
(1977) 11 DEL CK 0003
In the Delhi High Court
Case No : Civil Revision 418 of 1972

Ganga Ram

APPELLANT

Vs

Mohd. Usman

RESPONDENT

Date of Decision : 03-11-1977

Acts Referred:

Citation : AIR 1978 Delhi 107 : (1977) 13 DLT 204 : (1978) 1 ILR Delhi 139 : (1978) RLR 145

Hon'ble Judges : T.V.R. Tatachari, C.J.;Yogeshwar Dayal, J;Prithvi Raj, J

Bench : Full Bench

Advocate : S.R. Gupta, for the Appellant; Rajiv Bahl and Tara Chand Brij Mohan Lal, for the Respondent

Judgement

T.V.R. Tatachari, C.J.—This Civil Revision Petition has been filed under S. 25 of the Provincial Small Cause Courts Act (No. 9 of 1887) against the judgment and decree of Shri B. B. Gupta, Judge, Small Cause Court, Delhi, dated 4th Oct., 1972, in Suit No. 3343 of 1972.

2. The said suit was filed by the respondent herein, Shri Mohd. Usman, for recovery of Rs. 561.75p. alleging that the petitioner herein, Shri Ganga Ram, was a statutory tenant under him on a monthly rent of Rs. 60/-, and that the Municipal Corporation of Delhi assessed the rate able value of the house No. 369 at Rs. 1,720/- and imposed other charges like water tax, scavenging tax, fire tax, etc. amounting to Rs. 111.80p. It was also alleged in the plaint that the petitioner (tenant) had sublet the premises in his tenancy to three persons who were paying rent to him amounting to Rs. 78.25p. per month, that the said amount was taken into consideration by the Corporation in determining the rateable value of the premises, and that the Corporation determined the ratable value on the basis that the premises in dispute was fetching rent at the rate of R. 60/plus Rs. 78.26p. = Rs. 138.26p. It was submitted that the respondent (plaintiff) was entitled under S. 121(1) of the Delhi Municipal Corporation Act to recover from the petitioner (tenant) the difference between the amount of the

property tax levied on the property and the amount of tax which would be livable upon the premises if the said tax was calculated only on the amount of rent of Rs. 60/- per month paid by the petitioner (tenant) to the respondent without taking into consideration the sum of Rs. 78.26p. that was paid by the sub-tenants to the petitioner (tenant), that the respondent thus paid an extra sum of Rs. 561.75p. to the Municipal Corporation for the period 1969 to 1972, and that he was entitled to recover the same from the petitioner. The petitioner (tenant) contested the suit raising various pleas.

3. The suit was heard by Shri B. B. Gupta, Judge, Small Cause Court, Delhi. The respondent had earlier filed a similar suit for recovery of extra tax from the petitioner (tenant) for an earlier period, and the same was decreed. A Civil Revision was preferred by the petitioner (tenant) to this Court against the said judgment and decree and the same was dismissed by the judgment which has been marked as Exhibit P. 4 in the present suit. Observing that a perusal of the said judgment shows that the same pleas were taken by the petitioner (tenant) in the said earlier suit and had been overruled by the High Court, the learned subordinate Judge decreed the present suit. The petitioner. (tenant) has filed the present Civil Revision petition against that judgment and decree.

4. The present Civil Revision came up for hearing before B. C. Misra J. in the first instance. The learned Judge considered that the provision involved the interpretation of S. 121 of the Delhi Municipal Corporation Act and, Therefore, the Municipal Corporation of Delhi should be heard. He accordingly issued notice to the Corporation to show cause why it should not be imp leaded in the Revision. It appears from the record that though the learned Judge did not subsequently pass any order impleading the Corporation, Mr. C. L. Chaudhry, Advocate, entered appearance for the Corporation and was heard by the learned Judge at the time of the hearing of the Revision Petition. After hearing the counsel for the petitioner and the respondent and Mr. Chaudhry for the Corporation, the learned Judge noted that while S. 7(2) of the Delhi Rent Control Act provides that the landlord shall not recover from the tenant, by increase in rent or otherwise, the amount of any tax on building or land imposed in respect of the premises occupied by the tenant, S. 121(1) of the Delhi Municipal Corporation Act enables the landlord to recover from the tenant any excess of the amount of house tax which has been levied on the building and which is in excess of the amount which would be "leviable on the amount of contracted rent received from the tenant, and that there was thus a conflict between S. 7(2) of the Rent Act and S. 121(1) of the Corporation Act. The learned Judge also observed that in Gangs, Ram v. Mohd Usman (1971) 1 Delhi 639 H. R Khanna C. J. (as his Lordship then was) held that S. 121(1) of the Corporation Act would prevail upon S. 7(2) of the Rent Act, while a Division Bench of this Court, S. N. Andley C. J. and S. N. Shankar J., held in Sunderdess Tola Ram v Municipal Corporation of Delhi, C. M. (M) No. 197 of 1971, decided on 26th March, 1973, that the right given by S. 121(1) of the Delhi Municipal Corporation Act was set at naught by S. 7(2) of the Delhi Rent Control Act, and that the-provisions of the

Rent Act prevailed, it being a later and special statute. The learned Judge further observed that the decision of H, R. Khanna, C. J. was not noticed by the Division Bench. In the circumstances, the learned Judge considered that the questions involved in the case need to be decided by a larger Bench.

5. The learned Judge indicated the following two questions as arising for determination in the Revision:-

" (1). Whether the Municipal Corporation of Delhi can fix the annual " rateable value at a figure higher than the, amount of rent paid by the tenant to the landlord by taking into consideration the amount of rent paid by the subtenants to the tenant; and

(2) If so, whether the .landlord is en, titled to recover u/s 121 of the Corporation Act the enhanced amount of house tax from the tenant notwithstanding the contract of tenancy and the provisions of sub-s. (2) of Ss. 7 and 4 of the Delhi Rent Control Act?"

6. The Civil Revision Petition then came up before two of us (T. V. R. Tatachari, C.,J. and Yogeshwar Dayal J.) on 23rd March, 1977, and it was directed to be posted for hearing by a Full Bench of three Judges. That is how the Civil Revision Petition has now come up before us.

7. It is not clear from the order of the learned single Judge as to whether he wanted to refer only the two questions or the entire Civil Revision Petition to the larger Bench. However, the learned counsel for the parties are agreed before us that the entire Civil Revision Petition may be treated as referred for decision by us.

8. So far as the first question is concerned, it cannot be permitted to be raised and decided in the present case as the suit, as framed, was only for recovery of the excess tax amount from the tenant. The learned counsel for the petitioner (tenant) submitted that he would like to challenge the levy of the tax also and the first question may also be considered by us. In our opinion, he cannot be permitted to do so because the validity of the levy of the tax by the Corporation taking into consideration the rent paid by the subtenants to the tenant concerns the Corporation, but it was not made a party to the suit filed by the landlord. If the tenant wants to question the validity of the levy, he has to do so by an I appropriate proceeding making the Corporation a party. It is true that notice was issued by the learned single Judge to the Corporation in-this Civil Revision petition and and Mr. C.L. Chaudary appeared for the Corporation Yet, his appearance was only in response to add it as a party for the first time in the Revision Petition and deeded the validity of. the levy without giving it a proper opportunity to file a regular pleading in writing regarding the same. We, Therefore, informed the counsel that we win not consider and decide the first question.

"121. Apportionment of liability for property taxes when the premises assessed

are let or sublet-

(1) 11 any land or building assessed to property taxes is let, and its rateable value exceeds the amount of rent payable in respect thereof to the person upon whom under the provisions of S. 120 the said taxes are livable, that person shall be entitled to receive from his tenant the difference between the amount of the property taxes levied upon him and the amount which would be livable upon him the said taxes were calculated an the amount of rent payable to him.

(2).....

(3) Any person entitled to receive any own under this Section shall have for the recovery there the same rights and remedies as it such sum were rent payable to him by the person from whom he is entitled to receive the same."

"7. Lawful increase of standard rent in certain cases and recovery of other charges

(1)

(2) Where a landlord pays in respect of the premises any charge for electricity or water consumed in the premises or any other charge levied by a local authority having jurisdiction in the area which. is , ordinarily payable by the tenant. he may recover from the tenant the amount so paid by him; but the landlord shall not recover hum the tenant whether by means of an increase in rent or otherwise the amount of any tax on building or land imposed in respect of the premises occupied by the tenant.

9. In *Ganga Ram v. Mohd. Usman* (1971) 1 FLR 639, (supra) H. R, Khanna C. J, considered this question and rejected a contention urged before him that as the Delhi Rent Control Act, 1958 (59 of 1958) is a later enactment compared to the Delhi Municipal Corporation Act, 1957 (66 of 1957), the provision in the Delhi Rent Control Act should have an overriding effect. The learned Chief Justice pointed out that the bar created by the second part of S. 7(2) of the Delhi Rent Control Act pertains to "normal tax on the building". occupied by the tenant, while S. 121(1) of the Delhi Municipal Corporation Act "deals with the contingency where the property tax levied for the tenanted premises is more than the amount which would have been levied had the assessment been made on the basis of the rent payable by the tenant to the landlord", and that "as S. 121 is an enactment dealing specially with that particular contingency", its provisions would have an overriding effect on the basis of the well established principle that "a special provision would be given effect to the extent of its scope, leaving the general provision to control cases where the special provision does not apply" as enunciated in *The South India Corporation (P) Ltd. Vs. The Secretary, Board of Revenue Trivandrum and Another*, . The learned Chief Justice observed that "the fact that the Delhi Rent Control Act was enacted in time subsequent to the enactment of the Delhi Municipal Corporation Act would not make much material difference." He further observed that apart from the above,

he was of the view that the provisions of S. 7(2) of the Delhi Rent Control Act were not attracted to the case before him as those provisions dealt with tax on building or land imposed in respect of premises "occupied by the tenant". While in the case before him, as in the present case before us, the tenant of the premises in dispute had "ceased to occupy" portions of the premises which have been sublet by him. With respect, we are in complete agreement with the reasons given by the learned Chief Justice as well as with his view that S. 121(1) of the Delhi Municipal Corporation Act has an overriding effect over the provision in S. 7(2) of the Delhi Rent Control Act.

10. We have, however, to consider the decision in *Sunderdass Tola Ram v. Municipal Corporation of Delhi* (supra) (CM (M) No. 197 of 1971, D/- 26-3-1973) (Delhi). In that case, until the financial year 1969-70, the building in question was assessed to house tax on an annual rateable value of Rs. 50,240/-. In July, 1970, the Assistant Assessor and Collector of the Municipal Corporation of Delhi proposed to increase the rateable value from Rs. 50,240/- to Rs. 61,500/-, with effect from 1st April, 1970, on the ground that there were additions to the building and changes in the rent. The owners of the building filed their objections to the said proposal, stating that there had been no increase in the rent which was being recovered by them from the tenants, that some of the tenants had constructions in the said building without the permission of the owners-landlords or of the Building Department of the Municipal Corporation. The Deputy Assessor and Collector made a verification at the site and confirmed that the owners-landlords were getting the same rent as before from the various tenants. He, however, took the view that by reason of the unauthorised constructions made by the tenants, the accommodation and the property had gone up and so should be the rental value. In that view, he increased the annual rateable value to Rs. 57,890/-.

11. The owners-landlords preferred an appeal to the Additional District Judge, Delhi, but the same was dismissed. They then filed a petition in the High Court under Art. 227 of the Constitution of India praying that the enhancement of the rateable value may be quashed as being illegal and void. The petition was heard by a Division Bench of this Court, S. N. Andley C. J. and S. N. Shankar J. The Division Bench held firstly that under S. 124(3) of the Delhi Municipal Corporation Act, notice had to be given to the owner or to any lessee or Occupier of the building when the rateable value of the building was sought to be increased, but that no notice of the proposed increase was given by the Corporation to any of the tenants who had made the unauthorised constructions so the basis of which the annual rateable value was proposed to be increased and that in the absence of such notice no increase could be made. The Division Bench then observed that in that view of the matter, a contention urged on behalf of the Corporation that even if the annual rateable value was increased without giving notice to the tenants, the owners-landlords could not have any complaint as they could recover the additional tax from the tenants under S. 121(1) of the Delhi Municipal Corporation Act as well as the contention in reply

by the owners landlords that by reason of S. 7(2) of the Delhi Rent corporation Act .the additional tax on the building could not recovered by them from the the tenants, did not fall for determination. Yet the division Bench considered the conflict between S. 121(1) of the corporation Act and S. 7(2) of the Rent control Act and held that the Delhi Rent control Act is a latter and special statue dealing with the rights and liabilities between landlords and tenants and Therefore the Delhi Control Act would Prevail over the corporation Act as held by the Supreme Court in Asa Ram v. The District Board Muzaffarnagar Air 19 S. C. 48,where the Supreme Court approved the following observation in King v Justices of Middlesex (1831) 2 B and Ad 819

"Where, two acts of parliament which passed during the same session and were to come into operation the same day are repugnant to each other, that which last received the Royal assent must prevail and be considered pro tant a repeal of the other."

In that view, the Division Bench expressed its opinion that the right given by S. 121(1) of the corporation Act landlords was set at naught by S 7.(2) of the Rent Control Act

12. With due respect we are unable to to agree with the above opinion of the Division Bench. In the first place, the" said opinion was an obiter dictum. In the second place, the reason given by the Division Bench for its view, namely that the Rent Control Act was a later and special statute was: not correct. The Delhi Municipal Corporation Act was enacted in 1957. At that time, the Delhi and Ajmer Rent Control Act, 1952 (38 of 1952) was in force. it contained a provision in Section 6 thereof in terms identical with the provision in S. 7(2) of the Delhi

Rent Control Act, 1958. It is not, Therefore, correct to proceed on the basis that S. 7(2) of the Delhi Rent Control Act,1958, was a later provision. Further, as pointed out by H. R. Khanna C. J. in Ganga Ram v. Mohd. Usman (1971) 1 Delhi 639 (supra) the bar created by the provision in the Rent Control Act pertains to "normal tax on a building" occupied by a tenant, while S. 121(1) of the Corporation Act deals with the particular contingency where the property tax levied for the tenanted premises is more than the amount which would have been levied had the assessment been made on the basis of the rent payable by the tenant to the landlord. Thus, the provision in the Delhi Municipal Corporation Act was the later and special provision, and it would not be correct to proceed on the basis that the provision in the Rent Control Act is a later and special provision, while in fact S. 121(1) of the Corporation Act is a later and special provision. The decision in Gangs. Ram v. Mohd. Usman (supra) does not appear to have been brought to the notice of the Division Bench which had, there fore, no occasion to consider the reasons give by H. R. Khanna C. J. in the case of Gangs, Ram (supra). For all the above

reasons, we are of the opinion that the view expressed by the Division Bench .regarding the conflict between S. 121(1) of the Corporation Act and S.

7(2) of the Rent Control Act cannot be accepted as laying down the correct law.

13. For the foregoing reasons, our answer to the second question mentioned by B. C. Misra J. is in the affirmative and we accordingly hold that the land lord is entitled to recover under S. 121(1) of the Corporation Act the enhanced amount of house tax from the tenant notwithstanding the contract of tenancy and the provisions of S. 7(2) and Section 4 of the Delhi Rent Control Act. No other point or question was urged before us in the Civil Petition.

14. Civil Revision Petition No. 418 of 1972, Therefore, fails and is dismissed, but in the circumstances without costs.

15. Revision dismissed.