
(2004) 10 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2585 of 1986

Shri Gurparshad Khanna

APPELLANT

Vs

The Municipal Corporation

RESPONDENT

Date of Decision : 06-10-2004

Acts Referred:

Punjab Municipal Corporation Act, 1976 — Section 103

Citation : (2005) 139 PLR 300 : (2005) 1 RCR(Civil) 398

Hon'ble Judges : Ajay Kumar Mittal, J

Bench : Single Bench

Advocate : A.C. Jain, for the Appellant; R.D. Bawa, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kumar Mittal, J.—Challenge in the writ petition under Articles 226 and 227 of the Constitution of India is to the order Annexure P-3 passed on 21.12.1985 by the Assistant Commissioner, Municipal Corporation, Amritsar whereby the assessment of the property of the petitioner was fixed and the order Annexure P-4 dated 25.2.1986 passed by the Commissioner, Jalandhar Division, Jalandhar whereby appeal preferred by the assessee against the aforesaid order of the Assistant Commissioner was dismissed.

2. The facts as set out in the petition are that the petitioner is the owner of property No.1102/Q-XIII, situated at Maqbool Road, Amritsar, the major portion of which is in self-occupation of the petitioner and the remaining has been let out on rent for commercial purposes. Initially, the respondent-Corporation had been charging house tax on this property at the rate of Rs. 77.76 paise per annum till the year 1978-79 and thereafter the respondent charged house tax at enhanced rate from time to time and ultimately charged house tax at Rs. 531.60 paise per annum at the annual letting value of Rs. 4,400/- by virtue of an agreement arrived at between the parties. Accordingly, the petitioner paid the house tax at the latter rate assessed at the annual letting value of Rs. 4400/- per annum and the same was accepted by the respondent Corporation. Thereafter, the petitioner

was served with a notice dated 8.2.1984 (Annexure P1) u/s 103 of the Punjab Municipal Corporation Act, 1976 (for short "the 1976 Act") by the respondent whereby assessment of the annual letting value of the property, which was previously being assessed at the annual letting value of Rs. 4400/-, was proposed to be enhanced to Rs. 21,642/- for the purpose of levy of house tax on the property. To the proposed assessment at the annual letting value of Rs. 21,642/-, the petitioner filed objections dated 28.2.1984 (Annexure P-2) and 26.12.1984. The objections filed by the petitioner were rejected and the respondent by order Annexure P-3 passed by the Assistant Commissioner, Municipal Corporation, Amritsar on 21.2.1985 assessed the property of the petitioner at the annual letting value of Rs. 21,642/-, which according to the petitioner was almost five times of the agreed assessment of Rs. 4400/- per annum. Being aggrieved by the order Annexure P-3, the petitioner preferred appeal before the Commissioner, Jalandhar Division, Jalandhar who upheld the order Annexure P-3 and dismissed the appeal by order Annexure P-4. This is how, the petitioner has challenged herein both the orders.

3. Learned counsel for the petitioner pleaded that the respondent had fixed, accepted and acted upon the rental value of the property at Rs. 4400/- per annum which amounted to fixation of fair rent of the property and the same could not be increased as the building is subject to Rent Restriction Laws. According to the learned counsel, the respondent, u/s 103 of the 1976 Act, cannot alter any assessment list and that there is nothing in the notice dated 6.2.1984 and the orders dated 21.2.1985 and 25.2.1986 to show as to on what material the respondent authority could reach a conclusion that certain additions or alterations had been made in the property. Learned counsel raised a plea by drawing my attention to the objections dated 28.2.1984 (Annexure P-2) filed by him stating that no construction as alleged by the respondent had been raised by the petitioner to alter the finalisation of the assessment list. The learned counsel further submitted that the original tenant M/s J.K. Printers are in continuous possession of the rented portion ever since the inception of the tenancy in the year 1968 and are carrying on their Firm-business therein in the name and style. The counsel also stated that respondent was wrong in observing that tenant M/s J.K. Printers had vacated the premises. The counsel also submitted that in view of decisions of the Supreme Court in *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, and *Dr. Balbir Singh and Others Vs. M.C.D. and Others*, the action of the respondent and the orders Annexures P-3 and P-4 are legally unsustainable.

4. Learned counsel for the respondent by referring to the reply by way of affidavit of the Executive Officer, Municipal Corporation, Amritsar, tried to justify the action of the respondent and defended the orders Annexures P-3 and P-4. In the reply, while admitting that the property in question is owned by the petitioner, it has been stated that the property is occupied by the petitioner either for residential purpose or for commercial purpose and no part of it has been legally rented out. As a matter of fact, the whole of the property is in

occupation of Gur Parshad, petitioner and his family members. It is further stated that the petitioner did not care to notice the changes made regarding determination of rateable value of lands and buildings in terms of the Punjab Municipal Act, 1976 which came into force within Corporation Area of Amritsar with effect from 30.3.1977 whereby fundamental changes in the matter of assessment of different properties had been brought about as compared to the provisions of the Punjab Municipal Act, 1911 whereunder originally, the annual rental value of the property had been assessed at Rs. 4400/- on 10.2.1977. It is also stated that the provisions of the East Punjab Urban Rent Restriction Act, 1949 have no applicability to the property in question as the annual rental value of the property has to be fixed in terms of "the 1976 Act". It was further stated that assessment of the annual rental value of Rs. 21,642/- had been made by taking fresh measurements of the built-up area and on the premises that the previous assessment had been erroneously made and all additions and alterations effected in the building since the previous assessment at Rs. 4,400/- per annum, as fully noticed in the reply itself, were taken into consideration while making the latest assessment of the annual rental value. In the end, it was stated that the assessment at Rs. 21,642/- was amply justified by the provisions of Section 93 of the 1976 Act.

5. I have heard learned counsel for the parties and have gone through the records.

6. The Supreme Court in *Devan Daulat Rat Kapoor's case* (supra) while dealing with a similar matter held as under:-

"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 this 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."

7. The annual value of the property had been agreed between the parties at Rs.

4400/per annum and thus, the same could not have been increased by the respondent.

8. Now adverting to the plea of the respondent regarding additions, it needs to be noticed that the petitioner in objections 3 and 6 dated 28.2.1984 (Annexure P-2) had specifically submitted that no alterations had been made by him. Objections 3 and 6 read as under:-

"3. That the necessary particulars of the basis if there are any, for revision of the current operative assessment of the objector property to house tax from annual letting out or rented value of Rs. 4400/- to Rs. 21642/- per annum have not been given in the notice.

6. That in any case the proposed assessment at Rs. 21642/- per annum is indefensible when no additions of alteration whatever have been made either in the self acquired or rented out portion of the property in question of the objector."

9. A perusal of the notice also shows that the respondent has not mentioned the nature and quantum of additions or alterations in the notice. On a specific query by the Court, learned counsel for the respondent candidly admitted that there is no specific mention regarding alterations or additions in the building either in the notice or in the orders Annexures P-3 and P-4. Thus, it cannot be said that the petitioner had made any alterations or additions in the building after preparation of the last assessment list.

10. In view of the above, the writ petition is allowed. The orders Annexures P-3 and P-4 are hereby quashed. There will, however, be no order as to costs.