(1975) 04 BOM CK 0017

Bombay High Court (Nagpur Bench)

Case No: Civil Revision Application No. 428 of 1972

K.K. Dabir		APPELLANT
	Vs	
The City of Nagpur Corporation		RESPONDENT

Date of Decision: April 4, 1975

Acts Referred:

- City of Nagpur Corporation Act, 1948 - Section 119

Citation: AIR 1976 Bom 117 : (1976) MhLj 293

Hon'ble Judges: Dharmadhikari, J

Bench: Single Bench

Advocate: S.J. Chawda, for the Appellant; M.L. Vaiya, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The applicant is the owner of house No. 737 in Ward NO. 41, situate in city of Nagpur. In the year 1967, all houses in Ward NO. 41 were revalued by the non-applicant, Corporation for the purposes of assessment, as contemplated by Section 119 of the City of Nagpur Corporation Act, 1948, referred to hereinafter as the Act. ON the basis of revaluation, the Corporation authorities assessed the annual letting value of the house of the applicant at Rs. 2,345 with effect from 1-4-1967. Therefore, a notice u/s 134 of the Act was issued to him. The applicant raised an objection to this assessment on various grounds and contended that his house has been wrongly valued and assessed. According to him, the entire house is occupied by the owner himself, and therefore, the house should be assessed as one unit only. This objection was rejected by the Objection Officer by his order dated 18-12-1968. The applicant-owner therefore, preferred Miscellaneous Appeal No. 89 of 1969 Before the District Judge Nagpur, who heard the appeal, by his order dated 12-12-1968 (sic) remanded the case back with a specific direction that the valuation and assessment should be ascertained on the basis of oral and documentary evidence on referred, including the declaration given by the tenants etc. It was also

directed that the Objection Officer may collect some material from which he can revalue the portion occupied by the owner of the house and then fix the assessment in accordance with law.

2. After remand, the Objection Officer recorded the evidence of the parties and thereafter passed an order on 4-5-1971 rejecting the objection raised by the applicant owner. He held that the house is liable to be assessed from 1-4-1967 to 31-3-1968 on the basis of 3 units. He further held that from 1-4-1968 onwards the house is liable for assessment on the basis of two units and a regards the rate of Rs. 10 per sq, ft. and accordingly fixed the rented value of the premises occupied by the owner as well as the tenants. On this basis, he held that the owner is liable to pay a tax of Rs. 431.95, excluding the water charges.

3. The applicant - owner then filed an appeal u/s 130 of the Act to the District Court, Nagpur against the aforesaid order of the Objection Officer. The Second Extra Assistant Judge, Nagpur by his order dated 18-7-1972 in Miscellaneous Appeal No.4 of 1971 upheld the assessment made by the Objection Officer the dismissed the appeal. Being aggrieved by this order passed by the Second Extra Assistant Judge, the present revision application has been filed by the owner of the house.

4. Shri Chawda, the learned counsel for the applicant contended before me that the procedure followed by the Corporation authorities for determining the valuation is contrary to the provisions of law. According to him, as the house in question was constructed in the year 1935, it was not open for the Corporation authorities to decide the gross annual rented value arbitrarily. According to him, such annual letting value could be determined only in the light of the provisions of the C. P. & Berar Letting of Houses and Rent Control Order, 1949, referred to hereinafter as the Rent Control Order. He further contended that it was not open for the owner of the house to have charged more rent than one which is payable under the provisions of the Rent Control Order, and that would be the basis for arriving at the annual rented value which the house might at the time of assessment could be reasonably expected to be let within the meaning of Section 119 of the Act. In support of his contention Shri Chawda has relied upon a decision of the Supreme Court in The Guntur Municipal Council Vs. The Guntur Town Rate Payers'' Association etc.,

5. On the other hand, the learned counsel for the Municipal Corporation Shri M.L. Vaidyan contended before me that the process of valuation followed by the corporation authorities is in according with the provision of section 119 of the Act read with the Bye-laws framed under the city of Nagpur Corporation Act, 1948. He contended that in the present case though a portion of the house is occupied by the tenant as the fair rent has not been fixed or determined by the Rent Controller, it is the open for the land lord to change a reasonable rent, which could be termed as ''expected rent'' at which the house could be let out. The provisions of the Rent Controller order do not create any bar in accepting the rent higher than the fair rent in case the provision of the Rent Control Order will not apply. In support of these

contentions Shri Vaidya has relied upon the following decisions of this Court, namely. Saraswatibai Vs. Corporation of City of Nagpur, ; Motilal V. Corporation of the city of Nagpur (1958 Nag LJ (Note) No 128) ; City of Nagpur Corporation V. Ramachandra Raju 1960 Nag LJ 711 and City of Nagpur Corporation v. Balachandra 1961 Nag LJ 352.

6. For properly appreciating the controversy involved in this revision application it will be necessary to reproduce the relevant provisions of the City of Nagpur Corporation Act and the Bye-laws framed thereunder, Section 119 (b) of the Act reads as under:-

""119-For the purpose of assessing land or buildings in the property tax-

(a).....

(b) the annual value of any building shall be deemed to be the gross annual rent at which such building, together with its appurtenances and any furniture that may be let for use or enjoyment therewith, might reasonably at the time of assessment be expected to be let from year to year, less an allowance of ten percent for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross annual rent.

Explanation 1-For the purposes of this clause it is immaterial whether the 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."

In exercise of the powers conferred by sub-section (1) of Section 418 of the Act read with Sections 415 and 416 the Bye laws have been framed for the purposes of levy f property tax, which are known as Property Tax Be-laws, the relevant provisions of Property Tax Be-laws, namely, Bye-laws 3.4.5 and 6 are as under:

"3 (a) For determining the annual value of land u/s 119 (a) the locality in which it is situated should be the guiding factor.

(b) Annual value of land shall'' generally be calculated on the basis of rents at which similar lands are let in the same locality or similar other localities.

(c) The annual value of land which is exclusively used for agricultural purposes shall, if the State Government so directs, be deemed to be double the land revenue.

4 (a) The annual value of a building shall generally be determined on the basis of gross annual rent less an allowance as prescribed u/s 119 (b) of the Act, for the cost of repairs, and for all other expenses necessary to maintain the building in a state to

command such a gross annual rent.

(b) For purposes of this bye-law it is immaterial whether the 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.

(c) 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.

5. In determining the annual value of a building u/s 119 (b) the following factors should be considered:-

(a) The location of the premises. (b) type of construction, (c) advantages and amenities offered to the occupant, (d) age and the present condition f the building, (e) advantages of the locality, (f) free access of light and air and open space available, (g) whether the locality is congested or developed area or on the out-skirts of the city, (h) neighbourhood and amenities, (i) safety and security of the habitation, (j) prevailing rents for similar buildings in the neighbourhood and (k) the rents actually fixed either by contract or law.

6. Having regard to the general principles specified in Bye-law 5 above, the assessment staff shall laws adopt following procedure for determination of the annual value of building:-

(i) When the buildings in any ward are to be revalued the ward should be divided into suitable number of smaller blocks surrounded by main roads, bye-roads, lanes, etc. as the case may be..

(ii) In each of such blocks buildings used for residential purposes and for business purposes should be separately classified in the categories as given in the Appendix A.

(iii) Information should be collected from the tenants according to the categories of buildings in respect of area occupied and rents paid by them; regard being had to the amenities afforded to them, such as pipe, latrine, electricity, etc.

(iv) The Information as gathered above should be compiled in a statement for preparation of a rent chart for different categories of houses in the block.

(v) The average rental incidence (rent per 100 spur feet of built-up plinth area) should be worked out. The rental incidence so determined should generally be taken as a guide for determining the annual value of an individual building."

From the bare reading of Section 119 (b) of the Act it is, therefore, obvious that the annual value of a building is deemed to be the gross annual rent at which such a building may be expected to be let out from year to year. Clause 5 of the Bye-lays

then lays down the method for determining the annual value of the building u/s 199 (b) of the Act and the factors which are to be taken into consideration. Clause 5 (a) of the Bye-laws requires that the rent which is actually fixed either by the contract or law should also be taken into consideration while determining the annual value of the building, u/s 119 (b) of the Act.

7. It is no doubt true that in the previous decisions reported in Saraswatibai Vs. Corporation of City of Nagpur, ; Motilal v. Corporation of the City of Nagpur 1958 Nag LJ 128: City of Nagpur Corporation v. Ramchandra Raju 1960 Nag LJ 711 and City of Nagpur Corporation v. Bhalchandra 1961 Nag LJ 352 (all cit. supra) a view was taken by this Court that unless in fact the fair rent has been fixed under the provisions of the Rent Control Order there is no statutory bar prohibiting a landlord to charge a tenant a reasonable rent. IN this context it was held by this Court that unless there is such a determination or fixation of the fair rent by the competent authority under the Rent Control Order, the question of considering the hypothetical rent under the said provisions may not arise while determining the reasonable rent u/s 119 (b) of the Act.

8. So far as the previous decisions of the court are concerned, on which reliance is placed by Mr. Vaidya, the observations made therein cannot be read torn from the context. In Saraswatibai Vs. Corporation of City of Nagpur, the house in question was partly by the owner himself and in this context it was observed by this Court:

"When the provisions of the Order are examined, it is clear the Order by Itself does not fix any fair rent. It only Ex-powers the Rent Controller to fix a fair rent when moved either by the landlord or by the tenant. It is only when the Rent Controller is moved by either of them; he gets jurisdiction to fix a fair rent. It does not prevent the parties to amicably settle the rent between themselves, nor does this order make it illegal to charge and realise the agreed rent which may be at variance with the method indicated in the order for fixing a fair rent. It is only when such fair rent is fixed by the Rent Controller, the landlord is prohibited from claiming anything in excess of the rent fixed."

Then reference was made to Section 119 of the Act and it was observed:

"Reading this section by itself, it would be seen that the powers of the non-application to assess the gross annual rent is in no way restricted by the provisions of the aforesaid Rent Control Order. Even assuming that Section 6 of the Act XI of 1946 controls the powers of the Corporation to assess the gross annual rent, it cannot be said that these provisions come into play till the fair rent is actually determined by the Rent Controller on being moved by any one of the interested parties."

So far as the premises which were in the occupation of the landlord were concerned, it was observed by this Court:

"There is no substance in the contention of the applicant that there is no basis for fixation of this rent. Para 5 of the Order of the Objection Officer dated 10-8-1955 shows that the rent is fixed on the basis of the rent obtained by the landlord for the adjoining units Nos. 494/1 to 494/5."

In City of Nagpur Corporation v. Ramchandra Raju. 1960 Nag LJ 711 (cit. supra) the question was considered with reference to the premises which were in occupation of the tenant. Same is the position in the case of Motilal v. Corporation of the City of Nagpur 1958 Nag LJ 128 and City of Nagpur Corporation v. Bhalchandra. 1961 Nag LJ 352 (both cit. supra). It is obvious, therefore, that in these cases the question was considered by this Court with reference to the houses which were occupied by the tenants and the tenants were actually paying agreed rent. This principle will not apply in the case of a house which is occupied by the owner and hypothetical expected rent is required to be determined. In a given case so far as a house which is in the occupation of the tenant is concerned, the rent actually paid by the tenant may represent the expected rent. However, the matter will stand on somewhat different footing when the question is to be decided with reference to a house which is in the occupation of an owner.

9. From the bare reading of Section 119 of the Act, it is clear that the annual value of any building on which the property tax is leviable is to be fixed at a figure to be arrived at by finding the gross annual rent at which such building might reasonably be expected to be let out at the time of assessment. Therefore, a fiction is introduced for finding out the annual value of the building because in a given case even though the building is not occupied by the tenant, it is to be imagined that the building is available for letting at the time when assessment is to be made. It is the duty of the assessing officer to find out what could be a reasonable rent or gross annual rent for which the building might be let out at the relevant time, namely, at the time when he is assessing the building or is finding out the annual value of the building for the purposes of the property tax. It is no doubt true that the basis for calculation of the annual value with reference to gross annual rent the building is reasonably expected to fetch at the time of assessment is the same, whether the building is occupied by the owner or by the tenant. But in a given case when the house is in the occupation of a tenant, the rent actually paid by him might represent the expected rent. That will not be a case when the owner himself is occupying the building. The Bye-laws of the Corporation further indicate that while deciding this question, apart from other things, the authorities are expected to take into consideration the relevant provisions of law.

10. In The Guntur Municipal Council Vs. The Guntur Town Rate Payers'' Association etc., on which as already stated, reliance is placed by Shri Chawda, the learned counsel for the applicant, while construing similar provisions of Madras District Municipalities Act, 1920, the Supreme Court held as follows:

"He only point which we are called upon to decide is whether before the fixation of a fair rent of any premises the municipality was bound to make assessment in the light of the provisions contained in the Rent Acts. A subsidiary question has also arisen whether the court''s below were justified in referring to and passing the decree keeping in view the Rent Acts which were in force prior to the enactment of the Andhra Pradesh Buildings (Lease, Rent, and eviction) Control Act, 1960 hereinafter called the ''Act'' Now Section 82 (2) of the Municipalities Act, as stated before, makes provision for the fixation of annual value according to the rent at which lands and buildings may reasonably be expected to be let from month or from year to year less the specified deduction. The test essentially is what rent the premises can lawfully fetch if let out to a hypothetical tenant. The municipality is thus not free to assess any arbitrary annual value and has to look to and is bound by the fair or the standard rent which would be payable for a particular premises under the Rent Act in force during the year of assessment. In The Corporation of Calcutta Vs. Sm. Padma Debi and Others, , it was held that on a fair reading of the express provisions of section 127 (a) of the Calcutta Municipal Act, 1923 the annual rent could not be fixed higher than the standard rent under the Rent Control Act. There the Rent Control Act of 1950 came into force before the assessment was finally determined ant it was observed that the Corporation had no power to fix the annual valuation of the premises higher that the standard rent under that Act. The learned counsel of the appellant has not made any attempt nor indeed he could do so to contest the above view. What has been stressed by him is that Section 7 of the Act makes it clear that it is only after the fixation of the fair rent of a building that the landlord is debarred from claiming or receiving the payment of any amount in excess of such fair rent. It is urged that so long as the fair rent of a building or premises is not fixed the assessment of valuation by a municipality need not be limited or governed by the measure provided by the provision of the Act for determination of fair rent. Logically such builders or premises as are not let out to a tenant and are in the self occupation of the landlords would also fall within the same principle if no fair rent has even been fixed in respect of them.

We are unable to agree that on the language of Section 82 (2) of the Municipalities Act any distinction can be made between buildings the fair rent of which has been actually fixed by the controller and those in respect of which no such rent has been fixed. It is perfectly clear that the landlord cannot lawfully expect to get more rent that the fair rent which is payable in accordance with the principles laid down in the Act. The assessment of valuation must take into account the measures of fair rent as determinable under the Act. It may be that where be e the Controller has not fixed the fair rent the municipal authorities will have to arrive at their own figure of fair rent but that can be done without any difficulty by keeping in view the principles laid down in Section 4 of the Act for determination of fair rent. This would of course be with regard to the assessment of valuation for the period subsequent to the coming into force of the Act. For the prior period it would be the Rent Act in force during the

year of assessment in the light of the provisions of which the figure of the fair rent would have to be determined and assessment made accordingly."

It is clear from this decision of the Supreme Court that the test which is to be applied in such a case is to find out as to how much rent an owner is expected to get lawfully from such premises. The test essentially is what rent the premises can lawfully fetch if let out to a hypothetical tenant. The municipality, there annual value and has to look to and is bound by the fair of the standard rent which would be payable for a particular premises under the Act in force during the year of assessment. No distinction can be made between buildings the fair rent of which has been actually fixed by the Controller ant those in respect of which no such rent has been fixed. Obviously because of the provisions of Rent Control Legislation a landlord cannot lawfully expect to get more rent than the fair rent which is payable in accordance with the provisions of the Rent Control Legislation. Therefore the assessment of valuation of the premises must take into account the measure of fair rent as determinable under the Act. The Supreme Court further observed in this context that in case the Controller has not fixed the fair rent , the Municipal authorities will have to arrive at their own figure of fair rent by that can be done without any difficulty by keeping in view the principles laid down in Rent Control Legislation for the determination of the fair rent. In my opinion therefore it is obvious from the law laid down by the Supreme Court in Guntur Municipal Council''s case that whether is fixed by the Controller or not under the provisions of the Rent Control Order will not make any difference.

11.The Division Bench of this court in Filmistan Private Limited v. Municipal Commr. for Greater Bombay (1970) Mah Lj 866 had an occasion t consider this aspect of the matter while dealing with the analogous provisions of the Bombay Municipal Corporation Act After making a reference to a decisions of the Supreme Court in The Corporation of Calcutta Vs. Sm. Padma Debi and Others, the Division Bench of this court held as under:

"Section 154 of the Act provides that ratable value of a building must be fixed on the basis of the annual rent for which the building might reasonably be expected to let from year to year. The reasonable expectation of a landlord in regard fetch cannot exceed what he can lawfully recover from his tenant under the Rent Act and therefore while considering what a hypothetical tenant can reasonably be expected to pay for the property by way of rent reward must necessarily be had to what would be the standard rent of the premises. The learned Chief Judge is therefore not right in taking the view that he could not consider the question as to what would be the standard rent of the premises and that therefore the agreed rent between the parties must be deemed to be the standard rent."

In this context this Court further held that the reasonable expectation of a landlord in regard to the rent which his property would fetch cannot exceed what the can lawfully recover from the tenant under the Rent Act and this is not dependent upon

whether the standard rent has been actually fixed under the Rent Control Act. Therefore while considering what a hypothetical tenant can reasonably expect to pay for the property by way of rent regard must necessarily be had to what would be the standard rent of the premises unsure the Rent Control Legislation. This view has been re-affirmed in the subsequent decision of this Court in Filmistan Pvt. Ltd. v. Municipal Commissioner Greater Bombay 1970 Mah LJ 866.

12. It is no doubt true that in the subsequent decision of this Court in Filmistan Pvt. Ltd. v. Municipal Commissioner Greater Bombay 1970 Mah LJ 866 (cit. supra) the decisions of the Supreme Court in Corporation of Calcutta v. Smt. Padma Debi AIR 1970 SC 151. Corporation of Calcutta v. L.I.C. India AIR 1971 SC 1417 and The Guntur Municipal Council Vs. The Guntur Town Rate Payers'' Association etc., have been distinguished in the context of the provisions of the Bombay Rents, Hotels and Lodging House Rates Control Act. But, in my opinion, so far as the provisions of the C.P. and Berar Rent Control order are concerned, the law laid down by the Supreme Court in Guntur Municipal Council''s case (cit. supra) will apply with all force. At this stage we might usefully refer to the relevant provision of the Rent Control Order. Clauses 4,5,6,7, 7-A,8 and 9 of the Rent Control Order read as under:

"4. When on a written application by the landlord or tenant the Controller has reason to believe that the rent of any house within his jurisdiction is insufficient or excessive as the case may be he shall hold such enquiry as may be necessary and record a finding.

5. If on a consideration of all the circumstances of the case, including any amount paid before the 1st December 1952 by the tenant by way of premium or any other like sum in addition to rent the Controller finds that the rent of the house is insufficient or excessive, as the case may be he shall determine the fair rent to be charged for the hours.

6. (1) In determining the fair rent under clause 5 of a house constructed before the 1st April 1940 and occupied wholly or mainly for purposes of residence the Controller shall have due regard to the prevailing rates of rent for the same or a similar house in similar circumstances during the twelve months immediately before that date and to the rental value as entered in the Municipal or local Board Assessment Registers. as the case may be relating to that period and shall increase the rent so determined by 12 1/2 per cent if he is satisfied that the house has been maintained by the landlord in a proper state of repair.

(2) In determining the fair rent under clause 5 of a house constructed after the 1st April 1940 and occupied wholly or mainly for purposes of residence, the controller shall have due regard to the prevailing rate of rent for the same or a similar house in similar circumstance and also to any general increase in the cost of sites and building construction.

(7) (1) In determining the fair rent under clause 5 of a house constructed before the 1st April 1940 and occupied wholly and mainly for non-residential purposes the Controller shall have due regard to the prevailing rates or rent for the same or similar house in similar circumstances during the twelve months immediately before that due date and may after considering any general rise in the rental values for business or other similar purposes, increase the rent so determined upto 50 per cent if he is satisfied that the house has been maintained by the landlord in a proper state of repair:

Provided that where a house has been let for educational purposes the increase shall not exceed 12 1/2 per cent.

(2) In determining the fair rent under clause 5 of a house constructed after the 1st April 1940 and occupied wholly or mainly for non -residential purposes, the Controller shall have due regard to the prevailing rates of rent of the same or a similar house for similar purposes and also to any general increase in the case of sites and building construction.

7-A. In the case of a house constructed before the 1st April 1940 of which the fair rent has not been determined, the landlord may with the consent of the tenant increase the rent within the limits of the increase allowed under sub-clause (1) of clause 6 or clause 7, as the case may be, and the rent so agreed shall, subject to any order that may be made by the Controller in pursuance of clauses 4,5,6,7 and 8 be deemed to be fair rent for the purposes of this Order.

8.Subject to the provisions of clauses 9,10 and 11, when controller has determined the fair rent of a house-

(a) the landlord shall not claim or receive any premium or other like sum in addition to rent or any rent in excess of such fair rent: but the landlord may stipulate for the payment of such rent in advance each month;

(b) any agreement for the payment of any sum in addition to rent or of rent in excess of such fair rent shall be null and void in respect of such addition of excess and shall be construed as if it were an agreement for the payment of fair rent;

(c) any sum, paid in excess of or short of fair rent from the date of the filing of application beefier the Controller to the date on which the fair rent is determined shall be refunded by the landlord or paid by the tenant as the case may be or may otherwise be adjusted by mutual agreement.

(9) After an order determining a fair rent has been passed, the landlord may increase the rent so determined only where some addition improvement or alteration not included in necessary repairs or repairs which are usually make to houses in the area to which this chapter is extended, has been carried out at the landlord''s expense:

Provided that such increase in rent shall not exceed 7 1/2 per cent per annum on the cost of such addition, improvement or alteration and shall be chargeable only from the date such addition, improvement or alteration is completed."

If these provisions are read together it is obvious that the Rent Control Order provides for a complete Code for deciding the fair rent which is payable by a tenant. It is no doubt true that the term ''fair rent'' has not been defined in the Act, But in my opinion this will not make any distinction. Obviously the term ''fair rent'' has not been defined in the Rent Control Order because the provisions of the Rent Control Order do clearly lay down as to what will be deemed to be a fair rent for the purposes of the Rent Control Order. The said provisions clearly lay down the procedure for fixing the fair rent and further make a provision indicating at which rate the fair rent could be fixed. In substance , therefore , these provisions of the Rent Control Order clearly lay down as to what will be the fair rent payable by a tenant to a landlord for the premises which are governed by the said clauses of the Rent Control Order. Chapter II of the Rent Control Order in which these clauses appear, in terms deals with the fixation of fair rent. In the present case we are dealing with a house which was constructed before the 1st April 1940 and which is wholly occupied for the purposes of resistance''s. What will be a fair rent for such a house has been clearly laid down by clause 6 (1) of the Rent Control Order. Then clause 7-A provides that even if no application has been filed for fixation of a fair rent and in case of a house constructed before 1st April 1940, of which fair rent has not been determined it is open for the landlord and the tenant to agree to increase the rent within the limits of increase allowed under sub-clause (1) of clause 6 or clause 7, as the case may be and the rent so agreed shall subject to any order that may be made by the Controller in pursuance of clauses 4,5,6,7 and 8 shall be deemed to be fair rent for the purposes of the Rent Control Order. In substance, therefore, in case of a house constructed before 1st April 1940 this will apply be the reasonable rent which a landlord is expected to get. The same principle will apply in case of a house which is occupied by the land lord him self and is not let out. The provisions of clause 7-A of the Rent Control Order clearly point out that it is open to the landlord with the consent of the tenant to enhance the rent, but obviously this could be subject to maximum rent which can be fixed under clauses 6 and 7 of the Rent Control Order. There fore, if all these clauses of the Rent Control Order are read together it is quite clear that the provisions of the Rent Control Order lay down the maximum permissible limit for increase of rent. Therefore it is obvious that the procedure and the guide lines for the fixation of the fair rent have been provided by the Rent Control Order. The said order is a complete Code in itself. In View of these provisions of the Rent Control Order, it is obviously not permissible for a landlord to reasonably expect more rent than the maximum provided by these clauses of the Rent Control Order. Clause 8 then provides that in case where the fair rent is fixed by the Controller a landlord cannot claim or receive any premium of other like sum in addition to rent, or any rent in excess of such fair rent. Clause 8, therefore. is

penal in nature. Any contract or agreement contrary to the said provisions of the Rent Control Order, therefore. Will not be enforceable.

13. In this view of the matter, in may opinion, the contention raise by Shri Vaidya that no other limit has been provided or fixed by the Rent Control Order for fixation of fair rent cannot be accepted. Once it is held that the provisions of the Rent Control Order are concerned, then, in my opinion, that will be the reasonably expected rent within the meaning of Section 119 (b) of the Act. Therefore, in cases where either the building is occupied by the owner himself or in cases where the fair rent has not been fixed, the Municipal authorities will have to arrive at their own figure of fair rent in accordance with the principles laid down by the Rent control Order. Only because the fair rent has not been fixed by the Rent Controller, the Corporation is not free to assess any arbitrary annual value, but it will have to arrive at their own figure of fair rent by keeping in view the principles laid down in Chapter II of the Rent Control Order.

14. As to what will be a ''fair rent'' or an ''expected rent'' in a given case is ultimately a question which will depend on the facts and circumstances of each case. Section 119 (b) of the Act contemplates fixation of annual value of a building on the basis of the goes annual rent which might reasonably at the time of assessment be expected to be let from year to year. The expectation of a rent will obviously differ depending upon the facts and circumstances of each case. In case of houses which are occupied by the tenants, in a given case, it is possible to hold that the rent actually paid by the tenant is the expected rent. In another case, the rent which is actually being paid by the tenant may not represent the reasonably expected rent, depending upon the various circumstances. In this context a reference was made by Shri Vaidya to a decision of this Court in City of Nagpur Corporation v. Sheokisan 1973 Mah LJ 59 in which a view has been taken that since the units were actually occupied by the tenants since a long time that must be taken to be the rent for the purposes of assessment of those units and that the Corporation could not launch on an enquiry for finding out as to what the expected rent of those units could be unless the rent actually paid had been fraudulently shown. On the other hand, Shri Chawda has drawn my attention to another decision of this Court in City of Nagpur Corporation v. Bhalchandra 1961 Nag LJ 352 in which it was observed as under:

"It can be seen that there may be no actual rent in the cases of premises which are occupied by owners. ON the other hand, actual rent may be paid at an exorbitant rate by a tenant who may be in distressed circumstances and at the mercy of the Landlord. Rack renting is not unknown even in these days. On the other hand, the artificial figure at which rent may be fixed for different reasons and paid by a tenant cannot again furnish the true basis for determining the gross annual rent at which a tenement may be reasonably expected to be let. What is to be determined if the gross annual rent after taking all relevant factors into consideration. If all relevant factors have to be taken into consideration, I do not find it possible to accept the

exercise of the powers under the Rent Control Order in respect of tenements, cannot be taken into consideration. This matter once came up before this Court and the decision is reported in City of Nagpur Corporation v. Ramchandra Raju 1960 Nag LJ 711. It has been held in that case that the gross annual rent cannot be determined only on the basis of actual rent paid by a tenant. I respectfully agree with the decision." However, this is a question which will have to be decided having regard to the facts and circumstances of each case and no general rule can be laid down in this behalf.

15. In the result, therefore, the revision application is allowed. The order passed by the Extra Assistant Judge is set aside and the matter is remitted back to the Objection Officer to decide it afresh in accordance with law and in advertence with the observations made herein before. The Objection Officer will give a reasonable opportunity to the applicant of being heard and to put forward his case. He will also afford a reasonable opportunity to the applicant to adduce evidence in support of his contentions if he so desires. However, in the circumstances of the case there will be no order as to costs in this revision application.

16. Application allowed.