

Atma Ram Properties Pvt. Ltd. vs The Oriental Insurance Co. Ltd. on 6 December, 2017

Equivalent citations: AIR 2017 SUPREME COURT 5714

Author: S.Abdul Nazeer

Bench: S. Abdul Nazeer, J. Chelameswar

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.20913 OF 2017
(Arising out of S.L.P. (Civil) No.17117 of 2016)

ATMA RAM PROPERTIES PVT. LTD.

... APPELLANT

VERSUS

THE ORIENTAL INSURANCE CO. LTD.

...RESPONDENT

JUDGMENT

S.ABDUL NAZEER, J.

1. Leave granted.

2. This appeal involves an important question of law as to whether property tax recoverable from the tenant under Section 67(3) of the New Delhi Municipal Council Act, 1994 (for short 'NDMC Act') as arrears of rent by the landlord/owner can be considered to be forming part of the rent for the purpose of seeking eviction or ejectment of such tenant who defaults in payment of such recoverable tax as rent and when the rent including recoverable tax in respect of the tenanted premises exceeds Rs.3500/- per month, thereby losing protection of the Delhi Rent Control Act, 1958 (for short 'Rent Act').

3. The appellant/plaintiff is the owner/landlord of the building known as Atma Ram Mansion (previously known as Scindia House), Connaught Circus, New Delhi-110001 by virtue of a registered sale-deed dated 31.5.1980 executed by previous owners in favour of the plaintiff. The

respondent/defendant has been a tenant in respect of a portion of the aforesaid property. The rent of tenanted premises prior to termination of tenancy was Rs.1438/- per month exclusive of electricity and water charges. The defendant has been paying service tax of Rs.148/- on the said amount of Rs.1438/- and thus the last paid rent was Rs.1586/- per month.

4. Pursuant to the amendment of the New Delhi Municipal Council (Determination of Annual Rent) Byelaws, 2009, (for brevity 'the Byelaws 2009') the house tax on the properties situated in the New Delhi Municipal Council (for short 'NDMC') area was assessable on the basis of Unit Area System. The tenanted premises in occupation of the defendant fell within the jurisdiction of NDMC. The house tax payable on the said property in accordance with the Unit Area System comes to Rs.9,64,710/- per annum, i.e. Rs.80,392.50 per month. According to the plaintiff, the defendant was liable to pay the said amount. The plaintiff issued a notice dated 6.7.2009 calling upon the defendant to pay the entire house tax or pay its monthly installment. However, the defendant neither replied to the same nor deposited/paid house tax to the plaintiff. The plaintiff issued a further notice dated 8.12.2009 calling upon the defendant to pay the house tax. The defendant did not come forward to make payment of the house tax. In order to safeguard its property and to avoid any penal action, the plaintiff deposited the total house tax of Rs.2,94,23,237/- on the basis of self-assessment of the property tax with NDMC. After payment of the house tax, the plaintiff again sent a notice dated 7.4.2010 calling upon the defendant to pay the said amount of tax. The notice was returned with the report "left without address".

5. According to the plaintiff, the tax paid on the suit property was far more than the initial rent, the amount of property tax levied by NDMC and the initial rent became recoverable as arrears of rent and the suit property having fetched rent above Rs.3500/- per month has ceased the protection of the Rent Act. As such the plaintiff vide legal notice dated 16.6.2010, terminated the tenancy of the defendant without prejudice to its legal rights. The defendant sent a reply dated 23.7.2010 denying its liability to pay the rent. Therefore, plaintiff filed the aforesaid suit for a decree for possession of the tenanted premises, for damages/mesne profits of Rs.6,24,600/- per month w.e.f. 1.5.2011 till 31.5.2011 and for directing an enquiry under Order XX Rule 12 of the Code of Civil Procedure, 1908 (for short 'CPC') for assessment of future damages/mesne profits till the delivery of vacant possession of the tenanted premises.

6. The defendant filed the written statement denying its liability to pay the enhanced rent. It was contended that the plaintiff has no authority or power to increase the rent on its own. It was further contended that the tenanted premises is governed by the Rent Act and that the defendant is a protected tenant. The NDMC byelaws cannot govern the relationship of landlord and tenant by by-passing the provisions of the Rent Act. It was further contended that the house tax cannot be treated as arrears of rent, which takes away the premises from the ambit of the Rent Act. It was denied that the premises are governed by the Transfer of Property Act. It was contended that Section 67 of the NDMC Act speaks of apportionment of liability of tax when the premises are let out and sub-let. It is only the right to recover the house tax for which the landlord is entitled to. He cannot go for eviction of the tenant on any ground which is not specified under the Rent Act. Therefore, the suit for possession filed by the plaintiff in a court other than the court of Rent Controller is barred by the provisions of Section 50 of the Rent Act.

7. The plaintiff filed an application under Order XII Rule 6 read with Section 151 of the CPC for passing a decree for possession of the tenanted premises for the reasons mentioned therein. The defendant opposed the application by filing objections.

8. The trial Court passed an order dated 12.8.2013 granting decree of possession of the tenanted premises in favour of the plaintiff. The High Court by the order dated 30.5.2016 has set aside the order of the trial Court and has remanded the matter to the trial Court. The appellant has called in question the legality and correctness of the said order in this appeal.

9. Shri Dushyant Dave, learned senior counsel appearing for the appellant/plaintiff, submits that after coming into force of the Byelaws 2009, the property tax in the NDMC area was to be assessed on the basis of unit area system instead of previous basis of property tax on actual rent. As a result, the annual property tax payable for the area occupied by the respondent worked out at Rs.9,64,710/- p.a. i.e Rs.80,392.50/- per month when divided over twelve months period. The respondent failed to pay the house tax despite repeated request of the appellant; therefore the appellant was left with no alternative but to deposit entire arrears of tax. The appellant issued a notice dated 16.06.2010 terminating the tenancy on the failure of the respondent to pay the said amount of rent and instituted the suit under the provisions of the Transfer of Property Act. It is contended that the rate of rent per month was Rs.1438/- and after adding the tax, it exceeded Rs.3500/- per month. Therefore, the tenant lost protection of the Rent Act. It is argued that the full Bench of the Delhi High Court in *Ganga Ram v. Mohd. Usman* reported in ILR (1978) 1 Delhi page 139, has laid down that the amount of tax on building or land becomes part of the rent. Section 121(1) of the Delhi Municipal Corporation Act, 1957 (for short 'the Corporation Act') enables the landlord to recover from the tenant in excess of the amount of house tax which has been levied on the building and which is in excess of the amount which would be leviable on the amount of contracted rent received from the tenant. The Full Bench held that the landlord is entitled to recover, under Section 121(1) of the said Act, the enhanced amount of house tax from the tenant notwithstanding the contract of tenancy and the provisions of Section 7(2) and Section 4 of the Rent Act. Sub-sections (1) and (3) of Section 121 of the Corporation Act is in pari materia with sub-sections (1) and (3) of Section 67 of the NDMC Act. For the reasons set out in the judgment of the Full Bench in *Ganga Ram* (supra), the High Court ought to have dismissed the appeals.

10. It is further argued that Section 7(2) of the Rent Act could not be the basis for denying the benefit of Section 67(3) of the NDMC Act. The tax component becomes a part of the rent. If the tax component is added to the monthly rent, the total rent of the premises exceeds Rs.3,500/-. It is submitted that the property tax has to be fictionally treated as rent under Section 67(1) of the NDMC Act because in the absence of the same; the landlord would be compelled to pay the whole amount of tax which is recoverable from him and would be left to an expensive and cumbersome remedy of filing a civil suit for recovery of such tax. It is submitted that the liability to pay excess property tax is solely that of tenant and the landlord has been provided with 'rights and remedies' for recovery of such amounts as rents. Therefore, the High Court was not justified in holding that the property tax will not constitute rent to enable the appellant to seek ejectment/possession of the suit property. In this connection, he has relied on the decisions of this Court in *Karnani Properties Ltd. v. Augustine*, (1957) SCR 20, *Bombay Municipal Corporation v. Life Insurance Corporation*, Bombay (1970) 1 SCC

791, Raju Kakara Shetty v. Ramesh Prataprao Shirole, (1991) 1 SCC 570, D.C. Bhatia v. Union of India, (1995) 1 SCC 104 and Calcutta Gujarati Education Society v. Calcutta Municipal Corpn., (2003) 10 SCC 533.

11. Shri Vikas Singh, learned senior counsel appearing for the respondent submits that the contractual rent of the suit property was Rs.1,586/- per month. The Rent Act is a special enactment, and has a non-obstante clause and the NDMC Act does not contain a non-obstante clause. Section 411 of the NDMC Act provides that other laws not to be disregarded. The primacy of the statute would have to be determined on the basis of the intention of the legislature. The NDMC Act is a general enactment and the special enactment prevails over the general enactment. It is pointed out that Section 67(3) of NDMC Act permits the landlord to recover rent. However, for non-payment of the rent which includes tax component, the landlord cannot sue for eviction/ejectment of the tenant. Alternatively, it is argued that even if the NDMC Act prevailing over the Rent Act, still this Court has to harmoniously construe the provisions so as to ensure that latter enactment does not violate the Rent Act. Section 67(3) of the NDMC Act merely gives a right to recover the rent and even if the latter enactment was to override the earlier enactment in so far as obviating the effect of Section 7(2) of the Rent Act, still the tax could not be added as a rent for the purpose of determining as to whether the tenant will lose the protection under the Rent Act by adding the said rent to the contractual rent so as to consider it above Rs.3,500/- per month.

12. The issue which arises for consideration in the present matter is regarding the interplay of Section 67(3) of the NDMC Act vis-à-vis Section 7(2) of the Rent Act. Under Section 67(3) the landlord has been given the right to recover the house tax from the tenant as if the same were rent whereas under Section 7(2) of the Rent Act, there is a specific bar to recover any tax as rent from the tenant.

13. Having regard the contentions urged, let us first consider as to whether in Ganga Ram (supra) Delhi High Court has taken a view that the tax recoverable under the Corporation Act can be made a part of the rent for the purpose of eviction/ejectment of a tenant. In Ganga Ram (supra) the tenant had sub-let a portion of the property and was receiving rents from the sub-tenant. After taking into consideration the rents received by the tenant from the sub-tenant and the rent payable by him to the landlord, the corporation determined the rateable value on the basis that the premises was fetching higher rent than that of the rent paid by the tenant to the landlord. It was the case of the landlord that he was entitled, under Section 121(1) of the Corporation Act, to recover from the tenant the difference between the amount of property tax levied on the property and the amount of tax which would be leviable upon the premises if the tax was calculated only on the amount of rent paid by the tenant to the landlord without taking into consideration the rent received by the tenant from the sub-tenant. Taking into consideration this plea, the Court framed second question for determination as under:

“(2) If so, whether the landlord is entitled to recover under section 121 of the Corporation Act the enhanced amount of house tax from the tenant notwithstanding the contract of tenancy and the provisions of sub-section (2) of Section 7 and 4 of the Delhi Rent Control Act?”

14. It was held that the bar created by the provisions in the Rent Control Act pertains to “normal tax on a building” occupied by tenant. Bar containing in Section 7(2) in the Rent Act pertains to normal tax on a building occupied by a tenant while Section 121(1) of the Corporation Act deals with the particular contingency where the property tax levied for the tenanted premises is more than the amount which would have been levied, had the assessment been made on the basis of the rent payable by the tenant to the landlord. The Court held that landlord is entitled to recover, under Section 121 of the Corporation Act, the enhanced amount of house tax from the tenant notwithstanding the contract of tenancy and the provisions of sub-section (2) of Section 7 and Section 4 of the Rent Act. The Court has not considered the question relating to eviction of a tenant under the provisions of Rent Act where protection is accorded to the tenant from eviction.

15. The question for consideration in this appeal is entirely different. The question is whether non-payment of property tax recoverable from the tenant as rent can be a ground for his eviction/ejectment from the premises. The Rent Act is beneficial and also restrictive in nature. It is primarily an Act to provide for the control of rents and evictions. It is settled that while interpreting the provisions of this Act, the Courts are under a legal compulsion to harmoniously read the provisions of the Act so as to balance the rights of the landlord and the obligations of the tenant towards each other, keeping in mind that one of the objects of the legislature while enacting the Rent Act was to curb the tendency of the greedy landlords to throw out the tenants paying lower rent and to rent out the premises at the market rate. Section 14 occurring in Chapter 3 of the Rent Act provides for controlling of eviction of tenants. It puts an embargo as regards recovery of possession of any premises at the instance of the landlord unless the Controller satisfies himself as regards existence of any of the grounds specifically referred to in the proviso appended thereto.

16. Section 2(i) of the Rent Act defines the “premises”. Section 3(c) states, “nothing in the Act shall apply to any premises whether residential or not, whose monthly rent exceeds Rs. 3,500/-”. Sub-section (2) of Section 7 puts an embargo on the landlord not to recover from the tenant any amount of tax on the building or land imposed in respect of the premises occupied by the tenant. This provision is as under:

“(2) 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.”

17. Section 50 of the Rent Act bars the civil court to entertain any suit or proceedings insofar as it relates to the fixation of standard rents in relation to any premises to which the Rent Act applies or to eviction of any tenant therefrom or to any other matter which the controller is empowered by or under the said Act.

18. It is also relevant to notice two provisions of the NDMC Act namely; sub-sections (1) and (3) of Section 67 which are as under:

“67. Apportionment of liability for property tax when the premises are let or sub-let.- (1) If any land or building assessed to property tax is let, and its rateable value exceeds the amount of rent payable in respect thereof to the person upon whom under the provision of section 66 the said tax is leviable, that person shall be entitled to receive from his tenant the difference between the amount of the property tax levied upon him and the amount which would be leviable upon him if the said tax was calculated on the amount of rent payable to him. (2)

(3) Any person entitled to receive any sum under this section shall have, for the recovery thereof, the same rights and remedies as if such sum were rent payable to him by the person from whom he is entitled to receive the same.”

19. Yet another provision which requires consideration is Section 411 of the NDMC Act, which reads as under:

“411. Other laws not to be disregarded.- Save as provided in this Act nothing contained in this Act shall be construed as authorising the disregard by the Council or the Chairperson or any municipal officer or other municipal employee of any laws for the time being in force.”

20. While the normal principle is that the latter enactment will prevail in cases where the latter enactment has a non-obstante clause, that is, giving it overriding effect and secondly, if it is also held to be a special enactment with regard to the matter in issue.

In the instant case, the earlier enactment has a non-obstante clause in Section 14 which grants protection to the tenant from being evicted from any premises “notwithstanding anything to the contrary contained in any other law or contract, no order of decree for the recovery of possession of any premises shall be made by any Court or Controller in favour of the landlord against a tenant.” Thus the earlier enactment which is a special enactment has a non-obstante clause and the latter enactment which is not a special enactment as far as landlord tenant issue is concerned and the same does not have a non-obstante clause and in fact, has a section namely Section 411 which provides that other laws not to be disregarded.

21. In *Life Insurance Corporation of India v. D.J. Bahadur and Ors.*, (1981)1 SCC 315, this Court was considering a conflict between the Industrial Disputes Act, 1947 and the Life Insurance Act, 1956. It was held that so far as matters concerning industrial dispute are concerned, the Industrial Disputes Act would prevail over the latter enactment i.e. Life Insurance Corporation of India Act.

22. In *Sanwormal Kejriwal v. Viswa Co-operative Housing Society Ltd. and Ors.*, (1990) 2 SCC 288, it was held that Rent Act of 1947 will prevail over the Maharashtra Co-operative Societies Act, 1960, so far as the protection of the tenant from eviction is concerned. Here also, both the Acts held a

non-obstante clause but still the earlier enactment was held to cover the field and hence, was to be given primacy over the latter enactment.

23. As seen from the abovementioned judgments, this Court has held that an earlier enactment will prevail over a latter enactment even if, there is a non-obstante clause in the latter enactment, if it were to be held that the earlier enactment is a special enactment on the particular subject being in issue.

24. Assuming that the latter enactment prevailing over the earlier enactment were to apply to this case, the two enactments have to be harmoniously construed so as to ensure that the latter enactment does not cause violence to the intent of the earlier enactment.

In *St Stephen's College v. University of Delhi*, (1992)1 SCC 558, it has been held thus:-

“140. ... The golden rule of interpretation is that words should be read in the ordinary, natural and grammatical meaning and the principle of harmonious construction merely applies the rule that where there is a general provision of law dealing with a subject, and a special provision dealing with the same subject, the special prevails over the general. If it is not constructed in that way the result would be that the special provision would be wholly defeated”.

Similarly, in *Gobind Sugar Mills Ltd. v. State of Bihar and Ors.* (1999) 7 SCC 76 this Court has held as under:

“10. While determining the question whether a statute is a general or a special one, focus must be on the principal subject-matter coupled with a particular perspective with reference to the intendment of the Act. Keeping in mind this basic principle, we will have to examine the provisions of the two Acts to find out whether it is possible to construe harmoniously the provisions of Section 4 of the Finance Act and Section 49 of the Sugarcane Act.....”

25. In *Commercial Tax Officer, Rajasthan v. Binani Cements Limited and Anr.* (2014) 8 SCC 319, it was held that when a general law and a special law dealing with the same aspect dealt with by the general law are in question, the general law to the extent dealt with by the special law is impliedly repealed.

26. The object of the Rent Act is to provide protection to tenants who under common law, including Transfer of Property Act could be evicted from the premises let out to them at any time by the landlord on the termination of their tenancy. It restricts the right of the landlord to evict the tenant at their will. It is a special law in relation to landlord and tenant issue. Therefore, the Rent Act has to prevail insofar as landlord and tenant issue is concerned.

27. Let us now consider the judgments relied upon by Shri Dushyant Dave. In *Karnani Property Ltd.* (supra) by agreement of the parties, the rent fixed included payment of the additional amenities and

services. In Bombay Municipal Corporation (supra) the question relating to eviction of a tenant has not been considered. In Raju Kakara Shetty (supra) the statutory right to recover the education cess in respect of demised premises from the occupant-tenant was quantified by agreement of the parties. In D.C. Bhatia (supra) this Court has considered the validity of Section 3(c) of the Delhi Rent Control Act, 1958. In Calcutta Gujarati Education Society (supra) this Court has not considered the eviction of a tenant nor the interplay between a provision similar to sub-section (2) of Section 7 of the Rent Act and Section 231 of the Calcutta Municipal Corporation Act, 1980 which is *pari materia* with Section 67(3) of the NDMC Act. Hence, these judgments have no application to the facts of the instant case.

28. Therefore, we are of the view that though the Rent Act is an earlier Act when compared to the NDMC Act, it is a special enactment with regard to the matter in issue and has a non-obstante clause. The NDMC Act is not a special enactment insofar as landlord-tenant issue is concerned and it contains Section 411 which provides that other laws not to be disregarded. Section 67(3) of the NDMC Act merely gives a right to recover the tax in respect of the premises as rent. It does not override the Rent Act insofar as obviating the effect of Section 7(2) of the Rent Act. In our opinion, the tax recoverable from the tenant under Section 67(3) of the NDMC Act as arrears of rent by the appellant cannot be considered to be forming part of the rent for the purpose of seeking eviction/ejectment of the respondent who defaults in payment of such recoverable tax as rent.

29. The appeal is devoid of merit and is accordingly dismissed with no orders as to costs.

.....J. (J. CHELAMESWAR)J. (S. ABDUL
NAZEER) New Delhi;

December 06, 2017.