Supreme Court of India
M/S. Jyoti Prashad Vinod Kumar And ... vs Yash Pal And Others on 23 August, 1996
Equivalent citations: JT 1996 (8) 195
Author: M Punchhi
Bench: Punchhi, M.M.

PETITIONER:
M/S. JYOTI PRASHAD VINOD KUMAR AND ANR.

Vs.

RESPONDENT:
YASH PAL AND OTHERS

DATE OF JUDGMENT: 23/08/1996

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
THOMAS K.T. (J)

CITATION:
JT 1996 (8) 195

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Leave granted.

This is an appeal against the judgment and order of a learned Single Judge of the High Court of Punjab and Haryana dated 26-5-1995, passed in Civil Revision No.4928/94, dismissing the revision petition of the present appellants in limine.

The facts as are relevant for our purpose are as follows:

In an eviction petition, raising a number of grounds, the sole surviving one was : whether the tenants had made a valid tender of arrears of rent, inclusive of taxes. The period for which arrears of rent were claimed was from 1-4- 1984 till 30-9-1986. So far as the quantum of contractual rent was concerned, that indisputably was paid before the Rent Controller. The dispute centered around the payment of house-tax. It is undisputed that the house-tax was payable w.e.f. 1-4-1985. The fact that the said house-tax could form part of the rent, was never disputed. Section 8(1) of the Haryana

Urban (control of Rent and Eviction) Act, 1973 provides for this eventuality, which is worth reproduction at this stage. which reads:

> "8. INCREASE OF RENT ON ACCOUNT OF PAYMENT OF RATES, ETC. OF THE LOCAL AUTHORITY - (1) Notwithstanding anything contained in any other provision of the Act, a landlord shall be entitled to increase the rent of a building or rented land if after the commencement of the tenancy, a fresh rate, cess or tax is levied in respect of the building or rented land by any local authority, or if there is an increase in the amount of such a rate, cess or tax being levied at the commencement of this Act. Provided that increase in rent shall not exceed the amount of any such rate, cess or tax or the amount of increase in such rate, cess or tax, as the case may be: Provided further that such Increase in rent shall be payable by the tenant from the date of despatch of the written notice of demand sent by the landlord under registered cover.
>
> (2) Notwithstanding anything contained in any law for the time being in force or any contract, no landlord shall recover from his tenant the amount of any rate, cess or tax or any portion thereof in - respect of any building or rented land occupied by such tenant by any increase in the amount of the rent payable or otherwise, save as provided in subsection (1)."

Specific attention need be invited to the second proviso which mandates that increase in rent due to levy or increase in rate, cess or tax payable by the tenant is not automatic from the date of levy but permissible from the date of despatch of the written notice of demand. The liability transferred is thus prospective. There are evidently three important elements for the proviso to be operative, namely, (i) on the happening of the event there shall be a despatch of written notice of demand; (ii) it must be sent by the landlord under registered cover; and

(iii) the increased rent shall be payable by the tenant from the date of despatch of demand letter and not from a date earlier. It is, thus, patently clear that even if a fresh rate, cess or tax had been levied in respect of the desired building or rented land, unless the demand is made in terms of the 2nd proviso, it per se does not go to increase the liability of the tenant to pay increased rent. The spirit of the provision, apparently, is that the liability to pay fresh rate, cess or tax or increase thereof is primarily that of the landlord, but the law permits him to shift the burden to the tenant in the manner ordained in the second proviso.

In view of the Rent controller, the tender had fully and validly been made which was inclusive of house-tax the appellate authority, however, took the view that it had not been made so. The High Court, as said before, affirmed the view of the appellate authority by dismissing the revision petition in limine. Nowhere do we find on the present record it ever having been pleaded or found that there was a notice in terms of the 2nd proviso sent to the tenant. There were, however, three documents on record being Exhibits A-6, A-7 and A-8 having a bearing on the controversy. Ex. A-6 is dated 23-1-1985 and the same was sent at the instance of the landlord by his counsel to the tenant's counsel by means of 3 registered letter. lt is specifically not a notice of demand as such but it only

blames the tenants of having failed to remit the house-tax payable along with the rent due. Ex.A-7 and A-8 are both dated 2-4-1985 purported to have been sent by the landlord to the two tenants in identical language thereby putting to notice the respective tenants that house-tax in the sum of Rs.262.50 per annum w.e.f. 1-4-1985 was payable by each. The receipt of these notices has not been accepted by the tenants. All the same, it is crystal clear that these were not sent to the tenants under `registered cover' as is the requirement of the 2nd proviso to Section 8. Ex. A-7 and A- 8, indubitably, were otherwise timely notices. Even if the tenants are not bound by these, the landlord definitely is. Ex.A-6 being of a date prior to 1-4-1985 (the date of levy), could not be termed as a notice or despatch in terms of the 2nd proviso. Thus it was no notice in the eyes of law. A-7 and A-S too fail to conform to the strict requirements of the proviso. Thus, in the absence of a valid notice/despatch in terms of the 2nd proviso, it goes without saying that the tenants were under no obligation to tender house-tax alongwith arrears of rent. However, they seem to have voluntarily tendered before the Rent controller house tax w.e.f. 1-10-1984 to 30-9-1986. By their manifested conduct, therefore, they stand duly noticed as to their obligation to pay house tax. They were however under no obligation to pay the house tax demanded for the period prior to 1-4-1985. For this reason, no defect can be found in the tender made by the tenants-appellants. Their eviction was, thus, uncalled for. The Appellate Authority committed an error in ordering eviction and the High Court concurring in the same. Resultantly, we would, and do hereby, upset the orders of the appellate authority and that of the High Court and order restoration of that of the Rent Controller, dismissing the eviction petition on the ground of failure to pay rent.

The appeal, thus, stands allowed with costs.