

workmen employed in the scheduled employments by prescribing minimum rates of wages for them, and so in construing the said provisions the court should adopt what is sometimes described as a beneficent rule of construction. If the relevant words are capable of two constructions preference may be given to that construction which helps to sustain the validity of the impugned notification; but it is obvious that an occasion for showing preference for one construction rather than the other can legitimately arise only when two constructions are reasonably possible not otherwise."

We are, therefore, of the view that Shama and Tusli Ram even if their rights may have become precarious still remained landlord and tenant respectively under the Punjab Act No. 8 of 1953, and the appellant falling within the definition of an 'occupancy tenant' came to be fully vested with proprietary rights of his landlord. In this view of the matter, this appeal must succeed and it is accordingly allowed. The judgment of the trial Court is restored and the suit of the plaintiffs dismissed. As the point for determination is not free from difficulty, we will make no order as to costs.

B.R.T.

REVISIONAL CIVIL

Before S. B. Kapoor and H. R. Khanna, JJ.

MUNICIPAL CORPORATION OF DELHI,—*Petitioner*

versus

G. S. Mumick,—*Respondent*

Civil Revision No. 441-D of 1960

August 11, 1966

*Delhi Municipal Corporation Act (LXVI of 1957)—Ss. 124, 126 and 512—
Assessment of rateable value of property made by New Delhi Municipal*

Municipal Corporation of Delhi v. G. S. Mumick (Khanna. J.)

Committee in respect of transferred area—Whether can be amended by Corporation without fresh assessment—Bye-laws not framed under the Corporation Act—Whether old bye-laws framed under the Punjab Municipal Act will continue in force.

Held, that the assessment of the rateable value of the property in dispute at the time, when the locality in which the property in dispute is situated was within the jurisdiction of the New Delhi Municipal Committee, was made under the provisions of the Punjab Municipal Act. Sections 63 to 66 of that Act correspond to section 124 of the Delhi Municipal Corporation Act. According to clause (e) of sub-section (2) of section 512 of the Corporation Act, the assessment made by the New Delhi Municipal Committee of the property in dispute, though under the Punjab Municipal Act, should be deemed to have been made under the provisions of the Corporation Act. It follows that the assessment list and rateable value prepared by the New Delhi Municipal Committee should be regarded as that having been made under section 124 of the Corporation Act. In the circumstances, there would be no legal impediment to the Commissioner of Corporation proceeding under clause (d) of sub-section (1) of section 126 of the Act for the modification or enhancement of the rateable value of the property in dispute.

Held, that according to clause (d) of sub-section (2) of section 512 of the Corporation Act all bye-laws made by the New Delhi Municipal Committee immediately before the establishment of the corporation in connection with the transferred area are to continue in force, in so far as they are not inconsistent with the provisions of the Act, until they are superseded by any bye-laws under the said provisions.

Petition for revision, under section 115 of the Code of Civil Procedure and Article 227 of the Constitution of India, of the order of Shri D. R. Puri, Additional District Judge, Delhi, dated 13th June, 1960, accepting the review and setting aside the assessment and rateable value fixed by the Corporation. The case was referred to a larger Bench for decision by the Hon'ble Mr. Justice Harbans Singh by order, dated 25th November, 1965.

S. S. CHADHA, ADVOCATE, for the Petitioner.

MISS UMA MEHTA, ADVOCATE, for the Respondent.

JUDGMENT

KHANNA, J.—This case has been referred to Division Bench in pursuance of the order of Harbans Singh, J., who was of the view that as the question raised is of general importance it would be in the fitness of things that the matter was decided authoritatively by a larger Bench.

The brief facts of the case are that G. S. Mumick, respondent owns property bearing No. C/8, situated in Nizam-ud-Din, New Delhi. This locality was previously within the jurisdiction of the New Delhi Municipal Committee which is governed by the provisions of the Punjab Municipal Act, 1911 (Punjab Act No. III of 1911). The annual rental value of the property in dispute was assessed by the New Delhi Municipal Committee at Rs. 360, for the purpose of property tax. On 7th April, 1958, the locality, where the property in dispute is situated, came within the jurisdiction of Delhi Municipal Corporation. After the transfer of the above locality, the Corporation issued a notice to the respondent under section 126 of the Delhi Municipal Corporation Act (hereinafter referred to as the "Corporation Act") that the rateable value of the property in dispute belonging to the respondent for the purpose of house tax, was proposed to be revised to Rs. 3,600. The respondent raised objections. Ultimately the rateable value of the property in dispute was assessed at Rs. 1,680 with effect from 7th April, 1958. The respondent filed an appeal against the order assessing the rateable value of the property in dispute at Rs. 1,680, but the same was dismissed by Shri B. L. Malhotra, Additional District Judge, Delhi. The respondent thereafter filed a petition for review on the allegation that there was error apparent on the face of the record. This petition was heard by Shri D. R. Puri, Additional District Judge. He allowed the petition for review and set aside the assessment and rateable value fixed by the Corporation. In the view of Shri Puri, the previous rateable value assessed by the New Delhi Municipal Committee could not be modified or amended under section 126 of the Corporation Act unless a fresh assessment was made by the Corporation under section 124 of that Act. The Corporation then came up to this Court by means of revision and as stated earlier, the matter has now been referred to the Division Bench.

The point of controversy lies within a narrow compass but, before dealing with it, it would be useful to reproduce the relevant provisions. Section 124 of the Corporation Act makes provision for the preparation of assessment list. According to that section the Corporation shall cause an assessment of all lands and buildings in Delhi to be prepared in such form and manner and containing such particulars as may be prescribed by bye-laws. The Corporation has to give a public notice after preparation of the list and a right of inspection is given to all owners, lessees or occupiers of the building or land. Provision is also made for decision of objections, if any which may be filed. After the decision of the objections, if any, the authenticated list has to be deposited in the office of the Corporation. Section 126 provides for the

Municipal Corporation of Delhi v. G. S. Mumick (Khanna, J.)

amendment of assessment list, and according to clause (d) of sub-section (1) of that section, the Commissioner may, at any time, amend the assessment list by increasing or reducing for adequate reasons the amount of any rateable value and of the assessment thereupon. Sub-section (2) of the section makes it imperative for the Commissioner to give notice of not less than one month to any person affected by the amendment and to consider his objections before making the amendment. Section 512 of the Corporation Act defines a transferred area as meaning that area of Delhi which immediately before the commencement of that Act was included within the local limits of the New Delhi Municipal Committee but which, after the commencement of that Act, forms part of Delhi by provisions of that Act. Clause (e) of sub-section (2) of that section reads as under:—

“512 (2) As from the establishment of the Corporation,—

- | | | | | |
|-----|---|---|---|---|
| (a) | * | * | * | * |
| (b) | * | * | * | * |
| (c) | * | * | * | * |
| (d) | * | * | * | * |

- (e) all assessments, valuations, measurements or divisions made by the New Delhi Municipal Committee immediately before such establishment in or in connection with the transferred area shall in so far as they are not inconsistent with the provisions of this Act, continue in force and be deemed to have been made under the provisions of this Act unless and until they are superseded by any assessment, valuation, measurement or division made by the Corporation or the municipal authority concerned under the said provisions.”

Mr. Chadha on behalf of the petitioner—Corporation has argued that on account of the provisions of clause (e) of sub-section (2) of section 512, the rateable value of the property in dispute, which was assessed by the New Delhi Municipal Committee, should be deemed to be rateable value under the Corporation Act and as such the Commissioner of Corporation was well within his powers in modifying the amount of rateable value under clause (d) of sub-section (1) of section 126. The preparation of an assessment list under section 124 of the Corporation Act, according to the learned counsel was not essential before the initiation of the action under clause (d) of sub-section

(1) of section 126 of the Act. As against that, Miss Mehta, on behalf of the respondent, has argued that the Corporation could proceed under clause (d) of sub-section (1) of section 126 of the Act only if it first prepared an assessment list under section 124 of that Act. After giving the matter my consideration I am of the view that the contention advanced on behalf of the petitioner-Corporation should prevail. The assessment of the rateable value of the property in dispute at the time, when the locality in which the property in dispute is situated was within the jurisdiction of the New Delhi Municipal Committee, was made under the provisions of the Punjab Municipal Act. Sections 63 to 66 of that Act correspond to section 124 of the Corporation Act. According to clause (e) of sub-section (2) of section 512 of the Corporation Act, which has been reproduced above, all assessments and valuations made by the New Delhi Municipal Committee immediately before the establishment of Municipal Corporation in connection with a transferred area shall, unless they be inconsistent with the provisions of the Corporation Act, continue in force and be deemed to have been made under the provisions of the Corporation Act until they are superseded by the assessment or valuation by the Corporation. In view of the above provisions, the assessment made by the New Delhi Municipal Committee of the property in dispute, though under the Punjab Municipal Act, should be deemed to have been made under the provisions of the Corporation Act. The word "deemed" under clause (e) shows that the above result has been attained by a legal fiction. Once, however, the statute introduces that fiction the Court is bound to give full effect to it and carry to its logical conclusion and natural consequence. As observed by their Lordship in the case of *State of Bombay v. Pandurang Vinayak and others* (1).

"When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion."

From what has been observed above, it would follow that the assessment list and rateable value prepared by the New Delhi Municipal Committee should be regarded as that having been made under section 124 of the Corporation Act. In the circumstances, there would be no

(1) A.I.R. 1953 S.C. 244.

Municipal Corporation of Delhi *v.* G. S. Mumick (Khanna, J.)

legal impediment to the Commissioner of Corporation proceeding under clause (d) of sub-section (1) of section 126 of the Act.

Argument has then been advanced on behalf of the respondent that as the property tax bye-laws were published on 21st March, 1959 and came into force with effect from 1st April, 1959, the amendment of the rateable value made by the authorities of the Corporation on 11th February, 1959, was not valid. Reference in this connection has also been made to sub-section (3) of section 113 of the Corporation Act according to which the property taxes and other taxes mentioned in sub-section (1) of section 113 shall be levied, assessed or collected in accordance with the provisions of the Act and the bye-laws made thereunder. In my opinion, the non-existence of the bye-laws on 11th February, 1959, would not invalidate the action taken by the Commissioner of Corporation under clause (d) of sub-section (1) of section 126 of the Act. There is no reference to any bye-laws in section 126 of the Act, and in view of that it cannot be said that the framing and publication of the bye-law was a condition precedent to the initiation of action under clause (d) of sub-section (1) of section 126. According to clause (d) of sub-section (2) of section 512 of the Corporation Act all bye-laws made by the New Delhi Municipal Committee immediately before the establishment of Corporation in connection with the transferred area shall, in so far as they are not inconsistent with the provisions of that Act, continue in force and be deemed to have been made under the provisions of the Corporation Act unless and until they are superseded by any bye-law under the said provisions. It is not disputed that bye-laws framed under the Punjab Municipal Act were in force when the locality where the house in dispute is situated was within the jurisdiction of the New Delhi Municipal Committee. In the circumstances it would not be a correct approach to proceed in this case as if no bye-laws were at all in existence when the impugned amendment of assessment was made. As the action taken on behalf of the respondent in proceeding under section 126 (1) (d) of the Corporation Act is warranted by the language of the statute, the same cannot be held to be contrary to law on the score that bye-laws under the Corporation Act had up to that date been not published.

I would, accordingly, accept the revision, set aside the order of Shri D. R. Puri, Additional District Judge, and restore that of the authorities of the Corporation. The parties, in the circumstances of the case, are left to bear their own costs.

S. B. Kapoor, J.—I agree.

B.R.T.