Before N.K. Sodhi & Virender Singh, JJ

SHIV PAL SAGAR—*Petitioner*

versus

STATE OF PUNJAB *AND* ANOTHER—*Respondents*

C.W.P. No. 11645 of 2000

10th December, 2002

Constitution of India, 1950—Art. 226—Punjab Municipal Corporation Act, 1976—Ss. 97, 101 and 103—Alterations/additions in the building—Enhancement of annual rental value—Owner raising no objection—Owner not paying house tax as determined after completion of assessment proceedings—Corporation issuing notice of recovery—Owner failing in a Civil Court—Challenge by a tenant—Whether non-issuance of a notice of hearing to the tenant violates principles of natural justice—Held, no—Provisions of S. 101(3) require notice either to owner or to lessee or to occupier of the building—Tenant has no locus standi *to challenge the recovery—Writ dismissed with costs being misconceived.*

Held, that according to sub-section (3) of Section 101 of the Punjab Municipal Corporation 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. Notice had been issued to the owners and this was sufficient compliance of the provisions of Section 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. 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 is misconceived and the action of the petitioner cannot be said to be *bona fide.*

(Para 3)

Further held, that 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.

(Para 4)

Amarjit Singh, Advocate, for the petitioner.

Rajesh Garg, Advocate for respondent No. 2.

JUDGEMENT

N. K. Sodhi, J :

(1) Sarvshri Sham Lal, Shadi Lal and Brij Lal are owners of plot bearing No. B-II/1854-1855, 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 19th November, 1979. On noticing some additions/alterations in the existing unit in the year 1993-94, the Corporation issued to the owners a notice under Section 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 20th January, 1994. 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 24th February, 1994. 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 Section 103 of the Act on 28th December, 1994 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 24th March, 1995 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 Section 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 20th January, 1994 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 24th February, 1994 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 16th January, 1998.

(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 Sections 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) 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 building is sub-let, 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 bye-laws.

(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 that purpose and the Commissioner or an officer of the Corporation authorised by him in this behalf.

(6) When the objections have been disposed of, and the revision of the reteable 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 xxxx xxxx xxxx

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

xxxx xxxx xxxx xxxx

(2) Before making any amendment under sub-section (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 a 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 Section 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 bye-laws. 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 buildings 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 1993-94 and accordingly a notice under Section 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 Section 103 of the Act on 28th December, 1994 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 sub-section (3) of Section 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 Section 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 sub-section (3) of Section 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 sub-section (2) of Section 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 writ petition fails and the same is dismissed with costs which are assessed at Rs. 20,000.

R.N.R.