78 the agreed rateable value was fixed at Rs. 1,30,000/-. According to him, no additions were made in the building and, therefore, the rateable value could not be increased by the Corporation. He also urged that it is not clear from the orders what criteria was adopted by the respondents to determine the rateable value of the building.

12. We find substance in the contention of the learned counsel. S. 103 of the Corporation Act, 1976 relates to amendment of the assessment list. It inter alia provides that a Commissioner may at any time amend the assessment list if the building has been erroneously valued or assessed through fraud, mistake or accident; or if it has been erected, re-erected or altered after the preparation of the assessment list. From a reading of the provision it is clear that the rateable value of a building can be changed in the circumstances set out above and not at the sweet will of the Corporation. The question whether any additions / alterations have been made in the building is required to be determined after giving an appropriate hearing and recording evidence, if the assessee wants to lead. In the present case it is not clear on what data the respondents came to the conclusions that additions have been made in the building after the last assessment. It was incumbent on the Corporation to bring the case within the four corners of the aforesaid provisions before making any change in the rateable value of the building. The impugned orders also do not point out how the rateable value was determined.

13. Mr. Aggarwal has then argued that the Commissioner of the Corporation erroneously held that the fair rent of the building could not be fixed and that decision had been affirmed by the Commissioner, Patiala Division in appeal. We have given our thoughtful consideration to the argument and find substance in it. The fair rent is to be fixed by the authorities on hypothetical basis taking into consideration the facts and circumstances of each case. The provisions of the Rent Act provide a method for determining the fair rent and it is the duty of the officers of the Corporation to determine the same in accordance with the principles laid down in it. In the present case in our view the respondents have not properly considered the matter. The impugned orders are, therefore, liable to be quashed.

14. Lastly, Mr. Aggarwal, has urged that no opportunity was given by the Commissioner of the Corporation to the petitioner to represent its case before him and thus he violated the principles of natural justice. He has also urged that in Clause (c) of S. 93, the Commissioner has been given unguided powers for determining the rateable value and, therefore, Clause (c) is liable to be struck down. We do not propose to go into these matters as we are of the opinion that the impugned orders are illegal and liable to be set aside on other grounds and that Clause (c) is not applicable to this case.

15. For the aforesaid reasons, we accept the writ petition and quash the impugned orders. The Corporation, however, may proceed to make fresh assessment after taking into consideration the observations made above. No

order as to costs.

16. Petition allowed.