

(1985) 09 MP CK 0010
In the Madhya Pradesh High Court
Case No : M.P. No. 1972 of 1984

Ashok Printing Works (Press) and another	APPELLANT
Vs	
Rent Control Officer, Raigarh and others	RESPONDENT

Date of Decision : 27-09-1985

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 7

Citation : (1986) JLJ 562 : (1986) MPLJ 303

Hon'ble Judges : Gulab C. Gupta, J; B.C. Varma, J

Bench : Division Bench

Advocate : P.P. Naolekar, for the Appellant; Ravindra Kumar Shrivastava, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Varma, J.

The order in this petition shall also govern the disposal of Miscellaneous Petition No. 2488 of 1984 (Narendra Singh vs. Rent Controlling Authority, Raigarh and others).

The petitioners here and the petitioner in Miscellaneous Petition No. 2488 of 1984 are in occupation as tenants of certain houses situate within the limits of Municipal Council, Raigarh, their landlords being respondents 3 and 4 in this petition and respondent No. 3 in the other. These houses were assessed to tax by the Municipal Council on the basis of annual letting value. The assessment so made on the basis of annual letting value of the houses was objected to by one Basudev Modi as being too low. That objection was then allowed and the annual letting value was, consequently, increased. The petitioners objected to this increase in the annual letting value and to the consequent assessment of the taxes on the basis of such value principally on the ground that neither any notice nor any opportunity was given to them before the annual letting value was increased. They further submitted that there was no data or material on the

basis of which the annual letting value earlier fixed was thought to be low and warranted an increase. The petitioners after acquiring knowledge of this increase in the annual letting value objected but the Chief Municipal Officer rejected the objection on the ground that the petitioners had no locus standi to raise any objection which could be raised only by the landlord. These orders are Annexure-G in M.P. No. 2488 of 1984 and Annexures-H/1 & H/2 in M.P. 1972 of 1984. The petitioners are aggrieved by the increase in the annual letting value and, by the rejection of their objections and their contention is that since they are the persons directly affected by the increase in annual letting value, they are entitled to a special notice of hearing and should have been heard before the orders were passed.

Section 127 of the Municipalities Act provides for imposition of certain taxes including a tax payable by the owners of (he houses, buildings or lands situated within the limits of the municipality with reference to the annual letting value of the houses, buildings or lands. Section 126 defines the term "annual letting value". Section 129 onwards then details the procedure for imposition of (his tax. Section 136 requires the Chief Municipal Officer to give a public notice of the completion of the assessment list. Section 137 provides for the hearing of objection to such assessment and requires that at the time of the publication of the assessment list u/s 136, the Chief Municipal Officer shall give a public notice of a date not earlier than 30 days from publication of such notice by which objections to the valuation of the assessment of such list may be delivered at his office. Sub-section (2) of Section 137 requires the Chief Municipal Officer to give special notice to the owner or occupier of the property, if known, and if the owner or occupier is not known, to fix such notice on a conspicuous place of the property in all cases in which the property is for the first time assessed or the assessment is increased as a result of the increase in the valuation of the property. Section 139 relates to the provision for an appeal to the Civil Judge when the liability of any land or building to assessment or as to the basis or principle of assessment or when the amount of tax assessed is in dispute. S. 142 gives a finality to the assessment list and sub-section (2) of S. 146 requires the Municipal Council to arrange for a survey for the purposes of assessments of each part of the Municipality at least once in four years. By force of S. 147, the property tax leviable upon any land or building is to be paid by the owner thereof and the Explanation to that section says that for the purposes of that section a tenant of land or building or both under a lease for any period with a covenant for its renewal thereafter, shall be deemed to be owner thereof. According to S. 148, the tax so levied may be recovered from the occupier and in such case the occupier shall, in the absence of any contract to the contrary, be entitled to recover and may deduct the same from any rent then or thereafter due by him to the owner.

Shri P.P. Naolekar, appearing for the petitioners in both the petitions, with reference to the aforesaid provisions and the scheme of assessment including the right of the Municipal Council to recover the tax so assessed from the occupier of

the house, who in the present case are the petitioners, submitted that the petitioners should have been given a special notice under S. 137(2) of the revision of assessment list or of the proposed assessment. Learned counsel submitted that this is particularly so because the market value so determined shall directly affect the "standard rent" of the houses occupied by the petitioners as defined in S. 7 of the M.P. Accommodation Control Act and thus they would become liable to pay the increased rent. We are unable to accept the contention so raised on behalf of the petitioners.

The special notice under sub-sec. (2) of S. 137 to the owner or occupier of the property is to be given when the property is assessed for the first time or when there is an increase in the assessment as a result of increase in valuation of the property. In terms of sub-sec. (2) of S. 137, such special notice may be given either to the owner or occupier of the property, if known, and if not known, it would be affixed on a conspicuous place of the property. The provision only indicates that the person primarily liable, namely, the owner of the property, either directly or through the occupier of the property, should know the proposal to assess or to the increase of the assessment already made in order to enable him to raise an objection to the assessment. We do not see anything in sub-sec. (2) to indicate that this special notice has to be given apart from the owner to the occupier also where the property is in occupation of any person other than the owner. It is enough if such notice is given to the owner. It shall be due compliance with this mandate if the notice is even given to the occupier of the property. If the argument of the learned counsel is to be accepted, the word "or" appearing between words "owner" and "occupier" of the property, appearing in sub-section (2) of S. 137, shall have to be read as used conjunctively for which we find no justification. A distinction may be drawn between positive and negative conditions prescribed by a statute for acquiring a right of benefit. Positive conditions separated by the word "or" are read in the alternative out negative conditions connected by "or" are construed as cumulative and "or" is read as "nor" or "and". In *The Star Co. Ltd. Vs. Commissioner of Income Tax (Central), Calcutta*, the provisions contained in Explanation to S. 23A(i) of the Indian income tax Act, 1922, before it was amended by the Finance Act, 1955, came for consideration. The Explanation provided that a company shall be deemed to be a company in which the public are substantially interested if it was also proved that either any such shares have in course of the previous year been the subject of dealing on any stock exchange, or that the shares are in fact freely transferable by the holders to other members of the public. These two positive conditions were held to be in the alternative and proof of any one of the conditions only was held necessary. Again, in *Punjab Produce and Trading Co. Ltd. Vs. Commissioner of Income Tax, West Bengal II, Calcutta*, somewhat similar provisions contained in Explanation (b)(iii) to S. 23A(9) of the Indian income tax Act, 1922, as it stood prior to its amendment, again fell for consideration. Cls. (ii) and (iii) of the Explanation (b) were as follows:

(ii) the said shares were at any time during the previous year the subject of

dealing in any recognised stock exchange in India or were freely transferable by the holder to other members of the public; and

(iii) the affairs of the company or the shares carrying more than fifty per cent of the total voting power were at no time during the previous year controlled or held by less than six persons (persons who are related to one another as husband, wife, lineal ascendant or descendant or brother or sister, as the case may be, being treated as a single person and persons who are nominees of another person together with that other person being likewise treated as a single person:

Provided that in the case of any such company as is referred to in sub-section (4), this clause shall apply as if for the words "more than fifty per cent" the words "more than sixty per cent" had been substituted.

The Supreme Court observed that clause (ii) relates to a positive state of affairs whereas clause (iii) lays down negative condition. A negative condition appearing in clause (iii) is to be read as conjunctive. It was observed that word "or" is often used to express an alternative of terms defined or explanation of the same thing in different words. In the light of the principles so laid down in the aforesaid two decisions, the positive condition of giving special notice in sub-sec. (2) of S. 137 renders the use of the word "or" between the words "owner" and "occupier" of the property in the alternative and signifies that the special notice to either of the two, viz., the owner or the occupier would satisfy the requirement of that sub-section. This is more so because sub-section (1) requires a public notice to be given of a date not earlier than 30 days from the publication of such notice by which objection to the valuation or assessment in the list may be delivered at the office of the Chief Municipal Officer. This will enable the occupier to raise objection if he feels aggrieved by the proposal to assess or to revise the assessment. We, therefore, negative the contention that the petitioners as occupiers of the property (houses) were entitled to any special notice.

An argument was also raised that since the burden of the tax would be upon the petitioners as tenants, a special notice in terms of sub-section (2) of Section 137 should be given to them. This contention is based upon the terms of SS. 147 & 148 of the Municipalities Act, and S. 7 of the M.P. Accommodation Control Act. We are unable to accept this contention either. It is true that Sections 147 & 148 of the Municipalities Act permit the Municipal Council to recover the tax from the occupier. Section 148, however, further provides that in absence of any contract to the contrary, a tenant or occupier will be entitled to recover the same from the owner and may deduct the same from any rent then and thereafter due by him to the owner. Thus, the ultimate burden of the tax is on the owner of the building and, therefore, a notice to him alone will be sufficient compliance of provisions of sub-section (2) of Section 137.

A tenant of a house in occupation only derives his rights into the property from the owner and cannot have any right superior to that of the owner himself vis-a-

vis any third party. All the rights that he holds are that of a lessee and no more. Under these circumstances, after the special notice is served upon the owner, as required by S. 137(2) of the Municipalities Act, another such special notice to a tenant is not contemplated. For this reason also, the petitioners as tenants are not justified in challenging the assessment on the ground of want of special notice to them under S. 137(2) of the Municipalities Act.

It is true that revision in the market value of the property occupied by the tenant for the purposes of assessment of tax may in some cases adversely affect the tenant inasmuch as he may be required to pay a little higher rent in terms of section 7 of the M.P. Accommodation Control Act, 1961. This, however, can at best make them "a person aggrieved" and may permit them to challenge that assessment by proper proceedings and in the present case, by first filing an objection under sub-section (3) of Section 137 which permits "any person" dissatisfied with the valuation or assessment made to file an objection and thereafter by preferring an appeal u/s 139 of the Act, if necessary. That, however, in our opinion, will not permit the tenant in occupation like the petitioners, in the present case, to question the entire proceedings for want of special notice u/s 137(2). We are, therefore, of opinion that the petitioners cannot be heard to challenge the assessment on the ground of want of special notice u/s 137(2) of the Act. We hold that the assessment proceedings were proper.

The impugned orders show that due notice was given to the landlord/owner of the proposed increase in the annual letting value and consequent increase in the assessment of tax on the building. No objection was raised by the landlord. The annual letting value was, therefore, determined as proposed for want of any objection. We have on record the objection filed before the Chief Municipal Officer by the petitioners. There too the only objection raised by the petitioners was that the annual letting value should be determined only on the basis of rent paid by them and that the landlord got the market value increased only to harass the petitioners/tenants. There does not seem to be any substance in this objection. The substance of the objection is that the petitioners were not noticed of the proposed increase in the letting value of the house. It also appears that they failed to file any objection within the time specified in accordance with sub-section (3) of section 137. Their objections, therefore, have been rightly rejected.

The petitions fail and are dismissed. There shall be no order as to costs. Security amount be refunded to the petitioners.