New Delhi Municipal Committee

Vs

M. N. Soi and Another

Civil Appeal No. 541 of 1976

(M.H. Beg, P.N. Shinghal JJ)

24.09.1976

JUDGMENT

BEG, J. -

1. This appeal by special leave is directed against the unanimous decision of a Full Bench of the Delhi High Court. The case before us arose from a writ petition filed by the respondent. M. N. Soi, praying that certain assessment orders, together with the order under Section 84 of the Punjab Municipal Act, III of 1911, passed on February 11, 1966, by an Additional District Magistrate of Delhi relating to the house of the petitioner at 15, Prithviraj Road, New Delhi, modifying assessments on appeal, be quashed. The respondent landlord submitted that assessment for purposes of rating, in accordance with the provisions of Section 3(1) (b) of the Punjab Municipal Act III of 1911 (hereinafter referred to as 'the Act'), and, in particular, the interpretation of the words may reasonably be expected to be left from year to year, impose upon the assessing authorities the obligation not to assess at a higher rental value than the "standard rent". It is not disputed that standard rent of the house was fixed on September 25, 1941, in the following terms :

> After due consideration of all the facts and circumstances a fair rent of Rs. 170 One Hundred and Seventy p. m., (unfurnished) on annual tenancy, exclusive of House Tax and Irrigation water charges, is hereby fixed for House No. 15, Prithvi Raj Road, New Delhi, under Clause 5 of the Rent Control Order 1939.

2. It appears from the statement of facts by the Full Bench, which has not been questioned before us, that the fixation of rent in 1941, under the New Delhi House Rent Control Order, 1939, continues to be valid notwithstanding the repeal of the Control Order by Section 15 of the Delhi and Ajmer-Merwara Rent Control Act, 1947, which, in its turn, was repealed by Section 46 of the Delhi and Ajmer Rent Control Act, 1952. The repealing provisions maintained intact the validity of all that was legally done under the repealed order.

3. The Delhi Rent Control Act, 1958 (59 of 1958) contains a very elaborate procedure for the fixation of "standard rent" under Section 6 of this Act. In so far as such premises as "have been let at any time before the 2nd day of June 1944", are concerned, the standard rent is determined as follows :

> 6. (1) (a) if the basic rent of such premises per annum does not exceed six hundred rupees, the basic rent; or
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> (b) if the basic rent of such premises per annum exceeds six hundred rupees, the basic

rent together with ten per cent of such basic rent :

The first two clauses of the second schedule to the 1958 Act define the "basic rent" for the purposes of the case before us :

> 1. In this Schedule, "basic rent" in relation to any premises let out before the 2nd June, 1944, means the original rent of such premises referred to in paragraph 2 increased by such percentage of the original rent as is specified in paragraph 3 or paragraph 4 or paragraph 5, as the case may be.
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> 2. 'Original rent', in relation to premises referred to in paragraph 1, means -
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> (a) where the rent of such premises has been fixed under the New Delhi House Rent Control Order, 1939, or the Delhi Rent Control Ordinance, 1944, the rent so fixed; or
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> (b) in any other case, -
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> (i) the rent at which the premises were let on the 1st November, 1939, or
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> (ii) if the premises were not let on that date, the rent at which they were first let out at any time after that date but before the 2nd June, 1944.

Thus, the "fair rent" fixed under the 1939 order determines, ultimately the "standard rent" which still affects the assessment of rates in the manner indicated below.

4. It is clear that, although, legislative provisions, for the fixation of standard rent in New Delhi, contained in Section 9 of the Delhi Rent Control Act 59 of 1958, are comparatively recent and fairly elaborate, yet, the fixation of rates for purposes of assessment of house tax is still governed by the provisions of Section 3(1) (b) of the Punjab Municipal Act of 1911, enacted at a time when there was no machinery for the control of rents. The whole of the Section 3(1) may be set out here in order to get an idea of the nature of valuation contemplated by the Act of 1911 for the purposes of rating. Section 3(1) reads :

> 3. (1) 'Annual value' means -
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> (a) in the case of land, the gross annual rent at which it may be reasonably be expected to let from year to year :
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> Provided that, in the case of land assessed to land-revenue or of which the land-revenue has been wholly or in part released, compounded for, redeemed or assigned, the annual value, shall if the State Government so direct, be deemed to be double the aggregate of the following amounts, namely :
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> (i) the amount of the land-revenue for the time being assessed on the land, whether such assessment is leviable or not; or when the land-revenue has been wholly or in part compounded for or redeemed, the amount which, but for such composition or redemption, would have been leviable : and
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> (ii) When the improvement of the land due to canal irrigation has been excluded from account in assessing the land-revenue, the amount of owner's rate or water

advantage rate, or other rate imposed in respect of such improvement :

(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 use or enjoyment therewith, may reasonably be expected to let from year to year, subject to the following deductions :-

(i) such deduction and exceeding 20 per cent of the gross annual rent as the committee in each particular case may consider a reasonable allowance on account of the furniture let therewith :

(ii) a deduction of 10 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. The deduction under this sub-clause shall be calculated on the balance of the gross annual rent after the deduction (if any) under sub-clause (i);

(iii) where land is let with a building such deduction, not exceeding 20 per cent of the gross annual rent as the committee in each particular case may consider reasonable on account of the actual expenditure, if any, annually incurred by the owner on the upkeep of the land in a state to command such gross annual rent :

Explanation I. - For the purposes of this clause it is immaterial whether the house or building, and the furniture and the land let for use or enjoyment therewith, are let by the same contract or by different contracts, and if by different contracts, whether such contracts are made simultaneously or at different times.

Explanation II. - The term 'gross annual rent' shall not include any tax payable by the owner in respect of which the owner and tenant have agreed that it shall be paid by the tenant.

(c) In the case of any house or building, the gross annual rent of which cannot be determined under clause (b), 5 per cent, on the sum obtained by adding the estimated present cost of erecting the building, less such amount as the Committee may deem reasonable to be deducted on account of depreciation (if any) to the estimated market value of the site and any land attached to the house or building :

Provided that -

(i) in the calculation of the annual value of any premises no account shall be taken of any machinery thereon;

(ii) when a building is occupied by the owner under such exceptional circumstances as to render a valuation at 5 per cent on the cost of erecting the building, less depreciation, excessive, a lower percentage may be taken.

5. The question raised before us is whether rating, for purposes of house tax, is to be corelated to the actual income from house property, or, it is to be regulated by an artificially determined basis, fixed in the past, without reference to the actual rent that may be derived from the house or building today ?

6. On a bare reading of the provisions of Section 3(1) (a), set out above no doubt is left that, although, annual value, for purposes of rating land, may be linked to the assessment of land revenue, if the State Government so directs, yet, in the cases of houses or buildings, it is the reasonable expectation to let such buildings, subject to certain reasonable deductions, which governs valuation whatever may have been the origin of rating. The concept of rating and its origin have been commented upon by this Court several times (see Patel Gordhandas Hargovindas v. Municipal Commissioner, Ahmedabad ((1964) 2 SCR 608 : AIR 1963 SC 1742) and Municipal Corporation of Greater Bombay v. M/s. Polychem Ltd.((1974) 3 SCR 687 : (1974) 2 SCC 198))

7. In the case of the Municipal corporation of Greater Bombay, after considering various cases on the rating and commenting upon the case of Patel Gordhandas, this Court observed (at p. 697) : [SCC p. 208, para 16]

> This case links the nature of the property tax called a rate levied for local government purposes with the mode adopted for its levy. Each mode had necessarily to be directed to finding out the annual rental value of land as that was what was taxed and not either the capital or the potential value of land.

8. It is true that, in the case before us, the actual rent obtained by the landlord now is Rs. 1500 p. m., which is about nine times the fair rent fixed in 1941. But, the fixation of 1941 has continued unaltered. No fresh fixation of a fair or standard rent, in accordance with the applicable provisions of law, has taken place. The argument, therefore, which prevailed before the Full Bench and is pressed before us also for acceptance, on the strength of the view expressed by this Court in the Corporation of Calcutta v. Smt. Padma Debi ((1962) 3 SCR 49 : AIR 1962 SC 151), followed by the Full Bench, was that reasonable rent, contemplated by Section 3(1) (b) of the Punjab Municipal Act, 1911, can, in no case, be above the fair rent or standard rent fixed by the provisions relating to fixation of rent in rent control legislation an infringement of which is penalised. The crucial words used in the enactment before the Court in Smt. Padma Debi's case were (at p. 53) : gross annual rent at which the land or building might at the time of assessment reasonably be expected to let from year to year.

Subba Rao, J. speaking for a bench of four Judges of this Court said there (at p. 53) :

> 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.

9. After quoting a passage from the judgment of the Judicial Committee of the Privy Council in Bengal Nagpur Railway Co. Ltd. v. Corporation of Calcutta (1946 LR 74 IA 1 : AIR 1947 PC 50), showing that a hypothetical tenancy of an improbable character was not contemplated, this Court pronounced as follows on the decisive concept of "reasonableness" :

> 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 our 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 Section 2(1) (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 the 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 than 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.

10. It was held in Smt. Padma Debi's case that it was 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". It was explained :

> . . . . . an open market cannot include a 'black market', a term euphemistically used to commercial transactions entered into between parties in defiance of law.

11. Thus, whatever may be our views on the reasonableness of tying down assessment, for the purposes of rating, to the concept of a rent which has been held to be fair rent in the past but does not bear a real relationship to the prevailing conditions of the market for accommodation if it was uncontrolled, we find it impossible to get over the ratio decidendi of this Court in Smt. Padma Debi's case which we are bound to follow. This was that, if a rent which is higher than that which can be legally demanded by the landlord and actually paid by a tenant, despite the fact that such violation of the restriction on rent chargeable by law is visited by penal consequences, the municipal authorities cannot take advantage of this 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.

12. Cases were referred to before us by Mr. S. T. Desai where income tax had to be paid on income illegally made even by indulging in criminal activities. In those cases, however, the basis of taxation was the actual income and not a determination of what a prudent man could reasonably do to get the income. It is certainly no part of prudence for a landlord to extract higher rent than what law prescribing restrictions of rent, by rent control legislation, enjoins and then visits their infringement with penal consequences. Hence, in the case before us, the prudence of the landlord has to be assumed and judged by normal standards to determine his "reasonable expectation". This, we think, was the ratio decidendi of Smt. Padma Debi's case which was decided as long ago as 1962. If the

law has remained unchanged despite that pronouncement by this Court, of which the law-making authorities must be deemed to be cognizant, the presumption would be that the intention, from allowing the state of the law so declared to continue, is to let rating be governed by the fixation of rent by control authorities and not by the test of actual income derived by the landlord. In other words, the concept of an "open market" applicable to such cases is not one where the landlord is absolutely free to let to anybody at any rent he can obtain and where the tenant has the corresponding freedom to offer anything he likes for any accommodation he may want to hire. As we know, the right to offer many things one possesses for either sale or hire as well as the freedom to purchase or to hire them is hedged round today with conditions imposed by law. The concept of this restricted "open market", if one may juxtapose such antithetical concepts, is well established today. The area of the "open market" is circumscribed by law. It is within this restricted area that the reasonable man's expectations must be deemed to operate even if such a concept seems to import an element of unreality into the field of rating. Legal norms often savour of some artificiality.

13. It may be observed here that the proviso to Section 116 of the Delhi Municipal Corporation Act 66 of 1957, providing for determination of rateable value of lands and buildings assessable to tax, lays down :

> Provided further that in respect of any land or building the standard rent of which has been fixed under the Delhi and Ajmer Rent Control Act, 1952, the rateable value thereof shall not exceed the annual amount of the standard rent so fixed.

14. Mr. S. T. Desai, basing his argument on this provision, contended that, as there is no such provision in the Punjab Municipal Act, 1911, to imply such a restriction upon powers of assessment, due to rent control legislation, would be incorrect. We think, that this provision, far from helping the case of the appellant municipal committee, suggests that it is in conformity with notions of reasonable rental value today for the purposes of assessment. The mere fact that Section 3(1) (b) of the Punjab Municipal Act of 1911 left the determination of reasonable expectations of rent to the assessing authorities does not mean that they can today ignore the subsequent law fixing restrictions on rent and the penal consequences with which their infringement if visited. The provisions of the Delhi Municipal Corporation Act, 1957, were introduced after the concept of restrictions on rent and letting of accommodation had become well established in this country. It shows what reasonable expectation in the new context could or should mean. Therefore, in our opinion, the existence of such provisions supports the case of the respondent which was accepted by the Full Bench. In any case, so long as the ratio decidendi of Smt. Padma Debi's case holds the ground, this Court cannot, by judicial interpretation, introduce a new concept of reasonable expectation. If the resulting position is not just or equitable, its remedy lies in the amendment of the law itself by legislation. We cannot remedy it.

15. We may here indicate the penal provisions in the Delhi Rent Control Act of 1958, which make the ratio decidendi of Smt. Padma Debi's case applicable to the case before us. Section 5(1) of this Act lays down :

> 5. (1) Subject to the provisions of this Act, no person shall claim or receive any rent in excess of the standard rent, notwithstanding any agreement to the contrary.
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> And, Section 48(1) (a) enacts :
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> 48. (1) If any person contravenes any of the provisions of Section 5, he shall be

punishable -

(a) in the case of a contravention of the provisions of sub-section (1) of Section 5, with simple imprisonment for a term which may extend to three months, of with fine which may extend to a sum which exceeds the unlawful charge claimed or received under that sub-section by one thousand rupees, or with both;.

16. Hence, the case before us is completely covered by the concept of reasonableness of expectation of rent which must take the penal law of the State into account. It is not the expectation of a landlord who takes 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 purposes of rating.

17. For the foregoing reasons, we affirm the decision of the Full Bench of the Delhi High Court and dismiss this appeal. But, in the circumstances of the case, we make no order as to costs.

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