
(2005) 04 P&H CK 0040
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5348 of 1985

Raj Guru Sood

APPELLANT

Vs

The Municipal Corporation and Others

RESPONDENT

Date of Decision : 01-04-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Municipal Corporation Act, 1976 — Section 93

Citation : (2005) 140 PLR 521 : (2005) 3 RCR(Civil) 101

Hon'ble Judges : Ajay Kumar Mittal, J

Bench : Single Bench

Advocate : Amit Jhanji, for the Appellant; Harsh Aggarwal, for Respondent Nos. 1 and 2 and K.K. Bheniwala, D.A.G., for the Respondent

Judgement

Ajay Kumar Mittal, J.—This is a petition filed under Articles 226/227 of the Constitution of India for issuance of a writ, quashing the order of the Assessing Authority i.e. the Municipal Corporation, Ludhiana passed on 8.10.1984 (Annexure P-4) and the order of the appellate authority i.e. the Commissioner, Patiala Division, Patiala passed on 15.7.1985 (Annexure P-5). The petitioner has also made a prayer for issue of a writ of mandamus, directing the Municipal Corporation, Ludhiana to recover the tax of the property in question, in accordance with law.

2. The facts necessary to understand the controversy need to be noticed first:

3. The petitioner claiming to be the owner of property unit No. B-1-1342/1 at Ludhiana stated that originally the said property consisted of residential self-occupied portion of four rooms, two stores, kitchen, bath and latrine with two shops. The two shops are said to be on rent with the tenants. The portion now called as Samrat Hotel, consisting of 22 rooms on 1st and 2nd floors of the said building, was constructed in the year 1974. It is further stated that earlier this portion was being assessed at the rental value of Rs. 190/- per month i.e. Rs. 140/- for the self-occupied portion and Rs. 50/- for the two shops. In the year

1979, the petitioner was informed that the property in question was to be assessed under the Punjab Municipal Corporation Act, 1976 (in short "1976 Act") and consequently, by virtue of an order dated 25.7.1980, passed by respondent No. 2, recovery proceedings were started against the petitioner whereby the property had been assessed at an annual rental value of Rs. 63,196/- for the year 1975-76, onwards. The petitioner challenged the said order and consequently, respondent No. 3 set aside the same by order dated 31.10.1981, Annexure P-1 and remanded the matter to the Assessing Authority with the observations that the assessment be made in accordance with the provisions of the East Punjab Urban Rent Restriction Act (for brevity "the Rent Act"). It is further stated that the Commissioner, Municipal Corporation, Ludhiana again determined the annual rental value of the property of the petitioner, by order dated 3.3.1982. Annexure P-2, at Rs. 63,196/- ignoring the observations made in the order Annexure P-1, and without affording any opportunity to the petitioner to represent his case. Again on an appeal being filed by the petitioner, the order Annexure P-2 was set aside by respondent No. 3 by order dated 11.7.1993, Annexure P-3 and the case was remanded to the Commissioner, Municipal Corporation, Ludhiana for deciding the matter in accordance with law.

4. Upon fresh consideration, the Commissioner, Municipal Corporation, Ludhiana again assessed the annual rental value of the building in question by order dated 8.10.1984. Annexure P-4 whereby the annual rental value was fixed at Rs. 45,560/-, Order Annexure P-4 was challenged by the petitioner in appeal filed u/s 146 of 1975 Act before respondent No. 3, but the same was dismissed by order dated 15.7.1985, Annexure P-5.

5. In the written statement filed on behalf of respondent No. 1, it was stated that the assessment had been made in accordance with law. It was stated that since material additions and alternations were carried out. in the building by constructing 22 rooms, the rental value was fixed by taking into consideration as to what the prospective tenant would pay to the landlord. It was stated that full opportunity was given to the petitioner to put forward his case before the Assessing Authority as well as the appellate authority. It was further stated that the hotel portion was brought into existence in the year 1974 and it was on account of the change of residential accommodation into a commercial accommodation and also on account of additions and alterations made by the petitioner, the rateable value of the property was fixed having regard to rental which might be available in the year 1975, and also by giving rebates.

6. At the hearing, learned counsel for the petitioner submitted that while passing the assessment order, the Assessing Authority determined the annual rental value of the building on the basis of actual rent received, totally ignoring the provisions of the Rent Act. It was further argued that even the appellate authority i.e. respondent No. 3, while dismissing the appeal of the petitioner did not take into consideration the provisions of Section 93(b) of the 1976 Act as well as the provisions of the Rent Act. The submission of the learned counsel, in

other words, is that rateable/annual rental value of the property in question was required to be determined strictly in accordance with the provisions of Section 93(b) of ; 976 Act. The counsel submitted that the provisions of the Rent Act are applicable to the property in dispute and in view of the law laid down by the Supreme Court in *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, , *Dr. Balbir Singh and Others Vs. M.C.D. and Others*, and also in Civil Writ Petition No. 2884 of 1981 *The Metafold Industries (Regd.) through Shri Des Raj Aneja, Partner, Bhagwan Chowk, Partap Nagar, 3 B-21/653/1, The Metafold Industries (Regd.) Vs. State of Punjab and Another*, decided on 30.5.1997, the annual value of the property was required to be determined on the basis of the standard rent as determined under the Rent Act. On the other hand, learned counsel appearing for the respondents supported the orders Annexures P-4 and P-5 and submitted that the petitioner never got the fair rent of the building fixed from the Rent Controller nor the building in question was in existence in the year 1938-39.

7. I have heard learned counsel for the parties and with their assistance perused the record.

8. The dispute in the present writ petition is covered by a decision of this Court in *Partap Steel Rolling Mills (1935) Limited Vs. Municipal Corporation of Amritsar and Another*, . It has been held in para Nos. 11, 12 and 13 thereof as under:-

"11. The controversy in the present case revolves primarily on the interpretation of Section 93(b) and (c) of the 1976 Act. The provision 94 of Section 93(b) and 93(c) of the said Act read thus:-

"93. Determination of rateable value of lands and buildings assessable to taxes.-

XXX XXX XXX

(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 should 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 herewith;

(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.

Explanation I.- For the purpose of this clause, it is immaterial whether the house or building, and the land let for use or enjoyment therewith, are let by the same contract or by different contracts, and if by different contracts, whether such contracts are made simultaneously or at different times.

Explanation II. The term "gross annual rent" shall not include any tax payable by the owner in respect of which the owner and tenant have agreed that it shall be paid the tenant.

93(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 be deducted on account of depreciation (if any), to the estimated market value of the site and any land attached to the building:

(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 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."

12. The matter in the present petition is not resintegra. A Full Bench of this Court in Banarsi Dass Mahajan Vs. The State of Punjab and Another, , after considering a plethora of judgments, while interpreting the provisions of Section 93(b) and 93(c) of 1976 Act, in paras 21 and 27 laid down as under:-

Para 21 : "Before leaving this aspect of the case it is significant to note that Clause (c) of Section 93 of the Corporation Act has an identical provision as in the Municipal Act and the Supreme Court in Devan Daulat Rai Kapoor's case (supra) was not unaware of that provision when examining the whole provision. Repeatingly and summingly, we hold that the Commissioner must first do the exercise under Clause (b) to determine at what figure the building may reasonably be expected to let in accordance with the principles of the Rent laws, give permissible deductions in the light of the Explanations, deviate to Sub-clause (ii) of the first proviso if he can but keep foothold on his deliberations under Clause (b), apply both the provisos in the above manner and then determine the annual rateable value. If he is unable to do so for any substantive reason, then he may take resort to Clause (c) again keeping a foothold thereon and applying the provisos when applicable so as to arrive at a just figure. In so far as Clause (c) is concerned, it provides determining the estimated present cost

of erection of the building minus depreciation and adding to it estimated market value of the site and of any land attached to the building, from which 5 per cent of the sum total represents the gross annual amount. Now it is known that the cost of erection of buildings keeps rapidly changing, the rates of depreciation are minimal and the estimated market value of the site and any land attached to the building goes sky rocketing. The whole thing is inchoate in Clause (c). The employment of this clause, as preferred by learned counsel for the Corporation, on the prospect of legitimate expectancies of a higher revenue dividend, and a justified measure to meet the cost of running day to day affairs of the Corporation which, at the Bar, were stated to be bordering on bankruptcy, cannot be permitted. The Legislature designedly made Clause (c) apply only in the situation when the gross annual value of a building cannot be determined under Clause (b). As stated before, to both clauses do the provisos apply but as an integral part the said two clauses, and that too as safeguards, so that neither the Corporation nor the tax-payer is dealt with unjustly. In the event of conflict between two successful determinations, the determination which is favourable to the tax-payer would normally have to govern the field, and we hold it so, well settled as it is as a principle.

Para 27: Even if there is a tenancy or there is not, the concept of the hypothetical tenant still has a brooding influence in the determination of the fair rent. To repeat we say that Clause (b) of Section 93 has first to be exhausted and when gross annual letting value can in no event be determined under the said clause, then the gross annual value may be determined under Clause (c), and both the provisos, and in particular the first proviso cannot be read in isolation so as to render otiose the main provisions of Clauses (b) and (c). Viewed in this light, we are of the confirmed view that Punjab Concast Steel Ltd.'s case (1985)87 P.L.R. 757 (supra) was rightly decided and the decisions to the contrary i.e. A.R. Skinner's (1969) 71 P.L.R. 205 and Hukam Chand's 1979(1) L.L.R. 124 cases (supra) and other cases of the kind are no good law in view of Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others, case (supra)"

13. The Apex Court in Devan Daulat Rai Kapoor and others's case and Balbir Singh's case (supra), had laid down that the annual value of the building has to be determined on the basis on which building is reasonably expected to let and, therefore, the rent has to be determined under the provisions of the Rent Act for determining the annual value. Learned counsel for the respondent, however, could not point out that the Apex Court had in any case taken a contrary view to the one taken in the aforesaid two judgments. Even in Srikant Kashinath Jituri and others Vs. Corporation of the City of Belgaum, , the Apex Court had held that the said question did not arise in that case and had not, therefore, expressed any final opinion on that issue. In view of the above settled legal position, it is held that the respondent-Municipal Corporation has erred in taking recourse to the provisions of Section 93(c) without first taking recourse to the provisions of Section 93(b) of the 1976 Act and therefore, the action of the

respondent is legally not sustainable."

9. In view of the above, orders Annexures P-4 and P-5 passed by respondent Nos. 2 and 3 respectively are quashed and the matter is remanded to the Municipal Corporation, Ludhiana for determining the rateable value of the property in question under Clause (b) of Section 93 of the 1976 Act and if for any justifiable reason, the Municipal Corporation, Ludhiana cannot determine such value under Clause (b), it may then resort to the provisions of Clause (c) of the said Section. The Municipal Corporation, Ludhiana shall afford a reasonable opportunity of being heard to the petitioner in the matter.

10. The writ petition is disposed of in the above terms. There will be no order as to costs.