

(1978) 12 AHC CK 0016
In the Allahabad High Court
Case No : S.A. No. 2533 of 1970

Vijai Shanker Lal

APPELLANT

Vs

Thakur Radha Krishna Ji Virajman and Another

RESPONDENT

Date of Decision : 18-12-1978

Acts Referred:

Transfer of Property Act, 1882 — Section 108
Uttar Pradesh Municipalities Act, 1916 — Section 149, 149(2), 149(3), 149(4),
166(1)

Citation : (1979) AWC 127

Hon'ble Judges : B.N. Sapru, J

Bench : Single Bench

Advocate : G.N. Verma, for the Appellant; S.C. Agarwal, for the Respondent

Final Decision : Allowed

Judgement

B.N. Sapru, J.—The Appellant Vijai Shanker Lal is a tenant of house No. 27/150 situate in Jagatganj, Varanasi. The house consists of two portions. One portion thereof is in the occupation of Sri Vijai Shanker Lal as an allottee under an order of allotment passed by the Rent Control and Eviction Officer, and the other portion is in his occupation without such an allotment order.

2. The present appeal arises out of suit No. 418 of 1958, and it relates to that portion of the house which is in the occupation of Vijai Shanker Lal under an allotment order in his favour.

3. The Respondent, who is the landlord, filed a suit for the eviction of the Appellant from the allotted portion of the house on the ground inter alia that the Appellant had made default in the payment of rent despite the service of a notice of demand as more than three months' rent was due from him.

4. The rent of the allotted portion of the house was fixed in suit No. 360 of 1957 with effect from 1st of July, 1958 at Rs. 3.75 P. per month. The first appeal in the case for fixation of rent being First Appeal No. 152 of 1959 was dismissed by the

judgment under appeal. The total amount of the arrears of rent claimed by the landlord was Rupees 378.75 p. from 1-9-1955 to 30-1-1957 at the rate of Rs. 15/-per month. Up-to August 1, 1957 the total was Rs. 343/-and from 1-8-1957 to 30-4-1958 at the rate of Rs. 3.75 P. per month the total was Rs. 33.75 P. Thus, the grand total comes to Rs. 378.75 P. The Appellant has admittedly made two payments; one of Rs. 225/-and the other of Rs. 105/-, making a total of Rs. 330/ -.

5. The Appellant claimed to be entitled to a set off of a sum of Rs. 151.37 P. which he claimed he had paid towards the municipal taxes under receipts Exs. A-5 and A-8.

6. The trial court dismissed the suit, but on appeal the appellate court decreed the suit and held that the Appellant was not entitled to have the sum of Rs. 151.37 P. paid by him towards municipal taxes adjusted as against the rent due by him to the landlord.

7. The appellate court, as it held that the Appellant was not entitled to have the adjustments made, came to the conclusion that he was in arrears of rent for more than three months, and hence has decreed the suit.

8. The short question in this appeal is whether the view of the appellate court in this regard is correct or not. The appellate court came to the conclusion that the Appellant had not produced any bill from the Municipal Board to show that payment of taxes had been demanded and, therefore, the Appellant could not in law claim to have the amount paid by him to the Municipal Board as taxes adjusted against the rent due by him to the landlord.

9. The second ground given by the lower appellate court for deciding against the Appellant was that the payment of municipal taxes had been made by the Appellant during the currency of the financial year and, therefore, the tax was not due to the Municipal Board and, as such, the Appellant could also not claim to set off the payment against the rent due by him to the landlord* In these circumstances, the appellate court came to the conclusion that the landlord had not failed to make payment of the taxes and, therefore, the Appellant was not entitled in law to pay the taxes to the Municipal Board and then get the same adjusted against the rent payable by him to the landlord.

10. u/s 108(g) of the Transfer of Property Act it is provided as follows:

If the lessor neglects to make any payment, which he is bound to make, and which, if not made by him, is recoverable from the lessee, or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor.

In the case of *Basant Lal Katyal Vs. Boora Ram Kapoor and Others*, it has been held that where there was a tenant in possession of an accommodation within a municipal area, on which certain taxes were leviable by the Board, those arrears of taxes are recoverable against the property in possession of the lessee as

contemplated by Clause (g) of Section 108 of the Transfer of Property Act. Therefore, if the tenant made the payment himself, he is entitled to deduct the same from the rent, in the exercise of his rights u/s 108(g) of the Transfer of Property Act.

11. u/s 166 Sub-clause (1) of the Municipalities Act as soon as a person becomes liable for the payment of any sum on account of tax, other than an octroi, or toll or any similar tax payable upon immediate demand, the board shall, with all convenient speed, cause a bill to be presented to the person so liable.

12. Section 169 of the Municipalities Act provides for the contents of a bill. Therefore Section 168 provides that if the sum for which a bill has been presented as aforesaid, is not paid into the municipal office, or to a person empowered by the regulation to receive such payments, within fifteen days from the presentation thereof, the board may cause to be served upon the person liable for the payment of the said sum a notice of demand in the form set forth in Schedule IV, or to the like effect. Thereafter, there are provisions for the realisation of the amount of the tax.

13. Coming back to Section 166, we find that under Sub-section (2) thereof it is provided that a person shall be deemed to be liable for payment of every tax and licence fee upon the commencement of the period in respect of which such tax or fee is payable.

14. Section 149 of the Municipalities Act provides for the liability for payment of certain taxes on annual value. u/s 149, the tax on the annual value of land or building shall have to be leviable primarily from the actual occupier of the property upon which the said taxes are assessed, if he is the owner of the buildings or lands or holds them on a building or other lease from the Government or from the Board, or on a building lease from any person. Sub-section (2) of Section 149 provides that in any other case the tax shall be primarily leviable as follows:

- (a) if the property is let, from the lessor;
- (b) if the property is sub-let, from the superior lessor;
- (c) if the property is unlet, from the person in whom the right to let the same vests.

Sub-section (3) of Section 149 provides that on failure to recover any sum due on account of such tax from the person primarily responsible to pay it, the Board may recover from the occupier of any part of the buildings or lands in respect of which it is due.

15. Thereafter Sub-section (4) of Section 19 provides that the occupier who makes any payment to the Board for which he is not primarily liable under the foregoing provisions, shall in the absence of any contract to the contrary, be entitled to be reimbursed by the person primarily liable.

16. The question then narrows down whether the landlord had failed to pay the sum due to the Board. Sub-section (3) speaks of the failure to recover any sum of tax by the Board from the person primarily liable. It was only when the tax was not paid by the landlord, that the tenant made the payments. The tenant has pleaded that he was being threatened with disconnection of water supply if he did not pay the tax. It is well known that Municipalities very often resort to cutting off of water supply in order to realise the tax.

17. u/s 166(2) of the Municipalities Act, the liability to pay the tax arises as from the commencement of the period in respect of which the tax is payable. Thus, the tax on the annual value becomes payable in law as from the date the financial year of the Board commences. Presentation of the bill is part of the machinery sections for the collection of tax. The machinery sections regarding collection do not impose the liability for the payment of tax by themselves. The liability is controlled by Sub-section (2) of Section 166.

In this case the tenant has admittedly paid the tax to the Board. The tax was assessed on the building in which the Appellant was residing as a tenant. The mere fact that the tenant Appellant has been unable to show that a bill was presented to the landlord and the landlord did not make payment, despite the service of the bill on him by the Municipal Board would not disentitle the Appellant from having made the payment of the tax to the Board.

18. The admitted position in this case is that after the tax is paid by the Appellant to the Board, or taking into account, while calculating the rent due to the landlord, the arrears will not be there. In these circumstances the view taken by the lower appellate court appears to be incorrect.

19. The learned Counsel for the Respondent has argued that it is a finding of fact that the landlord did not fail to pay the taxes, and as such, that finding is binding in second appeal. The learned Counsel for the Plaintiff Respondent has urged that it is a finding of the fact that the landlord had not neglected to make the payment of the Municipal Taxes and, as such, the tenant was not entitled under the provisions of Section 108(g) of the Transfer of Property Act to make payment to the Board and have the payment adjusted as against the rent due from him. Section 108(g) speaks of a landlord neglecting to make any payment. The specific argument of Mr. R.N. Singh is that there is a definite finding by the lower appellate court that the lessor did not neglect to make payment.

20. In this connection he points out that the neglect of payment by the lessor would only arise after a bill had been presented to the lessor, and unless and until it is proved by the Defendant Appellant that such a bill had been presented by the Board to the landlord Respondent, and thereafter the landlord Respondent had failed to make the payment, the tenant would not be entitled to voluntarily make payment of the municipal taxes and claim the benefit of Section 108(g) of the Transfer of Property Act.

21. Section 108(g) speaks of neglect by the lessor in the making of payments,

whereas Section 149 Sub-clause (3) of the Municipalities Act speaks of the failure by the Board to recover any sum due on account of such tax from the person primarily liable, the Board may recover the tax from the occupier. In Section 149(3) there is no reference to the neglect on the part of the lessor in the payment of tax. It is only the fact of the failure to recover that empowers the Municipal Board to recover the tax from the occupier. Thereafter Sub-section (4) of Section 149 provides that any occupier who makes payment for which he is not primarily liable under the provisions of the Act, shall in the absence of any contract to the contrary, be entitled to be reimbursed by the person primarily liable. The failure of the recovery of the tax is the essence of Section 149(3); whereas, neglect on the part of the lessor is an ingredient of Section 108(g) of the Transfer of Property Act. If the Appellant can show that there was a failure to recover a tax by the Board, he would succeed by virtue of the provisions of Section 149(4) of the U.P. Municipalities Act.

In this case the admitted position is that the Respondent who is the landlord of the house did not pay the tax and it was paid by the tenant namely, the Defendant Appellant. There was obviously a failure on the part of the Board to recover the tax from the landlord. In this situation, without reference to Section 108(g) of the Transfer of Property Act, the Appellant is entitled in law to have the tax paid by him adjusted as against the rent payable by him to the landlord Respondent.

22. Sri R.N. Singh, learned Counsel for the Appellant has urged that the relations between the landlord and tenant are governed by the provisions of the Transfer of Property Act, and they are not governed by the provisions of the U.P. Municipalities Act. He is perfectly right when he argues that most of the relations between the landlord and the tenant are governed by the Transfer of Property Act. However, when the Municipalities Act, which is a special law dealing with special situations provides something which is in addition to what is provided by the Transfer of Property Act, the provisions of the Municipalities Act in a given situation will prevail. The Municipalities Act provides that a Municipal Board may realise a tax from the occupier tenant, and thereafter when it provides that a tenant occupier paying the tax to the Board, may get himself reimbursed by the person primarily liable, the provisions of the Municipalities Act will prevail notwithstanding that such a provision is not to be found in the Transfer of Property Act.

23. I am also of the view that in this case the finding of the lower appellate court that the landlord did not neglect to pay the tax, as no bill was presented to him, is not basically sound. The liability to pay the tax arises out of the provisions of Section 166(2) of the Municipalities Act. It is true that the Municipal Board may not proceed to recover the tax without submission of a bill, and would not be competent to use coercive machinery as against the landlord without first presenting a bill to him, but even where the Board has not presented a bill, the neglect to pay the tax may still be there, though realisation of tax may not be

possible for the Board without the presentation of a bill. The factual non-payment of the tax amounts to neglect of payment within the meaning of Section 108(g) of the Transfer of Property Act.

24. The appeal is accordingly allowed and the decree for eviction passed against the Appellant is set aside. There will be no order as to costs.