

MUNICIPAL CORPORATION, INDORE AND OTHERS

v.

SMT. RATNA PRABHA AND OTHERS

October 29, 1976

[A. N. RAY, C.J., M. H. BEG AND P. N. SHINGHAL, JJ.]

Madhya Pradesh Municipal Corporation Act 1956—Sec. 138(b)—Madhya Pradesh Accommodation Control Act 1961—Sec. 7—Must rental value under the Municipal Act follow the standard rent under Accommodation Control Act when premises let out—When used by owner.

The respondents are the owner of a building known as Viram Lodge. They run a hotel in the said building. The annual gross rental value of the building was determined at Rs. 6,600/- in 1956. It was revised to Rs. 43,405/- by the Assessment Officer in 1965. Section 138(b) of the Madhya Pradesh Municipal Corporation Act, 1956, provides that notwithstanding anything contained in any other law for the time being in force, the annual value of any building shall be deemed to be the gross annual rent at which such building might be reasonably at the time of assessment be expected to let from year to year at the time of the less an allowance of 10 per cent for repairs etc. The respondent challenged the valuation on the ground that the rental value of the premises could not be fixed at a rate higher than the standard rent under section 7 of the Madhya Pradesh Accommodation Control Act, 1961. The Municipal Commissioner negatived the respondents' contention. An appeal filed by the respondents to the Additional District Judge also failed. The High Court however allowed the Revision filed by the respondents.

Allowing the appeal by Special Leave held :

1. In the present case the building in question was never let on rent and is being used by the owners as a hotel. [1019 A]
2. On a proper construction of section 138(b) where the standard rent of a building has been fixed under section 7 of the Accommodation Control Act, and there is nothing to show that there has been fraud or collusion that would be its reasonable letting value but where the building has never been let out the question of fixation standard rent does not arise. In that case it would be permissible to fix its reasonable rent without regard to the provisions of Madhya Pradesh Accommodation Control Act. This view gives proper effect to the *non-obstante* clause in section 138(b). [1019 D-F]

The Corporation of Calcutta v. Smt. Padma Debi and others [1962] 3 S.C.R. 49, *Corporation of Calcutta v. Life Insurance Corporation of India* [1971] 1 S.C.R. 246, *Guntur Municipal Council v. Guntur Town Rate Payers' Association* [1971] 2 S.C.R. 423 and *New Delhi Municipal Committee v. M. N. Soi and another* [1977] 1 S.C.R. 731, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2111 of 1969.

(Appeal by Special Leave from the Judgment and Order dated 26-9-1968 of the Madhya Pradesh High Court in Civil Revision No. 711/66).

V. S. Desai, P. C. Bhartari and D. N. Misra for the Appellants.

B. N. Lokur and Rameshwar Nath for the Respondents.

A The Judgment of the Court was delivered by

SHINGHAL, J.—This appeal by special leave is directed against the judgment of the Madhya Pradesh High Court dated September 26, 1968 setting aside the appellate order of the Second Additional District Judge, Indore, dated October 29, 1966 and remitting the matter to the Municipal Commissioner for a fresh determination of the annual value of the building.

C The building in question is known as “Viram Lodge”, on Ravindra Nath Tagore Marg, Indore. It belongs to the respondent and has been used by them as a hotel. The annual gross rental value of the building was determined at Rs. 6600/ in 1956. It was revised by the Assessment Officer on June 3, 1965 and was raised to Rs. 43,405.20. The respondents filed objections to the valuation, but the Municipal Commissioner fixed the annual value at Rs. 43,405.20. He held that, in view of the “*non-obstante*” clause in section 138(b) of the Madhya Pradesh Municipal Corporation Act, 1956, hereinafter referred to as the Act, there was no justification for the argument that the rental value of the premises could not be fixed at a rate higher than the standard rent under section 7 of the Madhya Pradesh Accommodation Control Act, 1961. An appeal was taken to the Second Additional District Judge, but without success. The respondents then filed an application for revision, which was allowed by the impugned judgment of the High Court dated September 26, 1968. This is how the present appeal has arisen at the instance of the Municipal Corporation and its officers.

E Section 138 of the Act prescribes the mode for determining the annual value of any land or building for purposes of assessing it to property tax. Clause (a) of the section deals with the annual value of land, and it is not the case of the parties that it has any bearing on the controversy. Clause (b) prescribes the mode of determining the annual value of a building and reads as follows,—

F “(b) the annual value of any building shall notwithstanding anything contained in any other law for the time being in force be deemed to be the 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.”

H There are two explanations to the clause. It is nobody’s case that they have any bearing on the short point in controversy before us. Clause (c) of the section prescribes that if the gross annual rent of a building cannot be determined under clause (b), the annual value of the building shall be determined according to that clause. It is

not in controversy before us that the Viram Lodge was never let on rent, and is being run as a hotel by its owners, the present respondents, so that the question of fixing its standard rent under s. 7 of the Madhya Pradesh Accommodation Control Act, 1961, has not arisen. It has argued that, even so, the reasonable rent contemplated by s. 138(b) of the Act cannot exceed the standard rent to be fixed under the aforesaid section 7. It has thus been urged that it was incumbent for the Municipal Commissioner to determine the annual value of the building on the same basis on which its standard rent was required to be fixed under section 7. Reliance in this connection has been placed on the decisions of this Court in *The Corporation of Calcutta v. Smt. Padma Debi and others*,⁽¹⁾ *Corporation of Calcutta v. Life Insurance Corporation of India*,⁽²⁾ *Guntur Municipal Council v. Guntur Town Rate Payers' Association*⁽³⁾ and *New Delhi Municipal Committee v. M. N. Soi and another*.⁽⁴⁾

As has been stated, clause (b) of section 138 of the Act provides that the annual value of any building shall "notwithstanding anything contained in any other law for the time being in force" be deemed to be the gross annual rent for which the building might "reasonably at the time of the assessment be expected to be let from year to year." While therefore the requirement of the law is that the reasonable letting value should determine the annual value of the building, it has also been specifically provided that this would be so "notwithstanding anything contained in any other law for the time being in force". It appears to us that it would be a proper interpretation of the provisions of clause (b) of section 138 of the Act to hold that in a case where the standard rent of a building has been fixed under section 7 of the Madhya Pradesh Accommodation Control Act, and there is nothing to show that there has been fraud or collusion, that would be its reasonable letting value, but, where this is not so, and the building has never been let out and is being used in a manner where the question of fixing its standard rent does not arise, it would be permissible to fix its reasonable rent without regard to the provisions of the Madhya Pradesh Accommodation Control Act, 1961. This view will, in our opinion, give proper effect to the *non-obstante* clause in clause (b), with due regard to its other provision that the letting value should be "reasonable".

We have gone through the decision in *Padma Debi's* case (*supra*). There the premises were on rent and section 127(a) of Calcutta Municipal Corporation Act, 1923, did not contain a *non-obstante* clause. That the section provided, *inter alia*, was that the annual value 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." This Court examined the significance of the word "reasonable" and held that it would be incongruous to

(1) [1962] 3 S.C.R. 49.

(3) [1971] 2 S.C.R. 423.

(2) [1971] 1 C.R. 248.

(4) [1977] 1 S.C.R. 731.

- A consider fixation of rent beyond the limits fixed by penal legislation as reasonable. That view was taken with reference to the provisions of the Rent Control Act which penalised the taking of a higher rent, and also made it irrecoverable. While, therefore, we are in agreement with the view taken in *Padma Debi's* case (supra) that it would not be reasonable to consider fixation of rent beyond the limits fixed by the Rent Control Act as reasonable, it would not be a proper interpretation of section 138(b) of the Act to ignore the significance of its *non-obstante* clause altogether. That is why we have taken the view that it would be a fair and reasonable interpretation of section 138(b) to hold that as no standard rent has been fixed so far in respect of the Viram Lodge, the Municipal Commissioner was justified in adopting another suitable criterion for determining the annual value of the building. There is in fact nothing in the Act to make it obligatory for the Commissioner to follow the provisions of the Madhya Pradesh Accommodation Control Act in spite of the *non-obstante* clause and to limit the annual value to any standard rent that the building might fetch under that Act.

- D We have also gone through *Corporation of Calcutta v. Life Insurance Corporation of India* (supra). That was also a case where the premises had been let out on rent. The standard rent had also been fixed, and that was why *Padma Debi's* case (supra) was held to be applicable.

- E So also, *Guntur Municipal Council v. Guntur Town Rate Payers' Association* (supra) was a case where the premises were on rent and there also *Padma Debi's* case was held to be applicable even though the standard rent had not been fixed, because it was held that there was nothing to prevent the authorities concerned from ascertaining the fair rent by keeping in view the principles which had been laid down for its determination under the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. Section 82(2) of the Madras District Municipalities Act, which governed that case, did not contain a *non-obstante* clause.

- F Much the same was the position in *M. N. Soi's* case which related to a house in New Delhi, of which rate had to be assessed under the provisions of the Punjab Municipal Act, 1911.

- G The High Court did not properly appreciate the difference between the wordings of section 127 of the Calcutta Municipal Corporation Act, 1923, and section 138(c) of the Act, and committed an error in thinking that this was virtually similar to *Padma Debi's* case.

- H We find that the High Court has taken the view that a full hearing was not given to the respondents at the time of fixing the annual value of the Viram Lodge and that the valuation was based on "no principle". Here again, the High Court was clearly in error because we find from the judgment of the Second Additional District Judge, dated October 29, 1966, that the counsel for the respondents

was given "ample opportunity" by the Municipal Commissioner to represent his case before him. He has also stated that the Assessment Officer paid due regard to all the relevant circumstances which had a bearing on the determination of the reasonable letting value of the building. Counsel for the respondents has in fact not found it worth his while to argue either that such a hearing was not given, or that all the relevant factors were not taken into consideration in determining the annual letting value of the premises.

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In the result, the appeal is allowed and the impugned judgment of the High Court dated September 26, 1968, is set aside. The appellants will however pay the costs of the respondents as stipulated in the order of this Court granting the special leave.

P.H.P.

Appeal allowed.