

Corporation of Calcutta

Vs

Life Insurance Corporation of India

Civil Appeal No. 1559 of 1966

(J. C. Shah, K. S. Hegde JJ)

09.04.1970

JUDGMENT

SHAH, J. -

1. Messrs. A. Firpo Ltd., held as tenants premises No. 11, Government Place East, Calcutta, belonging to the Asiatic Assurance Company Ltd. under a lease, dated August 6, 1941, at a monthly rental of Rs. 2,000/-. The rent was increased by mutual agreement with effect from November 1953 to Rs. 2,800/- per month. Messrs. A. Firpo Ltd., had sublet a major part of the premises to five different tenants and the aggregate rent received from the sub-tenants amounted to Rs. 4,520/-.

2. The Corporation of Calcutta assessed the annual value of the premises at Rs. 32,076/- for six years prior to April 1, 1955, with effect from Rs. 62,761/-. The objection raised by the owner against the determination of annual value was rejected by the Special Officer of the Corporation. In appeal by the Life Insurance Corporation of India (which had statutorily acquired the rights of the owner) the Court of Small Causes assessed Rs. 30,240/- as the annual value. The order was confirmed in appeal to the High Court under Section 183(3) of the Calcutta Municipal Corporation Act, 1951. With certificate granted by the High Court, this appeal has been preferred.

3. In this appeal the Corporation claims that in determining the annual value of the premises the assessing authority was entitled to take into consideration the rental received by Messrs. Firpo Ltd., from its sub-tenants. This Court in *The Corporation of Calcutta v. Smt. Padma Debi and Others*, ((1962) 3 SCR 49) - a case arising under the Calcutta Municipal Act, 1923-held that in assessing the annual value under Section 127(a) of the Calcutta Municipal Act, 1923, the rent which the landlord may realise if the house was let is the basis for fixing the annual value of the building : the criterion being the rent realisable by the landlord and not the value of the holding in the hands of the tenant. The test of reasonableness of the gross annual rent at which the building may at the time of assessment reasonably be expected to let in Section 127(a) is the rent which the landlord may realize if the house is let under a bargain between a willing lessor and a willing lessee uninfluenced by extraneous considerations, and in determining the reasonableness of the expectation of the landlord in the matter of rent a law which imposes penal consequences cannot be ignored. The law must 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, and since a statutory limitation of rent circumscribes the scope of the bargain in the market, in no circumstances can the hypothetical rent exceed the limit prescribed by the law.

4. It was therefore clearly laid down by this Court in *Smt. Padma Debi's* case that in determining the annual value of the land or building for the purpose of ascertaining the consolidated rate, the

standard rent is the maximum amount which can be taken into account.

5. In the present case the Court of Small Causes and the High Court have determined the annual value on the footing of the standard rent.

6. Counsel for the Corporation, however, contended that the decision in Smt. Padma Debi's case ((1962) 3 SCR 49) has no application to this case since that case was decided on the interpretation of Section 127(a) of the Calcutta Municipal Act, 1923, whereas the present case falls to be determined on the interpretation of Section 168 of the Calcutta Municipal Corporation Act, 1951, of which the scheme is different. Section 168(1) at the relevant time provided :

"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, X X X :

Provided that in respect of any land or building the standard rent of which has been fixed under Section 9 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, the annual value thereof shall not exceed the annual amount of the standard rent so fixed."

Counsel urged that under the proviso, gross rent for which the land or building might reasonably be expected to let is subject to the maximum limit of the annual standard rent, only in those cases in which standard rent under Section 9 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 is fixed by order of the Controller, and since no such standard rent is fixed by order of the Controller, the proviso to Section 168 does not apply, and the assessing authority was, in determining the annual value, competent to take into account all relevant circumstances including the rent at which the premises were or could be sublet.

7. It is true that the assessment of annual value in Smt. Padma Debi's case (supra) was for the year 1950-51 and Section 127(a) of the Calcutta Municipal Act, 1923, was in these terms :

"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 be let from year to year, less,

#X X X X.###

That section did not contain a proviso in the form of the proviso to Section 168(1) of the Calcutta Municipal Corporation Act, 1951. But the enactment of the proviso does not alter the law. This Court in Smt. Padma Debi's case (supra) interpreted 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 Section 127(a), and held that in determining the gross annual rent statutory limitation of rent circumscribes the scope of the bargain in the market and therefore in no circumstances the hypothetical rent may exceed the limit.

8. By the addition of the proviso, in our judgment, the meaning of the expression "gross rent at which the land or building might reasonably be expected to let" is not altered. In the present case, there is no order of the Controller fixing standard rent under Section 9 of the West Bengal Premises

Rent Control (Temporary Provisions) Act, 1950, but the standard rent stands determined by the definition of that expression in Section 2(10)(b) of that Act, which provides (omitting parts not relevant) :

"standard rent' in relation to any premises means -

#(a) X X X##

(b) 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."

9. We are therefore of the view that the High Court was right in assessing the annual value on the basis of the standard rent is statutorily determined. It is common ground that the standard rent of the premises was Rs. 2,800/- per month by virtue of the second part of Section 2(10)(b).

10. It was then urged that in any event where there are different grades of owners of a building, the assessing authority is bound to take it to consideration the value to each grade of owner for the purpose of determining the standard rent. It was submitted that their sub-tenants, Messrs. A. Firpo Ltd., were the owners of the premises and the rent which they received had also to be taken into account in determining the standard rent. Reliance in that behalf was placed upon the definition of "owner" in Section 5(53) and Section 193 of the Calcutta Municipal Corporation Act, 1951. Section 5(53) defines "owner" as including "the person for the time being receiving the rent of any land or building or of any part of any land or building, whether on his own account or as agent or trustee for any person or society or for any religious or charitable purpose, or as a receiver or who would so receive such rent if the land, building or part thereof were let to a tenant". Section 193 provides :

"Where there are gradations of owners of any land or building, the Commissioner may, notwithstanding anything contained in Section 191, apportion the owner's share of the consolidated rate in respect of such land or building among such owners in proportion to the amount of the net rent receivable by each of them and thereupon the owner's share of the consolidated rate shall be paid by such owners accordingly.

#Explanation. - X X X.###

11. But under the Act the quantum of the consolidated rate depends upon the annual value of land or building on the gross rent for which the land or building might reasonably be expected to let, and not the gross rent at which the subordinate interest of a tenant may be expected to sublet. In determining the assessment of annual value, the assessing authority is not concerned with the rent which the tenant may receive from his sub-tenant. It is the gross rent which the owner may realize by letting the land or building under a bargain "uninfluenced by extraneous consideration" which determines the annual value. Section 193 only provides for apportionment of consolidated rate; it is irrelevant in determining annual value.

12. The appeal fails and is dismissed with costs.

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