

(2001) 01 AP CK 0006

Andhra Pradesh High Court

Case No: Writ Petition No. 35027 of 1997

Mohd. Abdul Shukoor

APPELLANT

Vs

Municipal Commissioner,
Municipal Corporation of
Hyderabad

RESPONDENT

Date of Decision: Jan. 19, 2001

Acts Referred:

- Hyderabad Municipal Corporation Act, 1955 - Section 204, 268, 276, 276(3)

Citation: (2001) 1 ALT 657

Hon'ble Judges: S. Ananda Reddy, J; Bilal Nazki, J

Bench: Division Bench

Advocate: Mirza Nisar Ahmed Baig, for the Appellant; Ghanta Rama Rao, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Bilal Nazki, J.

Heard the learned Counsel for the parties. Notice of demand issued on 10-12-1997 has been challenged in this writ petition which is purported to have been issued u/s 268 of the Hyderabad Municipal Corporations Act, 1955. Facts are not at dispute. It is contended by the petitioner that he is tenant of the property and in terms of the lease agreement with his landlord, the landlord was supposed to pay all the taxes but inspite of that the impugned notice has been issued against the petitioner. It was also complained that the respondents were contemplating to issue a warrant of distress against the movable properties of the petitioner and not the immovable property of the landlord.

2. Counter has been filed. The learned Counsel for the respondents submits that the landlord as well as the tenant are liable to pay the tax. Since the petitioner was

occupier of the property in question at relevant point of time therefore he is liable to pay the tax.

3. Now, the only question is whether an occupier is liable to pay the tax under the Hyderabad Municipal Corporations Act or the landlord alone has to pay the tax and in case the occupier who is not the landlord is liable to pay the tax in what circumstances and in what manner. Section 204 of the Hyderabad Municipal Corporations Act is reproduced below:

"204. Primary responsibility for property taxes on whom to rest - (1) Property taxes shall be leviable primarily from the actual occupier of the premises upon which the said taxes are assessed if such occupier holds the said premises immediately from the Government or from the Corporation.

(2) Otherwise the said taxes shall be primarily leviable as follows, namely-

(a) if the premises are let, from the lessor;

(b) if the premises are sub-let, from the superior lessor; and

(c) if the premises are unlet, from the person in whom the right to let the same vests.

(3) But if any land has been let for any term exceeding one year to a tenant, and such tenant has build upon the land, the property taxes assessed upon the said land and upon the building erected thereon shall be primarily liable from the said tenant or his legal representative, whether the premises be in the occupation of the said tenant or of his legal representative or of subtenant."

From bare perusal of Section 204 it is abundantly clear that the liability is of the owner to pay the tax and not the occupier or tenant but reliance is placed on Section 276 by the learned Counsel for respondents. Section 276 is also reproduced below:

"276. When occupier may be held liable for payment of property tax - If the sum due on account of any property tax remains unpaid after a bill for the same has been duly served on the person primarily liable for the payment thereof and the said person be not the occupier for the time being of the premises in respect of which the tax is due, the Commissioner may serve a bill for the amount on the occupier of the said premises, or, if there are two or more occupiers thereof, may serve bill on each of them for such portion of the sum due as bears to the whole amount due the same ratio which the rent paid by such occupier bears to the aggregate amount of rent paid by them both or all in respect of the said premises.

(2) If the occupier or any of the occupiers fails within thirty days from the service of any such bill to pay the amount therein claimed, the said amount may be recovered from him in accordance with the foregoing provisions.

(3) No arrears of a property-tax shall be recovered from any occupier under this section, which had remained due for more than one year, or which is due on account of any period for which the occupier was not in occupation of the premises on which the tax is assessed.

(4) If any sum is paid by, or recovered from an occupier under this section, he shall be entitled to credit therefore in account with the person primarily liable for the payment of the same."

From bare perusal of this section it becomes clear that the occupier's liability arises only when a notice has been served on the person primarily liable i.e., the owner for payment and if he fails to make the payment then the occupier would be liable. There is nothing either in the notice impugned nor in the counter-affidavit which suggests that a notice of amount due on account of property-tax had been served on the owner who was primarily liable u/s 204 and he had not made the payment. Since owner was liable primarily therefore the respondents have to show that the owner had failed to pay the tax in spite of the notice having been served on him. There is not even such an assertion in the counter-affidavit. Therefore, we are of the view that the notice is bad and deserves to be quashed. The learned Counsel for the petitioner has further drawn our attention to Sub-sections (3) of Section 276. According to him in no case the occupier can be made liable to pay the property tax if it had remained due for more than one year. In the counter-affidavit nothing has been said as to when the tax had become due. Particulars are not given even in the impugned notice. The notice merely says, ".... upto the year ending on Sep/March, 1997-1998".

4. For these reasons, we allow this writ petition. Quash the impugned notice. During the pendency of this writ petition the petitioner was asked to deposit Rs. 10,000/-. The respondents are directed to reimburse the amount to the petitioner.