CIVIL MISCELLANEOUS

Before A. N. Grover and S. K. Kapur, JJ.

KALU RAM,—*Petitioner*.

versus

NEW DELHI MUNICIPAL COMMITTEE AND ANOTHER,—*Respondents*.

Civil Writ No. 228-D of 1962

1965

April, 8th

Public Premises (Eviction of Unauthorised Occupants) Act (XXXII of 1958)—S. 7—"Rent payable"—Meaning of—Time-barred rent—Whether can be recovered under S. 7(3)—Public Premises (Eviction of Unauthorised Occupants) Amendment Act (XL of 1963)—S. 2—Whether retrospective—Licence fee—Whether recoverable as arrears of land revenue—Interpretation of statutes—Provisions of a statute—How to be interpreted.

Held, that it is only rent 'payable' that can be recovered under section 7(3) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958. The word 'payable' in its normal acceptation denotes both "legally recoverable" and "payable". Section 7 of the Act cannot be construed to mean that even though the Municipal Committee had lost the remedy to recover the amount in a court of law, it still retained the right to recover it by invoking the coercive machinery. This section merely provides a summary procedure for recovery of certain debts with the objects of avoiding all complications involved in litigation. It does not create a right but merely prescribes an alternative procedure for recovery of certain categories of dues. Consequently if the respondents had no right to recover the rent by way of suit, they did not get one by reason of section 7 of the Act.

Held, that the amendment made by section 2 of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1963, as been in terms made retrospective and the amended statute has to be read as if it had been originally passed in the amended form.

Licence fee is clearly included in the definition of rent and can, therefore, be legitimately recovered under section 7 of the Act as arrears of land revenue.

Held, that it is in accord with reality that all statutes are subject to interpretation—that all statutes must first have their meanings ascertained, and then their applicability determined and, if found applicable to the case at hand, applied. The Legislative intention has to be primarily sought for in the statute itself in the words used by the law-makers to express their will. No doubt, in a Court of law, what the legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact, either in express words or by reasonable and necessary implication, but certain amount of commonsense must be applied in construing statutes and in order to understand the meaning of the words used, an enquiry must be made into the subject-matter with respect to which they are used, and the object in view. When a statute is susceptible to two or more interpretations, normally that interpretation should be accepted as reflecting the will of the legislature, which operates most equitably, justly and reasonably as judged by the normal conceptions of what is right and what is wrong, and of what is just and what is unjust.

Petition under Articles 226/227 of the Constitution of India praying that this writ petition be accepted with costs throughout and impugned recovery be stayed till the disposal of the petition.

D. P. BHANDARI, ADVOCATE, for the Petitioner.
CECIL L. JOSEPH, ADVOCATE, for the Respondent.

ORDER

Kapur, J.

KAPUR, J.—This writ petition along with Civil Writs Nos. 311-D to 340-D, 441-D to 479-D and 545-D to 550-D of 1962, were referred to a Division Bench in pursuance of the order dated the 10th of May, 1963 made by Dua, J.

It is common ground that the decision in Civil Writ No. 228-D of 1962 will govern all other writ petitions including Civil Writs Nos. 41-D to 69-D, 97-D to 100-D, 117-D, 122-D, 128-D to 130-D, 219-D, 220-D, 256-D, 615-D to 617-D, 735-D, 835-D to 838-D and 925-D of 1963, 88-D, 425-D, 654-D and 655-D of 1964 and we are, therefore, confining ourselves to the facts of Civil Writ No. 228-D of 1962. The petitioner was originally a pavement vendor in Connaught Place from where he was removed and provided with a pre-fabricated small stall No. 216 on Irwin Road.

which was constructed by the New Delhi Municipal Committee (respondent No. 1 in 1950. The New Delhi Municipal Committee demanded rent at the rate of Rs. 30 per mensem from the petitioner for the said stall whereupon the petitioner and the other allottees moved the Rent Controller under the Delhi and Ajmer Rent Control Act, 1947, for fixation of standard rent which was fixed at Rs. 19-12-0. The petitioner as well as respondent No. 1 felt aggrieved by the said order and filed appeals to the District Judge and the rent was fixed at Rs. 6-2-0 per mensem on 26th of July, 1954. The New Delhi Municipal Committee filed a revision petition in this Court which was allowed on 13th of October, 1958, on the ground that the Rent Controller had no jurisdiction to entertain the application for fixing any standard rent since there was no contract properly executed between the parties in accordance with section 47 of the Punjab Municipal Act. The Municipal Committee took no steps thereafter till the end of December, 1960 when it demanded licence fee in respect of the stall in question which the petitioner had vacated some time in early 1957. This demand was resisted by the petitioner *inter alia* on the ground that the same was barred by time. The New Delhi Municipal Committee applied to the Estate Officer for proceeding to recover the said amount as arrears of licence fee under section 7(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958. The Estate Officer, respondent No. 2, ordered the recovery of licence fee describing it as arrears of rent. He held that the provisions of the Limitation Act were not applicable to such recoveries. An appeal was taken against this order to the Court of Additional District Judge by the petitioner but the same was disallowed. It is in these circumstances that the present writ petitions were filed challenging the order of the Additional District Judge.

The learned counsel for the petitioner has taken two objections to the recovery proceedings. He contends that the amount sought to be recovered was not "rent" but a licence fee and, therefore, the provisions of section 7(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 (No. 32 of 1958) were not applicable. He further submits that under section 7(1) it is only such arrears of rent as are "payable" in respect of any public premises,

Kala Ram
v.
New Delhi Municipal Committee and another

Kapur, J.

that can be recovered under section 7(3) and since the claim was time-barred, section 7(1), of the Act and consequently section 7(3) did not apply. There is no force in the first contention of the learned counsel for the petitioner. Rent was not defined in the Act as originally enacted and its definition was for the first time inserted by the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 40 of 1963. Section 2 of the said Amendment Act is in the following terms:—

> "In section 2 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958, after clause (d), the following clause shall be inserted and shall be deemed always to have been inserted, namely—
>
> "(dd) "rent", in relation to any public premises, means the consideration payable periodically for the authorised occupation of the premises, and includes—
>
> (i) any charge for electricity, water or any other services in connection with the occupation of the premises;
>
> (ii) any tax (by whatever name called) payable in respect of the premises;
>
> where such charge or tax is payable by the Central Government."

The amendment having been in terms made retrospective, the amended statute has to be read as if it had been originally passed in the amended form. Licence fee is clearly included in the definition of rent and can, therefore, be legitimately recovered under section 7 as arrears of land revenue. There is, however, force in the second contention of the learned counsel for the petitioner and he is right when he says that it is only rent 'payable' that can be recovered under section 7(3) of the Act. Section 7, in our view, does not create a right but merely prescribes an alternative procedure for recovery of certain categories of dues. Consequently if the respondents had no right to recover the rent, they did not get one by reasons of section 7 of the Act. In *Pariteshah Sadashiv* v. *The Assistant Custodian of Evacuee Property* (1), section 48 of the Administration of Evacuee Property Act (Act 31 of 1950) fell

(1) 1952 P.L.R. 468.

for consideration. The said section 48, as it then stood, was as under:—

> "*Recovery of arrears.*—Any sum due to the State Government or to the Custodian under the provisions of this Act may be recovered as if it were an arrears of land revenue."

This Court held that section 48 was restricted to sums otherwise legally recoverable and could not extend to recovering debts which were barred by time. No doubt in *Pariteshah's case* the Court had to construe the words "sum due" but in our view the word "payable" does not have a different connotation at least in the statute under consideration and must mean debts legally recoverable. It was observed by Sir George Mellish L. J., in *Kemp* v. *Fastnedge* (2), at page 387:—

> "Now, the words "debts due to him" are certainly words which are capable of a wide or a narrow construction. I think that *prima facie*, and if there be nothing in the context to give them a different construction, they would include all sums certain which any person is legally liable to pay, whether such sums had become actually payable or not. On the other hand, there can be no doubt that the word "due" is constantly used in the sense of "payable", and if it is used in that sense, then no debts which had not actually become payable when the act of bankruptcy was committed would be included. Lastly, the expression "debts due" is sometimes used in bankruptcy proceedings to include all demands which can be proved against a bankrupt's estate, although some of them may not be strictly debts at all."

Again in *Nijamudin* v. *Mahammadal* (3), at page 391 it was observed by a Division Bench of the Madras High Court that—

> "In speaking of a debt, the word "due" is not unfrequently used in the sense of "payable", but

(2) (1873) IX Chancery Appeals 383.
(3) 4 M.H.C.R. 385.

Kalu Ram
v.
New Delhi
Municipal
Committee
and another

its proper signification does not require that it should be understood to mean more than that the debt is owing—that there is the existing obligation to pay it, and we think that this is the sense in which it is used in the section."

Kapur, J.

The above passages show that the word "due" may some time have a wider significance inasmuch as it may refer to an amount which a person is legally liable to pay though it may not have become actually payable. On the other hand "payable" in its normal acceptation denotes both "legally recoverable" and "payable" but otherwise there is no difference in the two expressions. According to Chamber's dictionary also 'payable' means 'due'. The following passage in Words and Phrases (permanent edition) Vol. 31 at page 457 also lends support to the view we have taken—

"Bankruptcy Act, 1867, Articles 19, 14 Stat. 517, providing that all debts due and payable from the bankrupt at the time of the adjudication of bankruptcy may be provable against his estate. includes "all debts, no matter how long standing" No debt can be considered due and payable which is barred by limitation, and a debt so barred cannot be proved in bankruptcy."

What then did the legislature intend when providing for the recovery of an amount payable? It is in accord with reality that all statutes are subject to interpretation—that all statutes must first have their meanings ascertained, and then their applicability determined and if found applicable to the case at hand applied. The Legislative intention has to be primarily sought for in the statute itself in the words used by the law-makers to express their will. No doubt in a Court of law, what the legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact, either in express words or by reasonable and necessary implication, but certain amount of commonsense must be applied in construing statutes and in order to understand the meaning of the words used, an enquiry must be made into the subject-matter with respect to which they are used and the object in view. When a statute is susceptible to two or more interpretations, normally that interpretation should be accepted as

reflecting the will of the legislature, which operates most equitably, justly and reasonably as judged by the normal conceptions of what is right and what is wrong, and of what is just and what is unjust. If the intention of the legislature and the object of the enactment was merely to prescribe a less cumbersome procedure for realisation of public dues, section 7 cannot be construed to mean that even though the Municipal Committee had lost the remedy to recover the amount in a court of law, they still retained the right to recover it by invoking the coercive machinery. As we have already said, section 7 merely provides a summary procedure for recovery of certain debts with the object of avoiding all complications involved in litigation. The section cannot be read as creating a fresh right in favour of the respondents. In this view section 7 could not be resorted to by the respondents for the recovery of time-barred amounts. The learned counsel for the respondents submits that the law of limitation merely bars the remedy but does not destroy the right. But, as we have already said, section 7 of the Act does not also create a new right. The learned counsel for the petitioner then contended that section 81 of the Punjab Municipal Act provided a special procedure for recovery of the licence fee and resort could not, therefore, be had to Public Premises (Eviction of Unauthorised Occupants) Act, 1958. When told that section 81 was confined only to the amounts claimable under the Punjab Municipal Act, the learned counsel called attention to section 173 and particularly clause (3) of sub-section (1) thereof in support of his plea that such licence fee was a fee claimable under the Act. That provision, in our view, is not applicable as in this case the stalls were constructed by the Municipal Committee and not by the petitioners. No other provision has been pointed out which would bring the claim within the purview of section 81. In this view section 81 of the Municipal Act would not be attracted and resort could be had to Act 32 of 1958 if otherwise the respondents were entitled to recover the amount. The petitions would, therefore, succeed and are allowed with costs.

Kapur, J.

A. N. GROVER, J.—I agree.

Grover, J.

B.R.T.