Tara Chand Vs Municipality and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 7, 2004

Acts Referred: Haryana Municipal Act, 1973 â€" Section 168, 2, 2(1), 69, 69(2)
Punjab Municipal Act, 1911 â€" Section 3(1)

Citation: AIR 2005 P&H 128 : (2005) 140 PLR 301

Hon'ble Judges: G.S. Singhvi, J; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: Rajesh Garg, for the Appellant; C.B. Goel, (for No. 1) and Jaswant Singh, Sr. Dy. A.G. (for No. 2), for the Respondent

Final Decision: Dismissed

Judgement

Ajay Kumar Mittal, J.
This appeal is directed against order dated 17-1-1997 passed by the learned single Judge in C.W.P. No. 4671 of

1983 whereby he rejected the appellant"s prayer for quashing the assessment of house tax made by Municipal Committee, Rewari (for short, "the

Municipal Committee") for the years 1980-81 and for issuance of a direction to levy house tax in accordance with the Haryana Municipal Act,

1973 (for short, "the Municipal Act") read with the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short, "the Rent Control Act").

2. The appellant owns property bearing No. 7685/6 situated within the municipal limits of Rewari. He is running a factory under the name and style

of M/s. Bipan Metal Works. In 1981, the Municipal Committee assessed the annual value of the appellant"s property at Rs. 60,000/-. The

appellant contested the proposed assessment and filed objections dated 21-4-1981. After considering the same, Administrator of the Municipal

Committee, vide his order dated 16-9-1981 passed u/s 69(2) of the Municipal Act, determined the annual value of the appellant"s property at Rs.

36,000/-. Accordingly, house tax demand of Rs. 4050/- was created for the years 1980-81 and 1981-82. The appeal filed by the appellant was

partly allowed by Deputy Commissioner, Narnaul, who reduced the annual value of his property from Rs. 36,000/- to Rs. 30,000/-. C.W.P. No.

3181 of 1982 filed by the appellant questioning the determination of the annual value of his property and the demand of house tax was dismissed

by the learned single Judge. The learned single Judge noticed the non-obstante clause contained in Section 2(1) of the Municipal Act, the

judgments of the Supreme Court in Municipal Corporation, Indore and Others Vs. Smt. Ratnaprabha and Others, and Asstt. General Manager,

Central Bank of India and Others Vs. Commissioner, Municipal Corporation for the City of Ahmedabad and Others, and held ""it should thus be

apparent that in the cases of the property situated in the city of Haryana and governed by the Haryana Municipal Act, question of applicability of

the standard rent under the Rent Control Act would not arise.

3. Shri Rajesh Garg assailed the order of the learned single Judge by arguing that the view taken by him on the interpretation of Section 2(1) read

with Section 69 of the Municipal Act is patently erroneous. Shri Garg emphasised that Section 2 of the Municipal Act does not preclude the

fixation of rent in accordance with the Rent Control Act and, therefore, in respect of the properties which are in self-occupation of the owners, the

words ""expected to be let"" should be treated as fair rent for the purpose of determination of annual value. He further argued that where the

property is governed by the provisions of the Rent Control Act, the fair rent ascertainable under that Act should be treated as annual value

irrespective of the actual rent received by the owner. In support of his arguments, Shri Garg relied on the judgments of the Supreme Court in

Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others, , Dr. Balbir Singh and Others Vs. M.C.D. and Others,

and Municipal Corporation of Greater Mumbai and Another Vs. Kamla Mills Ltd., and a judgment of this Court in Banarasi Dass Mahajan v.

State of Punjab 1990 (1) P LR 1.

4. Shri C. B. Goel, learned counsel for the Municipal Committee and Shri Jaswant Singh, learned Senior Deputy Advocate General supported the

order of the learned single Judge and argued that the annual value of the appellant''s property was rightly determined keeping in view Section 2(1)

(a) of the Municipal Act. Shri Goel relied on the judgments of the Supreme Court in Municipal Corporation, Indore and Others Vs. Smt.

Ratnaprabha and Others, Radhika Theatre, Rewari v. State of Haryana 1996 (2) PLR 51 : 1996 AIHC 4956 and East India Commercial Co.

Pvt. Ltd. Vs. Corporation of Calcutta, .

5. Now, it would be advantageous to juxtapose and notice the definition of annual value u/s 3(1) of the Punjab Municipal Act, 1911 (for short,

''the 1911 Act'') and u/s 2(1) of the Municipal Act.

Punjab Municipal Act Haryana Municipal Act

3. In this Act, unless there is something ""2. In this Act, unless there is anything

repugnant in the subject or context.-- repugnant in the subject or context. --

(1) ""annual value"" means-- (1) ""annual value"" notwithstanding

anything contained in any other law for

(a) in the case of land or building which

the time being in force, means --

is in the occupation of a tenant, the

gross annual rent at which the land or

building has actually been let :

Provided that in the event of increase in (a) in the case of land, the gross annual

the rent, the Committee may make rent --

corresponding increase in the annual

(i) to be calculated on the basis of fair

value :

rent fixed under the law relating rent

restriction for the time being in force; or

Provided further that where the land or

(ii) where no fair rent referred to in item

building has been let by the owner to

(i) is fixed, at which it is expected to be

any of his relations, and the Committee

let or it is actually let, whichever is

is of the opinion that the rent fixed does

greater :

not represent the true rent, the rent

fixed under the agreement of lease shall Provided that in the case of land

not be taken into consideration and the assessed to land revenue or any other

annual value shall be determined in tax in lieu thereof or of which the land

accordance with the principles revenue has been wholly in part

contained in clause (b) : released, compounded for, redeemed or

assigned, the annual value shall, if the

(b) in the case of land or building which State Government so directs, be

is occupied by the owner, the annual deemed to be double the aggregate of

value shall be five per cent on the sum the following amounts, namely --

obtained by adding the present market

value of the land and estimated cost, of

erecting the building less ten per cent

depreciation :

Provided that in the calculation of

annual value of any land and building,

no account shall be taken of the

furniture or machinery thereon :

(c) in the case of any land on which no (i) the amount of the land-revenue or any

building has been erected but on which other tax in lieu thereof for the time being

a building can be erected, and on any assessed on the land, whether such

land on which a building is in the assessment is leviable or not; or when

process of erection, the annual value the land-revenue, has been wholly or in

shall be fixed at five per cent of the part, compounded for or redeemed the

estimated market value of such land : amount which, but for such composition

or redemption would have been leviable:

(d) in the case of any land on which no

and

building has been erected but on which

a building can be erected, or which is (ii) when the improvement, of the land

partially built and is being used by due to canal irrigation has been excluded

erecting tents, temporary structures for from account in assessing the land-

the purpose of accommodating revenue, the amount of owner''s rate or

marriage parties, circus shows or for water advantage rate, or other rate

any entertainment purposes or such imposed in respect of such improvement

other purpose as may be specified in :

this behalf by the Committee with the

(b) in the case of any house or building

previous sanction of the State

together with its appurtenance or any

Government the annual value shall be

furniture that may be let for use and

twenty per cent of the estimated market

enjoyment therewith, the gross annual

value of such land.

rent --

(i) to be calculated on the basis of fair

rent fixed under the law relating to rent

restriction for the time being in force: or

(ii) where no fair rent referred to in item

(i) is fixed, at which it is expected to be

let or it is actually let, whichever is

greater, subject to the following

deductions : --

(1) a deduction not exceeding twenty

per centum of the gross annual rent as

the committee in each particular case

may consider a reasonable allowance on

account of the furniture let therewith:

(2) a deduction of twelve and a half per

centum 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

tills sub-clause shall be calculated on the

balance of the gross annual rent after the

deduction, if any, under item (1);

(3) where land is let with a building such

deduction, not exceeding twenty per

centum of the gross annual rent, as the

committee in each particular case may

consider reasonable on account of the

actual expenditure, if any, annually

incurred by the owner on the

maintenance of the land in a state to

command such gross annual rent.

Explanation I. -- For the purpose of this

clause it is immaterial whether the house

or building and the furniture 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 arc 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;

(c) in the case of any house or building,

the gross annual rent of which cannot be

determined under clause (b), five per

centum on the sum obtained by adding

the estimated present cost of erecting the

building, less such amount as the

committee may deem reasonable to be

deducted on account depreciation, if

any, to the estimated market value of the

site and any land attached to the house

or building.

6. In Radhika Theatre''s case (1996 AIHC 4956) (supra), a Division Bench of this Court interpreted Section 2(1) of the Municipal Act, which is

relevant for deciding this appeal, and observed as under :

On the strength of this definition our attention was drawn by the learned counsel for the respondents to the non obstante clause occurring in the

Haryana Municipal Act, 1973. The language of the provisions are by and large by consonance with the decision of the Supreme Court in the case

of Ratnaprabha AIR 1977 SC 308 (supra). In other words, where fair rent has not been fixed then notwithstanding anything contained in any other

law, the annual value has to be fixed on which the building is expected to be let or is actually to be let subject to certain deductions. It is not the

case of the petitioners that fair rent has been fixed of either of the buildings. Consequently, the authorities were well within their rights to take into

consideration rent which the building was expected to be let rather than fall back on basis of fair rent fixed under the law relating to rent

restrictions. It is brought to our notice that in the case of Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others,

while considering the decision of the Supreme Court in the case of Ratnaprabha (supra) certain observations had been made but the Supreme

Court hastened to add that it is not necessary to probe further into the correctness of this decision because there is no nonobstante clause in

Section 3(1) of the Punjab Municipal Act or in Delhi Municipal Corporation Act. Consequently, the decision in the case of Ratnaprabha (supra)

would hold good and valid with the result that the very basis of the plea of the petitioners learned counsel falls to the ground. The annual value so

fixed cannot be held to be illegal merely because principles for fixation of fair rent under the Rent legislation have been ignored under the Haryana

Municipal Act, 1973. The decisions in the case of 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, will not come to the rescue of the petitioners because the language of the provisions in these

relevant enactments is different. There is no non obstante clause as exists in the Haryana Municipal Act, 1973.

7. In Municipal Corporation v. Ratna Prabha (AIR 1977 SC 308) (supra); Indian Oil Corporation Ltd. Vs. Municipal Corporation and Another,

and Asstt. General Manager, Central Bank of India and Others Vs. Commissioner, Municipal Corporation for the City of Ahmedabad and Others,

the Supreme Court interpreted the provisions contained in Section 138(b) of the Madhya Pradesh Municipal Corporation Act, 1956 and other

provisions similar to Section 2(1) of the Municipal Act and held that the annual value is to be determined according to the principles contained in

the Municipal Act and not as per the fair rent or the standard rent determinable under the Rent Control Act.

8. In East India Commercial Co. Pvt. Ltd. Vs. Corporation of Calcutta, , the Supreme Court reviewed various judicial precedents including those

on which reliance has been placed by the learned counsel for the parties and held (para 17 of AIR) :

From the aforesaid decisions, the principle which is deducible is that when the Municipal Act requires the determination of the annual value, that

Act has to be read along with Rent Restriction Act which provides for the determination of fair rent or standard rent, Reading the two Acts

together the rateable value cannot be more than the fair or standard rent which can be fixed under the Rent Control Act. The exception to this rule

is that whenever any Municipal Act itself provides the mode of determination of the annual letting value like the Asstt. General Manager, Central

Bank of India and Others Vs. Commissioner, Municipal Corporation for the City of Ahmedabad and Others, relating to Ahmedabad or contains a

non obstante clause as in Ratna Prabha case AIR 1977 SC 308, then the determination of the annual letting value has to be according to the terms

of the Municipal Act. In the present case, Section 168 of the Municipal Act does not contain any non-obstante clause so as to make the Tenancy

Act inapplicable and nor does the Act itself provide the method or basis for determining the annual value. This Act has, therefore, to be read along

with Tenancy Act of 1956 and it is the fair rent determinable u/s 8(1)(d) which alone can be the annual value for the purpose of property tax.

9. By applying the ratio of the above noted judgments of the Supreme Court and of the Division Bench in Radhika Theatre"s case (1996 AIHC

4956) (supra), we hold that the learned single Judge did not commit any error by rejecting the appellant"s prayer for quashing the determination of

the annual value of his property and the demand notice issued by the Municipal Committee.

10. No other point has been argued.

11. In the result, the appeal is dismissed. However, the parties are left to bear their own costs.