

(1971) 03 DEL CK 0002

In the Delhi High Court

Case No : Civil Revision Appeal No. 27D of 1966

Ganga Ram

APPELLANT

Vs

Mohd. Usman

RESPONDENT

Date of Decision : 22-03-1971

Acts Referred:

Citation : (1971) ILR Delhi 639

Hon'ble Judges : H.R. Khanna, C.J

Bench : Single Bench

Advocate : N.D. Bali, K.L. Budhiraja and D.C. Chatwal, for the Appellant;

Judgement

H.R. Khanna, C.J.

(1) This judgment would dispose of two Civil Revisions Nos. 27-D and 44-D of 1966 which have been filed by Ganga Ram against Mohd. Usman and are directed against the judgments and decrees of Additional Judge, Small Cause Court. The learned counsel for the parties are agreed that the question involved in the two revisions is the same and decision in Civil Revision No. 27-D of 1966 would also govern the other revision. In the circumstances, the acts of the suit giving rise to Civil Revision No. 27-D of 1966 only may be referred to.

(2) The petitioner has taken house No. 369 situated in Haveli Haider Kuli, Chandni Chowk, Delhi, from the respondent on a monthly rent of Rs. 60.00. Some portions of the house were let out by the petitioner to Bishamber Dayal, Dharam Chand and Rameshwar Dayal on monthly rent of Rs. 23.50 paise, Rs. 33.00 and Rs. 22.00 respectively. Portion of the house also continued to remain in the occupation of the petitioner. On account of the above sub-letting, the Delhi Municipal Corporation took it that the house was fetching a rent of Rs. 138.25 Paise per month. The rateable value of the house was fixed at the enhanced amount of Rs. 1717.00, The respondent went up in appeal against the above assessment but the appeal was dismissed by Shri P. N. Thukral, Additional District Judge, as per order dated September II, 1962. It was held that the

property had been correctly assessed and Mohd. Usman respondent would be entitled to recover from the tenant the difference between the amount of property tax levied upon him and the amount which would have been livable upon him if the said taxes were calculated on the amount of rent actually received by him. The respondent thereupon filed suit for recovery of Rs. 445.41 Paise against the petitioner on the allegation that the above amount represented the excess of the amount of house-tax, water-tax etc., paid during the period from February 7, 1961 to April 7, 1963, by the respondent to the Municipal Corporation over what would have been paid by him for the house in dispute had its rateable value been assessed on the basis of the monthly rent of Rs. 60.00, the actual amount received by the respondent from the petitioner. The respondent in this connection relied upon the provisions of Section 121 of the Delhi Municipal Corporation Act.

(3) The suit was resisted by the petitioner. He admitted that he had agreed to pay rent of Rs. 60.00 per mender but pleaded ignorance regarding the rateable value of the house as assessed by the Delhi Municipal Corporation. According further to the petitioner, the sub-tenants had been inducted into the house in dispute in pursuance of an agreement with the respondent. The petitioner denied his liability to pay the amount claimed by the respondent. Plea was also taken that the Court had no jurisdiction to try the suit and the same was barred in view of the provisions of the Delhi Rent Control Act. An objection on the ground of non-joinder of parties was also taken. The additional Judge Small Cause Court found that the following points arose for determination :-

"1. Whether this Court has no jurisdiction to try this suit? 2. Whether this suit is not competent as such? 3. Whether this suit is had for non-joinder of necessary parties ? 4. Whether the plaintiff is entitled to recover the suit amount ?"

(4) On points I and 2 it was found that the Court had jurisdiction to try the suit and the same was maintainable u/s 121(3) of the Delhi Municipal Corporation Act. The objection that the claim of the respondent could not be entertained in view of the provisions of section 7(2) of the Delhi Rent Control Act was repelled. On point No. 3 the finding was that there was no defect in the plaint because of non-joinder of necessary parties. On point No. 4 it was found that the actual amount due to the respondent on account of the excess paid was Rs. 422-39 Paise. Decree for recovery of Rs. 422.39 Paise with proportionate costs was accordingly awarded in favor of the respondent against the petitioner. In the other suit, which related to the subsequent period and which has given rise to Civil Revision No. 44-D of 1966, decree for recovery of Rs. 305.19 Paise was awarded in favor of the respondent against the petitioner.

(5) The first contention, which has been advanced on behalf of the petitioner in revision, is that the suits brought by the respondent were not maintainable. In this respect I find that according to section 120 of the Delhi Municipal Corporation Act, the property shall be primarily leviable, if the land or building is let, upon the Lesser. Subsections (1) and (3) of Section 121 of the said Act read

as under :-

121.(1) If 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 section 120 the said taxes are leviable, 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 if the said taxes were calculated on the amount of rent payable to him. (3) Any person entitled to receive any sum under this section shall have, for the recovery thereof, the same rights and remedies as if such sum were rent payable to him by the person from whom he is entitled to receive the same."

(6) Perusal of sub-section (1) (reproduced above) makes it manifest that in case the rateable value of land or building exceeds the amount of rent payable in respect thereof to the Lesser, the Lesser shall be entitled to receive from the lessee the difference between the amount of property taxes levied upon him and the amount which would be livable upon him if the said taxes been calculated on the amount of rent payable to him. Sub-section (3) clothes the Lesser for the purpose of the recovery of the excess amount of the property taxes with the same rights and remedies as if such sum were rent payable to him by the person from whom he is entitled to receive the same. The object of the above provision is to throw the burden on the tenant of the higher property tax for the tenanted premises to the extent of the difference between the amount of tax which would have been levied had the assessment been made on the rent payable by the tenant to the landlord and the tax actually levied. This would be so irrespective of the fact whether the liability to pay higher property tax arises because of any act of the tenant like subletting of the premises or not. The present case, however, of the respondent is much stronger. As the liability to pay enhanced amount of property tax was imposed upon the respondent by the Municipal Corporation because of the Act of the petitioner in subletting portions of the house in question, the respondent in my opinion, was entitled to be reimbursed by the petitioner for the excess property tax paid by the respondent in view of the provisions of section 121 reproduced above. It also seems inequitable that even though the petitioner is making a profit by subletting a portion of the house in dispute on a rent higher than the total rent paid "by him for the entire house, the liability for the payment of the excess property tax because of the sub-letting be thrown upon the respondent.

(7) Section 7(2) of the Delhi Rent Control Act, upon which alliance has been placed on behalf of the petitioner, reads as under:-

"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 from 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 :

(8) There follows a proviso but we are not concerned with that. According to the learned counsel for the petitioner, the words in the above sub-section that "the landlord shall not recover from 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", create a bar to the maintainability of the present suits. It is urged that there is a conflict between the provisions of sub-section (2) of section 7 of the Delhi Rent Control Act and those of section 121 of the Delhi Municipal Corporation Act. 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 provisions of the Delhi Rent Control Act, according to the counsel, should have an overriding effect. I am unable to accede to the above contention. Section 7(2) of the Delhi Rent Control Act is a general provision relating to the amounts which can be recovered by the landlord from the tenant in addition to the rent. According to the above sub-section, the landlord may recover from the tenant any amount paid by him (landlord) in respect of any premises on account of charges 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. Apart from the above, the sub-section creates a bar to the recovery by the landlord from the tenant of any amount of tax on building or land imposed in respect of the premises occupied by the tenant. The bar created by the sub-section pertains to normal tax on building or land in respect of the premises occupied by the tenant. Section 121 of the Delhi Municipal Corporation Act, however, 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. As section 121 is an enactment dealing specially with that particular contingency its provision, in my opinion, would have an overriding effect. It is well-established that a special provision should be given effect to the extent of its scope, leaving the general provision to control cases where the special provision does not apply. See *The South India Corporation (P) Ltd. Vs. The Secretary, Board of Revenue Trivandrum and Another*, . 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.

(9) Apart from the above, I am of the view that the provisions of subsection (2) of section 7 of the Delhi Rent Control Act are not attracted to the present case. Those provisions deal with tax on building or land imposed in respect of premises occupied by the tenant- In the present case, the petitioner, who is a tenant of the premises in dispute, has ceased to occupy portions of the premises which have been sublet by him and indeed the enhanced tax has been imposed because of the subletting of those portions. As such, the provisions of sub-section (2) of section 7 cannot be of much avail to the petitioner.

(10) It has then been argued that the assessment of rateable value made by the

Municipal Corporation for the house in question is liable to be quashed in view of the decisions of the Supreme Court in the cases of Corporation of Calcutta Vs. Life Insurance Corporation of India, , and The Guntur Municipal Council Vs. The Guntur Town Rate Payers" Association etc., . It is, in my opinion, not necessary to express any opinion on the point as to whether the assessment made by the Corporation regarding the rateable value of the house in dispute suffers from an infirmity. Suffice it to say, that the respondent challenged that assessment in appeal and the assessment was upheld by learned Additional District Judge as per order dated September 14, 1962. In the face of that order, the assessment in question is binding upon the respondent.

(11) The revisions consequently fail and are dismissed. In the circumstances, I make no order as to costs.