Shiv Pal Sagar Vs State of Punjab and another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 10, 2002

Citation: AIR 2003 P&H 206 : (2003) 3 CivCC 307 : (2003) 3 LJR 537 : (2003) 3 LLR 578 : (2003) 3 LLR 538 : (2003) 1 PLJ 31 : (2003) 2 PLR 259 : (2003) 2 RCR(Civil) 157

Hon'ble Judges: N.K.Sodhi, J and Virender Singh, J

Advocate: Mr. Amarjit Singh, Advocate. Mr. Rajesh Garg, Advocate., Advocates for appearing Parties

Judgement

N. K. SODHI, J.
Sarvshri Sham Lal, Shadi Lal and Brij Lal are owners of plot bearing No. BII/18541855, G. T. Road, Ludhiana. The

annual rental value of this plot was assessed by the Municipal Corporation, Ludhiana (for short the Corporation) for the first time on 19111979.

On noticing some additions/alterations in the existing unit in the year 199394 the Corporation issued to the owners a notice under S. 103 of the

Punjab Municipal Corporation Act, 1976 (hereinafter called the Act) proposing to enhance the annual rental value of the property from Rs.

16,980/ per annum to Rs.2,98,800/ per annum. This notice was issued on 2011994. The owners did not file any objections and, therefore, the

annual rental value of the unit was finalized at Rs.2,98,800/ per annum on 2421994. Subsequently, the owners added second, third and fourth

floors to the building as a result whereof it became necessary for the Corporation to issue another notice to them under S. 103 of the Act on

28121994 for amending the existing assessment of annual rental value of Rs.2,98,880/ per annum. This notice was served by way of affixation as

personal service was refused by the owners repeatedly. Since the owners did not again file any objections to this notice, the assessment was

finalised on 2431995 and the annual rental value of the building was enhanced to Rs.45,80,400/ per annum. The petitioner is a tenant in the

property and is running a hotel therein under the name and style of Sagar Hotel and claims that he is paying a rent of Rs.1,80,000/ per annum to

the owners. The Corporation assessed the house tax on the basis of the annual rental value as determined and sent the bills to the owners of the

property every year but no payment has been made to the Corporation so far. A final notice was then sent to them requiring them to deposit a sum

of Rs.40,93,098.60 Paise in the Treasury of the Corporation failing which they were informed that recovery would be made by confiscating the

property under S. 138 of the Act. It is against this notice that the petitioner who is a tenant in the property has filed the present petition under

Article 226 of the Constitution challenging the same primarily on the ground that he was not afforded an opportunity of hearing nor was any notice

issued to him before the assessment was made.

2. In response to the notice of motion the Corporation has filed its reply controverting the averments made in the writ petition and it is pleaded that

the petitioner who is a tenant in the building is not entitled to any notice of hearing at the time of assessment proceedings and that he has no locus

standi to challenge the notice issued to the owners seeking to recover the arrears of house tax. It is averred that when the owners received the

notice dated 2011994 they did not raise any objection and the assessment of the annual rental value of the unit was finalised at Rs.2,98,800/ per

annum on 2421994 and that Shri Brij Lal, one of the owners, challenged the levy of house tax by filing a civil suit which after contest by the

Corporation was dismissed in default on 1611998.

3. From the rival contentions of the parties, the question that arises for consideration is whether the petitioner who is a tenant in the premises has a

right to challenge the assessment proceedings when the owners of the building were issued notice at the time of assessment. The answer to this

question depends upon the interpretation of Ss. 97, 101 and 103 of the Act the relevant parts of which are reproduced hereunder for facility of

reference :

97. Incidence of taxes on lands and buildings

1. (1) The taxes on lands and buildings shall be primarily leviable as follows :

(a) if the land or building is let, upon the lessor;

(b) if the land or buiding is sublet, upon the super lessor;

(c) if the land or building is unlet, upon the person in whom the right to let the same vests.

(2) xxxx xxxx xxxx

(3) xxxx xxxx xxxx

101. Assessment list. (1) Save as otherwise provided in this Act, the Corporation shall cause an assessment list of all lands and buildings in the city

to be prepared in such form and manner and containing such particulars with respect to each land and building as may be prescribed by byelaws.

(2) When the assessment list has been prepared, the Commissioner shall give public notice thereof and of the place where the list or a copy thereof

may be inspected, and every person claiming to be the owner, lessee or occupier of any land or building included in the list and any authorized

agent of such person, shall be at liberty to inspect the list and to take extracts therefrom free of charge.

(3) The Commissioner shall, at the same time, give notice of a date, not less than one month thereafter, when he will proceed to consider the

rateable value of lands and buildings, entered in the assessment list, and in all cases in which any land or building is for the first time assessed for the

rateable value of any land or building is increased he shall also give written notice thereof to the owner or to any lessee or occupier of the land or

building.

(4) Any objection to a rateable value or any other matter as entered in the assessment list shall be made in writing to the

Commissioner before the date fixed in the notice and shall state in what respect the rateable value or other matter is disputed, and all objections so

made shall be recorded in a register to be kept for the purpose.

(5) The objections shall be inquired into and investigated and the persons making them shall be allowed an opportunity of being heard either in

person or by authorised agent, by a committee consisting of two councillors elected by the Corporation for the purpose and the Commissioner or

an officer of the Corporation authorised by him in this behalf.

(6) When all objections have been disposed of, and the revision of the rateable value has been completed, the assessment list shall be authenticated

by the signature of the Commissioner, or, as the case may be, the officer authorised by him in this behalf, who shall certify that except in the cases,

if any, in which amendments have been made as shown therein no valid objection has been made to the rateable value or any other matters entered

in the said list.

(7) The assessment list so authenticated shall be deposited in the office of the Corporation and shall be open for inspection free of charge during

office hours to all owners, lessees and occupiers of lands and buildings comprised therein or the authorised agents of such persons, and a public

notice that it is so open shall forthwith be published.

103. Amendment of assessment list. (1) The Commissioner may, at any time, amend the assessment list,

XXXX XXXXX XXXX XXXX

(d) by increasing or reducing for adequate reasons the amount of any rateable value and of the assessment thereupon; or

XXXX XXXXX XXXX XXXX

(2) Before making any amendment under subsec. (1), the Commissioner shall give to any person affected by the amendment, notice of not less

than one month that he proposes to make the amendment and consider any objections which may be made by such person.

A reading of the aforesaid provisions makes it clear that the incidence of taxes on lands and buildings is upon the lessor if the land or building is let

out. In the instant case, the petitioner is tenant and the building constructed by the owners on the plot has been rented to him for the use of a hotel

for which he is paying Rs.1,80,000/ as rent, as claimed by him. In such a situation, the liability to pay tax is that of the lessor i.e. the owner of the

building. The assessment list has to be prepared and finalised by the Commissioner under S. 101 of the Act. According to this provision, the

Corporation prepares an assessment list of all lands and buildings in the city containing such particulars in respect of each land and building as may

be prescribed by the byelaws. The Commissioner is then required to give public notice of that assessment list informing the public about the places

where the list or a copy thereof may be inspected and every person claiming to be the owner, lessee or occupier of any land or building included in

the list is at liberty to inspect the same and take extract therefrom. The Commissioner also gives in the public notice the date not less than one

month from the date of publication when he will proceed to consider the rateable value of land and building entered in the assessment list and in

cases in which any land or building is for the first time assessed or the rateable value of any land or building is increased he is also required to give

written notice thereof to the owner or to any lessee or occupier of the land or building. Objections are required to be filed in writing to the

Commissioner in regard to the rateable value as entered in the assessment list. In the case before us, a notice was issued to the owners of the

building who in spite of service did not file any objections and, therefore, the rateable value and the assessment were finalised. Thereafter, the

Corporation found that the owners had made alterations/additions in the existing unit in the year 199394 and accordingly a notice under S. 103 of

the Act proposing to enhance the annual rental value of the property was issued to them. They again did not appear and the assessment was

finalised. Subsequently, the property was converted into a four storeyed hotel having 29 rooms besides 13 shops in the ground floor and,

therefore, the Corporation served another notice under S. 103 of the Act on 28121994 proposing the annual rental value of the property as Rs.

45,80,400/. This notice was served by affixation as personal service was repeatedly refused by the owners. The notice was affixed at the hotel

premises which are in the occupation of the petitioner. It can safely be presumed that the petitioner had knowledge of the same. Be that as it may,

the owners did not file any objections and the assessment was finalised. In this view of the matter, the petitioner who was a tenant of the premises

was not required to be issued any notice. According to subsec. (3) of S. 101 of the Act, notice at the time of assessment or increase thereof is

required to be given either to the owner or to any lessee or to the occupier of the land or building. In the present case, notice had been issued to

the owners and this was sufficient compliance of the provisions of S. 101 of the Act. No further notice was required to be issued to the petitioner

who was a tenant in the premises. It appears to us that the owners who challenged the assessment in a civil court and having failed therein, have put

up the petitioner who is their tenant to challenge the notice of recovery by filing the present writ petition. We are clearly of the view that the tenant

in such a situation has no locus standi to challenge the recovery. A perusal of the impugned notice makes it clear that the same has been issued to

the owners and not to the petitioner. Moreover, when the notice of assessment was served on the owners by affixation, the petitioner who is in

occupation of the premises had notice of the same and he did not challenge the assessment proceedings then. He has only come now to challenge

the notice of recovery. The writ petition, as already observed, is misconceived and the action of the petitioner cannot be said to be bona fide.

4. Before concluding, we may notice the contention advanced by the learned counsel for the petitioner. It was urged that since the petitioner was in

occupation of the premises in dispute as a tenant, he was entitled to a notice of hearing both at the time of making the assessment and also at the

time of recovering the house tax and since no such notice was issued, the principles of natural justice stood violated. We are not impressed with

this argument. As already noticed above, the provisions of subsec. (3) of S. 101 of the Act are very clear and in cases where the land or building is

for the first time assessed or the rateable value thereof is increased, the Commissioner is required to give written notice to the owner or to the

lessee or to the occupier of the land or building. The use of word or leaves no room for doubt that the Commissioner can issue notice either to the

owner or to the lessee or to the occupier and it is not necessary for him to issue notice to all. When the provisions of the Statute are clear and

unambiguous and specifically restrict the issuance of notice either to the owner or to the lessee, the rules of natural justice cannot come into play to

make it obligatory for the Commissioner to issue notice to the lessee as well. As regards subsec. (2) of S. 103 of the Act, it may be mentioned that

the Commissioner is required to give notice of the amendment of the assessment list to any person affected by the amendment. Since the incidence

of house tax is on the lessor, it is obviously he who is affected by the increase in the rateable value/annual rental value and not the lessee. We have,

therefore, no hesitation in rejecting this contention.

5. In the result, the petition fails and the same is dismissed with costs which are assessed at Rs. 20,000/.

Petition dismissed.