(1974) 09 DEL CK 0015

In the Delhi High Court

Case No : Regular Second Appeal No. 210 of 1968

Municipal Corporation APPELLANT

Vs

Shambhu Nath RESPONDENT

Date of Decision : 13-09-1974

Acts Referred:

Citation : (1975) RLR 152

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Advocate : B. Dayal and Maheshwar Dayal, for the Appellant;

Judgement

Avadh Behari, J.

(1) Respondent shambu Nath is the owner of house No. 720-702, Chowri Bazar, Delhi. He has let that house to two tenants. One of the tenants is Lakshmi Shankar and other is Bata Shoe Co. The landlord owner, namely, the respondent has not taken any water connection in his own name in this house. The tenant Lakshmi Shanker has taken one water connection in the portion of his tenancy in bids own name for his own use.

(2) The appellant, Municipal Corporation of Delhi demanded from the respondent water tax. They served a notice dated 1lth of March 1966 claiming a sum of Rs. 184,98 by way of water tax in respect of this property. The respondent refused to pay on the ground that since there was a water connection in the property and Lakshmi Shankar was paying water bills in accordance with the consumption of water by him the landlord was not liable to pay the water tax.

(3) On llth May, 1966, the respondent instituted a suit for perpetual injunction against appellant corporation and claimed that the demand notice dated llth March, 1969, be quashed and the Corporation be restrained by a permanent injunction from charging or Realizing the water tax from him as demanded in that notice. The suit was dismissed by the trial Court.

(4) On appeal the learned Additional District Judge reversed the judgment of the trial Court and allowed the appeal on l8th of January, 196S. The Corporation has come up in second appeal to this Court.

(5) It is not disputed that there is a water meter in the said house in the name of Lakshmi Shankar who is the tenant in respect of a part of the premises. The landlord has not taken any water connection in his own name It is also not in dispute that the water connection is metered and Lakshmi Shankar is paying the water charges regularly in accordance with the water meter.

(6) The broad contention of the respondent is that if there is a water connection in a bulling then the landlord thereof is not liable to pay water tax. The counsel for the Corporation, however, urges that there in no exemption in favor of the landlord from payment of water tax if in a portion of that building some tenant takes a water connection in his own name.

(7) To appreciate the respective contentions of the parties the scheme of the Delhi Municipal Corporation Act 1957 (the Act) may be examined.

(9) Chapter Viii of the Act is entitled ''Taxation''. Section 131 provides for levy of taxes. One of the taxes which the Corporation is entitled to levy on lands and buildings is the property tax. Section 114 defines what is property tax. The property tax is a comprehensive term and contains within its scope (a) water tax, (b) a scavenging tax, (c) a fire tax and (d) a general tax. The water tax like the three other remaining taxes is to be levied on lands and buildings in Delhi. Section 115 provides that the water tax shall be levied only in respect of land 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.

(10) It is thus clear from this section that if the Corporation is unable to supply water in a part of Delhi they are not entitled to levy water tax in respect of the lands and buildings situated in that area or portion. The tax is levied when the Corporation is able to supply water. (Ss. 117 & 120 are then reproduced)

(11) The scheme of the above provisions clearly shows that water tax is a part of the property tax and is to be levied in respect of lands and buildings where the Corporation provides water supply. Water tax is to be, levied on a particular percentage of the rateable value of the land or building. It is open to the Commissioner to charge for the water supplied to the a particular building by measurement instead of levying water tax in respect of that building. The Commissioner may, in such cases as toe Delhi Water Supply and Sewage Disposal Committee may either generally or specifically direct, that instead of levying water tax, charges for water may be recovered. It is common ground that there is no general or specifiderecton issued by the Delhi Water Supply and Sewage Disposal Committee in respect of the building in question. It has not

been exempted by the Committee from payment of water tax.

(12) Now S. 117(3) provides :

"(3)A person who is charged for water supplied by measurement shall not be liable for payment of water tax, but any sum payable by him on account of water and not paid when it becomes due shall be recoverable by the Commissioner as an arrear of water tax under this Act."

(13) The counsel for the respondent strongly relies on this provision and contends that he is a person who is not liable for payment of water tax because the water is supplied by measurement to this building through a water connection obtained by Lakshmi Shankar. The counsel for the Corporation combats this argument and says that the exemption can be availed of only when the landlord of the building obtains water connection in his own for the use of the inmates of building but not where the tenant gets a water connection in his name for a portion of property. On an examination of this provision it appears to me that the contention of the Corporation is correct. Persons liable for property tax are mentioned in S, 120. they are the Lesser, the superior Lesser and the person in whom the right to let vests. If one of these persons says to the Corporation that he would like to have water for his own use and a connection may be provided and that he will pay the charges then in that case instead of levying water tax the Commissioner will only recover charges for the water supplied to that building by measurement. Under sub-section (3) that person is entitled to exemption from payment of water tax because that person has obtained a water connection in that building. But that person is contemporaneously subjected to a corresponding liability. The liability is that "any sum payable by him on account of water and not paid when it becomes due shall be recoverable by the Commissioner as an arrear of water tax under this Act."

(14) Now water tax is a property tax and property taxes are first charge on the premises on which they are assessed (S. 123). If the person primarily liable to pay property tax under S. 120 fails to pay the Commissioner can recover from occupiers (S. 822). But Sections 122 and 123 and 128 talk of the ''Person liable." For the default of the tenant to pay water charges the property of the owner cannot be made liable. The tenant''s liability will be his own. If the owner is not liable he cannot correspondingly claim benefit of exemption.

(15) The term "person" used in S. 187 is one of the persons mentioned in S. 120. He is primarily liable. Here in this case the tenant has obtained the water connection. In ray opinion the landlord is not entitled to take advantage and say that he will not pay the water tax.

(16) Let me illustrate this point. There is a multi-storeyed building in which may be 29 tenants. One of the tenants in a flat obtains a water connection in his own name. Will it then stand to reason that the entire property is exempt from the payment of water tax ? The counsel for the respondent has referred me to S. 132 which says that the premises owned or let to two or more persons in severally

are to be treated as one property. He says that since there is a water connection in the house and the property is to be assessed as one property the benefit of the water connection can also be taken by the landlord. I do not agree. The benefit can be obtained only when the water connection is taken by one of the persons mentioned in S. 120. Appeal allowed.

