

New Delhi Municipal Committee vs Kalu Ram & Anr on 20 April, 1976

Equivalent citations: 1976 AIR 1637, 1976 SCR 87, AIR 1976 SUPREME COURT 1637, 1976 3 SCC 407, 1977 (1) SCJ 279, 1976 (1) SCWR 479, 1976 (12) DLT 325, 1976 MCC 194, 1976 UJ (SC) 525

Author: A.C. Gupta

Bench: A.C. Gupta, Jaswant Singh

PETITIONER:
NEW DELHI MUNICIPAL COMMITTEE

Vs.

RESPONDENT:
KALU RAM & ANR.

DATE OF JUDGMENT 20/04/1976

BENCH:
GUPTA, A.C.
BENCH:
GUPTA, A.C.
SINGH, JASWANT

CITATION:
1976 AIR 1637 1976 SCR 87
1976 SCC (3) 407

ACT:
Public Premises (Eviction of Unauthorised Occupants)
Act, 1958, S. 7, whether creates new right or merely
provides special procedure, whether subject to limitation.

HEADNOTE:

In 1950, the appellant allotted small pre-fabricated stalls to several displaced persons including the respondent, at the licence fee of rupee thirty payable per month. Later, these allottees applied for a fixation of standard rent but ultimately lost in the Punjab High Court at Delhi. Meanwhile, the respondent fell in arrears in paying the licence fee. In December, 1960, the appellant demanded from him the entire amount in arrears from May 1950 to April 1957 but he failed to pay. In September 1961, the

Estate Officer ordered the respondent under section 7(1) of the Act, to pay the sum, overruling his objection that the claim was barred by limitation. The respondent's appeal to the Additional District Judge was rejected, but the Punjab High Court at Delhi allowed his writ petition on the ground that section 7 could not be availed in case of time barred claims.

The appellant contended before this Court that the Limitation Act only barred the remedy by way of suit and did not extinguish the right which could still be exercised through section 7 of the Act. Section 7 did not put a time limit for taking action under it, and was, therefore, not subject to the limitation prescribed for a suit to recover the amount.

Dismissing the appeal, the Court,

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HELD: Section 7 only provides a special procedure for the realisation of rent in arrears and does not constitute a source or foundation of a right to claim a debt otherwise time-barred. The word "payable" in Section 7 in the context in which it occurs, means "legally recoverable". [90 B & D]

Hans Raj Gupta and others v. Official Liquidator of the Dehradun Mussoorie Electric Tramway Co. Ltd. 60 I.A. 13, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 988 of 1968.

(From the Judgment and order dated the 8-4-1965 of the Punjab High Court, Circuit Bench Delhi-now the High Court of Delhi in Civil Writ No. 228-G of 1962).

Hardyal Hardy, B. P. Maheshwari, Suresh Sethi and Bikaramjit Nayar; for the appellant.

A. K. Sen, D. P. Bhandare, Mrs. Laxmi Arvind Mathur and S. S. Khanduja; for the respondents.

The Judgment of the Court was delivered by GUPTA, J.-Respondent Kalu Ram was pavement vendor in Connaught place, New Delhi. In 1950 the appellant. New Delhi Municipal Committee, provided a number of displaced persons with small pre-fabricated stalls to enable them to do their business. Kalu Ram who was also a displaced person was allotted one such stall on Irwin Road. Rupees thirty was the licensee fee payable per month by the allottees of these stalls. Later, the allottees, including the respondent, applied to the Rent Controller for reducing the rent. It is not necessary to refer to the various proceedings arising from these applications for fixation of standard rent which were ultimately dismissed by the Circuit Bench of the Punjab High Court at Delhi as not maintainable. In the meantime, many of the allottees fell in arrears in paying the licence fees. So far as the respondent is concerned, the appellant took no steps to recover the dues till December 1960 when it demanded the entire amount in arrears from May 1950 to April 1957. The respondent not

having paid, the appellant asked the Estate Officer, appointed under section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, to take steps to recover the amount in arrears under section 7 of that Act. The Estate Officer, who is the second respondent herein, made an order on September 28, 1961 under section 7(1) of the Act asking the respondent to pay the sum overruling his objection that the claim was barred by limitation. The respondent's appeal to the Additional District Judge from the Estate Officer's order was disallowed. The respondent then filed a writ petition before the Circuit Bench of the Punjab High Court at Delhi challenging the order against him. One of the grounds of challenge was that section 7 could not be resorted to for recovery of the sum as the claim was time-barred. The High Court accepted the contention and allowed the petition. In this appeal by certificate, the appellant, New Delhi Municipal Committee, questions the correctness of the High Court's decision.

The only contention raised before us by Mr. Hardy appearing for the appellant is that the High Court was wrong in holding that the amount in question could not be recovered under section 7 because the time for instituting a suit to recover the sum had expired. Admittedly, any suit instituted on the date when the Estate Officer made his order under section 7(1) would have been barred by time. Mr. Hardy argued that the Limitation Act only barred the remedy by way of suit and did not extinguish the right, and section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act providing a different and special mode of recovery was therefore available to recover rent in arrears beyond three years. Section 7 as it stood at the relevant time reads :

Power to recover rent or damages in respect of public premises as arrears of land revenue.

"7. (1) Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is, or has at any time been in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order:

Provided that no such order shall be made until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer. (3) If any person refuses or fails to pay the arrears of rent or any instalments thereof payable under sub-section (1) or the damages or any instalment thereof payable under sub-section (2) within the time specified in the order relating thereto the estate officer may issue a certificate for the amount due to the Collector who shall proceed to recover the same as an arrear of land revenue."

As would appear from the terms of the section, it provides a summary procedure for the recovery of arrears of rent. It was argued that since section 7 did not put a time limit for taking steps under that section and as the limitation prescribed for a suit to recover the amount did not apply to a proceeding under this section, the High Court was in error in upholding the respondent's objection. In support of his contention that a debt remained due though barred by limitation, Mr. Hardy relied on a number of authorities, both Indian and English. We do not consider it necessary to refer to these decisions because the proposition is not disputed that the statute of limitation bars the remedy without touching the right. Section 28 of the Indian Limitation Act, 1908 which was in force at the relevant time however provided that the right to any property was extinguished on the expiry of the period prescribed by the Act for instituting a suit for possession of the property. But on the facts of this case no question of a suit for possession of any property arises and section 28 has no application. It is not questioned that a creditor whose suit is barred by limitation, if he has any other legal remedy permitting him to enforce his claim, would be free to avail of it. But the question in every such case is whether the particular statute permits such a course. Does section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 create a right to realise arrears of rent without any limitation of time? Under section 7 the Estate Officer may order any person who is in arrears of rent 'payable' in respect of any public premises to pay the same within such time and in such instalments as he may specify in the order. Before however the order is made, a notice must issue calling upon the defaulter to show cause why such order should not be made and, if he raised any objection, the Estate Officer must consider the same and the evidence produced in support of it. Thus the Estate Officer has to determine upon hearing the objection the amount of rent in arrears which is 'payable.' The word 'payable' is somewhat indefinite in import and its meaning must be gathered from the context in which it occurs. 'Payable' generally means that which should be paid. If the person in arrears raises a dispute as to the amount, the Estate Officer in determining the amount payable cannot ignore the existing laws. If the recovery of any amount is barred by the law of limitation, it is difficult to hold that the Estate Officer could still insist that the said amount was payable. When a duty is cast on an authority to determine the arrears of rent, the determination must be in accordance with law. Section 7 only provides a special procedure for the realisation of rent in arrears and does not constitute a source or foundation of a right to claim a debt otherwise time-barred. Construing the expression "any money due" in section 186 of the Indian Companies Act, 1913 the Privy Council held in *Hans Raj Gupta and others v. Official Liquidators of the Dehradun Mussorie Electric Tramway Company Ltd.*(1) that this meant moneys due and recoverable in suit by the company, and observed: "it is a section which creates a special procedure for obtaining payment of moneys; it is not a section which purports to create a foundation upon which to base a claim for payment. It creates no new rights." We are clear that the word "payable" in section 7, in the context in which it occurs, means "legally recoverable." Admittedly a suit to recover the arrears instituted on the day the order under section 7 was made would have been barred by limitation. The amount in question was therefore irrecoverable. This being the position, the appeal fails and is dismissed with costs.

M.R.

Appeal dismissed.