APPELLATE CIVIL

Before S. K. Kapur, J.

MAM CHAND,—*Appellant*

versus

MOHAN LAL KHANNA,—*Respondent*

S.A.O. 125-D of 1962

1965

January, 20th.

Delhi Rent Control Act (LIX of 1958)—Ss. 6(b)(2)(b) and 9(4)—Rent of a part of building—Whether can be determined under S. 6(b)(2)(b).

Held, that the standard rent of a part of a building can be fixed by applying the provisions of section 6(b)2(b) of the Delhi Rent Control Act, 1958. It cannot be said that merely because the premises let is a part of the building it is not possible to fix the standard rent thereof under that provision and, therefore, standard rent should be fixed under section 9(4) of the Act. Section 6(b)2(b) fixes the standard rent at 7½ per cent per annum of the reasonable cost of construction of the premises plus the market price of the land which means that where premises let is a part of a building, 7½ per cent per annum of the reasonable cost of construction of that part of the building. Under section 6(b)(2)(b) what is to be determined is not the actual cost of construction in all cases, but "reasonable cost of construction". The actual cost incurred may be reasonable or may not be reasonable. But the requirement of the statute is to determine the reasonable cost of construction and it is, therefore, not necessary that the cost should be capable of determination to a penny.

Petition under Section 39 of the Delhi Rent Control Act, 1958 from the order of Shri Pritam Singh, Rent Control Tribunal, Delhi, dated the 12th April, 1962 modifying that of Shri B. L. Mago, Controller, Delhi, dated the 30th October, 1961, fixing the standard rent.

MOHAN BEHARI LAL, ADVOCATE, for the Petitioner.

G. R. CHOPRA, ADVOCATE, for the Respondent.

ORDER

Kapur, J.

KAPUR, J.—The facts in this second appeal from order No. 125-D of 1962, against the judgment of the Rent Control Tribunal dated the 12th April, 1962, admit of being stated in a moderate compass.

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Kapur, J.

The subject-matter of dispute is a godown comprising two rooms on the ground floor in building bearing municipal No. 1614 and situate in Darya Ganj, Delhi. It has not been disputed that the premises is non-residential. The construction of the premises in question started in beginning 1953 and was completed in about April, 1954. This finding of the Tribunal has also not been disputed. There has been some controversy as to whether it was the entire building which was constructed during this period or only the godown in dispute. I will advert to this controversy a little later. The godown was let to the tenant respondent Mohan Lal on the 1st of May, 1957. On 6th of November, 1959, he made an application for fixation of standard rent. The Rent Controller fixed the rent at Rs. 94.50 Paise per month for a period up to 31st of March, 1961. Both the parties appealed and the case was remanded to the Rent Controller with a direction to fix the rent also for the period subsequent to March, 1961. By order dated the 30th of October, 1961, the Rent Controller fixed Rs. 94.50 Paise as the standard rent for the period up to the 31st of March, 1961, and at Rs. 39 from 1st of April, 1961. The Rent Controller applied section 9(4) of the Delhi Rent Control Act and fixed the standard rent thereunder. Parties again went up in appeal. The Rent Control Tribunal upheld the decision of the Rent Controller regarding standard rent up to the 31st of March, 1961, but from 1st of April, 1961, revised the standard rent and increased it to Rs. 63.21 Paise. Rs. 94.50 Paise were fixed under section 6(2)(a) of the Delhi Rent Control Act, 1958, as according to the Tribunal the construction of the building was started in July, 1953 and completed in March, 1954. The Tribunal further found that agreed rent was Rs. 105 per mensem which included the house-tax as provided in the lease-deed. As the landlord was, in view of section 7(2) of the said Act, not entitled to realise house-tax from the tenant, the same was deducted from the said agreed rent of Rs. 105 per mensem and Rs. 94.50 Paise was fixed as the standard rent under section 6(2) (a) for a period of seven years from the date of completion. Regarding standard rent from 1st April, 1961, the Rent Control Tribunal came to the conclusion that section 9(4) was not applicable and the standard rent had to be fixed under section 6(b) (2) (b) of the said Act at 7½ per cent per annum of the aggregate of the reasonable cost of construction and the market price of the land comprised in the premises on the date of the commencement of the

construction. The Tribunal fixed the price of the land at Rs. 100 per square yard and of the construction at Rs. 6,912.

Mr. Mohan Behari Lal, the learned counsel for the appellant; submits that the Tribunal was wrong in reducing the agreed rent for first seven years from the date of completion of building from Rs. 105 per mensem to Rs. 94.50 Paise per mensem. When confronted with a clause in the lease-deed that Rs. 105 will include the house-tax and with section 7(2) of the Act, the learned counsel did not rightly press the contention. The main contention of Mr. Mohan Behari Lal is that the Tribunal erred in applying the provision of section 6(b) (2) (b) of the Act and should have applied section 9(4) thereof. According to the learned counsel the premises let being a part of a bigger building, it is not possible to determine the standard rent of the premises on the principles set forth under section 6. The short question that arises, therefore, for consideration is the meaning to be given to the words "where for any reason it is not possible" in section 9(4). No decided case has been brought to my notice. No one has probably ever affected to define what precisely the term "not possible" means, nor is an express definition possible. Context must in all cases determine its meaning. How then are the words to be interpreted in section 9(4) of the Act. Obviously not in the manner in which the learned counsel for the appellant would like me to interpret. He submits that where the cost to be determined is only of a part of the building, the exact and precise cost of that part can never be determined with the result that section 9(4) will always apply in such cases. In my view it is not necessary that the cost should be capable of determination to a penny. Under section 6(b) (2) (b) what is to be determined is not the actual cost of construction in all cases, but "reasonable cost of construction." The actual cost incurred may be reasonable or may not be reasonable. But the requirement of the statute is to determine the reasonable cost of construction. I do not agree with Mr. Mohan Behari Lal that since the premises in question is a part of a bigger building reasonable cost of construction thereof cannot be determined at all. As a matter of fact expert evidence was led showing the cost of construction of the premises. A reference to the definition of the term "Premises" in section 2(1) lends support to the view I am taking. Premises have been defined to mean, "any building or a part of a building"

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which is, or is intended to be, let separately for use as residence or for commercial use or for any other purpose and includes. * * * * * * Section 6(b) (2) (b) fixes the standard rent at 7½ per cent per annum of the reasonable cost of construction of the premises plus the market price of the land which means that where premises let is a part of a building 7½ per cent per annum of the reasonable cost of construction of that part of the building. If the legislature had thought that reasonable cost of construction of a part of a building was incapable of determination, section 6(b) (2) (b) would not have been made applicable to such cases at all and would have been confined to cases where the premises let were a complete building. There may be many cases where it is not possible to determine the standard rent. It is neither necessary nor advisable to enumerate them. It is enough to say that merely because the premises let is a part of the building, it cannot be said that it is not possible to determine the standard rent under section 6 of the Act. Each case will have to be answered as it arises. If for instance I dropped a coin into deep water, it may be possible by some extraordinary device to recover it, yet it cannot be said to be possible in the language of every day life. The answer to question whether it is possible to recover the coin will depend on the context in which it is asked. In this view the Tribunal rightly applied the provisions of section 6 of the Act for determining the standard rent.

Mr. G. R. Chopra submitted that the entire building was not constructed between 1953-54 but it was only the part in occupation of the tenant that was constructed in 1953-54 and therefore section 9(4) could in no case apply and it is possible to determine the cost of construction of that part of the building. Mr. Mohan Behari Lal on the other hand contends that the entire building was reconstructed in 1953-54 and the Tribunal has so found. In the view that I have taken it is not necessary to consider this question.

Mr. Mohan Behari Lal then attempted to take me through the evidence on the cost of construction and of the land and urged that the Tribunal ought to have fixed the cost of construction and market price of the land at higher figure. The Tribunal has considered the entire evidence and come to a particular conclusion which is based

on evidence. In an appeal under section 39, Delhi Rent Control Act, I have no jurisdiction to reconsider a finding of fact based on evidence. There is no question of law much less a substantial question of law involved in the process of determining the reasonable cost of construction and the market price of the land comprised in the premises on the date of the commencement of the construction.

Mr. G. R. Chopra also raised a contention that all the legal representatives of the appellant who died on the 12th of February, 1964, have not been brought on record and, therefore, the appeal abates. According to Mr. Chopra, the appellant died leaving a widow and a son and the widow has not been brought on record. Mr. Mohan Behari Lal on the other hand contended that the widow had no interest in this property which devolved on the son alone. Application for bringing the legal representatives was filed on the 17th of March, 1964, and the said application was granted by this Court,—*vide* order, dated the 18th of March, 1964. No affidavit has been filed by the respondent, raising an objection that there are in existence other legal representatives who have not been brought on record. This case was heard on Friday, the 15th January, 1965 and Monday, the 18th January, 1965. The question of legal representatives being brought on the record was discussed on Friday and yet no affidavit has been filed even on Monday nor has the learned counsel asked for permission to file any affidavit. In the circumstances and in view of the fact that I have held against the appellant on all the points, I do not consider it necessary to go into this question. In the result the appeal fails and is dismissed with costs.

Civil Appeal No. 153-D of 1962 is a cross-appeal by the tenant. Mr. Mohan Behari Lal submits that the respondent in the appeal who was the appellant in S.A.O. No. 125-D of 1962 died on the 16th of February, 1964 and no legal representatives have been brought on record. Mr. Mohan Behari Lal, therefore, submits that the appeal has abated. Mr. Chopra does not dispute the contention of Mr. Mohan Behari Lal. This appeal will, therefore, also stand dismissed with costs.

B.R.T.