FULL BENCH

Before M. M. Punchhi, Ujagar Singh and A. P. Chowdhri. JJ.

BANARSI DASS MAHAJAN,—*Petitioner.*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 2175 *of* 1986

July 28, 1989.

Punjab Municipal Corporation Act (XLII of 1976)—S. 93—Assessment of house tax—Rateable value—Determination of such value—Building self occupied—Fair rent of such building not fixed—Mode of determining rateable value—Stated.

Held, that the Commissioner must first do the exercise under clause (b) to determine at what figure the building may reasonably be expected to let in accordance with the principles of the Rent Laws, give permissible deductions in the light of the Explanations, deviate to sub-clause (ii) of the first proviso if he can but keep a foothold on his deliberations under clause (b), apply both the provisos in the above manner and then determine the annual rateable value. If he is unable to do so for any substantive reason, then he may take resort to clause (c) again keeping a foothold thereon and applying the provisions when applicable so as to arrive at a just figure. In so far as clause (c) is concerned, it provides determining the estimated present cost of erection of the building minus depreciation and adding to it estimated market value of the site and of any land attached to the building, from which 5 per cent of the sum total represents the gross annual amount. Now it is known that the cost of erection of buildings keep rapidly changing, the rates of depreciation are minimal and the estimated market value of the site and any land attached to the building goes sky rocketing. The whole thing is inchoate in clause (c). The employment of this clause, as preferred by the learned counsel for the Corporation, on the prospect of legitimate expectancies of a higher revenue divident, and a justified measure to meet the cost of running day to day affairs of the Corporation, which, at the Bar, were stated to be bordering on bankruptcy, cannot be permitted. The Legislature designedly made clause (c) apply only in the situation when the gross annual value of the building cannot be determined under clause (b). (Para 22)

Hukam Chand *vs.* State of Punjab and others 1979(1) I.L.R. 124.

Lt. Col. Mischeal A. R. Skinner and others *vs.* Municipal Committee, Hansi and others, 1969 P.L.R. 205.

(*Over-ruled*).

Writ petition under Articles 226/227 of the Constitution of India praying that :—

(*a*) *an appropriate writ, order or direction for quashing the impugned orders dated 31st January*, 1984, *and 20th May*, 1985, *Annexures P-4 and P-6, respectively be quashed*;

(b) *any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case be issued for assessment of the annual rental value from* 1982-83 *onwards in view of the Division Bench Judgment reported as* 1985 *Punjab* 287;

(c) *the directions be issued to quash the notice dated* 16*th October,* 1982, *Annexure "P-2" and the respondent No.* 2 *be directed to refund the House tax for the years* 1982-83, 1983-84, *and* 1984-85, *recovered more than Rs.* 6,000 *of annual rental value;*

(d) *filing of the certified copies of annexures "P-1" to "P-6" and prior notices to the respondents be dispensed with; and*

(e) *the records of the case be summoned from the Respondent No.* 2 *and the writ petition be allowed with costs.*

It is further prayed that the operation and implementation of the order dated 31*st January,* 1984, *Annexure "P-4", and order dated* 20*th May,* 1985, *Annexure "P-6", be stayed and the recovery of House Tax more than the annual rental of Rs.* 6,000 *in respect to Property No.* 2096-*E/XV situated at Head Water Works, Amritsar, be stayed during the pendency of the writ petition.*

Amarjit Markan, Advocate and Sunil Chadha, Advocate, *for the petitioners.*

R. S. Bindra, Sr. Advocate with Miss. Renu Bala, Advocate, *for the respondents.*

JUDGMENT

M. M. Punchhi, J.—

(1) These are 19 matters which have been admitted to be heard by a Full Bench. Two are Civil Writ Petitions Nos. 2175 and 5488 of 1986 and seventeen are Letters Patent Appeals Nos. 264, 287 to 294, 321 to 326, 342 and 343 of 1986.

(2) The Municipal Corporation, Amritsar (hereafter referred to as 'the Corporation') is the contesting party on one side in these matters. And the contestants on the other side are house-tax payers. Their dispute with the Corporation and its officers is with regard to the method of the assessment of house-tax under the provisions of section 93 of the Punjab Municipal Corporation Act, 1976

(hereinafter referred to as 'the Corporation Act'). The house-tax payers rely on a Division Bench decision of this Court in *Punjab Concast Steel Ltd., Ludhiana* v. *The Municipal Corporation, Ludhiana and another* (1), and on the other hand the Corporation relies on a Division Bench decision in *Hukam Chand* v. *The State of Punjab and others* (2). To begin with, in the first of such cases i.e., CWP No. 2175 of 1986, the Motion Bench found a conflict in the afore-referred to two decisions and thus admitted the case to a Full Bench, vacating interim stay. Likewise, another Motion Bench followed suit in CWP No. 5488 of 1986 and ordered the said case to be heard with CWP No. 2175 of 1986 by a Full Bench. Here also the stay was vacated, but an undertaking of the learned counsel appearing for the Municipal Corporation was recorded that if as a result of the decision of the writ petition, any amount of tax paid for the year 1986-87 becomes refundable to the petitioner, the same shall be refunded to the petitioner with interest at the rate of 18 per cent per annum. The 17 Letters Patent Appeals are against a common judgment of a Single Bench of this Court, which were also admitted by the Motion Bench to a Full Bench and ordered to be heard with CWP No. 2175 of 1986. The Single Bench had applied *Punjab Concast Steel Ltd.'s case* (supra) in allowing the writ petitions of the house-tax assessees, remitting the cases back for taking decision under clause (b) of Section 93 of the Corporation Act. It is the Munnicipal Corporation, Amritsar, who is the Letters Patent Appellant in these cases. This is how these matters are placed before us as a bunch.

(3) For the purposes of disposing of these matters, we shall take up facts from Civil Writ Petition No. 2175 of 1986. The petitioner, Banarsi Dass Mahajan, is the owner of a property numbered 2096-E/XV situated at Head Water Works, Amritsar. The annual letting value of this property was determined at Rs. 6,000 with effect from 1st April, 1975,—*vide* order Annexure P-1 passed by the Administrator, Municipality, Amritsar, under the Punjab Municipal Act, 1911 (hereinafter referred to as 'the Municipal Act') as by that time the Corporation Act had not come into vogue. The Corporation Act came into force with effect from 31st December, 1976. It appears that the annual rental value so determined at the rate of Rs. 6,000 per annum continued applying in the succeeding years. On 16th October, 1982 however, a notice was sent by the Corporation to the petitioner under section 103 of the Corporation Act, declaring

(1) AIR 1985 Pb. & Hy. 287.

(2) 1979(1) ILR 124.

its intention to enhance the annual rental value to Rs. 21,210 for the year 1982-83. The petitioner filed written objections. The Executive Officer of the Corporation rejected the objections of the petitioner, treating the property as a single self-occupied unit, and determined its annual rental value at Rs. 21,210 apparently under section 93(c) of the Corporation Act. This figure was arrived at by the method devised in section 93(c) read with the provisos. The petitioner filed an appeal before the Divisional Commissioner, Jalandhar Division, Jalandhar, contending that the assessment of the annual letting value should have been under clause (b) of section 93 of the Corporation Act, on the basis of the rent which could reasonably be fetched under the provisions of the East Punjab Urban Rent Restriction Act (hereafter referred to as 'the Rent Act'). The Commissioner repelled the contention and affirmed the assessment,—*vide* order dated May 20, 1985, Annexure P-6. It is to challenge the said order that CWP No. 2175 of 1986 has been filed.

(4) The defence of the Corporation in nutshell is that the property is self-occupied, it has not been let out and there is no question of its annual letting value being determined under clause (b) of section 93, that the Rent Act has no applicability and that the assessment was rightly made under clause (c) of section 93 of the Corporation Act.

(5) In the remaining 18 cases as well the buildings involved are self-occupied by the owners, be they residential or non-residential or partly residential and partly non-residential. So the fate of these 19 cases would be common, the foundation facts being basically identical.

(6) The sole question which requires to be determined in these cases is how to determine the house-tax due on the buildings in the self-occupation of the petitioners and the answer to this question will sequely settle the conflict in the Division Bench cases in *Hukam Chand's* case and *Punjab Concast Steel Ltd.'s* case (supra). In both these cases, *Devan Daulat Rai Kapoor and others* v. *New Delhi*

Municipal Committee and another (3) was employed and distinguished, in *Hukam Chand's case* and beneficially applied in *Punjab Concast Steel Ltd.'s case* (supra).

(7) The Municipal Act came into force in the then State of Punjab (before the partition of the country) on October 1, 1911. Amritsar Municipality was created shortly thereafter. Decades later, the Rent Act came into force in 1949. When the Corporation Act came into force with effect from December 31, 1976, the shadow of the Municipal Act and the Rent Act hung over it. The similarities, distinctions and prominent provisions in the aforesaid three Acts would be worthwhile to be noticed at this juncture.

(8) Section 61(1) of the Municipal Act, *inter alia,* authorises the Municipal Committee to impose a tax payable by the owner on buildings and lands not exceeding 15 per centum of the annual value, provided that in case of lands and buildings occupied by tenants in perpetuity, the tax shall be payable by such tenants. It is evident that it is a direct tax on the owner of the building or land. The expression "annual value" has been defined in section 3(1) thereof, which would be adverted to at a later stage. On the other hand, section 90(1)(a) of the Corporation Act authorises the Corporation to levy taxes on lands and buildings. Section 91(1)(c) provides that save as otherwise provided in the said Act, taxes on lands and buildings in the City shall consist of a general tax of not more than fifteen per cent of the rateable value of lands and buildings within the city, provided that the general tax may be levied on a graduated scale, if the Government determines. The government has been given the power to exempt from the general tax lands and buildings of which the rateable value does not exceed the prescribed limit under section 91(2) of the Corporation Act. 'Rateable value' has been defined in section 2(46) of the Corporation Act, to mean the value of any land or building fixed in accordance with the provisions of the Act and the bye-laws made thereunder for the purpose of assessment to property taxes. Section 93 of the said Act provides the

(3) AIR 1980 SC 541.

procedure for determination of rateable value of lands and buildings assessable to taxes. This provision too would be taken note of a little later. For the sake of clarity, Section 116 of the Delhi Corporation Act, 1957 (hereafter referred to as the 'Delhi Act') interpreted in *Devan Daulat Rai Kapoor's* case (supra) too would have to be taken note of. Thus, it becomes prominently evident that the tax is now on lands and buildings; distinct from a tax on the owners of lands and buildings as was the case in the Municipal Act. The tax now in that way is indirect, for lands and buildings by themselves are incapable of paying taxes.

(9) As said before, lands and buildings in the municipal area of Amritsar do attract the provisions of the Rent Act. That Act defines 'rented land', 'building', 'residential building', 'non-residential building' and 'scheduled building', as well as 'tenant' and 'landlord' since that measure has to cater to different situations. Section 4 thereof provides determination of fair rent. Fair rent thereunder has to be fixed in accordance with the principles laid down therein regarding rented lands and buildings. Thus. fair rent of a building or rented land once fixed is normally unalterable and stays at that rate. The Controller has to fix it on an application by the tenant or landlord. Section 5 provides that the fair rent fixed under section 4 cannot be increased except in the circumstances mentioned therein. Section 6(1) prohibits a landlord from claiming anything in excess of the fair rent of a building or rented land. Any landlord contravening section 6(1) in claiming or receiving any premium or other like sum in addition to fair rent or any rent in excess of such fair rent, shall be punishable under section 19 with imprisonment which may extend to two years and with fine, on a complaint or a report by the Controller.

(10) Now it is time to juxtapose and notice the concept of '*annual value*' under section 3(1) of the Municipal Act, 'rateable value' under the Delhi Act and the 'rateable value under section 93

of the Corporation Act:

Punjab Municipal Act

(1) 'annual value' means—

(a) in the case of land, the gross annual rent at which it may reasonably be expected to let from year to year:

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:—

(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

Delhi Corporation Act

116. *Determination of rateable value of lands and buildings assessable to property taxes.*

(i) 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 equal to 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

Punjab Municipal Corporation Act

93. *Determination of rateable value of lands and buildings assessable to taxes.*—Subject to the rules, if any, made by the State Government in this behalf, the rateable value of any land or building assessable to taxes specified in section 91 shall be—

(a) in the case of land, the gross annual rent at which it may reasonably be expected to let;

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

(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

(b) The water tax or the scavening 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, the rateable value thereof shall not exceed the annual amount of the standard rent so fixed.

(2) The rateable value of any land which is not built upon but is capable of being built upon and of any land on

(b) in the case of any building the gross annual rent at which such building, together with its appurtenances

Punjab Municipal Act	*Delhi Corporation Act*	*Punjab Municipal Corporation Act*
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:	which a building is in process of erection shall be fixed at five per cent of the estimated capital value of such land.	and any furniture that may be let for use for enjoyment therewith, may reasonably be expected to let, subject to the following deductions:—
(i) such deduction not 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 herewith;		(i) such deduction not exceeding 20 per cent of the gross annual rent as the Commissioner 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		(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);

under 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 1.—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 left by the same contract or by different contracts and if by different contracts whether such contracts are made simultaneously or at different times.

(iii) where land is let with a building, such deduction, not exceeding 20 per cent, of the gross annual rent, as the Commissioner 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 annual rent.

Explanation 1.—For the purpose 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 2.—The term "gross annual rent" shall not include any tax payable by the owner in respect of which the owner and tenant have agreed

Punjab Municipal Act	*Delhi Corporation Act*	Punjab *Municipal Corporation Act*
Explanation 2.—The term "gross annnual 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.		that it shall be paid by the tenant.
(c) in the case of any house 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:	(3) All plant and machinery contained or situate in or upon any land or building and belonging to any of the classes specified from time to time by public notice by the Commissioner with the approval of Standing Committee, shall be deemed to form part of such land or building for the purpose of determining the rateable value thereof under sub-section (1) but save as aforesaid no account shall be taken of the value of any plant or machinery contained or situated in or upon any such land or building."	(c) In the case of any 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 eracting the building less such amount as the Commissioner may deem reasonable to be deducted on account of depreciation (if any), to the estimated market value of the site any any land attached to the building:
Provided that—		Provided that—
(i) in the calculation of the annual value of any premises no account shall be taken of any machinery thereon;		(i) in the calculation of the rateable 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."

(ii) when a residential building is occupied by the owner or is not let the rateable value shall be fifty per centum of the annual market rent prevalent at the time of assessment in the locality for similar accommodation:

Provided further that in respect of any land or building the fair rent whereof has been fixed under the law relating to rent restriction for the time being in force the rateable value thereof shall not exceed the annual amount of the fair rent so fixed or the actual rent for which the same has been let, whichever is higher."

(11) Ordinarily we would have examined the question which of the two clauses, whether Clause (b) or clause (c) of section 93 of the Corporation Act would apply to determine the house-tax due on the buildings in the self occupation of the petitioners first on principle and then turn to the authorities cited on the subject, but we are reversing that order because the field thereof has been widely cultivated. So we would begin with the case law first.

(12) *The Corporation of Calcutta* v. *Smt. Padma Debi and others* (4), the basic judgment on the point. The words 'reasonably' and 'to let' in the context of the Calcutta Municipal Act were explained therein. The word 'reasonably' was explained to signify 'in accordance with reason' and the expression 'to let' was spelled from the dictionary meaning, to mean 'grant use for rent or hire'. The definition of 'annual value' in section 127(a) of the Calcutta Municipal Act, 1923, was the same as in section 3(1)(b) of the Punjab Municipal Act, 1911 and of the 'rateable value' under section 93(b) of the Corporation Act. The Supreme Court emphasised the use of the word 'reasonably' in the definition and pointed out that since it was penal for the landlord to receive any rent in excess of the standard rent fixed under the Act, the landlord could reasonably not expect to receive any higher rent in breach of the law and that it was the standard rent alone which the landlord could *reasonably* expect to receive from a hypothetical tenant because to receive anything more than that would be contrary to law. But the 'standard rent' as was latent could only come in when there was a tenancy at a given time and it was or could be settled on the application of either the landlord or tenant. It is noteworthy that in that case the standard rent of the building had in fact been fixed under the Act and since it was penal for the landlord to receive any rent higher than the rent fixed under the Act, the landlord could reasonably not expect to receive anything more than the standard rent from his tenants even though the tenants existing may have contracted to pay more than the standard rent. It is in these circumstances that it was held that the annual value of the building could not exceed the standard rent.

(13) The *Calcutta Corporation's* case (supra) became a much employed tool for litigation in this Court. A string of self-occupiers of buildings kept approaching this Court maintaining that they were liable to pay house-tax under the Municipal Act on the basis of the

(4) A.I.R. 1962 S.C. 151.

annual value as determined under section 3(1)(b) and pressed into service the aforesaid precedent. Thus, the first authoritative pronouncement was by a Division Bench of this Court in *Lt. Col. Mischeal A. R. Skinner and others* v. *Municipal Committee*, Hansi and others (5). The view taken by S. B. Capoor and R. S. Narula, JJ. (as their Lordships then were) was that the use of the phrase "may reasonably be expected to let" in clause (b) merely indicated that in determining the annual value the Municipal Committee is not bound to fix it at the rate of contractual annual letting and could justifiably determine the annual value at a higher or lower rate than that. The Bench had apparently in mind compulsive, designed, or surreptitious letting. In that situation, it was held that the municipality could be justified in holding that the property may *reasonably be expected* to be let at the fair rent determined by the Rent Controller though it was actually shown to have been let out at a higher or lower rate. But this principle was confined to those cases where properties were actually let out at one point of time or the other. The ratio of the *Calcutta Corporation's* case (supra) was not applied to those buildings which had never been let out, as in those cases fair rent was not determinable sans a tenancy and there was no one who was competent to have it settled from the Rent Controller under section 4 of the Rent Act, since there never was a landlord or a tenant of the building or rented land. It is for that reason that the Division Bench ruled that annual value of such property which had never been let and was in self occupation of the owner had to be fixed in accordance with the principles laid down in clause (c) of section 3(1) of the Municipal Act.

(14) A. R. Skinner's case (supra) was followed in *Hukam Chand* v. *State of Punjab and others* (6), by a Division Bench consisting of S. C. Mital and J. V. Gupta, JJ. So a sharp bend was made in the sense that *Calcutta Corporation's case* (supra) came to the rescue only of owners of tenanted or once tenanted premises and not to the owners of never tenanted and self-occupied properties.

(15) Then came on the scene *Devan Daulat Rai Kapoor and others* v. *New Delhi Municipal Committee and another* (7). Therein the Supreme Court elaborately traced the history of the judge-made

(5) 1969 P.L.R. 205.
(6) 1979 (1) All India Land Laws Reporter, 124.
(7) A.I.R. 1980 S.C. 541.

law on the subject starting from *Calcutta Corporation's case* (supra) downwards till date. The batch of cases before the Supreme Court related to properties in Delhi and New Delhi. In the former, the Delhi Municipal Corporation Act, 1957, applied and in the latter the Punjab Municipal Act, 1911. The 'annual value' under section 3(1)(b) of the Municipal Act was spelled out as if equated with the 'rateable value' defined in section 116 of the Delhi Municipal Corporation Act, 1957, by a process of reasoning and the difference noted therein was treated as immaterial. While laying down the correct position of law, to determine the 'annual letting value' of self-occupied properties, the Supreme Court made the following significant observations :—

> "10. Now it is true that in the present cases the period of limitation for making an application for fixation of the standard rent had expired long prior to the commencement of the assessment years and in each of the cases, the tenant was precluded by section 12 from making an application for fixation of the standard rent with the result that the landlord was lawfully entitled to continue to receive the contractual rent from the tenant without any let or hindrance. But from this fact—situation which prevailed in each of the cases, it does not follow that the landlord could, therefore, reasonably expect to receive the same amount of rent from a hypothetical tenant. *The Existing tenant may be barred from making an application for fixation of the standard rent and may, therefore, be liable to pay the contractual rent to the landlord, but the hypothetical tenant to whom the building is hypothetically to be let would not suffer from this disability created by the bar of limitation and he would be entitled to make an application for fixation of the standard rent at any time within two years of the hypothetical letting and the limit of the standard rent determinable under the Act would, therefore, inevitably enter into the bargain and circumscribe the rate of rent at which the building could reasonably be expected to be let. This becomes absolutely clear if we take a situation where the tenant goes out and the building comes to be self-occupied by the owner.* It is obvious that in case of a self-occupied building, the annual value would be limited by the measure of standard rent determinable under the Act, for it can reasonably be presumed that no hypothetical

tenant would ordinarily agree to pay more rent than what he could be made liable to pay under the Act. *The anomalous situation which would thus arise on the contention of the Revenue would be that whilst the tenant is occupying the building the measure of the annual value would be the contractual rent, but if the tenant vacated and the building is self-occupied, the annual value would be restricted to the standard rent determinable under the Act. It is difficult to see how the annual value of the building could vary according as it is tenanted or self-occupied.* The circumstance that in each of the present cases the tenant was debarred by the period of limitation for making an application for fixation of the standard rent and the landlord was consequently entitled to continue to receive the contractual rent, cannot therefore, affect the applicability of the decisions in the Life Insurance Corporation's case and the Guntur Municipal Council's case and it must be held that the annual value of the building in each of these cases was limited by the measure of the standard rent determinable under the Act". (Emphasis supplied)

And then again concludingly observed as follows :—

".....We are, therefore, of the view that even if the standard rent has not been fixed by the Controller, *the landlord cannot reasonably expect to receive from a hypothetical tenant anything more than the standard rent determinable under the Act and this would be so equally whether the building has been let out to a tenant who has lost his right to apply for fixation of the standard rent or the building is self-occupied by the owner.* The assessing authority would, in either case, have to arrive at its own figure of the Standard rent by applying principles laid down in the Delhi Rent Control Act, 1958, for determination of standard rent and determine the annual value of the building on the basis of such figure of standard rent." (Emphasis supplied)

(16) I. S. Tiwana. J. of this Court, sittingly, in *M/S J.C.T.M. Ltd. Phagwara* v. *The State of Punjab and* another (8), requested to

(8) 1984 C.L.J. (C&Cr) 223.

apply the rule laid down in *Devan Daulat Rai Kapoor's case* (supra) to the case of a self-occupant textile mills of its various constructions, including residential quarters for its staff and labourers. The Hon'ble Judge turned down the request observing that there never was any controversy before the Supreme Court in *Devan Daulat Rai Kapoor's* case as to whether the annual rental value of the property in question was assessable under clause (b) or clause (c) of Section 3(1) of the Municipal Act. He fully endorsed *A. R. Skinner's* case (supra) because it was asserted before him that the property involved therein had never been rented out. In passing it was commented by him that it was otherwise inconceivable that if the annual rent of every house or building was to be determined on hypothetical basis, then which would be the properties of which annual value or gross annual rent would be determinable under clause (c) of section 3(1). He took the view that if for all buildings whether self-occupied or rented out the gross annual rent had to be assessed on hypothetical grounds, clause (c) of section 3(1) would sure be rendered otiose, and to avoid that situation *A. R. Skinner's* case (supra) was held applicable to determine annual value of the petitioner's property under section 3(1)(c) of the Municipal Act and the ratio of *Devan Daulat Rai Kapoor's* case (supra) of the Supreme Court was left aside. The same ratio was applied by I. S. Tiwana and K.P.S. Sandhu, JJ. in *M/S Navdeep Theatre Pvt. Ltd. and others*, v. *Commissioner, Jullundur Division and others* (9). These decisions were followed by various Division Benches and Single Benches of this Court.

(17) Then came on the scene *Punjab Concast Steels Ltd. Ludhiana* v. *The Municipal Corporation Ludhiana and another* (10), a decision rendered by a Division Bench consisting of R. N. Mittal J. and one of us (M. M. Punchhi, J.) That was a case where the property of a public Limited Company was in its self-occupation and had never been let out. The point arose identically in the same manner, as to whether clause (b) or clause (c) of section 93 of the Corporation Act, applied. The petitioner, as was expected, pressed into service *Devan Daulat Rai Kapoor's* case (supra) and the Corporation in defence put up *A. R. Skinner's* case (supra) and *Hukam Chand's* case (supra) as also the Single Bench decision in *M/S J.C.T.M. Ltd's* case (supra). The Bench decided in favour of the petitioner wholly relying on the ratio of *Devan Daulat Rai Kapoor's* case (supra) by-passing the two Division Bench decisions

(9) 1986 Punjab Legal Reports and Statutes (Vol. I) 772.

(10) A.I.R. 1985 Punjab and Haryana 287.

afore-referred to, cited by the Corporation, and expressed no opinion on the ratio of the Single Bench case afore-referred to, since a Letters Patent Appeal was stated to be pending against that. The Bench observed as follows :—

> ".....Cl. (b) provides that the rateable value is the gross annual rent at which a building may reasonably be expected to let minus the deductions provided therein. The words, 'reasonably be expected to let' are very important. These words with regard to the building subject to Rent Act mean the amount of rent which the owner is entitled to charge in accordance with the provisions of the Rent Act from his tenant. It is not necessary that the building should have remained on rent with a tenant or there should be a tenant ready to take it on rent. It is also not necessary that fair rent of the building should have been fixed by the Rent Controller. If there is no tenant to take the building on rent it has to be determined taking into consideration what the landlord can reasonably get from a hypothetical tenant. The relevant consideration is not the rental value of the building in the open market but the rental value which the owner is entitled to realise under the Rent Act. The reason is that in the towns where Rent Acts are applicable, the owner is not entitled to charge anything more than the fair rent. Cl.(c) is applicable in case the gross annual rent of the building cannot be determined under Cl.(b)."

The Bench, in rejecting the contention of the Corporation's counsel for applying the first or the second proviso to section 93, observed as follows :—

> ".....No doubt the two provisos say that for determining the rateable value in certain circumstances the fair rent fixed by the Court is to be ignored. However, the present case is not covered by either of the said provisos. From these provisos, it cannot be inferred that the provisions of Rent Act are only applicable to the cases where fair rent of the building has been fixed and not otherwise. In Cl.(b) the words "reasonably be expected to let' are a pointer to the fact that the provisions of Rent Act are to be

taken into consideration for determining the rateable value and existence of the provisos (by printer's error, provisions) is immaterial."

18. Now the conflict is evident. One militant view is that in order to avail of the benefit of *Devan Daulat Rai Kapoor's* case (supra) and *A. R. Skinner's* case (supra), the building, like on the facts of that case, must be let out, as otherwise, the jurisdiction of the Rent Controller cannot be invoked under section 4 of the Rent Act and the other militant view is that it is not necessary that the building should have remained tenanted, or there should be a tenant ready to take it over on rent, even not necessary that fair rent of the building should have been fixed by the Rent Controller. The naked point for consideration before this Bench thus is what is the correct position of law when a building has never been tenanted and is in the self-occupation of an owner or not tenanted by him, when asked to pay house-tax under the provisions of the Corporation Act ?

19. Reverting back to the juxtaposed provisions mentioned in the earlier part of the judgment, it is noticeable that in both the Punjab Municipal Act as well as the Delhi Corporation Act, the two provisos which occur in the Punjab Municipal Corporation Act, were not there and thus the interpretation of the provisions of the afore-mentioned two statutes given in *Devan Daulat Rai Kapoor's* case (supra) may not be wholly attracted lest it render the provisos *otiose*. These provisos have, in their perspective, to be understood and the role they play in the process in the assessment of house-tax. It is noticeable that these two provisos are placed in the sequence after the substantive clauses (a), (b) and (c) are placed in section 93. Learned counsel for the Corporation was at pains to contend that both the provisos in their respective fields are in the nature of substantive provisions or exceptions independent of the main clauses (a), (b) and (c) and that leaving aside those clauses, the Corporation was competent to make decisions there under ignoring those clauses. We have analysed and pondered over the matter plainly and sceptically but we cannot be persuaded to let the provisos obliterate the main clauses which comprise the provision. Our reasons in that regard follow hereafter. We will make an attempt to dissect the provision. Clause (b) of section 93 of the Corporation Act pertains to all kinds of buildings, be they residential, non-residential, commercial, partly one or the other. They may be self-occupied by the owner, not let out by the owner but

not self-occupied, or let out by the owner at the time when the question in fixing the rateable value of such building arises. If let out, the measure of rent being charged is easily ascertainable. Now clause (b) has identical provisions to compare with in the Punjab Municipal Act and the Delhi Corporation Act and this has specifically been interpreted in *Devan Daulat Rai Kapoor's* case (supra). And here has been introduced the creation of a hypothetical tenancy, the introduction of a hypothetical tenant who would pay rent as permissible under the Rent Laws applicable in the city, be it called the fair rent, the standard rent or any such expression. If the fair rent or standard rent of such building has already been fixed by an order of the authorities under the Rent Act at a time when there existed a tenancy in such building, that would be the rent which the building may reasonably be expected to let. Upto this point there is no conflict in any of the decided cases in this Court. But in case the fair rent or the standard rent has not been fixed or could not be fixed by the Rent Controller because no land-owner or owner asked for it while it was let out, and the land-owner cannot now ask for it since it is self-occupied, the burden was put by the Supreme Court in *Devan Daulat Rai Kapoor's* case (supra) on the Commissioner to determine the fair rent/standard rent in accordance with the principles of Rent Laws and it ordered assessing the building therein on that basis. In either of the two ways, if the fair rent was capable of being assessed, then it had to be reduced by the three deductions mentioned in the provision in the light of the two explanations which follow thereafter as part of clause (b). It is only when it is not possible to determine such hypothetical rent or fair rent under clause (b) that resort has to be made to clause (c) to arrive at a figure by the method mentioned therein. If straightaway the provisos as exceptions are brought in without resort to clauses (b) and (c), then those two clauses would be rendered redundant and such an interpretation must in all events be avoided. So in either case there would be a rateable value determined either under clause (b) or clause (c) and once that is done, then can one apply the provisos, for they may or may not apply to one or the other ascertained rateable value.

20. Now with regard to the provisos, it is evident that sub-clause (i) of the first proviso is not of any use to the controversy in hand. Sub-clause (ii) of the first proviso says that when a residential building is occupied by the owner or is not let out, the rateable value shall be 50 per centum of the annual market rent prevalent at the time of assessment in the locality for similar

accommodation. The proviso only covers the case of a residential building occupied by the owner or the one which is not let. The proviso does not cover the cases of other buildings rateable value of which is required to be determined under clause (b) and if it cannot be determined under clause (b), then under clause (c). With regard to a residential building which is in occupation of the owner or is not let, the method provided is that the Commissioner shall discover a similar accommodation in the locality and find out its annual market rent prevalent at the time of the assessment. Now the word 'prevalent' occurring in the provision ordinarily means the rent which is most common, general or widespread, which is actually being paid by a tenant of similar accommodation to a landlord. Now here again there is no room for the argument that annual market rent prevalent in that event at the time of the assessment means that rent which hypothetically a tenant would be willing to pay for similar accommodation in the locality in total violation of the Rent Laws. The Legislature in its wisdom, alternately taking into account the imbalances actually caused by defiance of the Rent Laws, advisedly put the rateable value at 50 per cent of the said annual market rent for similar accommodation in the locality. Significantly, the question cannot be allowed to be posed as to what would be the expected rent of the accommodation in self-occupation of the land-owner or what would a tenant be prepared to pay to the land-owner if the building was let. Rather the question posed would be directed to the similar accommodation in the locality, if there is one having a tenant actually paying rent for that similar accommodation, at the time of the assessment, and on discovering its annual market rent the Commissioner would be required to halve it in order to determine the rateable value of the other building in self-occupation of the owner as if the rent of similar accommodation after being halved was transposed to such building in occupation of the owner. That appears to us the true interpretation of the proviso. But if there is no similar accommodation in the locality or none has been rented out and it is impossible for one reason or the other to determine the rateable value under the said proviso, then the proviso exhausts itself and then revertingly shelter has to be taken in the parent provision i.e. clause (b) for determination of rateable value. And then if it cannot be so determined under clause (b), then resort has to be made to clause (c).

21. So far as the second proviso is concerned, that applies to all lands and buildings, self occupied or otherwise. In all situations, where the fair rent has been fixed under the law relating to

the Rent Restriction Act for the time being in force, the rateable value cannot be permitted to exceed the actual amount of the fair rent so fixed. This principle may apply to a building which is rented out or to a building which is self-occupied. The latter part of the proviso applies to cases in which the building has actually been let out. The actual rent may in such case be less than the fair rent or higher than the fair rent. If it is less than the fair rent, then the rateable value shall be fixed at that rate. But if it is higher than the fair rent, it has been provided that the rateable value shall be fixed at the actual rate. Now here at this instance comes the rub on the basis of *Devan Daulat Rai Kapoor's* case (supra). If in the face of the fair rent already fixed the landowner is charging more rent, then he makes himself liable to be prosecuted under section 6 read with S. 19 of the Rent Act. In that situation under clause (b) he cannot be expected to let out his premises a rent higher than the fair rent. To that extent *Devan Daulat Rai Kapoor's* case (supra) is clear on the subject. However if the fair rent has not been fixed by the Rent Act authority, then the actual rent for which the building has been let could validly be a basis for determining the rateable value thereof even if it turns out to be higher, but uptill the amount of fair rent is determined by the Rent Act authority. But if under clause (b) the Commissioner has undertaken the exercise to determine the fair rent as enjoined under *Devan Daulat Rai Kapoor's* case (supra) it may turn out to be higher or lower than the rent actually being charged. If it turns out to be higher, the rateable value under the second proviso would loweringly be the actual rent for which the same has been let out, and if lower, then higheringly the actual rent at which the same has been let out. This proviso does not present any difficulty or even to affect the principle laid down to determine whether clause (b) or clause (c) would be applicable.

22. Before leaving this aspect of the case, it is significant to note that clause (c) of section 93 of the Corporation Act has an identical provision as in the Municipal Act and the Supreme Court in *Devan Daulat Rai Kapoor's* case (supra) was not unaware of that provision when examining the whole provision. Repeatingly and summingly, we hold that the Commissioner must first do the exercise under clause (b) to determine at what figure the building may reasonably be expected to let in accordance with the principles of the Rent Laws, give permissible deductions in the light of the

Explanations, deviate to sub-clause (ii) of the first proviso if he can but keep a foothold on his deliberations under clause (b), apply both the provisos in the above manner and then determine the annual rateable value. If he is unable to do so for any substantive reason, then he may take resort to clause (c) again keeping a foothold thereon and applying the provisos when applicable so as to arrive at a just figure. In so far as clause (c) is concerned, it provides determining the estimated present cost of erection of the building minus depreciation and adding to it estimated market value of the site and of any land attached to the building, from which 5 per cent of the sum total represents the gross annual amount. Now it is known that the cost of erection of buildings keeps rapidly changing, the rates of depreciation are minimal and the estimated market value of the site and any land attached to the building goes sky rocketing. The whole thing is inchoate in clause (c). The employment of this clause, as preferred by learned counsel for the Corporation, on the prospect of legitimate expectancies of a higher revenue dividend, and a justified measure to meet the cost of running day to day affairs of the Corporation which, at the Bar, were stated to be bordering on bankruptcy, cannot be permitted. The Legislature designedly made clause (c) apply only in the situation when the gross annual value of a building cannot be determined under clause (b). As stated before, to both clauses do the provisos apply but as an integral part the said two clauses, and that too as safeguards, so that neither the Corporation nor the tax-payer is dealt with unjustly. In the event of conflict between two successful determinations, the determination which is favourable to the tax-payer would normally have to govern the field, and we hold it so, well settled as it is as a principle.

23. Now back to the case law we find that the expression "may reasonably be expected to let" cannot be given a dwarfed meaning, as was done in *A. R. Skinner's* case (supra) only to mean that such expression gives power to the Municipal Committee to fix assessment of tax at a higher or lower annual rent as compared to the contractual rent when suspicious of collusion, contumacy and the like. But in this sphere as well, the Supreme Court stepped in *Balbir Singh* v. *Municipal Corporation, Delhi and others* (11), to extend the law laid down in *Devan Daulat Rai Kapoor's* case (supra) holding that the rateable value of a building, whether tenanted or self occupied, is limited by the measure of standard rent

(11) A.I.R. 1985 S.C. 339.

arrived at by the Commissioner by applying the principles laid down in the Rent Act and cannot exceed the figure of the standard rent so arrived at by the Commissioner. This is a direct blow to *A. R. Skinner's* case (supra). Thus, an upper limit of the standard rent has been put to the rateable value.

24. It is significant to note that in *Devan Daulat Rai Kapoor's* case (supra), their Lordships of the Supreme Court were declaring the law, even though on the facts of that case the building was let out, and the tenants precluded by the bar of limitation from asking the Rent Controller assess the standard rent; yet went far far ahead on the supposition that if those tenants were to vacate the premises and the landlord come back in possession, he could not expect and demand from any tenant more than the standard rent due. It is in this situation that their Lordships observed that in case of a self-occupied building, no hypothetical tenant would ordinarily agree to pay more than the standard rent which he would be liable to pay under the Act and such a presumption was raised in order to determine the annual value of a building in the self occupation of the owner. The ratio of the Supreme Court, in these circumstances, cannot even be imagined to be obiter, for their Lordships of the Supreme Court were deciding not the fate of Devan Daulat Rai Kapoor but of others also who were self-occupants of their respective buildings. Even the obiter of the Supreme Court cannot be ignored by a High Court, but here is a positive declaration of law introducing the concept of hypothetical tenant in the context of the expression "may reasonably be expected to let".

(25) Interpreted this way, clause (b) is paramount even if the building is self-occupied. As was directed in *Devan Daulat Rai Kapoor's* case (supra), the Commissioner would be bound in law to arrive at the figure of fair rent by applying the principles of the Rent Act, which provisions undeniably are applicable in the urban area of Amritsar over which the Corporation has jurisdiction. It is only on a positive finding that the gross annual rent of the building cannot be determined under clause (b), that resort can be had to clause (c) to section 93 of the Corporation Act.

(26) Learned counsel for the Corporation then maintained that section 4 of the Rent Act, whereunder fair rent can be determined by the Controller, the increase in fair rent when admissible under section 5, and section 6 debarring the landlord from claiming anything in excess of fair rent, were provisions which were vital for

buildings existing in the late thirties, but the mechanics in these sections are not virile to cope up with the situation regarding buildings constructed thereafter and the future buildings being built now in the town of Amritsar and it would be well-nigh difficult to assess fair rent. The argument has just to be noted and rejected. It is almost settled law in this Court that where the Controller cannot determine fair rent under section 4 for one reason or the other and the building is tenanted, the contractual rent has been ruled to be the fair rent. See in this connection, Civil Revision No. 1324 of 1976 (*Smt. Ram Piari and others* v. *Jagan Nath*) decided by a Division Bench of this Court on October 30, 1981. It was settled in that case that in the absence of a definition of the expression "fair rent" the same had to be determined in accordance with the prescribed method in section 4 of the Rent Act and as per sub-section (2) thereof a Rent Controller had first to fix the basic rent and thereafter allow specified increases mentioned in sub-sections (3) to (5) to arrive at the figure of fair rent. It has further been held in that case that where the parties failed to prove by evidence produced the basic rent as required by section 4(2)(a)(b), the only course open to the authorities under the Rent Act is to fix the agreed rent as the fair rent of the premises. This has been the consistent view of this Court, and a decision of a learned Single Judge in *Surinder Kumar and others* v. *The State of Punjab and others* (CWP No. 5716 of 1981) decided on May 6, 1983, is also on the point. So in a given case the agreed rent is the fair rent.

(27) Attention was also invited to *Meera Devi* v. *Birbal Dass* (12), a case which had arisen under the Rent Act. That was a case in which at the instance of the tenant fair rent of a shop at Hisar had been fixed. The Rent Controller found the evidence adduced by the tenant insufficient to enable him to fix the basic rent under sub-section (2) of section 4 of the Act. He then upheld the contractual rent of Rs. 175 per mensem as fair rent plus tax. On appeal, however, the District Judge, Hisar, fixed Rs. 4.50 per mensem as fair rent of the building. The point then arose that when material improvements were made in the shop after 1st January, 1939, the date crucial in determination of fair rent, the improved structure was not there in the year 1938. In that view of the matter, it was asserted that it could not be held that the prevailing rate of rent in the locality for the same or similar accommodation during 12 months prior to 1st January, 1939, in similar circumstances, was

(12) A.I.R. 1977 S.C. 219.

Rs. 3 per mensem, as had been adjudged by the District Judge. In answer to that, the Supreme Court took the view that if the building is a developed one, made so by substantial alterations, additions or new construction, then the fixation of fair rent under section 4 may have to be made on different considerations. But if there has been no development of the locality since after 1st January, 1939, then the prevailing rate of rent for the same or similar accommodation as was there before 1st January, 1939, will have to be taken into account in fixing the fair rent. Proceeding further to decide the case on merits, the Court was of the view that the agreed rent relied upon by the Rent Controller was exorbitantly high and the rent fixed by the District Judge was shockingly low. They found it difficult in terms of section 4 to draw a mean between the two and make any other kind of just and proper order. Reluctantly and hesitatingly, their Lordships affirmed the finding of fact arrived at by the District Judge. That judgment indirectly supports the view that if the contending parties do not adduce evidence towards fixation of basic rent, then fair rent is determinable on the basis of the agreed rent. The order of the Rent Controller was upset in the said case, because on facts, the District Judge could find that there was material to determine the basic rent. That finding was a finding of fact which their Lordships of the Supreme Court did not choose to upset. The view thus taken by the Supreme Court cannot be taken as a view deprecating the fixation of the agreed rent as fair rent. The only comment thereto was that it was exorbitantly high. Had the facts justified otherwise and the agreed rent was not, in the opinion of their Lordships of the Supreme Court, exorbitant, then on facts they might have upheld the agreed rent as fair rent. Nothing in this precedent can be read as if fixation of fair rent on the basis of agreed rent is barred by virtue of this authority.

28. Even if there is a tenancy, or there is not, the concept of the hypothetical tenant still has a brooding influence in the determination of the fair rent. To repeat we say that clause (b) of section 9 has first to be exhausted and when gross annual letting value can in no event be determined under the said clause, then the gross annual value may be determined under clause (c), and both the provisos, and in particular the first proviso cannot be read in isolation so as to render otiose the main provisions of clauses (b) and (c). Viewed in this light, we are of the confirmed view that *Punjab Concast Steel Ltd's case* (supra) was rightly decided and the decisions to the contrary i.e. *A. R. Skinner's* and *Hukam Chand's cases* (supra) and other

cases of the kind are no good law in view of *Devan Daulat Rai Kapoor's* case (supra).

29. Before parting with the judgment, we deem it necessary to explain the doubt expressed by I. S. Tiwana, J. in *M/s J. C.T. M. Ltd's* case (supra) as he was of the view that if annual rent of every house or building was to be determined on hypothetical basis, then what would be the properties of which annual value or gross annual rent would be determinable under clause (c). Some instances, like, temples, churches etc. were then given by the learned counsel for the property owners, but those did not appeal to him. It is in these circumstances that he opted for the view expressed in *A. R. Skinner's* case (supra) in order to avoid the provisions of clause (c) being rendered redundant. In our view, the scope of the enquiry before the Commissioner is very wide. For any justifiable reason put on record, he can express his inability, even on introduction of the hypothetical tenant, to say, he could not determine the gross annual rent of the building in the self-occupation of the landowner under clause (b). His order in that regard, supported as it is expected to be, with reasons, is amenable to the jurisdiction of the appellate Courts and this Court under Articles 226/227 of the Constitution. What is not capable of being done under clause (b) has been left to be done under clause (c), the latter being the residuary.

30. For the foregoing reasons, we allow writ petitions Nos. 2175 and 5488 of 1986, remitting the cases back to the Commissioner for re-determination of the rateable value under clause (b) of section 93 of the Corporation Act and if for any justifiable reason, he cannot determine such value under clause (b), he may then resort to the provisions of clause (c) of section 93 of the said Act. In the same light, we dismiss Letters Patent Appeals Nos. 264, 265, 287 to 294, 321 to 325, 342 and 343 of 1986 but slightly modify the directions of the Hon'ble Single Judge so that the Commissioner, as in the case of writ petitions, can, for justifiable reasons, resort to the provisions of clause (c) of section 93 of the Corporation Act in the situation mentioned earlier.

31. In view the complexity of the question and the raised expectancies of the parties, we would prefer not to allow costs in these matters.

SCK.