A M/S POPAT & KOTECHA PROPERTY & ORS.

v.

ASHIM KUMAR DEY

(Civil Appeal No. 8149 of 2018)

B AUGUST 09, 2018

[RANJAN GOGOI, R. BANUMATHI AND NAVIN SINHA, JJ.]

West Bengal Premises Tenancy Act, 1997 – sub-s.8 of s.5 (Incorporated vide Amendment Act No.14 of 2001) – Landlord filed application under the Act of 1997 for eviction of the respondent-tenant on the ground that the tenant had defaulted in payment of his share of municipal tax as an occupier under the provisions of the Kolkata Municipal Corporation Act, 1980 – Application dismissed by the trial Court – Dismissal upheld by the High Court – On appeal, held: With amendment to the Act of 1997 with incorporation of sub-s.8 of s.5, the obligation to pay municipal taxes as an occupier of the premises fell upon the tenant – In instant case, respondent-tenant nowhere denied in any specific terms that the share of municipal taxes demanded was disproportionate or excessive or otherwise unauthorised in law – Furthermore, default on the part of the respondent-tenant was clear and evident – The obligation to pay municipal taxes on the tenant being over and above the obligation to pay the rent by virtue of the provisions of Section 5(8) of the 1997 Act, the High Court could not have imposed on the landlord the requirement of obtaining a formal order of enhancement of rent from the Rent Controller – Thus, application filed for eviction is allowed – Kolkata Municipal Corporation Act, 1980.

Kolkata Municipal Corporation Act, 1980 – ss.230 and 231 – Municipal tax assessment when premises is occupied by more than one tenant – Held: Assessment of a part of premises in occupation of different tenants for municipal tax is not contemplated under the 1980 Act – In fact, from the provisions of s.230 of the Act, it is clear that the person to be assessed to tax is the person "primarily liable to pay" i.e. the owner who is further vested with the right to recover

the portion of the tax paid by him on behalf of the tenant – Thus, the municipal taxes would be a part of the "rent" payable by the tenant to the landlord – Besides, the Act provides that in event of any default on the part of the owner to pay the tax the rent payable by the tenant(s) is liable to be attached.

Allowing the appeal, the Court

HELD: 1. In the present case, under the tenancy agreement, municipal taxes were included in the monthly rent payable and any enhancement thereof was to result in enhancement of the monthly rent also. With the amendment made to the West Bengal Premises Tenancy Act, 1997 and upon incorporation of sub-section (8) of Section 5, the obligation to pay municipal taxes as an occupier of the premises fell upon the tenant. The relevant clauses in the rent agreement therefore stood superseded by the statutory obligation cast on the tenant by the amendment to the Act. [Para 8] [522-F-G]

2. In the present case following the enhancement of municipal taxes by the Municipal Corporation in respect of the suit property an apportionment of the share of each tenant was made by the landlord and a notice to pay was served on the respondent-tenant. In his reply, the respondent-tenant did not dispute his liability to pay his share of the municipal tax and had sought for a reconsideration/review. [Para 9] [522-H; 523-A-B]

3. The argument advanced that the landlord cannot apportion the municipal taxes among different tenants if the premises is to be occupied by more than one tenant and it is the Municipal Corporation who is the authority to separately assess the tax payable by each tenant does not find any support from the provisions of the Kolkata Municipal Corporation Act, 1980. While the provisions of the 1980 Act make it very clear that an occupier as distinguished from the owner i.e. 'person primarily liable' is entitled to pre-assessment notice and to participate in the assessment proceedings and also to question the same by way of an appeal, etc. assessment of a part of the premises in occupation of a tenant or different parts of such premises in occupation of

different tenants is not contemplated under the 1980 Act. Rather, from the provisions of Section 230 of the 1980 Act, it is clear that the person to be assessed to tax is the person primarily liable to pay i.e. the owner who is vested with the right to recover the portion of the tax paid by him on behalf of the tenant, if required, proportionately to the extent that the value of the area occupied bears to the value of the total area of the property. Under the 1980 Act, in the event of any default on the part of the owner to pay the tax the rent payable by the tenant(s) is liable to be attached. [Paras 10 and 12] 523-C-D; 524-H; 525-A-C]

4. In the present case, default on the part of the respondent-tenant is clear and evident. The obligation to pay municipal taxes on the tenant being over and above the obligation to pay the rent by virtue of the provisions of Section 5(8) of the 1997 Act, the High Court could not have imposed on the landlord the requirement of obtaining a formal order of enhancement of rent from the Rent Controller. [Para 13] [525-C-D]

Calcutta Gujarati Education Society and Another v. Calcutta Municipal Corpn. and Others **(2003) 10 SCC 533 : [2003] 2 Suppl. SCR 915 – referred to.**

Case Law Reference

[2003] 2 Suppl. SCR 915 referred to Para 11

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8149 of 2018.

From the Judgment and Order dated 07.12.2016 of the High Court at Calcutta in C.O. No.3942 of 2015.

Rana Mukherjee, Sr. Adv., Siddharth Gautam, Shekhar Kumar, Ms. Daisy Hannah, Ms. Kasturika Kaumudi, Ms. Ekta Pradhan, Ms. Sreoshi Chatterjee, Advs. for the Appellants.

Rauf Rahim, Adv. for the Respondent.

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. Leave granted.

2. This appeal by special leave by the landlord is against the order dated 7th December, 2016 passed by the Calcutta High Court in a proceeding under the West Bengal Premises Tenancy Act, 1997 (hereinafter referred as "the 1997 Act") for eviction of the respondent-tenant on the ground that the tenant had defaulted in payment of his share of municipal tax as an occupier under the provisions of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as "the 1980 Act"). The application filed by the landlord was dismissed by the learned Trial Court which view has been upheld in appeal by the High Court.

3. The matter lies in a very short compass and the question arising may be formulated as hereunder:

> "Whether after the amendment of the West Bengal premises Tenancy Act by Amendment Act No. 14 of 2001 with effect from 10th July, 2001 [which had incorporated sub-section (8) to Section 5] whether a tenant who defaults in payment of his/her share of municipal tax as apportioned by the landlord would be in default of rent rendering him/her liable to eviction."

4. The rent agreement governing the parties in the present case was executed in the year 1991. Under the said agreement the parties had agreed that the rent would include all municipal taxes payable and that as and when such taxes are enhanced rent should be proportionately raised. However, with the amendment of the Act with effect from 10th July, 2001 and after incorporation of sub-section (8) of Section 5 the obligation to pay the municipal tax/taxes was specifically cast on the tenant in his/her capacity as an occupier. Sub-Section (8) of Section 5 is in the following terms:

> "5. Obligations of tenant.-
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> *** *** ***
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> *** *** ***
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> (8)Every tenant shall pay his share of municipal tax as an occupier of the premises in accordance with the provisions of the Kolkata Municipal Corporation Act, 1980 (West Bengal Act LIX of 1980)

A or the West Bengal Municipal Act, 1993 (West Bengal Act XXII of 1993).

5. In the present case, the property tax payable in respect of the suit property was reassessed and enhanced. There were several tenants in occupation of the suit property. The landlord apportioned the tax between the tenants and issued a notice dated 7th February, 2003 upon the respondent-tenant to pay his share of the municipal taxes. The respondent-tenant by reply dated 29th March, 2003 to the said notice had sought for a reconsideration/review of the matter on a **"co-operative spirit for the sake of harmonious relation between tenant and landlord."** As the respondent-tenant had not remitted the amount due as his share of the municipal tax, the landlord instituted the proceedings for eviction on the ground of default of payment of rent on the part of the respondent-tenant.

6. The learned Trial Court dismissed the claim of the landlord on the ground that no documentary evidence with regard to the enhancement of property tax was forthcoming and as the respondent-tenant had been depositing the monthly rent payable with the Rent Controller, the tenant cannot be deemed to be the defaulter.

7. In appeal, the High Court upheld the order of the learned Trial Court though on a different reasoning. The High Court held that even if the municipal taxes are to be held to be part of the rent payable, there is no automatic enhancement of the rent byan unilateral notice on the part of the landlord under Section 20 of the 1997 Act and that such enhancement has to be ordered by the Rent Controller. As the aforesaid requirement was not met, the High Court dismissed the appeal filed by the landlord.

8. In the present case, under the tenancy agreement municipal taxes were included in the monthly rent payable and any enhancement thereof was to result in enhancement of the monthly rent also. With the amendment made to the Act with effect from 10th July, 2001 and upon incorporation of sub-section (8) of Section 5, the obligation to pay municipal taxes as an occupier of the premises fell upon the tenant. The relevant clauses in the rent agreement therefore stood superseded by the statutory obligation cast on the tenant by the amendment to the Act.

9. In the present case following the enhancement of municipal taxes by the Municipal Corporation in respect of the suit property an

apportionment of the share of each tenant was made by the landlord and a notice to pay was served on the respondent-tenant. As already noticed, in his reply, the respondent-tenant did not dispute his liability to pay his share of the municipal tax and had sought for a reconsideration/review. In the written statement apart from an evasive denial in the following terms there was no other denial or dispute raised:

> "7……The defendant further denies the legitimacy and/or authenticity of the calculation with regard to the enhancement of the rent….."

10. The respondent-tenant nowhere denied in any specific terms that the share of municipal taxes demanded was disproportionate or excessive or otherwise unauthorized in law. The argument advanced at the bar that the landlord cannot apportion the municipal taxes among different tenants if the premises is to be occupied by more than one tenant and it is the Municipal Corporation who is the authority to separately assess the tax payable by each tenant does not find any support from the provisions of the 1980 Act.

11. This aspect of the matter came up for consideration before this Court in *Calcutta Gujarati Education Society and another* vs. *Calcutta Municipal Corpn. and others*[1] and the views expressed by this Court is found to be in paragraph 45 of the said report which is extracted below:

> "45. We find that the machinery provisions for assessment and recovery of tax basically involve the owner or the lessor who is "primarily liable" for the tax on property although in the course of assessment and recovery of portion of tax from the tenants, sub-tenants or occupants, their involvement is also directed. It is with the purpose to make the procedure of recovery of tax simpler that the owner or the lessor is proceeded against as the "person primarily liable". The owner or lessor of the property is "primarily" required to satisfy the demand towards tax with right to recover it from the tenant, sub-tenant or the occupant. If the landlord or the owner is obliged to make payment of whole amount of tax inclusive of his own share and share of the tenant, sub-tenant or the occupant, the owner or lessor has to be conferred with the power to recover the portion of tax payable by the tenant, sub-tenant or

[1](2003) 10 SCC 533

A occupant who is actually enjoying the property and putting it to use for commercial or non-residential purpose. The legislature has taken note of the fact that a large number of properties in the metropolitan city of Calcutta are in occupation of tenants, sub-tenants or occupants on a comparatively small amount of rent or lease money. In such a situation, to impose entire burden of tax on the owner or lessor, would be inequitable, more so when the tenancy law does not allow increase in rent beyond a particular limit and the right of eviction of the landlord is restricted to the grounds under the Tenancy Act. By the impugned provisions of the Act, therefore, the legislature has thought of apportioning the tax burden between owner or the *lessor* as one party and the tenant, sub-tenant or occupier as the other parties. **The whole amount of tax is recoverable from the lessor and may also be recovered from the tenant or sub-tenant through attachment of the rent. In case where the lessor or landlord has paid the whole tax including the portion of tax payable by the tenant or sub-tenant, the landlord has to be equipped with the power to get himself reimbursed by recovery of the portion of tax paid by him on behalf of the tenant. Section 231 of the Act, therefore, creates a fiction that the "tax" apportioned on the tenant would be treated as "rent" and would be recoverable as such. The word "rent" has not been defined in the tenancy law and this Court has taken note of this legal position in the case of *Puspa Sen Gupta* v. *Susma Ghose (1990) 2 SCC 651* which arose out of the provisions of the Tenancy Act applicable to West Bengal. Rent is a compendious expression which may include lease money with service charges for water, electricity and other taxes leviable on the tenanted premises**."

(underlining is ours)

As already seen, in paragraph 45 of the report, extracted above, the provisions of Section 231 of the 1980 Act was also considered and it was held that municipal taxes would be a part of the "rent" payable by the tenant to the landlord.

12. While the provisions of the 1980 Act make it very clear that an occupier as distinguished from the owner i.e. 'person primarily liable' is entitled to pre-assessment notice and to participate in the assessment

proceedings and also to question the same by way of an appeal, etc. assessment of a part of the premises in occupation of a tenant or different parts of such premises in occupation of different tenants is not contemplated under the 1980 Act. Rather, from the provisions of Section 230 of the 1980 Act, it is clear that the person to be assessed to tax is the person primarily liable to pay i.e. the owner who is vested with the right to recover the portion of the tax paid by him on behalf of the tenant, if required, proportionately to the extent that the value of the area occupied bears to the value of the total area of the property. Under the 1980 Act, in the event of any default on the part of the owner to pay the tax the rent payable by the tenant(s) is liable to be attached.

13. In the present case, default on the part of the respondent-tenant is clear and evident. The obligation to pay municipal taxes on the tenant being over and above the obligation to pay the rent by virtue of the provisions of Section 5(8) of the 1997 Act, the High Court could not have imposed on the landlord the requirement of obtaining a formal order of enhancement of rent from the Rent Controller.

14. For the aforesaid reasons, we allow this appeal and set aside the order of the High Court affirming the order of the learned Trial Court. The application filed by the landlord for eviction of the respondent-tenant is allowed.

Ankit Gyan Appeal allowed.