Government Servant Cooperative House Building Society Ltd. and Others

Vs

Union of India and Others

Civil Appeals No. 8424 of 1994

(M. Srinivasan, Sujata V. Manohar JJ)

05.08.1998

JUDGMENT

SMT. SUJATA V. MANOHAR, J. –

The appellants are the owners of properties in Delhi which are governed by the Delhi Municipal Corporation Act, 1957 or the Punjab Municipal Act, 1911. Prior to coming into force of the Delhi Rent Control (Amendment) Act, 1988, these properties were governed by the Delhi Rent Control Act of 1958.

2. By the Delhi Rent Control (Amendment) Act, 1988, sub-sections (3)(c) and (d) were added in Section 3 of the Delhi Rent Control Act, 1958. These provide that nothing in the said Act shall apply "(c) to any premises, whether residential or not, whose monthly rent exceeds three thousand and five hundred rupees;" or "(d) to any premises constructed on or after the commencement of the Delhi Rent Control (Amendment) Act, 1988, for a period of ten years from the date of completion of such construction". On the said provisions coming into force, the appellants received notices under Section 126 of the Delhi Municipal Corporation Act for Assessment Year 1988-89 and for subsequent years proposing to revise the rateable value of their properties. The footnote to these notices stated that this was in view of the amendments to the Delhi Rent Control Act, 1988. Assessments which were made pursuant to such notices were made by calculating the rateable value of the property on the basis of the actual annual rent received. These and similar notices and assessments are the subject-matter of challenge in the present proceedings.

3. Under Section 113 of the Delhi Municipal Corporation Act, 1957, the Corporation shall levy, inter alia, property taxes. Under Section 114 the property taxes shall be levied on lands and buildings in Delhi and shall consist of the following, namely, (inter alia) under sub-section (d), a general tax of not less than ten and not more than thirty per cent rateable value of lands and buildings within the urban areas. Section 116 provides as follows :

> "116. Determination of rateable value of lands and buildings assessable to property taxes. - (1) The rateable value of any land or building assessable to property taxes shall be the annual rent at which such land or building might reasonably be expected to let from year to year less -
>
> (a) a sum of ten per cent of the said annual rent which shall be in lieu of all allowances for costs of repairs and insurance, and other expenses, if any, necessary to maintain the land or building in a state to command that rent; and

(b) the water tax or the scavenging tax or both, if the rent is inclusive of either or both of the said taxes :

Provided that if the rent is inclusive of charges for water supplied by measurement, then, for the purpose of this section the rent shall be treated as inclusive of water tax on rateable value and the deduction of the water tax shall be made as provided therein :

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 (38 of 1952), the rateable value thereof shall not exceed the annual amount of the standard rent so fixed.

[Explanation. - The expressions 'water tax' and 'scavenging tax' shall mean such taxes of that nature as may be levied by an appropriate authority.]

#(2)-(3) * * *" ##

To determine the quantum of property tax, therefore, it is necessary to arrive at the rateable of the land or building. Under Section 116(1), the rateable value is the annual rent at which such land or building might reasonably be expected to be let from year to year less certain deductions. We have to consider how the annual rent at which such property might be reasonably expected to be let, is to be arrived at when the rent of the property is not controlled under the Delhi Rent Control Act, 1985 or any other rent control legislation.

4. In the case of Corpn. of Calcutta v. Padma Debi (AIR 1962 SC 151 : (1962) 3 SCR 49) this Court considered Section 127(a) of the Calcutta Municipal Act, 1923. This section was similar to Section 116(1) of the Delhi Municipal Corporation Act, 1917. Under Section 127(a), the annual value of the land or building shall be deemed to be gross annual rent at which the land or building might at the time of assessment reasonably be expected to let from your to year less certain deductions. The Court observed that the word "reasonably" is not capable of precise definition. It said : (at p. 55)

> "'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."

5. Therefore, where there is legislation fixing the standard rent of the premises, the rent at which the premises could be reasonably expected to be let cannot exceed the statutory ceiling. But where there is no artificial control on the rent which is charged, a bargain between a lessor and a willing lessor uninfluenced by any extraneous circumstances, affords a good test of reasonableness.

6. The same principle was reiterated by this Court in Dewan Daulat Rai Kapoor v. New Delhi Municipal Committee ((1980) 1 SCC 685 : 1982 SCC (Tax) 116) (SCC at p. 687). After quoting the

above passage from Corpn. of Calcutta v. Padma Debi (AIR 1962 SC 151 : (1962) 3 SCR 49) this Court held that the actual rent payable by a tenant to the landlord would, in normal circumstances, afford reliable evidence of what the landlord might reasonably expect to get from a hypothetical tenant, unless the rent is deflated or depressed by reason of extraneous considerations such as relationship, expectation of some other benefit etc. There would ordinarily be, in a free market, close approximation between the actual rent received by the landlord and the rent which he might reasonably expect to receive from a hypothetical tenant.

7. In the case of Balbir Singh (Dr.) v. M. C. D. ((1985) 1 SCC 167 : 1985 SCC (Tax) 35 : (1985) 2 SCR 439) (SCR at p. 452) also, this Court reiterated the test laid down in the above two cases and repeated that in a free market, there would ordinarily be a close approximation between the actual rent received by the landlord and the rent which he might reasonably expect to receive from a hypothetical tenant. (See also East India Commercial Co. (P) Ltd. v. Corpn. of Calcutta ((1998) 4 SCC 368).)

8. Therefore, the annual rent actually received by the landlord, in the absence of any special circumstances, would be a good guide to decide the rent at which the landlord might reasonably expect to receive from a hypothetical tenant. Since the premises in the present case are not controlled by any rent control legislation, the annual rent received by the landlord is what a willing lessee, uninfluenced by other circumstances, would pay to a willing lessor. Hence, the actual annual rent, in these circumstances, can be taken as the annual rateable value of the property for the assessment of property tax. The municipal corporation is, therefore, entitled to revise the rateable value of the properties which have been freed from the rent control on the basis of annual rent actually received unless the owner satisfies the municipal corporation that there are other considerations which have affected the quantum of rent.

9. It was then submitted on behalf of the appellants that if the annual rent actually received is taken as the basis for determining the rateable value of the property, the property tax will become a tax on income of the owner. Such a tax would be beyond the legislative competence of the State Legislature. Being a tax on income, it can be levied only by the Central Government and it would not fall in Entry 49 of List II of the Seventh Schedule of the Constitution. It would, in fact, fall in Entry 82 of List I which deals with taxes on income other than agricultural income. Now, Entry 49 of List II covers taxes on lands and buildings. As the High Court has pointed out, the three lists in the Seventh Schedule of the Constitution have no relevance to the Union Territory of Delhi since Parliament can make law respecting all entries in all the three lists. The Delhi Municipal Corporation Act is, in fact, parliamentary legislation. Nevertheless, as the argument has been advanced before us at some length and it may affect other municipal legislations, we will briefly deal with it.

10. A similar argument in connection with the Punjab Urban Immovable Property Tax Act, 1940 was advanced before the Federal Court in the case Ralla Ram v. Province of East Punjab (AIR 1949 FC 81 : 1948 FCR 207 : (1949) 1 MLJ 213). The property tax under the said Act was based on the annual value of the property. Negativing the argument that this was a tax on income and hence was not covered by List II Item 42, dealing with taxes on lands and buildings under the Government of India Act, 1935, the Court said that a proper approach is to look at the true nature and character of the legislation or its pith and substance. If the substance of the legislation is within the express powers, then it is not invalidated if incidentally it affects matters which are outside the authorised field. The Court analysed the provisions of the said Act and observed that in every case, the actual profit derived from the property would not necessarily be its annual value. It is possible to conceive

of cases in which the property to be taxed does not actually yield any income whatsoever, though every property must have some notional annual value. The method of arriving at the quantum of tax should not be mixed up with the nature of the tax itself. The essential character of the tax was property tax and not a tax on income. It said : (p. 86)

> "This case demolishes the broad contention that wherever the annual value is the basis of a tax, that tax becomes a tax on income. It shows that there are other factors to be taken into consideration and that it is the essential nature of the tax changed and not the nature of the machinery which is to be looked at."

11. The Federal Court had referred to the Full Bench decision of the Bombay High Court Sir Byramjee Jeejeebhoy v. Province of Bombay (AIR 1940 Bom 65 : 1939 ITR 670) which also deals with the urban immovable property tax to be calculated by the Municipal Commissioner. The same view has been taken by this Court in the case of Patel Gordhandas Hargovindas v. Municipal Commr., Ahmedabad (AIR 1963 SC 1742 : (1964) 2 SCR 608). In this case the Municipal Corporation of Ahmedabad had imposed a rate on vacant land within the municipal limits. The rate was the percentage of valuation based upon the capital. The contention was that this was a tax on capital and not a tax on property and was, therefore, beyond the legislative competence of the State. The Court relied upon Ralla Ram v. Province of East Punjab (AIR 1949 FC 81 : 1948 FCR 207 : (1949) 1 MLJ 213) and emphasised the importance of the distinction between the levy of tax and the machinery of its calculation including the method of calculation and said that the subject-matter of the tax was obviously something other than the measure provided to quantify tax by levying the tax on a percentage of the capital value of the land taxed. The entire scope of the charging section was not changed. The tax was, therefore, a tax on land.

12. It is thus well settled that an Act of the state Legislature entitling a municipal corporation to levy property tax on the basis of rateable value of land and building calculated by the yardstick of annual rent at which such property can reasonably be leased to a hypothetical lessee, is valid and within its legislative competence. The tax remains property tax and cannot be viewed as a tax on income. (See also Bhagwan Dass Jain v. Union of India ((1981) 2 SCC 135 : 1981 SCC (Tax) 84), Asstt. Commr. of Urban Land Tax v. Buckingham and Carnatic Co. Ltd. ((1969) 2 SCC 55 : (1970) 1 SCR 268) and India Cement Ltd. v. State of T. N. ((1990) 1 SCC 12))

13. Looking to the charging section of the Delhi Municipal Corporation Act, 1957 which clearly imposes a tax on property and section 116 which deals with the method of determination of this tax with reference to the rateable value of lands and buildings, the property tax levied cannot be viewed as tax on income. The basis of valuation is the hypothetical annual rent which a willing lessor would receive from a willing lessee. Obviously in a case where the property is self-occupied, there is no question of the owner receiving any income. In the case of properties which are covered by the Delhi Rent Control Act, there may be many case where the annual rent received by a landlord in respect of a property may be different from its annual rateable value. A property tax under the Delhi Municipal Corporation Act is, therefore, not a tax on income. Since the Position is well settled, we need not elaborate on such instances.

14. Learned counsel for the Delhi Municipal Corporation has pointed out that in the case of self-occupied properties, the Delhi Municipal Corporation has continued to fix the rateable value on the basis that the property is governed by the Delhi Rent Control Act. The arguments of the appellants, therefore, have centred on properties which are let out and which are not subject to rent control.

15. In the premises, we agree with the impugned judgment and order of the Delhi High Court. The appeals and the writ petition are, therefore, dismissed. There will, however, be no orders as to costs.