

(2004) 10 P&H CK 0046

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 1923 of 1986

Partap Steel Rolling Mills (1935)
Limited

APPELLANT

Vs

Municipal Corporation of
Amritsar and Another

RESPONDENT

Date of Decision: Oct. 6, 2004

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Punjab Municipal Corporation Act, 1976 - Section 149, 93

Citation: AIR 2005 P&H 164 : (2005) 139 PLR 578 : (2004) 4 RCR(Civil) 797

Hon'ble Judges: Ajay Kumar Mittal, J

Bench: Single Bench

Advocate: Anand Kumar and Sapan Dhir, for the Appellant; I.S. Gujral, for the Respondent

Judgement

Ajay Kumar Mittal, J.

The grievance of the petitioner in this petition under Articles 226/227 of the Constitution of India is to the recovery of the enhanced house tax on the basis of assessment order dated 30.5.1984 (Annexure P2) with effect from 1.4.1982 and order dated 9.12.1985 (Annexure P4) passed on appeal thereon by respondent No. 2.

2. The facts as emerge from the writ petition are that the Municipal Corporation, Amritsar is a corporate body constituted under the Punjab Municipal Corporation Act, 1976 (for short "the 1976 Act"). The petitioner-company which till 12.4.1978 was situated within the territorial jurisdiction of Municipal Committee, Chheharta was being assessed on the annual value of the property upto the year 1975-76 by the said Committee, u/s 3(1)(b) of the Punjab Municipal Act, 1911 (for short "1911 Act"). The assessment of house-tax was made by the said Committee on reasonable expected letting value basis. The Municipal Committee, Chheharata assessed its

value at Rs. 75,600/- on the above basis, for the year 1976-77 after issuing a notice u/s 67 of the 1911 Act. The Municipal Committee, Chheharata increased the value to Rs. 84,000/- for the year 1976-77 vide order dated 25.3.1977.

3. Aggrieved against the order dated 25.3.1977, passed by the Municipal Committee, the petitioner filed appeal u/s 84 of the 1911 Act before the Deputy Commissioner, Amritsar. The appeal was accepted by order dated 27.7.1978 and the case was remanded to the Municipal Committee, Chheharata for fresh decision. The Municipal Committee, Chheharata however, stood dissolved with effect from 12.10.1978 and the area where the petitioner-company is situated, was included in the Municipal Corporation, Amritsar. The Municipal Corporation, Amritsar issued a notice u/s 103 of the 1976 Act to the petitioner-company proposing to enhance the value of the property to Rs. 5,02,668 for the year 1978-79 u/s 93(c) of the said Act, which is equivalent to Section 3(1)(c) of the 1911 Act. Ultimately, the case remanded by the Deputy Commissioner vide order dated 27.7.1978 and the proceedings u/s 103 of the 1976 Act were consolidated vide order dated 24.3.1979 and the value of the property of the petitioner for the years 1976-77 and 1977-78 was fixed at Rs. 84,000/- per year, but for the year 1978-79, the value was fixed at Rs. 2,44,718/-. Upto the year 1982-83, the tax continued to be recovered by adopting the annual value of the petitioner-company at Rs. 2,44,718/-. The Municipal Corporation, Amritsar had already fixed the annual value at Rs. 2,44,718/- and had recovered the tax on the said valuation upto the year 1982-83 and issued yet another notice on 30.3.1981 u/s 103 of the 1976 Act proposing to enhance the annual value of the petitioner's property to Rs. 7,67,236/- for the year 1982-83. Another notice dated 30.3.1983 was issued to the petitioner company whereby a further proposal for enhancement in the annual value of the property at Rs. 8,31,591 in respect of the aforesaid year was made. Notice dated 30.3.1981 whereby proposal was made to enhance the annual value to Rs. 7,67,236/- was decided on 20.4.1983 and the annual value was assessed at Rs. 4,29,842/-. Appeal carried by the petitioner-company against the said action of respondent No. 1 met with failure and was dismissed by respondent No. 2 vide order dated 26.11.1984.

4. To the notice dated 30.3.1983, Annexure P1 issued to the petitioner-company whereby the annual value of the property was proposed to be revised to Rs. 8,31,591/-, objections against the said proposal were filed by the petitioner-company. Respondent No. 1, however, finalised the assessment of the annual value of the property at Rs. 4,86,762/- which was ordered to be made effective from 1.4.1982 i.e. for the year 1982-83, by order dated 30.5.1984, Annexure P2.

5. Aggrieved by the aforesaid enhancement vide Annexure P2, the petitioner-company preferred appeal before the Commissioner, Jalandhar Division, Jalandhar. It was pleaded before the appellate authority that the property should have been assessed u/s 93(b) and not u/s 93(c) of the 1976 Act. The Commissioner,

Jalandhar Division, Jalandhar however, dismissed the appeal by upholding the order of assessment passed by the Municipal Corporation, Amritsar, vide order dated 9.12.1985, Annexure P4.

6. The prayer made in the writ petition therefore, is that order dated 30.5.1984. Annexure P2 whereby the assessment of the annual value of property of the petitioner's company was finalised by respondent No. 1, and the order dated 9.12.1985, Annexure P4 whereby the appeal filed by the petitioner against the aforesaid order of the assessing authority, was dismissed by respondent No. 2, may be quashed and a writ of mandamus be issued restraining respondent No. 1 from recovering enhanced house-tax on the basis of assessment order Annexure P2, passed by the Executive Officer of respondent No. 1.

7. In response to notice, written statement has been filed by respondent No. 1. The factual position as stated in the writ petition was admitted. It was, however, stated that during the year 1980-81, it was found that the property of the petitioner had not been properly assessed and therefore, a notice was issued proposing to revise the rental value to Rs. 7,67,276/- but after considering the objections of the petitioner, the valuation was finalised at Rs. 4,29,842/- for the year 1980-81 which was adopted for the years 1981-82 and 1982-83 as well. It was further stated that during the year 1982-83, it was considered necessary to revise the value of the property due to additions and alternations in the cost of the land and the building and therefore, after issuing notice and considering the objections, the valuation was finalised vide order dated 30.5.1984 (Annexure P2) at Rs. 4,86,762/- with effect from 1.4.1982.

8. Learned counsel for the petitioner submitted that the respondent-Corporation has erred in taking recourse to provisions of Section 93(c) of 1976 Act whereas Section 93(b) of the 1976 Act is applicable to the present case. According to the learned counsel, the Municipal Corporation is first to take recourse to the provisions of Section 93(b) of the 1976 Act and the annual value is to be calculated on the basis of rent on which the building is reasonably be expected to let and if the valuation for some reason cannot be determined u/s 93(b) then only recourse to Section 93(c) can be adopted. He submitted that the word reasonably be expected to let connotes that the provisions of the Rent Act are to be taken into consideration for determining the annual value. The counsel placed reliance on the judgments of this Court and also the Apex Court to buttress his submissions:-

i) [The Metafold Industries \(Regd.\) Vs. State of Punjab and Another](#) ;

ii) [Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others](#) .

iii) Balbir Singh v. Municipal Corporation Delhi, A.J.R. 1985 S.C. 339.

iv) Bhagwant Rai and Ors. v. State of Punjab and Ors. (1995) 111 P.L.R. 745 (S.C);

- v) [Sarvshri R.P. Mayor etc. Vs. The Municipal Corporation of Jullundur and Another](#), .
- vi) [Indian Oil Corporation Ltd. Vs. Commissioner, Jalandhar Division and Another](#), :
- vii) Banarsi Dass Mahajan v. The State of Punjab and Anr. (1990) 97 P.L.R. 1 (Full Bench).

9. The learned counsel for the respondent-Corporation controverting the submissions of the counsel for the petitioner submitted that Section 93(c) of the 1976 Act provides that where the annual value of the building cannot be determined u/s 93(b) of the 1976 Act, the Corporation can take recourse to clause (c) of Section 93 and in the present case, the value cannot be assessed u/s 93(b) of the 1976 Act and, therefore, recourse taken by the Corporation to provisions of Section 93(c) is proper and legal. He placed reliance on [Srikant Kashinath Jituri and others Vs. Corporation of the City of Belgaum](#), and in particular, para 12 thereof, where the Apex Court had expressed doubts about the soundness and continuing relevance of the view taken by the Apex Court in several earlier decisions that the property tax must be determined on the basis of Rent Act alone regardless of the actual rent received. The learned counsel then drew the attention of this Court to Section 149 of the 1976 Act to contend that the present writ petition is not maintainable in the light of the aforesaid provisions.

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

11. The controversy in the present case revolves primarily on the interpretation of Section 93(b) and (c) of the 1976 Act. The provisions 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 by 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 *res Integra*. A Full Bench of this Court in Banarasi Dass Mahajan "s case (*supra*), 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 the 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 clause (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 and in any case taken a contrary view to the one taken in the aforesaid two judgments. Even in Srikant Kashinath Jituri and other's case (supra), 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.

14. Now adverting to the next submission of counsel for the respondent that in view of the provisions of Section 149 of 1976 Act, the present writ petition is not maintainable. The provisions of Section 149 of 1976 Act shall be material to be reproduced which read thus:

"149. Taxation not to be questioned except under this Act.- (1) No objection shall be taken to any valuation or assessment, nor shall the liability of any person to be assessed or taxed be questioned, in any other manner or by any other authority than is provided in this Act. "

(2) No refund of any tax shall be claimable by any person otherwise than in accordance with the provisions of this Act and the rules thereunder."

15. In the present case, the order of assessment dated 30.5.1984 (Annexure P2) was challenged by the petitioner-company u/s 146 of the" 1976 Act before respondent No. 2 who had dismissed the appeal vide order dated 9.12.1985 (Annexure P4). The said order had attained finality insofar as the provisions of the 1976 Act are concerned. The jurisdiction of the High Court under Articles 226/227 of the Constitution cannot be said to be excluded under the aforesaid provisions. Since there was no other alternative remedy available to the petitioner, the present writ petition by the petitioner-company cannot be said to be not maintainable. This contention of counsel for the respondent is thus, rejected.

16. In view of the discussion aforesaid, orders Annexures P2 and P4 passed by respondents Nos.1 and 2 respectively are set aside and the case is remitted to the Municipal Corporation, Amritsar for determining the rateable value of the property under clause (b) of Section 93 of the 1976 Act and if for any justifiable reason, the Municipal Corporation, Amritsar cannot determine such value under clause (b), it may then resort to the provisions of clause (c) of the said Section. It is further directed that a reasonable opportunity should be given to the petitioner-company of being heard in the matter. The writ petition is disposed of in these terms. There shall, however, be no order as to costs.