

(1971) 07 DEL CK 0013

In the Delhi High Court

Case No : Civil Revn. No. 493-D of 1965, from judgment and decree of H.L. Rander, Addl. J. Sm. C.C. Delhi, D/- 31-7-1965

Kaushalya Pahwa

APPELLANT

Vs

Ram Lal Suri

RESPONDENT

Date of Decision : 28-07-1971

Acts Referred:

Citation : AIR 1972 Delhi 126

Hon'ble Judges : B.C. Misra, J

Bench : Single Bench

Advocate : H.K.L. Sabharwal, for the Appellant; D.N. Bhasin, for the Respondent

Judgement

1. This revision petition filed by the plaintiff u/s 25 of the Provincial Small Cause Courts Act is directed against the judgment and decree of the Additional Judge. Small Cause Court, dated 31st July. 1965 by which the learned Judge has decreed the claim of the plaintiff partially and has refused her other reliefs to realise fire and scavenging taxes for a period of three years from.

2. The brief facts leading to the dispute are that the defendant is a tenant of the plaintiff in respect of the premises situated at Rohtak Road, Delhi, on a rent of Rs. 250/- per month which the defendant had not paid for a period of three months from February, 1964 to April. 1964 and the plaintiff instituted a suit for recovery which has been decreed by the Court below. Besides the rent, the plaintiff also claimed Rs. 109.35 on account of arrears of scavenging and fire taxes imposed by the Delhi Municipal Corporation which has been refused by the Court below in view of Section 7(2) of the Delhi Rent Control Act. The question raised in this revision is of general public importance.

3. Section 7(2) of the Delhi Rent Control Act reads as follows:-

"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 :

provided that nothing in this sub-section shall affect the liability of any tenant under an agreement entered into before the 1st day of January, 1952, whether express or implied to pay from time to time the amount of any such tax as aforesaid."

4. An analysis of the section shows that the water and electricity charges are the burden of the tenant and can be recovered by the landlord while house-tax imposed on the buildings is a burden of the landlord which cannot be shifted to the tenant unless there is agreement prior to 1st January, 1952. In the present case, the proviso to Section 7(2) of the Rent Act does not apply since the tenancy began on 3rd January, 1959 and it was agreed that the monthly rent would be Rs. 250/- exclusive of electricity and water charges. The question for consideration is whether the scavenging and fire taxes are the kinds of taxes like house-tax which must be borne by the landlord and whether in view of Section 7(2) of the Rent Act, their impact cannot be shifted to the tenant. Section 114 of the Delhi Municipal Corporation Act under which the said taxes have been imposed reads as follows :-

"114. (1) Save as otherwise provided in this Act, the property taxes shall be levied on lands and buildings in Delhi and shall consist of the following, namely :

(a) a water tax of such percentage of the rateable value of lands and buildings as the Corporation may deem reasonable for providing water supply in Delhi :

(b) a scavenging tax of such percentage of the rateable value of lands and buildings as the Corporation may deem reasonable for providing for the collection, removal and disposal by municipal agency of all filth and polluted and obnoxious matter from latrines, urinals and cesspools and for efficiently maintaining and repairing the municipal drains constructed or used for the reception or conveyance of such filth or polluted obnoxious matter.

(c) a fire tax of such percentage of the rateable value of lands and buildings as the Corporation may deem reasonable for providing for the expense necessary for the conduct and management of the Fire Service Undertaking and for the protection of life and property in the case of fire :

(d) a general tax -

(i) of not less than ten and not more than twenty per cent, of the rateable value of lands and buildings within the urban areas, and

(ii) on lands and buildings within the rural areas at such lower rates and with effect from such date as may be determined by the Corporation.

* * * * *

The other relevant provision is Section 115 of the Delhi Municipal Corporation Act which reads as follows:-

"115 (1) Save as otherwise provided in this Act, the water tax shall be levied only in respect of lands and buildings -

(a) to which a water supply is furnished from or which are connected by means of pipes with. Municipal water works; or

(b) which are situated in any portion of Delhi in which the Commissioner has given public notice that sufficient water is available from municipal water works for a reasonable supply to all the lands and buildings in the said portion.

(2) Save as otherwise provided in this Act, the scavenging tax shall be levied only in respect of lands and buildings -

(a) in which there is a latrine, urinal, cesspool, bathing place or cooking place connection with a municipal drain; or

(b) which are situated in any portion of Delhi in which the Commissioner has given public notice that the collection removal and disposal of all filth and polluted and obnoxious matter from latrines, urinals and cesspools will be undertaken by municipal agency;

Provided that the said tax shall not be levied in respect of any land or building in or upon which in the opinion of the Commissioner, no filth or polluted and obnoxious matter accumulates or is deposited.

(3) The fire tax shall be levied in respect of all lands and buildings in Delhi in respect of which the general tax is levied or would have been levied but for the exception specified in sub-section (4) :

Provided that the fire tax shall not be levied in any rural area until the Commissioner has given public notice that the Corporation has undertaken to render fire service in that area through the agency of the municipal fire-brigade.

* * * * *

A perusal of the statutory provisions indicates that the water-tax and scavenging tax are in the nature of fees for services rendered by the Municipal Corporation to the occupants within the meaning of the dictum laid down by the Supreme Court in *Ratilal Panachand Gandhi Vs. The State of Bombay and Others*, . They do not appear to have been levied for the purpose of augmenting the public revenues of the Corporation irrespective of the services as in the case of a general tax on lands and buildings. Section 117 of the Delhi Municipal Corporation Act prescribes that the water tax may be levied by measurement and not by rates to the value of the property and in the circumstances of the present case, there is a meter in the premises and so no claim has been made by the plaintiff-landlord for water charges and the dispute really hinges round

scavenging and fire taxes. So far as scavenging tax is concerned, it is livable only in respect of lands and building where there is a latrine, urinal, a bathing or a cooking place connected with the municipal agency and there is a proviso that scavenging tax shall not be levied in respect of lands and buildings where no filth or polluted or obnoxious matter accumulates or is deposited in the opinion of the Commissioner. This clearly shows that the tax has been levied on the use of the premises by the occupants and not on the existence of the building as such which may not be occupied and where no filth or obnoxious matter accumulates. Reference in this connection may also be made to Section 61(e) of the Punjab Municipal Act III of 1911 which applied to Delhi before the enforcement of the Corporation Act where a tax is livable for house scavenging and the same is specified to be payable by the occupier. I am, Therefore, of the view that the water tax and the scavenging tax tenant and they are covered by the provisions of sub-section (2) of S. 7 of the Rent Act under which the landlord can shift to the tenant the burden of electricity or water consumed or any other charge levied by a local authority ordinarily payable by the tenant. In my opinion, these taxes although known as such under the Municipal Act and although collected with respect of the valuation of the lands and buildings, are not in the nature of taxes on buildings or lands which are the burden of the landlord-owners irrespective of their occupations, however, do not apply to the fire tax levied by the Corporation which has no connection with the usage of the building and is imposed on the owner in lieu of the availability of the fire services and the exception in Section 115 which relates to rural areas does not apply in respect of urban properties.

5. As a result, I hold that the landlord - petitioner is entitled to recover from the tenant the scavenging tax, but not the fire tax and she would also have been entitled to recover the water tax but it has not been levied by the Corporation in respect of the buildings in dispute and has not been claimed in the suit. There are other tenants in the property and so the landlord has claimed only one-third of the tax from the tenant and has claimed it for period of three years. The same, Therefore, comes to Rs. 24.30 paise per annum and the claim of the landlord is valid to the extent of additional Rs. 72.90.

6. The landlord has further contended that the learned trial Court was in error in not awarding costs of the suit to the plaintiff, although she had served notice of demand and the tenant had failed to pay rent in response to the same. The costs, however, are in the discretion of the Court and I do not find any matter of principle involved in the award of costs and so I am unable to interfere with the said part of the order of the Court below.

7. The counsel for the tenant seriously contended that in revision u/s 25 of the Provincial Small Cause Courts Act, this Court has no jurisdiction to interfere with the findings of fact. In this case, it is not necessary for me to determine the scope of revision u/s 25, but applying any test whatever. I find that an important question of law has been thrown up for my decision and the revision is

competent and it is otherwise a fit case for exercise of revisional powers of this Court, Consequently I modify the decree of the trial Court and direct a further sum of Rupees 72.90 to be paid by the defendant to the plaintiff with proportionate costs thereon incurred in this Court, while the order for costs made by the lower Court will remain undisturbed.

8. Order accordingly.