

(1971) 12 DEL CK 0009

In the Delhi High Court

Case No : Civil Writ Appeal No. 430D of 1961

Raj Kishan Jain

APPELLANT

Vs

Municipal Corporation, Delhi

RESPONDENT

Date of Decision : 17-12-1971

Acts Referred:

Citation : (1972) RLR 66

Hon'ble Judges : M.R.A Ansari, J

Bench : Single Bench

Advocate : F.C. Bedi, B.B. Jain and Bishamber Dayal, for the Appellant;

Judgement

M.R.A. Ansari

(1) Petitioner owns certain property in Daryagani, Delhi which is let out to tenants. For 1959-60, its rateable value was Rs. 14,500.00. For 1960-61, value was assessed at Rs. 26,061.00. Petitioner appealed against it U/S 169 but the same as dismissed. He moved High Court where it was held that although the standard rent of the property had been fixed under the Rent Control Act of 1947, it was the standard rent fixed under the Act of 1952 or of 1958 which would govern the proviso to S. 116(1) about the rateable valuation. After discussing Supreme Court decisions in The Corporation of Calcutta Vs. Sm. Padma Debi and Others, ; Corporation of Calcutta Vs. Life Insurance Corporation of India, .

(2) Guntur Municipal Council Vs. Guntur Tax Payers Association 1970 Rcj 989 it was observed in para 5 of the judgment on wards, thus :- The principles enunciated by the Supreme Court in the above three cases were applied by a Single Bench of this Court in Mrs. Sham Kapoor v. Municipal Corporation of Delhi etc. 1971. R.L.R. 81. This was a case u/s 116(1) of the Act. In that case also, no standard rent had been fixed by the Rent Controller under the Rent Control Act, 1958 and the rateable value was determined on the basis of the actual rent for which the buildings had been let. On behalf of the landlord, a contention was urged that although as between the landlord and the tenant, the agreed rent

would have to be paid in the absence of standard rent being fixed by the Rent Controller still the Corporation was bound to heed the provisions of the Rent Control Act regardless of whether the standard rent of any property had been fixed or not. This contention appears to have found favor with the learned Judge (Rangarajan J.), because his lordship observed :-

"The argument that the Municipal Corporation was not precluded from taking into account the actual rent collected in the absence of the same being fixed by the Controller under the provisions of the Delhi and Ajmer Rent Control Act, 1952 was repelled by me in Ram Pershad's case. I can see no support for the view that the taxing authority can merely have regard to the actual rent that is being collected, when the Controller and the other relevant provisions in the Rent Act do not apply and refuse to rateably assess the property, particularly at the owner's request on the basis of the rent calculated at the relevant percentage of the aggregate amount of cost of construction and market price of land, if any."

(3) With respect, I feel some difficulty in agreeing with the above observations of the learned Judge in view of the decision of the Supreme Court in M.M. Chwala v. J.S. Sethi reported in 1969 R.C.J. 913. Their Lordships observed :-

" BUT in our judgment the prohibition in sections 4 and 5 operates only after the standard rent of premises is determined and not till then. So long as the standard rent is not determined by the controller , the tenant must pay the contractual rent; after the standard rent is determined the landlord becomes disentitled to recover an amount in excess of the standard rent from the date on which the determination operates. We are unable to agree that standard rent of a given tenement is by virtue of section 6 of the Act a fixed quantity, and the liability for payment of rent by a tenant is circumscribed thereby even if the standard rent is not fixed by order of the Controller. Under the scheme of the Act standard rent of a given tenement is that amount only which the Controller determines. Until the standard rent is fixed by the Controller the contract between the landlord and the tenant determines the liability of the tenant to pay rent. In our view, the prohibition against recovery from operates the date on which the standard rent is determined by order of the Controller and not before that date."

(4) Even in Smt. Padma Debt's case in construing the word "reasonably" the Supreme Court observed as follows :-

"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 Lesser and a 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."

The same observations were repeated by the Supreme Court in the 2nd case & as already stated it was the rent which was agreed upon between the landlord and the tenant that was taken as the standard rent. If in the present case the enhanced assessment made by the Corporation was based upon the contractual rent between the landlord and the tenants which, in the absence of a standard rent having been fixed by the Rent Controller, the landlord could lawfully recover from the tenants without coming within the mischief of section 4 of the Rent Control Act, 1958, I should have taken the view that such assessment was perfectly valid and would have referred the case to a larger Bench in view of the observations of Rangarajan J. But as I shall presently point out, it cannot be said in this case that the enhanced assessment made by the Corporation was based on the contractual rent between the landlord and the tenants.

(5) In paragraph 2 of the writ petition, it has been stated that the assessment made in the year 1959-60 was based on the rents realised. This statement has been reiterated in the affidavit filed along with the writ petition. In the petitioner's letter dated February 1, 1961 addressed to the Assessor & Collector, Municipal Corporation of Delhi, which is Annexure "A" with the petition, it is stated that the rent of the entire building was fixed by the Court of Shri Tara Chand Aggarwal, Sub Judge, Delhi in Rent Control Case No. 978 of 1948. It has been further stated that the building is an old one and no addition or alterations have been made. In the memo. of appeal filed by the petitioner in the Court of the Additional District Judge, Delhi, in H T. A. No. 6/61, it was stated that the previous assessment at Rs 14,580.00 was based on the standard rent fixed by the Sub Judge 1st Class, Delhi in civil suit No. 978/48. It has been again reiterated that no additions or alterations in the property had been carried out after fixation of the standard rent.

(6) The assessment order: a copy of which has been filed as Annexure "B" to the petition, does not give the reasons for the enhancement of the assessment nor does it state that the enhanced assessment is based upon the actual rents collected by the petitioner. All that has been stated in the assessment order is that "after necessary investigation, the ratable value has been finally fixed." In the reply filed by the Corporation to the writ petition also, it has not been stated that the enhanced assessment was based upon the actual rents collected by the petitioner. All that has been stated is that "it is not even alleged that the petitioner is not Realizing the rents on the basis of which the assessment in dispute has been made."

(7) The position, Therefore, appears to be that the standard rent for the premises in question was fixed under the Rent Control Act, 1947 and that the same rent prevailed up to the time of the impugned assessment and it has not been established that the petitioner has been receiving a higher amount of rent. The standard rent for the premises which is liable to be fixed if an application was made u/s 9 of the Rent Control Act, 1958 would be the rent prescribed in section 6 of the said Act. The petitioner could not lawfully collect any amount in

excess of the rent as mentioned in section 6 of the said Act. It is only the standard rent u/s 6 of the Rent Control Act, 1958 at which the premises might reasonably be expected to let from year to year within the meaning of section 116(1) of the Act. The Corporation has necessarily to restrict the assessment of the ratable value to such rent. Since the impugned assessment is not based upon such rent, the assessment is not in accordance with sub-section (1) of section 116 of the Act and is, Therefore, illegal. The assessment is, Therefore, quashed. Petition Accepted.