Supreme Court of India
East India Commercial Co. ... vs Corporation Of Calcutta on 30 March, 1998
Author: Kirpal
Bench: A.S. Anand, B.N. Kirpal

PETITIONER:
EAST INDIA COMMERCIAL CO. PVT.LTD., SMT. D.P. MANTOSH

Vs.

RESPONDENT:
CORPORATION OF CALCUTTA

DATE OF JUDGMENT: 30/03/1998

BENCH:
A.S. ANAND, B.N. KIRPAL

ACT:

HEADNOTE:

JUDGMENT:

WITH CIVIL APPEAL NO. 1826/1998 (ARISING OUT OF S.L.P. @ NO. 7343/82) J U D G M E N T KIRPAL, J.

Leave granted in SLP(C) No. 7343 of 1982.

The only question which arises in these appeals relates to the determination of annual value under Section 168 of the Calcutta Municipal Act, 1951 in respect of buildings which are actually let out to tenants on rent agreed, but not fixed by the Controller under the rent Restriction Act for the purpose of assessment of property tax.

The appellant constructed a multi-storey building in Calcutta after the year 1956. By notice dated 10.10.1966 issued under Section 180 of the Calcutta Municipal Act, 1951 (hereinafter referred to as the 'Municipal Act') , the respondent assessed the annual value of the said building at Rs. 63365/- with effect from 3rd quarter of 1966-67. The appellant filed objections to the aforesaid valuation. While disposing of the objections the special Officer reduced the value to Rs. 49,368/- . The appellant filed an appeal against the said order before the Court of Small Causes, Calcutta. The appeals for subsequent years for similar orders passed by the special Officer were also filed by the appellant. The main contention of the appellant in the said appeal was that the annual valuation of

the property ought to be fixed on the basis of fair rent as contemplated under the Municipal Act read along with the provisions of Sections 8 (1)(d) of the West Bengal Premises Tenancy Act, 1956 (hereinafter referred to as the "Tenancy Act") and not on the basis of the actual rent being realised by the appellant.

In order to lead evidence relating to the actual cost of construction of the building, the appellant moved an application before the Small Causes Court for permission to examine an expert valuer as a witness to prove the cost of construction of the said building. The Chief judge of the Small Caused Court rejected the said application on the ground that such evidence was neither necessary not relevant for examining the correctness or otherwise of the determination of the annual valuation under Section 168(1) of the Municipal Act. A revision petition filed against the said order was rejected by the High Court of Calcutta. After the decision of this Court in the case of Dewan Daulat Rai Kapoor etc. etc. Vs. New Delhi Municipal committee & another etc. etc. (1980) 2 SCR 607, wherein it was inter alia held that a building is governed by the provisions of the Rent control Legislation and the landlord cannot reasonably be expected to receive anything more than the standard rent, the appellant once again applied to the Small causes Court for recalling its earlier order and for permitting the appellant to lead evidence for the purpose of determination of the actual cost construction. This application was allowed as the Chief judge of the Small causes Court was of the opinion that in view of the decision of this Court in Dewan daulat Rai Case (supra), the assessing authority has to follow the principle laid down in the Tenancy Act for determining the fair rent as the building had been constructed after 1956. it accordingly recalled its earlier order dated 7.6.1974 and allowed the appellant's prayer for examining his expert valuer in order to arrive at the fair rent of the premises in accordance with the provisions of the Tendency Act.

The respondent then filed appeals against the aforesaid decision of the Chief Judge, Small Causes Court. It was contended before the High Court that the decision in Dewan Daulat Rai's case, and other cases where the similar view had been taken, was distinguishable as the provisions of the West Bengal Statutes were different. Accepting this contention, the High Court came to the conclusion that on a correct interpretation of the Municipal Act and Tenancy Act, the rateable value had to be fixed on the basis of the actual rent received and not on the basis of cost of construction. The order of the Chief Judge Small Causes, Court, who had allowed the examination of a expert valuer, was accordingly set aside. Hence, these appeals by special leave.

On behalf of the appellant, it has been contended that the provisions of the Calcutta Municipal Act and the West Bengal Tenancy Act are similar to the provisions of the corresponding statutes which were the subject of the interpretation by this Court in Dewan Daulat Rai's case (supra) and the other decisions where the similar view had been adopted and, therefore, it is not the actual rent but the fair rent determinable under the Tenancy Act which is relevant for the purpose of assessment to municipal taxes.

Shri Tapas Ray, learned senior counsel, on the other hand submitted that it is the actual rent which was received by the appellant which alone could be the basis of determining the assessable value and the principle of fixation of fair rent under Sector 8 of the Tenancy Act was wholly irrelevant.

In order to deal with the rival contentions, it is necessary to first refer to the relevant provisions of the statutes, Section 168 of the Municipal Act provides for the method by which the amount of consolidated rate for the purpose of assessment of the rent and building has to be fixed. Sub-sections (1) to (3) of Section 168, which are relevant, read as under:

> " (1) For the purpose of assessment to the consolidated rate the annual value of any land or building shall be deemed to be the gross annual rent at which the land or building might at the time of assessment be reasonably expected to let from year to year, less, in the case of a building, an allowance of ten per cent, for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross rent; Provided hat in respect of any land or building the rent of which has been fixed under the provisions of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 or the West Bengal premises Tenancy Act, 1956, the annual value thereof shall not exceed the annual amount of the rent so fixed. (2) If the gross annual rent of any land not ordinarily let cannot be easily estimated, the gross annual rent of the land for the purpose of sub-section (1) shall be deemed to be five per cent of the estimated present value of the land. (3) If the gross annual rent of a building not ordinarily let cannot be easily estimated, the gross annual rent of the building for the purposed of sub-section (1) shall be deemed to be five per cent of the value of the building obtained by adding the estimated cost of erecting the building at the time of assessment less a reasonable amount to be deducted on account of depreciation, if any, to the estimated present market value of the land valued with the building as part of the same premises."

At the time when the Municipal Act was enacted it is the West Bengal Premises Rent Control (Temporary provisions) Act, 1950 which was applicable. Section 3 of the said Act Prohibited the realisation of any rent in excess of the fair rent and the same was as under;

> "3. (1) Subject to the provisions of this Act, any amount in excess of the standard rent of any premises shall be irrecoverable notwithstanding any agreement to the contrary.
>
> (2) For the purposes of sub-section (1), the rent shall be deemed to have accrued from day to day.
>
> Provided that nothing in this section or Act shall be deemed to affect the terms as to rent of a lease entered into before the first day of December, 1941, the period of which has not expired."

A charge was brought about, in this regard, by the Tenancy Act, 1956. Section 4 of the Tenancy Act relating to realisation of excess over the fair rent is as under:

> "4. Excess over fair rent to be irrecoverable.

(1) A tenant shall subject to the provisions of this Act pay to the landlord:

(a) in case where fair rent has been fixed for any premises. such that

(b) in other cases the rent agreed upon until fair rent is fixed.

(2) Rent shall be paid within the time fixed by contract or in the absence of such contract by the fifteenth day of the month next following the month for which it is payable.

Provided that a tenant may pay the rent payable for any month at any time during such month before it falls due.

(3) Any sum in excess of the rent referred to in sub-section (1) shall not be recoverable by the landlord."

Section 2 (c) of the Tenancy Act defines fair rent as, inter alia, meaning that rent which is referred to in Section 8 of the Tenancy Act, 1956 and contains the provisions for fixation of fair rent. It is not in dispute that in the present case it is clause (d) of Sub-section (1) of Section 8 of the Tenancy Act which is relevant and which reads as under:

"8(1) (d) "Fair Rent" in relation to any premises means.

Where such premises have ben constructed and let out after the commencement of this Act, the rent calculated on the basis of annual payment of an amount equal to 6% per cent, per annum of the aggregate amount of the actual cost of construction and the market price of the land on the date of commencement of construction, together with one-half of the total amount of the municipal rates and taxes payable annually in respect of the premises:

Provided that the rent agreed upon between the landlord and the tenant when such premises are first let out shall, for a period of eight years from the date of commencement of this Act, be deemed to be the fair rent."

Comparing Section 3 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 with Section 4 of the Tenancy Act, it is evident, that, notwithstanding any agreement between the landlord and tenant, under the 1950 Act any rent received in excess of the standard rent was irrecoverable Section 4 of the Tenancy Act of 1956, however, does not make the recovery of the contractual rent irrecoverable so long as fair rent has not been fixed. Where fair rent is fixed then the landlord anc only realise that amount of rent and any sum in excess of the fair rent is irrecoverable. As already noticed, in the present case, fair rent had not been fixed under the Tenancy Act and, therefore, by virtue of Section 4(1) (b) of the Tenanoy act, the contractual rent was not irrecoverable by the landlord.

On attention has been drawn by the learned counsel for the parties to many decisions of this Court where the question relating to the determination of the assessable value under the Municipal Act in relation to levy of property tax has been considered. The first such decision, to which reference may be made, is that of The Corporation of Calcutta Vs. Smt. Padma Debi & Others, 1962 (3) S.C.R.

49. This case arose from Calcutta where the provisions under Section 127(a) of the Calcutta Municipal Act, 1923 were similar to Section 168 (1) of the Municipal Act, 1951. Having regard to Section 3 of the tenancy Act of 19501 whereby amount in excess of the standard rent was irrecoverable, notwithstanding any agreement to the contrary, this Court came to the conclusion that the rental value could not be fixed higher than the standard rent under the Rent Control Act. it interpreted Section 127(a)) to mean that it did not contemplate the actual rent received by a landlord to be the annual value of any building but it contemplated hypothetical rent which he could reasonably be expected to receive if the building was let out. This hypothetical rent could not exceed the standard rent under the Rent Control Act.

It was submitted by Shri Tapas Ray that Padma Debi's case (supra) is clearly distinguishable because, unlike Section 3 of the Tenancy Act of 1950, the appellant was at liberty to receive the contractual rent because of Section 4(1)(b) of the Tenancy Act of 1956 as fair rent had not been fixed and, therefore, there was no prohibition to the receipt of the contractual rent. The contractual rent it was contended should be regarded as the basis for determining assessable value. It is no doubt true that there is this difference in the two Acts but, as we shall presently see, decisions subsequent to Padma Debi's case (supra), have clearly laid down that this distinction is irrelevant.

In Guntur Municipal Council Vs. Guntur Town Rate Players' Association, (1971) 2 S.C.R. 423, this Court had to consider a similar question relating to the fixation of the annual value. Section 82(2) of the Municipal Act, which was applicable there, inter alia, stated that the annual value of the lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to be let from month to month or from year to year. Just like sub-sections (2) and (3) of Section 168 of the Calcutta Municipal Act, the proviso to sub-section (2) of Section 82 of the T.N. District Municipalities Act, 1920, which was applicable in the case of Guntur Municipal Council, also provided for annual value being determined to be a fixed percentage of the total estimated value of the land and cost of building where such building or class is not ordinarily let or in case of buildings where essential amenities are not provided by the Municipality. Section 7 of the A.P. Buildings (Lease, Rent and Eviction) Control act, 1960 provided that landlord could not claim or receive anything in excess of the fair rent when fixed by the Controller. In other words, just like Section 4 of the Tenancy Act of 1950, the landlord could receive the contractual rent till the Controller fixed the fair rent under the Act. Even though this provision contained in Section 7 of the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 was different from Section 3 of the Tenancy Act of 1950, this Court in Guntur Municipal Council case (supra) followed and applied the ratio of the decision of this Court in Padma Debi's case (supra).

The principle, namely, that the annual value for the purpose of the Municipal Act could not be in excess of the standard rent even if the landlord was entitled to receive the contractual rent in respect of a building to which the rent restriction Law applies has been elaborately discussed in Dewan

Daulat Rai's Case (supra). It was sought to be contended on behalf of the New Delhi Municipal Committee that till the fixation of the standard rent, the landlord could legally receive the contractual rent, more so when the tenant's right to get the standard rent had come to an end with a limitation for moving such an application having expired, therefore, the annual value should be the actual rent which was legally received by the landlord. Rejecting this contention, this Court applied and followed the decision in Padma Debi's case (supra) and also the decision in corporation of Calcutta vs. Life Insurance Corporation, (1970) 2 SCC 44 where Padma Debi Case and Guntur Municipal Council case (supra) had been followed. Dealing specifically with the question that the contractual rent could be claimed by the landlord lawfully and, therefore, that should be the basis of the annual valuation, this Court in Dewan Daulat Rai's case (supra) at page 625 observed as under:

> " Now it is true that in the present cases the period of limitation for making an application for fixation of the standard rent had expired long prior to the commencement of the assessment years and in such of the cases, the tenant was precluded by Section 12 from making an application for fixation of the standard rent with the result that the landlord was lawfully entitled to continue to receive the contractual rent from the tenant without any let or hindrance. But from this fact-situation which prevailed in each of the cases, it does not follow that the landlord could, therefore, reasonably expect to receive the same amount of rent from a hypothetical tenant. The existing tenant may be barred from making an application for fixation of the standard rent and may, therefore, be liable to pay the contractual rent to the landlord, but hypothetical tenant to whom the building is hypothetically to be let would not suffer from this disability created by the bar of limitation and he would be entitled to make an application for fixation of the standard rent at any time within two years of the hypothetical letting and the limit of the standard rent determinable under the Act, would therefore, inevitably enter into the bargain and circumscribe the rate of rent at which the building could reasonably be expected to be let. this position becomes absolutely clear if we take a situation where the tenant goes out and the building comes to be self-occupied building, the annual value would be limited by the measure of standard rent determinable under the Act, for it can reasonably be presumed that no hypothetical tenant would ordinarily agree to pay more rent than what he could be made liable to pay under the Act. The anomalous situation which could thus arise on the contention of the Revenue would be that whilst the tenant is occupying the building the measure of the annual value would be the contractual rent, but if the tenant vacates and the building is self- occupied, the annual valued the Act. It is difficult to see how the annual value of the building could vary accordingly as it is tenanted or self-occupied. The circumstances that in each of the present cases the tenant was debarred by he period of limitation from making an application for fixation of the standard rent and the landlord was consequently entitled to continue to receive the contractual rent, cannot therefore affect the applicability of the decisions in the Life Insurance Corporation's case and the Guntur Municipal Council's case and it must be held that the annual value of the building in each of these cases was limited by the measure of the standard rent determinable under the Act."

We do not think that it is necessary to consider, in detail, any other decision except to observe that the principle elaborated and laid down in Dewan Daulat Rai's Case (supra) has been followed by this Court in Dr Balbir Singh & ors. Etc. etc. vs. Municipal Corporation of Delhi & Ors. 1985 (2) SCR 439, Morvi Municipality Vs. State of Gujarat & Ors. 1993(2) SCC 520, Bhagwant Rai & Ors. Vs. State of Punjab & Ors. (1995) 5 SCC 440, New Delhi Municipal Committee Vs. M.N. Soi & Another, (1977) 1 SCR 731.

One decision in which a different view was expressed is the case of Municipal Corporation, Indore & Ors. Vs. Smt. Ratna Prabha & Ors. (1977) 1 SCR 1017. There also the question arose whether for fixing the gross annual rental value for the purpose of assessment to property-tax, the Corporation must adopt as the annual value the standard rent which could be fixed under the Accommodation Control Act when the premises were let out. While answering this question in the negative, this Court distinguished the earlier decisions in the cases of Padma Debi, Life Insurance Corporation, Guntur Municipal Council and M. N. Soi (supra) because the peculiar language of Section 138(b) of the M.P. Municipal Corporation Act, 1956 which was differently worded as it contained a non obstante clause. The said clause read as under:

> " (b) the annual value af any building shall notwithstanding anything contained in any other law for the time being in be deemed to be 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 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."

[emphasis added] It is for this reason, namely, the existence of non-obstante clause in Section 138(b) of the Said Act, that Ratna Prabha's case (supra) was distinguished and was held to be non-applicable in Dewan Daulat Rai's case (supra) because the Delhi Act did not contain any non-obstante clause like one with which this court was concerned in Ratna Prabha's case (supra). This distinction has again been emphasized by this Court in Indian Oil Corporation Ltd. Vs. Municipal Corporation and another (1995) 4 SCC 96 which was a case relating to Section 138(b) of the M.P. Municipal Corporation Act, 1956 where Ratna Prabha's case (supra) was followed and the other decisions in the cases of Dewan Daulat Rai, Balbir Singh etc. (supra) were distinguished because of the existence of the non-obstante clause in Section 138(b) of the said Act. In Section 168 of the Municipal Act, with which we are concerned in the present case, the non-obstante clause is not there. The Municipal Act is different from the M.P. Municipal Act, 1956. Section 168 of the Municipal Act is similar to the corresponding provisions in Delhi and in Andhra Pradesh and, therefore, it is the ratio of the decisions in the cases of Prabha Devi, Dewan Daulat Rai and Guntur Municipal Council which should apply.

There is one more decision to which reference need be made, i.e., the case of Asstt. General manager, Central bank of India & Others VS. Commissioner, Municipal Corporation for the City of Ahmedabad and others (1995) 4 SCC 696. Here again the question arose with regard to the determination of the annual letting value of the property. It was contended that the principles of

Dewan Daulat rai case (supra) should be followed but this contention was repelled in view of the fact that the Municipal corporation Act applicable in Ahmedabad, after its amendment, itself defined what the annual letting value was to be. This provision also contained a non-obstante clause, similar to one, which was in M.P. Municipal Corporation Act and as a reason thereof, the rateable value was determined according to the principles contained in the Municipal Corporation Act and not as per the fair rent or the standard rent determinable under the Rent Restriction Act.

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 reteable 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 Central Bank of India's case (supra) relating to Ahmedabad or contains a non- obstante clause as in Ratna Prabha's case (supra) 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 under Section 8(1) (d) which alone can be the annual value for the purpose of property tax.

For the aforesaid reasons, we are of the view that the decision of Calcutta High Court, under appeal, cannot be sustained. The annual value under Section 168 of the Municipal Act has to be fixed on the basis of fair rent determinable under Section 8 of the Tenancy Act.

We, however, find that the proviso to Section 8(1) (d) of the Tenancy Act has not been considered so far in dealing with the question with regard to the fixation of the annual value. The decisions of this court referred to hereinabove clearly bring out that annual value cannot be more than the 'fair rent' or 'standard rent' (whatever may be the nomenclature in the relevant law of the State) which is determinable under the rent Restriction Act. The proviso to Section 8(1) (d) of the Tenancy Act regards the Contractual rent, for a period of 8 years, when the premises was first let out, to be the 'fair rent'. When, therefore, the actual value or the annual value for the purpose of determining the municipal tax has to be the 'fair rent' determinable under the Tenancy Act then, because of the proviso, it is the agreed rent for a period of eight years which is the 'fair rent' and has to be taken into consideration in determining the property tax. Because of the proviso the annual value of the building for the period of eight years form the first letting has to be fixed on the basis of contractual rent and thereafter the annual value will have to be revised and fixed as per the formula contained in Section 8(1) (d) of the Tenancy Act namely 6% per cent, per annum on aggregate amount of the actual cost of construction and the market price of the land on the date of commencement of construction as provided in that provision. To put it differently it is only the 'fair rent' which can be taken into consideration for the purpose of fixing the annual value under the Municipal Act. Because of the fiction created by the proviso to Section 8(1) (d) of the Tenancy Act, the contractual rent is regarded as the 'fair rent' for a period of eight years from the date the premises was first let out. It is for that reason that this figure of 'fair rent' will be the annual value which will have to be revised

after eight years when the proviso will no longer be applicable and the 'fair rent' will have to be determined on the basis of the formula contained in the said provision.

In the present case, it is not known as to when the property was first let out and when does the period of eight years come to an end. it is no doubt true that in Special Leave Petition, it has been stated that the premises were constructed after 1964 and they were let out only in 1966 but the assessing authority has not examined the question by taking into consideration the effect of the provision to Section 8(1) (d) of the Tenancy Act. It would, therefore, be necessary to determine as to when the property was first let out so that for a period of eight years, during the subsistence of tenancy, the contractual rent being the 'fair rent' will be regarded as the basis for fixing the annual value under Section 168 of the Municipal Act. Thereafter the annual value has to be determined in accordance with Section 8(1) (d) of the Tenancy Act.

Accordingly for the aforesaid reasons, the appeals are allowed. The impugned judgment of the High Court and the decision of the assessing authority is set aside with a direction that the assessing authority shall make a fresh assessment in accordance with law. Parties to bear their own cost.

(Arising out of Special leave petition (Crl.) No. 3014/97)