

(2003) 08 SHI CK 0022

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1179 of 1993

Smt. Shanti Devi (Dead) by L.R. Surinder Singh

APPELLANT

Vs

Municipal Corporation and Another

RESPONDENT

Date of Decision : 28-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Himachal Pradesh Municipal Corporation Act, 1979 — Section 100, 101, 102, 103, 104

Himachal Pradesh Registration of Hotels and Travel Agents Act, 1970 — Section 10, 9

Citation : (2003) 3 ShimLC 272

Hon'ble Judges : Lokeshwar Singh Pant, J

Bench : Single Bench

Advocate : K.D. Sood and Alok Ranjan, for the Appellant; K.L. Bali, for Respondent No. 1, M.S. Chandel, General and Vijay Thakur, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

Lokeshwar Singh Pant, J.—This writ petition under Articles 226/227 of the Constitution of India has been filed by the Petitioner for an appropriate writ, order or direction quashing the appellate order dated 26.5.1993 (Annexure P-1) passed by Divisional Commissioner, Shimla affirming the order of the Taxation Committee dated 9.7.1992 (Annexure P-2) assessing the rental value of the property in dispute.

2. The case of Smt. Shanti Devi (since dead) was that she was the owner of Cozy Nook Estate, Shimla, comprised of Khasra No. 602, 602/ 1, 602/2, 600/B, measuring 894.3 sq. yards. She inherited the said property from her husband late Sh. Santokh Singh by way of Will. The property in dispute was leased out by her by registered lease deed in 1976 on rental value of Rs. 1000 p.m. to her son Surinder Singh the present Petitioner). Later on the rent was increased to Rs. 1200 per month and vide registered lease deed dated 31.8.1982 the lease money was increased to Rs. 2000 per month. According to the original Petitioner

she had nothing to do with the running of the Hotel in the name and style of "Bright Land Hotel" Shimla by her son Surinder Singh. The Petitioner had received notice dated 21.5.1985 u/s 102 of the H.P. Municipal Act, 1979 (hereinafter referred to as HPMC Act) which was applicable in Shimla during the relevant period. The assessment notice was issued by Municipal Corporation-Respondent No.1 herein for the year 1984-85 and 1985-86 re-assessing the property at the annual value of Rs. 81,450 net for the purposes of house, water and sanitation taxes. The copy of the notice is attached to the writ petition as Annexure P-12. The original Petitioner filed the objections against the assessment of the property and submitted that the rental of the entire property was Rs. 2000 per month as per registered lease deed dated 31.8.1982 and the rental value could not be more than what was the standard rent or fair rent under the provisions of H.P. Urban Rent Control Act, 1987 and in any event, the letting value could not exceed Rs. 24,000 per annum which was being paid to her by the lessee and the fact that the tenant was running the hotel or charging more rent from the occupants was of no consequence for the purpose of assessing of rental value. The Municipal Corporation vide its order dated 8.7.1985 (Annexure P-14) rejected the objections filed by Smt. Shanti Devi and assessed the property at gross rental value at Rs. 85,000 per annum.

3. Feeling aggrieved against the order of the Municipal Corporation Smt. Shanti Devi filed appeal u/s 145 of the Municipal Act before the Divisional Commissioner, Shimla who dismissed the same vide order dated 9.1.1986 Annexure P-15. Against the order of the Appellate Authority, Smt. Shanti Devi filed Civil Writ Petition No. 454/1986 which was allowed by this Court on 27.11.1990 holding that wrong criteria and principles had been applied in assessing the property. The Respondents in the said writ petition were directed to re-assess the property of Smt. Shanti Devi for the purpose of Municipal Taxes in accordance with the provisions of Section 92 of the Municipal Act and in view of the law laid down by the Supreme Court in Dr. Balbir Singh and Others Vs. M.C.D. and Others,

4. The Municipal Corporation again sent notices Annexures P-19 to P-28 to Smt. Shanti Devi for the assessment of the property for the assessment years 1984-85 to 1987-88. Smt. Shanti Devi filed objections to the notices which were rejected by the Tax Assessment Committee vide order dated 9.7.1992 (Annexure P-2). Against the order dated 9.7.1992, Annexure P-2, Smt. Shanti Devi filed appeal before the Divisional Commissioner Shimla which has been dismissed on 26.5.1993 vide order Annexure P-1.

5. Now the Petitioner has challenged the appellate order by way of this writ petition inter alia on the ground that the assessment should have been fixed by the Assessing Authority @ Rs. 2000 per month as per the lease deed u/s 92(b) of the HPMC Act whereas the assessment has been made by the committee on surmises and conjectures; the Assessing Authority should have taken into consideration the letting value of the gross annual rent at which property could

be reasonably let in accordance with the standard rent or fair rent as determinable under the provisions of the H.P. Rent Control Act. The law laid down by 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*, have not been taken into consideration by the Assessing Authority as well as by the appellate Authority and the Petitioner has been discriminated in the matter of assessment of tax viz-a-viz Gulmarg Hotel and Samrat Hotel whose annual rental value have been assessed at different rates more especially Hotel Gulmarg is in close proximity to "Hotel Bright Land".

6. A joint affidavit-in-reply on behalf of Respondents has been filed by the Commissioner, Municipal Corporation, Shimla. The Respondents have stated that the property of Smt. Shanti Devi was re-assessed as per the directions of the Hon^{ble} Court in writ petition No. 454/1986 by working out the standard rent. The assessment has not been objected to by Smt. Shanti Devi. However, after amendment of Section 92 of H.P.M.C. Act the property in dispute has been assessed under the amended provisions of Section 92. The portion which is rented out on monthly rent has been assessed on actual rent and rest of the portion which is being run as Hotel continued to be assessed on standard rent basis. The lease deed executed by Smt. Shanti Devi in favour of her son @ Rs. 2000 per month is not the actual rent as contemplated under the amended Section 92(b) of the HPMC Act, as the said lease deed has been executed with the sole object to save the payment of tax to the Corporation and it appears to be tainted by relationship between mother and son. The Respondents contended that if there is any difference in the payment of amount with regard to taxes, Smt. Shanti Devi could recover the differential amount of taxes from the lessee Surinder Singh u/s 97 of the HPMC Act. Further it is contended that the requisite rebate has been granted to Smt. Shanti Devi for providing furniture etc. in the hotel premises for the portions let out on monthly/yearly rental basis. The Respondents have also stated that the writ petition is not maintainable because the matter stands already decided and concluded by the High Court in CWP No. 454 of 1986.

7. During the pendency of the writ petition Smt. Shanti Devi has died. Her son Surinder Singh has been substituted as her legal representative who has inherited the property in dispute on the basis of a Will, a true photostat copy whereof is placed on record as Annexure A-I with CMP (M) No. 198/2003.

8. I have heard learned Counsel for the parties. Mr. K.D. Sood, learned Counsel for the Petitioner has contended that no relevant criteria has been applied by the Assessing Authority for assessment of the rental value of the property and rent has been fixed arbitrarily as other Hotel, namely Gulmarg constructed by the owner after the construction of the Hotel by the Petitioner has been assessed at lesser value. In support of his submission reliance is placed on the judgment of the Supreme Court in *Dr. Balbir Singh and Others Vs. M.C.D. and Others*,

9. Per contra, Mr. K.L. Bali, learned Counsel for the Respondent Corporation has

contended that the assessment made by the Taxation Committee and upheld by the Divisional Commissioner in appeal is strictly according to law and both orders do not suffer from any infirmity to call for interference in exercise of the extraordinary jurisdiction.

10. I have given my careful consideration to the respective contentions of the learned Counsel for the parties.

11. To appreciate rival contentions of the parties, it is necessary to make reference to some statutory provisions relevant for the purpose of resolving the controversy. The definitions and expressions used in HPMC Act, 1979 are to be found in Section 2 of that Act. "Rateable value" is defined in Section 2, Sub-section (46) to mean 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. Chapter VIII of the HPMC Act deals with the subject of Taxation and it comprises Sections 89 to 156. Section 89 deals with taxes to be imposed by Corporation under the Act and arrangement of certain taxes collected by Government. Section 90 provides components and rates of taxes on land and buildings. Section 92, Clause (b) lays down that 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 deductions which reads as under:

(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).

12. Explanation-II provides that the term "gross annual rent" shall not include any tax payable by the owner in respect of which the owner and the tenant have agreed that it shall be paid by the tenant. Sub-clause (c) lays down that 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. Section 97 deals with apportionment of liability of taxes on lands and buildings when premises assessed are let or sublet. Recovery of taxes on lands and buildings are to be effected from the occupier of such land or building by attachment of the rent payable by such occupier on the failure to recover any sum due on account of taxes specified in Section 90 from the person primarily liable therefore u/s 96. u/s 100 the Corporation is obliged to cause the assessment list of lands and

buildings in the city to be prepared in such form and manner and containing such particulars with respect to each land and building as may be prescribed by bye-laws. Under Sub-section (4) of Section 100 objections can be filed to a rateable value or any other matter as entered in the assessment list in writing to the Commissioner before the date fixed in the notice. Under Sub-section (5) of Section 100 of the HPMC Act the objections shall be required into investigated and the persons making them shall be allowed an opportunity of being heard either in persons or by authorized agent, by a Committee consisting of two Councillors elected by the Corporation for that purpose and the Commissioner or an Officer of the Corporation authorized by him in this behalf. Under Sub-section (6) when all objections have been disposed of and the revision of the rateable value have been completed the assessment list shall be authenticated by the signatures of the Commissioner or as the case may be, the officer authorized by him in this behalf, who shall certify that except in the cases, if any, in which amendments have been made as shown therein no valid objection has been made to the rateable value or any other matters entered in the said list. The assessment list so authenticated shall be deposited in the office of the Corporation and shall be open for inspection free of charge during office hours to all owners, lessees and occupiers of lands and buildings comprised therein or the authorized agents of such persons, and a public notice that it is so open shall forthwith be published under Sub-section (7). The commissioner is competent to amend the assessment list u/s 102 and it is left to the discretion of the Commissioner to prepare for the whole or any part of the city a new assessment list every year or to adopt the rateable values contained in the list for any year as provided u/s 103. The other provisions contained in this Chapter deal with levy of Octroi, recovery of Octroi and tolls, tax on vehicles and animals etc. etc. Section 145 of the HPMC Act provides for filing of the appeal against the levy or assessment of any tax under the HPMC Act to the Divisional Commissioner. Section 147 deals with the finality of appellate order passed by the Divisional Commissioner.

13. It is not in dispute that u/s 41 the Corporation shall constitute as many ad hoc committees consisting of such number of councillors and for such term as it thinks fit for the exercise of any power or discharge of any function which the Corporation may by resolution delegate to them or for inquiring into, reporting or advising upon any matter which the Corporation may refer to them. In the present case, pursuant to Sub-section (3) of Section 41 House Tax Assessment Committee has passed order dated 9.7.1992 Annexure P-2. The order reveals that Mr. Rajinder Verma, Advocate appeared before the Committee on behalf of Smt. Shanti Devi alongwith Surinder Singh her son the present Petitioner. The Committee sought the information from the Kailash District Co-operative Marketing and Consumer Federation Ltd. and District Welfare Officer with regard to the portion leased out on semi-permanent basis in the said premises. The plea before the House Taxation Assessment Committee raised by the Secretary of HPMC was that the building in question could be assessed for different portions

under different provisions of Section 92. The entire estate of "Bright Land Hotel" has been leased at Rs. 2000 per month in the year 1982 by Smt. Shanti Devi to her son Surinder Singh. The premises in dispute is being run as a Hotel premises portion of which has further been given on semi-permanent basis to two different offices for which rateable value could be assessed based upon the information provided by the Corporation as well as concerned offices u/s 92. The order shows that after the amendment of Section 92 in the year 1985 the actual lessee and the actual rent are more important than the original lessee and the original rent. In the present case the house Tax Assessment Committee approved that the assessment of the premises has to be assessed for different portions u/s 92(b) and rest of the portion which is actually being used as Hotel u/s 92(c). The Committee allowed deduction on account of furniture and repairs @ 20% and 10% u/s 92(b). A submission was made before the Committee by Mr. Rajinder Verma, learned Counsel for Smt. Shanti Devi that as she was receiving Rs. 24,000 only gross lease money, the differential amount of taxes on account of assessment could be realized by Smt. Shanti Devi from her son Surinder Singh under subsection (1) of Section 97 for which the Municipal Corporation has no objection. The objection raised on behalf of Smt. Shanti Devi by Mr. Verma, that Hotel Gulmarg which is adjacent to the premises in dispute has been assessed on less rateable value as compared to "Hotel Bright Land" the subject matter of the present proceedings, was not found tenable as according to the opinion of the Committee each case has to be decided on its own merits under the relevant provisions of law. The Committee has concluded that if both the Hotels constructed in the same year, had similar areas and portions were rented out on similar rent on semi permanent basis only then the case could be comparable. The committee has also noticed that similar cases do exist in case of Hotel Himland and Hotel Bridge View where some portions of the Hotels have been given to office or other organizations on semi permanent basis under different provisions of Section 92. This order has been passed by a committee consisting of two councillors and the commissioner of the Municipal Corporation, Shimla

14. Smt. Shanti Devi assailed the order dated 9.7.1992 of the Committee before the Divisional Commissioner who has not found any cogent reason to interfere with the said order of the Committee and accordingly dismissed the appeal by the impugned order. Before the Appellate Authority the learned Counsel for Smt. Shanti Devi contended that Cozy Nook Estate had been leased by her to her son Surinder Singh (the present Petitioner) on 9.6.1976 @ Rs. 1000/- per month and w.e.f. 6.4.1978 at Rs. 1,200/- per month which was later on revised to Rs. 2,000/- per month w.e.f. 31.8.1982. Surinder Singh after taking over the premises on lease started running Bright Land Hotel. The arguments urged before the Appellate Authority were that the Assessing Authority has erred in dividing the estate in different parts for determining the rateable value which should have been assessed at the actual rent of Rs. 2,000/- per month for the entire premises. The case of the Municipal Corporation was that the premises in question was assessed in the year 1971 at the rateable value of Rs. 8,675/- per

annum till 31.3.1984 and w.e.f. 1.4.1984 to 31.8.1985 it was assessed as per directions of the Hon^{ble} High Court at Rs. 10,500/- per annum by determining the standard rent in accordance with the H.P. Urban Rent Control Act. From 1.9.1985 to 31.3.1986 the assessment has been made at a rateable value of Rs. 90,500/- as per amended Section 92 of the HPMC Act and after 1.4.1986 to 31.3.1992 the rateable value has been brought down to Rs. 59,400/- per annum as the portion of the premises which was rented to the Welfare Department by that time had fallen vacant. The appellate authority has said that in the year 1985 the basis of the assessment has been changed in Section 92 by substituting the words as under :

(i) In clauses (a) and (b), for the words 'may reasonably be expected to', wherever occurring, the word 'is' shall be substituted.

15. The case of the Municipal Corporation as borne out from the order of the Appellate Authority was that leasing of premises by mother to her son was a clever device to pay reduced taxes and should be discouraged and the actual rent on which the premises are let, is more relevant than the original rent. The Appellate Authority on consideration of the rival contentions of the learned Counsel for the parties has observed that the Municipal Corporation has taken pains to comply with the earlier orders of the Hon^{ble} High Court and now on the basis of the legal advice assessed the rateable value of the premises in accordance with the provisions of the amended Act. The basis of assessment of rateable value of any land, building is the gross annual rent on which it is actually let. The premises in dispute which is actually being used as running a Hotel at times also is sub-let has been assessed in different ways for different portions. The Appellate Authority has found that historical lease deed between two family members (mother and son) would not be a fair and correct indicator of the rateable value of the property in question.

16. On consideration of the above said provisions of HPMC Act, and the factual situation of the case it will thus be seen that the criteria for determining rateable value of the building is a gross annual rent at which such building is reasonably expected to be let less certain deductions as laid down in Section 92(b), Sub-clauses (i), (ii) and (iii) of the HPMC Act. The ratio of the judgments relied upon by the learned Counsel for the parties 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*, has been duly considered by the Apex Court in the case of *India Automobiles, (1960) Ltd. v. Calcutta Municipal Corporation* AIR 2002 SC 1089. In addition to the said two decisions, a number of other decisions passed earlier by the Supreme Court have also been elaborated and considered. Their Lordships in this judgment have clearly held that only because the owner of the building is not getting the same rental value which the sub-tenant paying to his lessor cannot be made basis to deny to the Corporation the right to determining the annual valuation and taxing the property on that basis. In the judgments passed by the Supreme Court in the past, two types of cases, one where the

Taxing Municipal Statutes had a non-obstante clause excluding the operation of the rent controller legislation and the second type of cases where there was no non-obstante clause for determination of the annual rental value for assessing the property tax, were the subject matters of the controversy and their Lordships after dealing with and considering the provisions of the relevant Statutes have said that in either type of these cases it would be difficult to hold that the rent actually paid by sub tenant be either taken a sole criteria or otherwise. Further it is said that each case would depend upon its own facts.

17. In the case on hand, as noticed above, the rateable value has been assessed on the basis of the rent paid by Kailash District Co-operative Marketing and Consumer Federation Ltd. and District Welfare Officer of the portion of the premises in dispute let out to them by Surinder Singh after he obtained the premises in dispute on lease from his mother. The portion of the premises which is being used as "Bright Land Hotel" by Surinder Singh can be assessed at the rateable value as per the orders of the Commissioner (Tourism), Himachal Pradesh passed from time to time fixing/revising bed capacity and rates of lodging under Sections 9 and 10 of the H.P. Registration of Hotels and Travels Agents, 1970 in respect of the Bright Land Hotel being run by Surinder Singh. The copies of the various orders passed by the Deputy Commissioner, Shimla and Commissioner, Tourism, Himachal Pradesh are placed on record by the Petitioner fixing the rates of lodging and other service charges for Bright Land Hotel. The criteria of the rateable value of the premises in dispute has been rightly assessed by the assessing authority based upon the gross annual rent which is reasonably be expected to let after granting permissible deductions as provided under the HPMC Act. The contentions of the Petitioner that no relevant criteria has been applied for assessment of the rental value of the premises in dispute and the assessment has been fixed arbitrarily not at par with the assessment of Hotel Gulmarg operating in the same vicinity do not merit acceptance. The Assessing authority has to decide each case on its own merit and the facts of one case cannot be compared with the facts of the other case.

18. No other point is urged by the learned Counsel for the parties.

19. For the reasons above said, there is no merit in this writ petition and it is accordingly dismissed. Parties are left to bear their own costs.

Stay order, if any, shall stand vacated.