

(1985) 08 P&H CK 0034
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3991 of 1980

Smt. Surjit Kaur	Vs	APPELLANT
Municipal Corporation and Others		RESPONDENT

Date of Decision : 07-08-1985

Acts Referred:

Citation : (1987) 163 ITR 56

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : Vijay Jhanji, for the Appellant; Nemo, for the Respondent

Judgement

I.S. Tiwana, J.—These two Petitions Nos. 3991 and 3990 of 1980 relate to two adjacent properties which have been assessed to house-tax under the Punjab Municipal Corporation Act, 1976 (for short, "the Act"), by the Commissioner, Municipal Corporation, Ludhiana. Identical questions of law and fact have been raised in these two petitions and are, therefore, being disposed of through this common order. For facility of reference, the facts stated in CWP No. 3991 of 1980 only are adverted to.

2. Admittedly qua the property in question, the annual rateable value was determined at Rs. 1,600 till the year 1979. The petitioner was issued notice u/s 103(D) of the Act indicating therein that the said value of the property was proposed to be raised to Rs. 12,000 per annum. The petitioner filed objections to this notice including the one that since the property was situated in an area where the East Punjab Urban Rent Restriction Act, 1949, was applicable, the rateable value of the said property had to be determined in the light of the standard rent under that Act. Though in the light of the objections, the rateable annual value of the property was reduced to Rs. 7,920, but the above-noted plea of the petitioner was concurrently rejected by the authorities below. It is the very same contention which is urged before me now.

3. Having heard the learned counsel for the parties, I find that these petitions

have to be allowed, in the light of the following observations by their Lordships of the Supreme Court in *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, (headnote of AIR) :

"Where a building is governed by the provisions 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."

4. It is not disputed before me that the East Punjab Urban Rent Restriction Act is applicable to the area where the property in question is located. The authorities under the Act though referred to the above noted dictum of the Supreme Court, failed to follow it on the ground that the property in question had never been rented out and the above-noted expression of opinion of the Supreme Court was applicable only to cases in which properties had been rented out. I see no justification for this conclusion of the authorities concerned. The Supreme Court has said in categorical terms that the standard rent under the Rent Control Legislation has to be determined on the basis that if the property concerned is rented out to a hypothetical tenant, what would be its rental value. Besides this, the said authorities have also sought support for the above-noted conclusion of theirs from a judgment of this court in *Hukam Chand v. State of Punjab*, [1979] LLR 124, wherein it had been observed that in case the property concerned had not been rented out, then its standard rent need not be determined under the East Punjab Urban Rent Restriction Act for purposes of fixing its annual rateable value. Firstly, this observation was made in this judgment before the pronouncement of the above-noted judgment of the Supreme Court in *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, . Secondly, a Division Bench of this court in a later judgment in *Punjab Concast Steels Limited v. Municipal Corporation, Ludhiana*, [1984] LLR 584 has pointed out that in view of the judgment of the Supreme Court in *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, , the view expressed by this court in *Hukam Chand's* case [1979] LLR 124 stands "impliedly overruled and thus no longer holds the field". In the light of all this, it is patent that the orders under attack cannot be legally sustained.

5. For the reasons recorded above, I allow this petition and while setting aside the impugned order, send the case back to the Commissioner for reassessment of the house-tax in accordance with law and the observations made above. The petitioners are also held entitled to the costs of the litigation which would be Rs. 250 in each case.