
(1995) 11 P&H CK 0104

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11538 of 1992

Radhika Theatre, Rewari

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 13-11-1995

Acts Referred:

Citation : (1996) 2 ICC 348 : (1996) PLJ 169 : (1996) 2 PLR 51 : (1996) 3 RCR(Civil) 169

Hon'ble Judges : Amarjeet Chaudhary, J and V.S. Aggarwal, J

Advocate : Mr. S.N. Mittal, Advocate, Mr. Rajneesh Narula, Advocate, Mr. Pritam Singh, Advocate, Advocates for appearing Parties

Judgement

V.S. Aggarwal, J.—By this common judgment we propose to dispose of Civil Writ Petition No. 11538 of 1992 titled Radhika Theatre and another v. State of Haryana and others, and Civil Writ Petition No. 11537 of 1992 titled Prem Enterprises and another v. State of Haryana and others. Since common questions have been raised which are subject matter of the controversy, therefore, both the petitions are being disposed of together.

2. The relevant facts in Civil Writ Petition No. 11538 of 1992 titled Radhika Theatre and another v. State of Haryana and others, 1996(3) R.C.R.(Civil) 169 are that Radhika Theatre is being run at Rewari. The Administrator, Municipal Committee, Rewari served a notice dated 1.2.1988 upon the petitioner for increasing the annual rateable value of the said Theatre for the purpose of House Tax. The rateable value of the property in question was proposed to be increased from Rs. 30,000/ to Rs. 60,000/. The petitioner filed objections but the same were rejected. The rateable value was fixed at Rs. 36,000/. An appeal was filed before the Deputy Commissioner, Mohindergarh at Rewari which was dismissed. The further revision before the Secretary, Local Bodies Department, Haryana was heard by the Joint Secretary and failed. By virtue of the present petition it has been prayed that the annual rateable value so increased should quashed.

3. In the reply filed by the Administrator, Municipal Committee, Rewari it was

asserted that annual value had been fixed in the year 197980. It has been enhanced in accordance with the provisions of Haryana Municipal Act, 1973. The annual value had been fixed according to the provisions and as per the law.

4. Similarly in Civil Writ Petition No. 11537 of 1992 entitled Prem Enterprises and another v. State of Haryana and others, it is asserted that the annual value fixed for the premises in question, of the said petitioner should be quashed being illegal and contrary to law. Needless to say that the appeal and the revision filed have also been dismissed. Herein too respondent Municipal Committee, Rewari has taken up the identical defence.

5. The short argument raised by the learned counsel for the petitioner was that the annual value could only be fixed on the basis of fair rent and it cannot be more than the fair rent fixed in accordance with the relevant Rent Legislation in Haryana. The Assessing Authority should arrive at its own independent finding by applying the principles of the Rent Act. In the absence of the same, the annual rateable value so fixed cannot be sustained.

6. The said argument is based on the well known decision of the Supreme Court in the case of Corporation of Calcutta v. Padma Debi and others, reported as AIR 1962 Supreme Court 151. In the cited case the facts were that the Corporation of Calcutta fixed the annual valuation of the premises and directed the same to take effect from the second quarter of 195051. In fixing the annual valuation, the said Corporation took as basis Rs. 1450/ as the monthly rental value of the premises. Notice of assessment based on the said annual valuation was served on the owner and objections were filed. The Small Cause Judge fixed the annual valuation on the basis of standard rent. The appeal by the Calcutta Municipal Corporation with the High Court failed. Further appeal was preferred with the Supreme Court. At this stage, it would be appropriate to refer to Section 127(a) of the Calcutta Municipal Act, 1923. The relevant portion of which reads:

``The annual 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 the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross rent.'''

The Supreme Court approved the view of the Calcutta High Court and concluded that annual valuation of the property should have not been fixed higher but on basis of the standard rent. In paragraph 11 the findings arrived at by the High Court were :

``On the other hand, the Legislature, which must be presumed to have had knowledge that the Calcutta Rent Act of 1920 would expire within three years from the commencement of the Municipal Act of 1923, and also have been aware that the former Act contained such a prohibition, if it intended to remove any such prohibition during those three years or even thereafter, would have

expressly made a provision to that effect in the Municipal Act, 1923. On the other hand, the phraseology of the section must have been designedly used wide enough to comprehend such a prohibition. Indeed, when the Act was prepared in 1951 by Act XXXIII of 1951, what was implicit in Section 127(a) was made explicit in the proviso to Section 168(1) of that Act. We cannot, therefore, draw any implied prohibition from the history of the legislation. In the result, we hold, on a fair reading of the express provisions of Section 127(a) of the Act in the light of the decisions considered, that the rental value cannot be fixed higher than the standard rent under the Rent Control Act."''

7. The same question again arose before the Supreme Court pertaining to the Punjab Municipal Act, 1911 as applicable to the New Delhi Municipal Committee. In the case of *Devan Daulat Rai Kapoor etc. v. New Delhi Municipal Committee and another etc.* reported as 1980(1) R.C.R.(Rent) 618 : AIR 1980 Supreme Court 541, the argument raised before the Supreme Court once again was the same that annual valuation of the building should be fixed on the basis of standard rent determinable under Delhi Rent Control Act, 1958. Section 3(1) of the Punjab Municipal Act, 1911 reads as under :

``Section 3(1). ``Annual value''' means

(a) in the case of land, the gross annual rent at which it may reasonably be expected to let from year to year;

(b) 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:

.....

(c) 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 committee may deem reasonable to be deducted on account of the depreciation (if any) to the estimated market value of the site and any land attached to the house or buildings."''

The Supreme Court once again adopted the same view as in the case of *Corporation of Calcutta v. Padma Debi and others* (supra) and held that assessing of annual valuation in excess of the standard rent determinable on the principles laid in Delhi Rent Control Act was illegal. In the concluding paragraph the Supreme Court observed :

``It is, therefore, clear that in each of the present cases, the annual value of the building must be held to be limited by the measure of the standard rent determinable on the principles laid down in the Delhi Rent Control Act, 1958 and it cannot exceed such measure of standard rent. We accordingly allow Appeals Nos. 1143 and 1144 of 1973 and declare in each of these two cases that the

assessment of the annual value of the building in excess of the standard rent determinable on the principles laid down in the Delhi Rent Control Act, 1958 was illegal and ultra vires."''

8. No different was the view adopted in the case of Balbir Singh and others etc. v. M/s. MCD and others etc., 1985(1) R.C.R.(Rent) 224 : AIR 1985 Supreme Court 339. Therein Section 116(1) of the Delhi Municipal Corporation Act, 1957 unfolds itself in the following words:

``The rateable value of any land or building assessable to property taxes shall be annual rent at which such land or building might reasonably be expected to let from year to year less:

xx xx xx

xx xx xx''''

9. It is apparent from aforesaid that in all these three enactments where the Supreme Court concluded that annual rateable value/rateable value should be fixed on basis of the principles for fixation of fair/standard rent under the relevant Rent Legislation applicable to each State because that was taken to be the reasonable rent, that landlord could charge. The language of the enactment in the case of Corporation of Calcutta, Delhi Municipal Corporation and the Punjab Municipal Act was identical because legislations in each of the areas used the words ``building reasonably be expected to let.''' There was Rent Legislation in each of the States allowing fixation of fair/standard rent. However, our attention has been drawn towards the provisions of the Madhya Pradesh Municipal Corporation Act, 1956. Herein Section 138(b) of the said Act prescribed the mode of determining the annual value of the building and it read as under :

``138(b). The annual value of any building shall notwithstanding anything contained in any other law for the time being in force be deemed to be gross annual rent at which such building, together with its appurtenances and any furniture that may be let for use or enjoyment therewith might reasonably at the time of assessment be expected to be let from year to year.....''''

It is apparent and crystal clear from Section 138(b) of the Madhya Pradesh Municipal Corporation Act that unlike the provisions of the relevant Act in Delhi, Calcutta or Punjab Municipal Act, Section 138(b) of the Madhya Pradesh Municipal Corporation Act begins with a nonobstante clause. The nonobstante clause does tilt the balance. The question as to whether where standard rent/fair rent has been fixed in accordance with the relevant Rent Legislation, still annual value should be fixed as per those principles, was considered by the Supreme Court in the case of Municipal Corporation, Indore and others v. Ratnaprabha and others, 1977(1) R.C.R.(Rent) 431 : AIR 1977 Supreme Court 308. The earlier decision of the Supreme Court in the case of Padma Debi (supra) had been seen with approval but taking note of the nonobstante clause in paragraph 5 the Supreme Court held as under:

“As has been stated, clause (b) of Section 138 of the Act provides that the annual value of any building shall “notwithstanding anything contained in any other law for the time being in force” be deemed to be the gross annual rent for which the building might “reasonably at the time of the assessment be expected to be let from year to year.” While, therefore, the requirement of the law is that the reasonable letting value should determine the annual value of the building, it has also been specifically provided that this would be so “notwithstanding anything contained in any other law for the time being in force.” It appears to us that it would be a proper interpretation of the provisions of clause (b) of Section 138 of the Act to hold that in a case where the standard rent of a building has been fixed under Section 7 of the Madhya Pradesh Accommodation Control Act, and there is nothing to show that there has been fraud or collusion, that would be its reasonable letting value, but, where this is not so, and the building has never been let out and is being used in a manner where the question of fixing its standard rent does not arise, it would be permissible to fix its reasonable rent without regard to the provisions of the Madhya Pradesh Accommodation Control Act, 1961. This view will, in our opinion, give proper effect to the nonobstante clause in clause (b), with due regard to its other provision that the letting value should be “reasonable”.”

It is apparent from the aforesaid decision that keeping in view the non obstante clause of the relevant Act in Madhya Pradesh where standard rent has not been fixed, then it would be permissible to fix reasonable rent without having regard to the Madhya Pradesh Accommodation Control Act, 1961.

10. With this background reference may be made with advantage to the Haryana Municipal Act, 1973. Section 2(1) of the said Act defines annual rent and it reads:

“Section 2(1). “Annual value” notwithstanding anything contained in any other law for the time being in force, means

(a) In the case of land, the gross annual rent

(i) to be calculated on the basis of fair rent fixed under the law relating to rent restriction for the time being in force; or

(ii) where no fair rent referred to in item (i) is fixed at which it is expected to be let or it is actually let whichever is greater:

.....

(b) in the case of any house or building together with its appurtenances or any furniture that may be let for use and enjoyment therewith, the gross annual rent

(i) to be calculated on the basis of fair rent fixed under the law relating to rent restriction for the time being in force; or

(ii) where no fair rent referred to in item (i) is fixed, at which it is expected to be let or it is actually let, whichever is greater, subject to the following deductions:

.....

(c) in the case of any house or building, the gross annual rent of which cannot be determined under clause (b) five per centum on the sum obtained by adding the estimated present cost of erecting the building less such amount as the committee 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 house or building.""

On the strength of this definition our attention was drawn by the learned counsel for the respondents to the nonobstante clause occurring in the Haryana Municipal Act, 1973. The language of the provisions are by and large in consonance with the decision of the Supreme Court in the case of Ratnaprabha (supra). In other words, where fair rent has not been fixed then notwithstanding anything contained in any other law, the annual value has to be fixed on which the building is expected to be let or is actually to be let subject to certain deductions. It is not the case of the petitioners that fair rent has been fixed of either of the buildings. Consequently, the authorities were well within their rights to take into consideration rent which the building was expected to be let rather than fall back on basis of fair rent fixed under the law relating to rent restrictions. It is brought to our notice that in the case of Devan Daulat Rai Kapoor (supra) while considering the decision of the Supreme Court in the case of Ratnaprabha (supra) certain observations had been made but the Supreme Court hastened to add that it is not necessary to probe further into the correctness of this decision because there is no nonobstante clause in Section 3(A) of the Punjab Municipal Act or in Delhi Municipal Corporation Act. Consequently, the decision in the case of Ratnaprabha (supra) would hold good and valid with the result that the very basis of the plea of the petitioners' learned counsel falls to the ground. The annual value so fixed cannot be held to be illegal merely because principles for fixation of fair rent under the Rent Legislation have been ignored under the Haryana Municipal Act, 1973. The decisions in the case of Devan Daulat Rai Kapoor and Balbir Singh (supra) will not come to the rescue of the petitioners because the language of the provisions in these relevant enactments is different. There is no non obstante clause as exists in the Haryana Municipal Act, 1973.

11. For these reasons, the petitions being without merit must fail and are dismissed. Parties are left to bear their own costs.

Petitions dismissed.