The Corporation of Calcutta

Vs

Sm. Padma Debi and Others

Civil Appeal No. 268 of 1958

(CJI B. P. Sinha, K. Subha Rao, Raghuvar Dayal, J. R. Mudholkar JJ)

08.08.1961

JUDGMENT

SUBBA RAO, J. -

This appeal by certificate from the order of the High Court at Calcutta raises the question of the true interpretation of the provisions of section 127(a) of the Calcutta Municipal Act, 1923 (hereinafter called the Act).

The respondents are the owners of premises No. 296, Bowbazaar Street, Calcutta. The Corporation of Calcutta fixed the annual valuation of the said premises at a sum of Rs. 14,093 and directed the same to take effect from the second quarter of 1950-51. In fixing the annual valuation, the said Corporation took as basis Rs. 1,450 as the monthly rental value of the premises. On June 20, 1950, notice of the assessment based on the said annual valuation was served on the respondents. Respondent No. 1 filed objections to the said assessment under section 139 of the Act. Meanwhile under the West Bengal Premises Rent Control (Temporary Provision) Act, 1950 (W. B. XVII of 1950), (hereinafter called the Rent, Control Act), the standard rent of the said premises was fixed by the Rent Controller : the rent was fixed at Rs. 550 per month with effect from April, 1951, and at Rs. 632-8-0 per month with effect from August, 1951. One of the objections raised was that the Corporation had no power to fix the annual valuation at a figure higher than the standard rent. The Special Officer disallowed all the objections and confirmed the assessment Being aggrieved by the said order, respondent No. 1 filed an appeal in the Court of Small Causes, Calcutta, and the learned Small Causes Judge allowed the appeal and fixed the annual valuation, for the purpose of assessment, at Rs. 6,831. That was on the basis of the standard rent of Rs. 632-8-0 per month. The Corporation of Calcutta questioned the correctness of the said Judgment by preferring an appeal to the High Court at Calcutta. The High Court by a majority agreed with the Small Causes Judge and dismissed the appeal. Hence the present appeal.

The main contention of Mr. N. C. Chatterjee, learned counsel for the appellant Corporation, is that under section 127(a) of the Act the Corporation has to ascertain only the hypothetical rent realisable from a hypothetical tenant at the time of assessment and not the actual rent payable at that time by any tenant, and therefore it is not bound to take into consideration the standard rent fixed under the Rent Control Act.

A subsidiary point raised in the appeal is as to the precise meaning of the phrase "at the time of assessment" occurring in section 127(a) of the Act.

The problem presented depends for its solution on the interpretation of the provisions of section

127(a) of the Act. The said section reads :

> "the annual value of land, and the annual value of any building erected for letting purposes or ordinarily let, shall be deemed to be the gross annual rent at which the land or building might at the time of assessment reasonably be 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".

We shall first look at the provisions of the section to ascertain the meaning. The crucial words are "gross annual rent at which the land or building might at the time of assessment reasonably be expected to let from year to year". The dictionary meaning of the words "to let", is "grant use of for rent or hire". It implies that the rent which the landlord might realise if the house was let is the basis for fixing the annual value of the building. The criterion, therefore, is the rent realisable by the landlord and not the value of the holding in the hands of the tenant. This aspect has been emphasized by the Judicial Committee in Bengal Nagpur Railway Company Limited v. Corporation of Calcutta ([1946] L. R. 74 I. A. 1). The question for determination in that case was whether the assessment of a certain premises to the consolidated rate was made in accordance with the provisions of section 127(a) of the Calcutta Municipal Act, 1923. There the plot in question was a vacant land occasionally used by the member of Railway Officer's Club for practice of the game of Golf. It was bought by the Railway Company not for present use but to be kept in reserve against the company's future requirement. The Corporation assessed the land on the basis of rental value of land in the neighbourhood. It was argued that the premises ought to be valued on the basis of rent which would be paid by a hypothetical tenant who must be presumed to keep the land vacant, or at the most use it as an imperfect golf course. The Judicial Committee rejected the contention and made the following observations at p. 5 :

> "Indeed, it provides a striking example of the danger attending an injudicious use of precedent. The owner of land in England is not chargeable with rates, as owner, at all. If he leaves land vacant and unoccupied, he pays no rates. Under the Calcutta Act mere ownership carries with it a liability to pay one-half of the rate assessed on the annual value of the land. It is impossible to construe section 127 as meaning that, when land is unoccupied, its annual value must be taken to be the rent at which it might be expected to be let to a tenant who was precluded from occupying it. There is nothing in the words of the section to suggest that a hypothetical tenancy of so improbable a character was contemplated, and the elaborate provision of section 151 can hardly have been framed in order to reduce by half, for the benefits of the non occupying owner, what would already be a merely nominal sum".

The same principle was accepted by a division bench of the Madras High Court as early as 1886 in Secretary of State v. Madras Municipality ([1886] I. L. R. 10 Mad. 38). Section 123 of the City of Madras Municipal Act (Mad. 1 of 1884) which was similar in its terms to section 127(a) of the Calcutta Municipal Act, 1923, ran as follows :

> "The gross annual rent at which building or land might reasonably be expected to let from month to month or from year to year shall for the purposes of assessment under this Act be deemed to be the annual value of such building or land".

The learned Judges in construing the said section observed thus at p. 41 :

> "The standard of value is certainly the value of the property to the owner which to be measured, whether he occupies the property himself or lets it out to a tenant the amount of rent per annum it would be worth to a hypothetical tenant".

Mukherjee, J., in Corporation of Calcutta v. Ashutosh De ((1927) 31 C. W. N. 864), accepted the said principle and applied the same in construing section 127(a) of the Act though Roy, J., differed from him. We would, with respect, accept the said principle in the construction of the said section and hold that the value of the property to the owner is the standard in making the assessment thereunder.

The word "reasonably" in the section throws further light on this interpretation. The word "reasonably" is not capable of precise definition. "Reasonable" signifies "in accordance with reason. " In the ultimate analysis it is a question of fact. Whether a particular act is reasonable or not depends on the circumstances in a given situation. A bargain between a willing lessor and a willing lessee uninfluenced by any extraneous circumstances may afford a guiding test of reasonableness. An inflated or deflated rate of rent based upon fraud, emergency, relationship, and such other considerations may take it out of the bounds of reasonableness. Equally it would be incongruous to consider fixation of rent beyond the limits fixed by penal legislation as reasonable. Under the Rent Control Act, the receipt of any rent higher than the standard rent fixed under the Act is made penal for the landlord. Section 3 of the said Act says that any amount in excess of the standard rent of any premises shall be irrecoverable notwithstanding any agreement to the contrary. Section 33(a) thereof provides inter alia that "whoever knowingly receives, whether directly or indirectly, any sum on account of the rent of any premises in excess of the standard rent" will be liable to certain penalties. "Standard rent" has been defined in 2(10) (b) to mean that "where the rent has been fixed under section 9, the rent so fixed, or at which it would have been fixed if application were made under the said section". A combined reading of the said provisions leaves no room for doubt that a contract for a rent at a rate higher than the standard rent is not only not enforceable but also that the landlord would be committing an offence if he collected a rent above that rate of the standard rent. One may legitimately say under those circumstances that a landlord cannot reasonably be expected to let a building for a rent higher that the standard rent. A law of the land with its penal consequences cannot be ignored in ascertaining the reasonable expectations of a landlord in the matter of rent. In this view, the law of the land must necessarily be taken as one of the circumstances obtaining in the open market placing an upper limit on the rate of rent for which a building can reasonably be expected to let.

It is said that section 127(a) does not contemplate the actual rent received by a landlord but a hypothetical rent which he can reasonably be expected to receive if the building is let. So stated the proposition is unexceptionable. Hypothetical rent may be described as a rent which a landlord may reasonably be expected to get in the open market. But an open market cannot include a "black market", a term euphemistically used to commercial transactions entered into between parties in defiance of law. In that situation, a statutory limitation of rent circumscribed the scope of the bargain in the market. In no circumstances the hypothetical rent can exceed that limit.

Strong reliance is placed by learned counsel for the appellant on the decision of the House of Lords in Poplar Assessment Committee v. Roberts ([1922] 2 A. C. 93, 104, 107, 116, 118, 225) in support of the contention that the standard rent fixed under the Rent Control Act shall not be taken into account in determining the valuation for rating purposes. There, it was held that in arriving at the valuation of a hereditament under section 4 of the Valuation (Metropolis) Act, 1869, the maximum gross value to be assigned to the hereditament was not limited to the standard rent of the

hereditament within the meaning of the Rent Restrictions Act, 1920. One of the noble Lords, Lord Carson, dissented from the majority view. It is not necessary to consider that case in detail except to note the passages in the judgments of the learned Lords emphasizing upon the peculiar aspect of the English Law of rating. Lord Buckmaster stated :

> "From the earliest time it is the inhabitant who has to be taxed. It is in respect of his occupation that the rate is levied, and the standard in the Act is nothing but a means of finding out what the value of that occupation is for the purposes of assessment".

Lord Atkinson observed :

> "What the ratepayer is, under both the Act of 1836 and that of 1869, rated in respect of is decided by many cases in this House to be the beneficial occupation of a hereditament".

Lord Sumner declared :

> "Rating is a process between an occupier and a rating authority, to the determination of which the landlord and the lessee are strangers".

Lord Parmoor stated thus :

> "Under 43 Eliz, clause 2, rates are to be levied upon every occupier of lands, houses, etc. The distinction between occupier and owner, in this connection, is of primary importance. The occupation value of property may be, and often is, distinct from its value to the owner. This distinction would probably be emphasized where an artificial statutory maximum is fixed, and a statutory restriction prevents an owner from recovering from any tenant a greater amount, as rent, than the statutory maximum".

These passages bring out in bold relief the distinction between the English and the Indian law which has already been pointed out by the Judicial Committee in Bengal Nagpur Railway Company Limited v. Corporation of Calcutta ((1946) L. R. 74 I. A. 1). That is why, while in England the value of occupation by a tenant is the criterion for fixing the standard rent under the rating law, under the Act the letting value of a building to the landlord is the standard in fixing the rental value. If this distinction is borne in mind much of the cloud cast in this case is dispelled. It would be instructive to quote the weighty observations of Atkin, L. J., as he then was, which were approved by Lord Carson in his dissenting judgment; and they are :

> "If no higher rent than the standard rent and statutory increases is enforceable, as a matter of common sense that seems to be the limit of the rent a tenant can be reasonably expected to give....".
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> "How then is the annual rent to be ascertained ? It is obvious that the definition presupposes that the premises are deemed to be vacant and are deemed to be capable of being let".

Accepting the said observations, Lord Carson proceeded to observe,

> "I cannot persuade myself that it is possible to ask the assessment authority to enter

> into such super-speculative and hypothetical regions, and I am of opinion that the only rent we have to consider is a rent de jure recoverable and not a voluntary promise which cannot be enforced".

With great respect to the other learned Lords, we are inclined to agree with the observations of Atkin, L. J., as approved by Lord Carson. That apart, the majority view can easily be distinguished on the peculiar principle of rating obtaining in England which is fundamentally different from that accepted under the Act. There is another difference between the English law and the Indian law : under the English Act of 1920, payment of rent in excess of the statutory rent was not barred and the landlord might receive the same, but under the Rent Control Act receipt of a higher rent that the standard rent is penalised; that is, while in England a contract to pay a higher rent may not by enforceable in a Court of law, it is not unlawful, but in India it is both unenforceable and unlawful. This difference is of vital importance in judging the reasonableness of a landlord's expectations to get a particular rent.

The Bombay High Court in Mongharam Jiwandas v. Municipal Corporation of the City of Bombay (I. L. R. [1951] Bom. 713) and the Madras High Court in The Madurai Municipality v. Kamakshisundaram Chettiar ((1955) II M. L. J. 369) followed the majority judgment of the House of Lords in Poplar Assessment Committee Case ((1922) 2 A. C. 93, 104, 107, 116, 118, 125) while the Rangoon High Court in The Municipal Corporation of the City of Rangoon v. The Surati Bara Bazzar Company Limited ((1923) I. L. R. 1 Rang. 668) and the Calcutta High Court in the present case distinguished the said decision. We would prefer to accept the view expressed by the Calcutta and Rangoon High Courts, as the decisions of the said Courts are based upon a correct appreciation of the distinction between the law of rating in England and that under the Act.

It is said that, as under section 9(1) (b) of the Rent Control Act the landlord can get the standard rent raised by an amount equivalent to the increase in taxes, rates or cesses, there would not be any prejudice even if the annual value of the building is fixed on the basis of a rate of rent higher than that permissible under the said Act. But this reasoning would land us in a vicious circle and would enable one to circumvent the provisions of the Rent Control Act, for though a tenant is not liable under an Act to pay a rent higher than the standard rent, by this process he would be compelled to pay a higher rent. On the other hand, the scope of that section can legitimately be confined to situations giving rise to increase of taxes such as the increase in the rate, etc.

Nor are we impressed by the argument that the omission of a specific provision, as in section 26 of the Calcutta Rent Act of 1920, prohibiting the Calcutta Corporation from making assessment of any rent higher that the rent fixed by the Rent Controller in the subsequent Acts would inevitably lead to the conclusion that the omission implies the conferment of such a power. Section 26 of the Calcutta Rent Act, 1920 (Ben. III of 1920) debars the Corporation of Calcutta and other local bodies from raising the annual value of any premises above the standard rent; but the life of that Act expired in the year 1926. For many years thereafter there were no Rent Control Acts in Bengal; but some Rent Control Acts came to be passed in the years 1942, 1943 and 1946. In 1950, Act XVII of 1950 was passed to make better provision for the control of rents of premises in Calcutta and in certain other areas in West Bengal. The said Act was amended by subsequent Acts and was finally repealed by Act XII of 1956. It may be mentioned that in the subsequent Acts there was no prohibition similar to that contained in section 26 of the Calcutta Rent Act of 1920. It may also be stated that there is no such prohibition in the Municipal Act of 1923. But when that Act was repealed and replaced by the Calcutta Municipal Act, 1951) W. B. XXXIII of 1951), a proviso was added to section 168(1) to the effect that in respect of any land or building, the standard rent of which has been fixed under section

9 of the Rent Control Act of 1950, the annual value under section 168(1) shall not exceed the annual amount of standard rent so fixed. It may be noticed from the history of the legislation that when the Calcutta Municipal Act, 1923, was passed, the Calcutta Rent Act of 1920 was still in force. Section 128 of the Calcutta Municipal Act, 1923, laid down the criteria for fixing the annual value under that Act and perhaps it was found not necessary to incorporate therein the prohibition contained in section 26 of the Rent Act of 1920. But that in itself cannot mean that the absence of such an express prohibition would imply that but for such a corresponding provision of the Rent Act the section should be understood as free from such a prohibition. The intention of the Legislature depends upon the interpretation of the words used in section 127(a) of the Act and not on the provisions of another Act. On the other hand, the Legislature, which must be presumed to have had knowledge that the Calcutta Rent Act of 1920 would expire within three years from the commencement of the Municipal Act of 1923, and also have been aware that former Act contained such a prohibition, if it intended to remove any such prohibition during those three years or even thereafter, would have expressly made a provision to that effect in the Municipal Act, 1923. On the other hand, the phraseology of the section must have been designedly used wide enough to comprehend such a prohibition. Indeed, when the Act was repealed in 1951 by Act XXXIII of 1951, what was implicit in section 127(a) was made explicit in the proviso to section 168(1) of that Act. We cannot, therefore, draw any implied prohibition from the history of the legislation. In the result, we hold, on a fair reading of the express provision of section 127(a) of the Act in the light of the decisions considered, that the rental value cannot be fixed higher than the standard rent under the Rent Control Act.

The next question is, what is the meaning of the phrase "at the time of assessment" occurring in section 127(a) of the Act. The majority view of the High Court was that assessment commences with the making of the valuation under section 131 of the Act and ends with the determination of the objection under section 140 thereof, and that an event which took place during this period may be relied upon for assessing the annual value under section 127(a) of the Act. The correctness of this view has not seriously been contested before us. That apart, for the reasons mentioned by Lahiri and Sen, JJ., that conclusion is justified on the provisions of the Act.

No other question is raised. The appeal fails and is dismissed with costs.

Appeal dismissed.

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