Bombay Municipal Corporation vs Life Insurance Corporation Of India, ... on 21 April, 1970

Equivalent citations: 1970 AIR 1584, 1971 SCR (1) 335, AIR 1970 SUPREME COURT 1584

Author: A.N. Grover

Bench: A.N. Grover, J.C. Shah, K.S. Hegde

PETITIONER:
BOMBAY MUNICIPAL CORPORATION

Vs.

RESPONDENT:
LIFE INSURANCE CORPORATION OF INDIA, BOMBAY

DATE OF JUDGMENT:
21/04/1970

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
SHAH, J.C.
HEGDE, K.S.

CITATION:
1970 AIR 1584 1971 SCR (1) 335
1970 SCC (1) 791
CITATOR INFO :
D 1974 SC1779 (19)

ACT:
Bombay Municipal Corporation Act, 1888, s. 154(1) and Bombay Hotel- and Lodging Houses Rates Act (57 of 1947), ss. 5(7), 5(10), 7, 10, 10A and 10AA-Educational cess permitted to be received from tenant by landlord and added to standard rent-If can be included for fixation of annual value of buildings.

HEADNOTE:
Section 154(1) of the Bombay Municipal Corporation Act, 1888, provides that the annual rent for which a building might reasonably be expected to be let from year to year

shall be the basis for fixing the rateable value of the building. Section 5(10) of the Bombay Rents, Hotel and Lodging House Rates Act, 1947 (the Rent Act) defines standard rent and s. 5(7) of the Rent Act defines 'permitted increase' to mean an increase in rent permitted under the provisions of the Rent Act. Under ,ss. 10, 10A and 10AA of the Rent Act, a landlord can increase the rent on account of payment of rates, cesses or taxes imposed or levied by a local authority.

The appellant imposed a tax known as educational cess on all the properties within its limits and the respondent increased the rents payable by its tenants to the extent of the educational cess under s. 10AA of the Rent Act. The appellant increased the rateable value on the ground that the educational cess should be deemed to be a part of the annual rent for which the building might reasonably be expected to be let from year to year' The High Court held that under s. 7 of the Rent Act the increase shall not be deemed to be an increase in rent and that therefore the rateable value could be fixed only on the basis of the standard rent fixed under the Rent Act.

In appeal to this Court,

HELD : Section 7 of the Rent Act provides that it shall not be lawful for the landlord to claim on account of rent any increase above the standard rent, but it does not prohibit the recovery of the increase to which a landlord may be entitled under the provisions of the Act, in addition to the-standard rent. The definition in s. 5(7) and the language and ss. 10, 10A and 10AA indicate that the Legislature treated the permitted increase as a part of the rent which the landlord would be entitled to receive from the tenant. That is, the building can well said to be reasonably expected to be let from year to year at the figure arrived at by adding the permitted increase to the standard rent. Therefore, in the present case, the valuation had to be arrived at after taking into account the amount of educational cess levied by the appellant, even if it leads to some inconvenience by varying the valuation at frequent intervals. [337 F-H; 338 D-F; 339 B-D]

The Corporation of Calcutta v. Smt. Padma Devi, [1962] 3 S.C.R. 49 and Patel Gordhandas Hargovindas v. Municipal Commissioner, Ahmedabad, [1964] 2 S.C.R. 608, referred to.

JUDGMENT:

CIVIL APPELLATE- JURISDICTION Civil Appeal No. 402 of 1967.

Appeal from the judgment and decree dated November 10, 1964 of the Bombay High Court in Appeal No. 148 of 1962 from Original Decree.

Niren De, Attorney-General, R. N. Banerjee and Ravinder Narain, for the appellant.

S. V. Gupte, K. L. Hathi and J. L. Hathi, for the respondent.

Judgement of the Court was delivered by Grover. J. This is an appeal from a judgement of the Bombay High Court in the matter of valuation of the premises belonging to the respondent made under the provisions of the Bombay Municipal Corporation Act 1888, hereinafter called "the Act of 1888".

For the years 1957-58 and 1958-59 the rateable valuation of the building was fixed by the Municipal Corporation at Rs. 1,66,410. On April 1, 1958 an additional tax known as educational cess was imposed by the Municipal Corporation at the rate of 1 1/2% of the rateable value on all properties within its limits. This was done under S. 140 of the Act of 1888. As the landlord became entitled to increase the rent recoverable from the tenant to the extent of the increase in the tax payable to the Corporation under the provisions of s.10-AA of the Bombay Rents, Hotel and Lodging House Rates 1947 (Act No. LVII of 1947) hereinafter called the Rent Act, the Assessor and Collector of the Corporation served a notice on the respondent proposing to increase the rateable value of the building in question to Rs. 1,68,585. The respondent objected to the above increase. The Assessor and the Collector, however, raised the rateable value to Rs. 1,66,180. The amount thus fixed was at lesser figure than the 'one for the year 1958-59 but that was by reason of certain other deductions which had been claimed by the respondent and which were allowed. The claim of respondent for non-inclusion of the amount of educational cess in the rent was disallowed. The matter was taken in appeal to the Court of Small Causes at Bombay which was dismissed. The respondent preferred an appeal to the High Court. The High Court held that the rateable value could be fixed only on the basis of the standard rent provided by the Rent Act and the amount of permitted increases could not be included in rent for the purposes of valuation. It was not disputed by the respondent before the High Court that the rents of the tenants had been increased by it to the extent of the educational cess but the contention that was put forward and which prevailed was that the same was not being recovered as a part of the rent.

The controversy between the parties is a narrow one. According to the appellant the amount of educational cess which is recoverable by the landlord under the Rent Act from tenants should be deemed to be a part of the annual rent for which the building might reasonably be expected to be let from year to year within the meaning of s. 154(1) of the Act of 1888. On the other hand the respondent has maintained throughout that the education cess levied under s. 40 of the aforesaid Act cannot be included for the purpose of valuation under s. 154(1) in the annual rent. We may now notice the relevant provisions of the Act of 1888 and the Rent Act. Section 140 of the Act of 1888 provides for imposition of property tax on buildings and lands in Greater Bombay. Section 154(1) provides that in order to fix the rate-able value of any building or land assessable to property tax there shall be deducted from the, amount of the annual rent for which such land or building might reasonably be expected to be let from year to year a sum equal to ten per centum of the said annual rent and the said deduction shall be in lieu of all allowances for repairs on or any other account whatever. Section 5(10) of the Rent Act gives the definition of "standard rent". There is no reference or mention of any permitted increase in the definition. The expression "permitted increase" is

defined by s. 5(7) to mean an increase in rent permitted under the provisions of the Act. Section 5(3) defines the word "landlord" as meaning any person who is for the time being receiving or entitled to receive rent in respect of any premises etc. Section 5(11) gives the meaning of the word "tenant". According to that meaning a tenant would be any person by whom or on whose account rent is payable for any premises and includes such persons as are specifically mentioned in sub-cls. (a), (a) and (b). Section 9 provides for increase in rent on account of improvements or structural alteration of the premises which have been made with the consent of the tenant and such increase is not to be deemed an increase for the purpose of s. 7. Under s. 10 a landlord can increase the rent on account of payment of rates, cess or taxes imposed and levied by a local authority. Such an increase again is not to be deemed to be an increase for the purpose of s. 7. Similarly under s. IOAA the landlord can increase the rent on account of payment of enhanced rates etc. permitted after certain date in particular areas. Any increase in this section cannot be deemed to be an increase for the purpose of s. 7. The High Court was alive to the fact that the mention of in- crease in ss. 10, IOA and IOAA referred to increases in rent but it was felt that the section in express terms provided that such an increase shall not be deemed to be an increase in rent under s. 7. According to the High Court it followed that what was allowed to the landlord in addition to the' standard rent was not an increase in the rent but a provision was made in a specified way for the transfer of the burden of the tax to the tenants because of the rigours of the Rent Act. The other factor which weighed With the High Court was that if the increase in rates was to be treated as a part of the, rent which would enable the Municipal Corporation to increase the valuation on every occasion when there was increase in rates and taxes this would "land us again into a cycle of incre- ments every year from figure to figure never intended by the framers either of the Rent Act or of the Municipal Act".

It is necessary to set out s. 7 of the Rent Act at this stage "Except where the rent is liable to periodical incrementt by virtue of an agreement entered into before the first day of September 1940, it shall not be lawful to claim or receive on account of rent for any premises any increase above the standard rent, unless the landlord was, before the coming into. operation of this Act, entitled to recover such increase..... under the provisions of this Act."

It is quite clear that s. 7 does not prohibit the recovery of the increase to which landlord may be,entitled under the provisions, of the Act in addition to the standard rent. The obvious implication of the definition of "permitted increase" in s. 5(7) is that such an increase becomes a part of the rent. The language which has been employed in ss. 9, 10 and 10-AA seems to indicate that the legislature treated the permitted increase as a part of the rent which the landlord would be entitled to receive from the tenant. In The Corporation of Calcutta v. Smt. Padma Devi(1) the question arose whether the Municipal Corporation had the power to fix the annual valuation on a figure higher than the standard rent., It was held that on a reading of the provisions of s. 127 (a) of the Calcutta Municipal Act 1923 the rental value could not be fixed higher than the standard rent under the Rent Control Act. It was further held that the words "gross annual rent at which the land or building might at the time of assessment reasonably be expected to let from year to year" in S. 127 (a) implied that the rent which the landlord might realize if the house was let was.- the basis for fixing the annual valuation of the building. Thus the criterion was the rent realizable by the landlord and not the valuation of the holding in the hands of the tenant. Even applying that criterion the rent reable, in the present case, would be the standard rent together with the permitted increase on account of the

levy of educational cess. As observed in Patel Gordhandas Hargovindas v. Municipal Commissioner, Ahmedabad 2) there are three modes of (1) [1962] 3 S.C.R. 49. (2) [1964] 2 S.C.R. 608.

determining the annual or rateable value of lands or buildings. The first is the actual rent fetched by the land or building where it is actually let. The second is rent based on hypothetical tenancy, where it is not let and the third is by valuation based on capital value from which the annual value has to be found by applying a. suitable percentage, where either of the first two modes is not avail,able. In the present case admittedly the actual-rent of the building in question which is being fetched comprises the standard rent and the permitted increase. The building can well be said to be: reasonably expected to be let from year to year at the figure arrived: at by adding the permitted increase to the standard rent. The, valuation had, therefore, to be arrived at after taking into account the amount of educational cess which was levied by the Corporation. Even if such a conclusion leads to some kind of inconvenience of variation in valuation at frequent intervals that can be no consideration for not giving full effect and meaning to the provisions of the Act of 1888 and the Rent Act under consideration.

In the result the appeal is allowed and the judgement of the High Court is set aside and that of the Court of the Small Causes V.P.S. Appeal allowed.