

Bhagwant Rai And Others vs State Of Punjab And Others on 17 August, 1995

Equivalent citations: 1996 AIR 95, 1995 SCC (5) 440, AIR 1996 SUPREME COURT 95, 1995 (5) SCC 440, 1995 AIR SCW 3755, 1995 () HRR 469, (1995) 6 JT 245 (SC), (1995) 2 RAJ LW 83, 1996 SCFBRC 413, (1996) 1 CIVILCOURTC 1, (1996) 2 LANDLR 331, (1995) 3 PUN LR 745, (1996) 2 RENCJ 170, (1995) 2 RENCJ 413, (1995) 2 RENTLR 363, (1995) 4 SCJ 495, (1996) 1 LJR 367, (1996) 63 DLT 385

Author: K. Ramaswamy

Bench: K. Ramaswamy, B.L Hansaria

PETITIONER:
BHAGWANT RAI AND OTHERS

Vs.

RESPONDENT:
STATE OF PUNJAB AND OTHERS

DATE OF JUDGMENT 17/08/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1996 AIR 95 1995 SCC (5) 440
JT 1995 (6) 245 1995 SCALE (4) 850

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Leave granted.

The appeal by special leave arises from the order of the High Court of Punjab and Haryana in Civil W.P. No. 19209/91 dismissing the writ petition in limine.

The admitted facts are that the appellant is having a house in Sangrur. For the assessment year 1987-88, the respondents have assessed the ratable value of the house at Rs.1,50,472.50 after giving standard deductions under s.3(1)(b) of the Punjab Municipal Act, 1911 (for short, 'the Act'). The basis on which the property was assessed was the rent being received by the appellant from State Bank of India to whom they had let out at Rs. 12,687/- per month. The question is whether the actual rent received by the appellants from the tenant would be the measure for determining annual value. Section 3 (1)(b) of the unamended Act reads thus:

"3(1) "annual value" means- xxxxxxxxxxxxxxxxxxxxxxxx

(b) in the case of any house or building, the gross annual rent at which such house or building together with its appurtenances and any furniture that may be let for or enjoyment therewith, may reasonably be expected to let from year to year subject to the following deductions:

xxxxxxxxxxxxxxxxxxxxxx"

This provision was subject of interpretation by this Court in *Diwan Daulat Rai Kapur vs. New Delhi Municipal Committee*, 1980 (2) SCR 607, which was followed in *Mrs. Shiela Kaushish v. C.I.T.*, 1981 (4) SCC 121. The question therein was whether the actual rent received from the tenant would form basis to determine the annual value. This court considered the controversy and held thus:

"The argument of the municipal authorities was that since the standard rent of the building was not fixed by the Controller under Section 9 of the Rent Act in any of the cases before the Court and in each of the cases the period of limitation prescribed by Section 12 of the Rent Act for making an application for fixation of the standard rent had expired, the landlord in each case was entitled to continue to receive the contractual rent from the tenant without any legal impediment and hence the annual value of the building was not limited to the standard rent determinable in accordance with the principles laid down in the Rent Act, but was liable to be assessed by reference to the contractual rent recoverable by the landlord from the tenant. The municipal authorities urged that if it was not penal for the landlord to receive the contractual rent from the tenant, even if it be higher than the standard rent determinable under the provisions of the Rent Act, it would not be incorrect to say that the landlord could reasonably expect to let the building at the contractual rent and of the contractual rent therefore provided a correct measure for determination of the annual value of the building. This argument was however rejected by the Court and it was held that even if the standard rent of a building has not been fixed by the Controller under Section 9 of the Rent Act, the landlord cannot reasonably expect to receive from a hypothetical tenant anything more than the standard rent determinable under the provisions of the Rent Act and this would be so equally whether the building has been let out to a tenant who has lost his right to apply for fixation of the standard rent by reason of expiration of the period of limitation prescribed by Section 12 of the Rent Act or the building is self-occupied by the owner. Therefore, in either case, according to the definition of

"annual value" given in both statutes, the standard rent determinable under the provisions of the Rent Act and not the actual rent received by the landlord from the tenant would constitute the correct measure of the annual value of the building. The Court pointed out that in each case the assessing authority would have to arrive at its own figure of the standard rent by applying the principles laid down in the Rent Act for determination of the standard rent and determine the annual value of the building on the basis of such figure of the standard rent. The Court, on this view, negated the attempt of the municipal authorities in each of the cases to determine the annual value of the building on the basis of the actual received by the landlord and observed that the annual value of the building must be held to be limited by the measure of the standard rent determinable on the principles laid down in the Rent Act and it could not exceed such measure of the standard rent." When similar contention was raised that the actual rent received will form the basis to determine annual value of the building, another bench of this Court in *New Delhi Municipal Committee vs. M.N. Soi and Anr.*, 1976 (4) SCC 535 held thus as stated in the Headnote:

"It is not the actual rent received by the landlord but the "hypothetical rent which can reasonably be expected if the building is to be let", which has to be the legal yardstick of a "reasonable expectation" in an "open market". The municipal authorities cannot take advantage of the defiance of the law by the landlord. Rating cannot operate as a mode of sharing the benefits of illegal rackrenting indulged in by rapacious landlords for whose activities the law prescribes condign punishment. The prudence of the landlord has to be assumed and judged by normal standards to determine his "reasonable expectation".

Hence rating is to be governed by the fixation of rent by rent control authorities and not by the test of actual income derived by the landlord. The concept of reasonableness of expectation of rent must take the penal law of the State into account. It is not the expectation of a landlord who taken the risk of prosecution and punishment which the violation of the law involves, but the expectation of the landlord who is prudent enough to abide by the law that serves as the standard of reasonableness for purpose of rating." This question was further examined by a bench of three Judges in *Balbir Singh vs. M/s M.C.D.* AIR 1985 SC 339. This Court said that "The ratable value of a building, whether tenanted or self occupied, is limited by the measure of standard rent arrived at by the assessing authority by applying the principles laid down in the Rent Act and cannot exceed the figure of the standard rent so arrived at by the assessing authority. The standard rent determinable on the principles set out in the Rent Act is the upper limit of the rent which the landlord may expect to received from a hypothetical tenant, but it may in a given case be less than the standard rent having regard to various attendant circumstances and considerations."

Thus, it is settled law that the actual rent received from a tenant is not the measure for determination of the annual ratable value, but the reasonable standard rent expected to be received under the relevant Rent Act. The view taken by the authorities is, therefore, clearly illegal.

It is contended by the respondent that in view of the admission by the appellants in their letter that they are prepared to pay the tax on the basis of the actual rent received from the Bank, they are estopped to go back from the admission and the respondents are right to adopt that as a measure of

assessing ratable value. We fail to appreciate the contention as there is no estoppel against the statute. When the statute prescribes particular mode to determine the annual rental value, it has to be done in that manner. Admission wrongly made by the landlord or the owner would not be a ground to deny the statutory benefit.

The appeal is accordingly allowed. The order of the assessing authority and the appellate authority are set aside and they are directed to determine the annual value, to determine the amount of tax, as indicated hereinabove. No costs.