

*

HIGH COURT OF DELHI AT NEW DELHI

+

R.F.A. No.451/2013 & C.M. APPL. No.14813/2013

Pronounced on: 30th May, 2016

SHRI B M SHARMA

..... Appellant

Through: Mr. Ravi Gupta, Senior Advocate with
Mr. Ashish Dholakiya, Mr. D. Kishore
Kumar, Mr. Gautam Bajaj &
Ms. Bhoomija Verma, Advocates.

Versus

SHRI BRIJ BHUSHAN SHARAN & ORS.

..... Respondent

Through: None.

WITH

+

R.F.A. No.356/2013 & C.M. APPL. No.29448/2015

M/S THE PRINTER HOUSE PVT LTD

..... Appellant

Through: Mr. Ravi Gupta, Senior Advocate with
Mr. Ashish Dholakiya, Mr. D. Kishore
Kumar, Mr. Gautam Bajaj &
Ms. Bhoomija Verma, Advocates.

Versus

M/S ATMA RAM PROPERTIES (P) LTD

..... Respondents

Through: Mr. Rakesh Tikku, Senior Advocate with
Mr. Amit Sethi, Advocate.

AND

+ **R.F.A. No.480/2013 & C.M. APPL. Nos.16085/2013, 29451/2015
& 31130/2015**

THE ORIENTAL INSURANCE CO LTD Appellant
Through: Mr. Vishnu Mehra, Advocate.

Versus

M/S ATMA RAM PROPERTIES Respondent
Through: Mr. Rakesh Tikku, Senior Advocate with
Mr. Amit Sethi, Advocate.

**CORAM:
HON'BLE MR. JUSTICE V.K. SHALI**

V.K. SHALI, J.

1. These are three Regular First Appeals in which the common question of law arises. The common question of law which arises for consideration is as to whether the property tax which is payable by the landlord under the New Delhi Municipal Council Act, 1994 (NDMC Act) and is recoverable from the tenant under Section 67 (3) of the NDMC Act as arrears of rent can be said to be forming part of the rent payable by the tenant to the landlord, so as to lose the protection of the Delhi Rent Control Act, 1958 (DRC Act) under Section 3(c) of the DRC Act, if it exceeds Rs.3500/-.
2. Briefly stated the facts of all the three cases are almost similar in the sense that there exists relationship of landlord and tenant and the rent of the premises in question is less than Rs.3500/- but in case the property tax assessed in respect of such property the rateable value exceeds the amount of rent payable then the

difference between the tax levied and the tax leviable shall be receivable by the landlord and it can be recovered by him as arrears of rent [Section 67 (3)]. Further, if this differential amount plus the rents payable by the tenant exceeds Rs.3500/-, whether the landlord can file a suit for possession.

3. Before dealing with this question, it will be pertinent here to refer to few relevant provisions of the both the Delhi Rent Control Act, 1958 and the New Delhi Municipal Council Act, 1994 as follows:-

The Delhi Rent Control Act, 1958

“3. Act not to apply to certain premises- *Nothing in this Act shall apply –*

- a)*
- b)*
- c) to any premises, whether residential or not, whose monthly rent exceeds three thousand and five hundred rupees”.*

.....

“6A. Revision of rent – *Notwithstanding anything contained in this Act, the standard rent, or, where no standard rent is fixed under the provisions of this Act in respect of any premises, the rent agreed upon between the landlord and the tenant, may be increased by ten per cent. every three years.”*

.....

“7.(2) Where a landlord pays in respect of the premises any charge for electricity or water consumed in the premises or any other charge levied by a local authority having jurisdiction in the area which is ordinarily payable by the tenant, he may recover from the tenant the amount so paid by him’ but the landlord shall not

recover from the tenant whether by means of an increase in rent or otherwise the amount of any tax on building or land imposed in respect of the premises occupied by the tenant;

Provided that nothing in this sub-section shall affect the liability of any tenant under an agreement entered into before the 1st day of January, 1952, whether express or implied, to pay from time to time the amount of any such tax as aforesaid.”

.....

“8. Notice of increase of rent –

(1) Where a landlord wishes to increase the rent of any premises, he shall give the tenant notice of his intention to make the increase and in so far as such increase is lawful under this Act, it shall be due and recoverable only in respect of the period of the tenancy after the expiry of thirty days from the date on which the notice is given.

(2) Every notice under sub-section (1) shall be in writing signed by or on behalf of the landlord and given in the manner provided in Section 106 of the Transfer of Property Act, 1982.”

4. Chapter VIII of the NDMC Act deals with taxation.

“60. Taxes to be imposed by the Council under this Act.

– (1) The Council shall for the purposes of this Act, levy the following taxes, namely:-

(a) property tax;

(b) to (e).....

“66. Incidence of property tax – *(1) The property tax shall be primarily leviable as follows:-*

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

- (b)
 (c) ”

.....

“67. Apportionment of liability for property tax when the premises are let or sub-let.-

(1) If any land or building assessed to property tax is let, and its rateable value exceeds the amount of rent payable in respect thereof to the person upon whom under the provision of section 66 the said tax is leviable, that person shall be entitled to receive from his tenant the difference between the amount of the property tax levied upon him and the amount which would be leviable upon him if the said tax was calculated on the amount of rent payable to him.

(2)

(3) Any person entitled to receive any sum under this section shall have, for the recovery thereof, the same rights and remedies as if such sum were rent payable to him by the person from whom he is entitled to receive the same.”

.....

“102. Recovery of tax. - *(1) If the person liable for the payment of the tax does not, within thirty days from the service of the notice of demand, pay the amount due, such sum together with all costs and the penalty provided for in section 101 may be recovered under a warrant, issued in the form set forth in the Seventh Schedule, by distress and sale of the movable property or the attachment and sale of the immovable property of the defaulter:*

Provided that the Chairperson shall not recover any sum the liability for which has been remitted on appeal under the provisions of this Act.”

5. In the light of the aforesaid provisions of the DRC Act and the NDMC Act, the question as has been framed hereinabove deserves the answer.
6. While as the appellants have contended that the portion of the property tax which is recoverable from the tenant in terms of Section 67(3) of the NDMC Act is not to be taken as the component of rent so as to deny the tenant of the protection of Section 3(c) of the DRC Act granted by the said statute. For this purpose, reliance was placed on the Section 7 (2) of the Act which prohibits the landlord from recovery of any increase in rent or property tax. As against this, the counsel for the respondent has contended to the contrary and has stated that in case the component of property tax payable or recoverable from the tenant is added to the rent payable by the tenant to the landlord and that happens to be more than Rs.3500/- then he ceases to enjoy the protection of the DRC Act and eviction can be ordered against him. This is precisely what has been done in the above mentioned three regular first appeals.
7. In two regular appeals, eviction order has been passed on merits after recording of evidence on the assumption that the component of property tax payable by the tenant has been added to the rentals and since it exceeds Rs.3500/-, therefore, the eviction order was passed. In the third matter, a decree of possession has been passed

under Order 12 Rule 6 CPC. In all the three cases, the impugned order of eviction has been challenged.

8. I have heard the learned counsel for the appellants as well as the learned counsel for the respondents.
9. The learned senior counsel Mr. Tikku appearing for the respondent has contended that there is no definition of word '*rent*' in D.R.C. Act. However, Hon'ble Supreme Court in *State of Punjab vs. British India Corporation Ltd.*, AIR 1963 SC 1459 has held that the word '*rent*' in its wider sense means any payment made for use of land or building which includes the payment by licensee in respect of use and occupation of any land or building. In its narrow sense it means payment made by tenant to landlord for the property demised to him.
10. In *Standard Pharmaceuticals Ltd. vs. Gian Chand Jain & Ors.*, 97 (2002) DLT 290, the learned Single Judge of this Court while relying on the definition of rent given by Apex Court in case *Karnani Properties Ltd. vs. Augustine & Ors.*, has held that charges payable for any amenity being availed by the tenant at the cost of landlord is included in rent. It also held that the services or any amenity which cannot be separated from the premises, payment on account of the same shall form part of rent.
11. In this case, the issue was whether the charges payable on account of the maintenance was part of the rent or not. The court held that it did form part of the rent. The said judgment of High Court was

affirmed by Hon'ble Supreme Court of India vide order dated 25.11.2002 in SLP 15050/2002. Similarly in *Pushpa Sen Gupta vs. Sushma Gosh; (1990) 2 SCC 65*, it was held that the charges payable for fixtures and furniture forms a part of rent. In *Rohini Varshenani vs. R.B. Singh*; RFA 829 of 2015 decided on 04.12.2008 it was held that payment on account of water and electricity and other amenities has been held to be a part of rent.

12. The Delhi Rent Control Act does not define the term 'Rent' but it defines Basic Rent, standard rent, fair rate coupled with the fact that Section 7 (2) which lays down any charges payable on account of services of electricity and water payable by the landlord are recoverable from the tenant would no doubt form part of rent
13. So far as the present cases are concerned, it cannot be said that the property tax or the house tax payable by the tenant in terms of Section 67 (3) of the NDMC Act is on account of some services or amenity and therefore it cannot be treated to be a part of the rent or forming part of the rent on the basis of judgments cited above by the learned counsel for the respondent and thereby seeking eviction of the tenant. Moreover, payment on account of services availed or amenities enjoyed is not comparable with the property tax, because tax is a charge on the property payable by the lessor. It is not being paid on account of any services therefore cannot be added to the component of rent.

14. Accordingly, both the judgments of *British India Corporation Ltd. (supra)* and *Standard Pharmaceuticals Ltd. (supra)* are distinguishable on facts of the cases.
15. The Bombay High Court in *Smt. Muktabai Gangadhar Kadamvi vs. Maktabai Laxman Palwankar, in Special Civil Application Nos.1978 of 1965 and 1966 of 1966, decided on 14.02.1969* while dealing with the issue as to whether Education Cess shall form part of rent, the court affirmed that the term rent under Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 has to be interpreted in its wider sense to include the same. In para 11 of said judgment the Court concluded that if by virtue of '*contract*' between the parties, such amount forms part of rent. It has been also observed that if the tenant is required to make his landlord any payment by virtue of a statutory provision, then also it will be part of the rent.
16. It has been contended by the learned counsel for the respondent that there is no reason why the same principle should not be applied to the payment which tenant is required to make to his landlord by virtue of statutory provision. Statutory provision in the said case was Section 15 of Maharashtra Education Cess Act by virtue of which rights of recovery have been given to person for recovery of such tax amount as rent. It has been contended by Mr. Tiku, the learned senior counsel that Section 67(3) of NDMC Act is *pari materia* to said provision of law which was the bone of contention in the judgment passed by Bombay High Court.

17. *Smt. Muktabai Gangadhar Kadamvi's* case is distinguishable from the facts of the present case. In the said case, the judgment had taken note of the fact that it was a part of the contract of the parties that the education cess payable under Section 13 of the Maharashtra Education Cess Act, 1962 shall form a part of the rent payable by the tenant under an agreement though the landlord is entitled to recover the property tax in terms of Section 67 (3) from the tenant but it is not shown by the respondent that there was an agreement between the parties that it will be payable by the tenant, namely, appellant. According to Section 67(3) it is recoverable as arrears of rent but that does not mean that it shall become a part of the rent. There is no agreement between the parties in the present case, therefore, the facts of the two cases are distinguishable.
18. In yet another judgment passed by Apex Court in *Calcutta Gujarati Education Society & Anr. vs. Calcutta Municipal Corporation & Ors., (2003) 10 SCC 533*, the Apex Court while dealing with Section 231 of Calcutta Municipal Corporation Act which again is *pari materia* to Section 67 (3) of NDMC Act held that tax has to be fictionally treated as rent because in the absence of same, landlord would be compelled to pay the whole amount of tax which is recoverable from him and then he would be left with expensive and cumbersome process of filing Civil suit for recovery. Apex Court in para 42, 43 and 44 of the said judgment discussed the effect of tax being considered as part of rent and in para 50 has conclusively held that right of landlord for recovery are

by demand notice under Tenancy Act and if necessary by filing an eviction suit. Resort to remedy before Regular Court is also not prohibited and there is no discrimination of tenants covered by Tenancy Act and others not covered under said Act. It was also held in this case that realization of property can be either by filing a suit for recovery or even by filing an eviction petition as that is the logical way of recovery of rent from the tenant.

19. The Hon'ble Division Bench of Calcutta High Court in *Mayank Poddar vs. Development Consultant Ltd.*, 2004 (2) RCR 154 (DB), clearly held that tax will form part of rent 'if agreed' to be paid by agreement and even variation in tax is irrelevant. Minute scrutiny of said judgment on the fact of it shows that tax forms part of rent and even if the same has to be paid quarterly and not monthly and once the amount is payable for occupation of premises, the same is covered under the concept of rent under the West Bengal Rent Control Act and merely because the amount can be varied or mode of payment is not monthly, it does not mean that the same is not part of rent. Similarly in *Auto Ancil vs. Jamnadas Vishnubhai Patel & Anr.* 1993 (2) RCR Guj. 651, while dealing with the definition of the word 'rent' under Bombay Rent, Hotel and Lodging House Rates Control Act, 1947 the payment of education cess or municipal tax has been held to be a part of the rent because it was agreed to be paid by the tenant. In *Harbans Lal vs. Joginder Singh*, 2001 (1) RCR 225 P&H in the context of Punjab Rent Law,

the house tax was part of rent because it was agreed so by the tenant.

20. In *Senappa vs. Shroff Puttappa*, 1970, *All India Rent Control Journal (Mysore)* 27 also similar proposition of municipal tax was held to be part of rent between the parties. The proposition was under the Mysore Rent Law. *Abdul Qadar vs. G. Govindaraja (D) through LRs.* AIR 2002 SC 2442 and *P.M. Gani vs. Ramachandran*, 1995 Supp (2) SCC 657 are the two other cases of the same category where house tax or municipal tax has been agreed to be paid by the tenant to the landlord that has been held to be forming part of the rent.
21. Similarly, Hon'ble High Court in *Ms. Annick Chaymotty Devyani vs. Smt. Prem Mohini Mehra*, 2003 (1) RCR 709; and *Continental Advertising Pvt. Ltd. vs. Capt. Pritpal Singh*, 2007 III AD Delhi, have held that house tax, Scavenging tax and Education Cess was agreed to be paid by tenant are part and parcel of rent.
22. The judgments in *Calcutta Gujarati Education Society*, *Mayank Poddar*, *Ms. Annick Chaymotty Devyani* and *Continental Advertising Pvt. Ltd. (supra)* are all distinguishable. The Supreme Court has repeatedly observed that the law is not to be applied like statute or mathematical theorems. The facts of the two cases; the one in which law has been laid down and the facts of the case in which law is sought to be applied must have some co-relation and only then the principle of law laid down in one case can be applied to the other. Reference in this regard has been made to *Haryana*

Financial Corporation & Anr. vs. Jagdamba Oil Mills; AIR 2002 SC 834 and *Sushil Suri vs. CBI & Anr.; AIR 2011 SC 1713*.

23. In *Calcutta Gujarati Education Society & Anr. vs. Calcutta Municipal Corporation & Ors., (2003) 10 SCC 533*, the eviction of the tenant on account of non payment was not the issue. What was in issue was only the recovery of the statutory amount. Property tax under Section 231 of the Municipal Act is arrears of rent like in Section 67 (3) of the Act. The court came to the conclusion that it forms a part of the rent on account of the fact that the word '*rent*' under the West Bengal Premises Tenancy Rent Act, 1956 is defined and it includes the property as tax also therefore so far as this judgment is concerned it does not apply to the facts of the present case.
24. In *Mayank Poddar vs. Development Consultant Ltd., 2004 (2) RCR 154 (DB)*, the parties had agreed that the tax shall form part of the rent. Thereby meaning that tenant had voluntarily agreed to pay tax and thus it formed a part of rent. Same was the case with *Ms. Annick Chaymotty Devyani vs. Smt. Prem Mohini Mehra, 2003 (1) RCR 709*; and *Continental Advertising Pvt. Ltd. vs. Capt. Pritpal Singh, 2007 III AD Delhi*. Therefore, if the tenant himself has agreed that house tax or property tax itself shall form a part of the rent then there is no problem. But, if the tenant has not agreed as in the present cases then it shall not form part of the rent because nothing to the contrary has been shown by the landlord to this court nor any evidence is led before the trial court.

25. Another Single Bench of this Court in *United India Insurance Company Ltd. vs. Smt. Anup Kaur*, RSA No.251/2008, decided on 28.04.2011, has held that even maintenance charges in regard to premises is payable by tenant to maintenance agency, forms part of rent and thus affirmed that the bar of Section 50 of DRC Act is not applicable if the rent coupled with maintenance charges takes the total rent above Rs.3500/- per month. The learned Single Judge of this Court while passing such judgment also relied upon the judgment of Hon'ble Division bench of this Court in 1995 RLR 254 and another judgment in *Sewa International Fashions vs. Suman Kathpalia*, AIR 2000 Delhi 69, while coming to such conclusion.
26. In *United India Insurance Company Ltd. vs. Smt. Anup Kaur*, RSA No.251/2008, decided on 28.04.2011, the maintenance has been held to be part of the rent originally so because the said payment is made for the services while as property tax is not paid on services provided by the petitioner or to the property by the landlord. Hence, these judgments are distinguishable. Section 7(2) of the Delhi Rent Control Act, 1958 lays that the charges payable for electricity and water also form part of the rent.
27. Simultaneous reading of judgment of Calcutta High Court, Delhi High Court and Bombay High Court reported as *Smt. Muktabai Gangadhar Kadamvi vs. Muktabai Laxman Palwankar*, (*supra*) shows beyond doubt that besides agreement, if statute fasten the liability of payment of any tax on the tenant, the same is part and parcel of rent only if agreed to be paid by contract or is forming a

part of the definition rent under the statute itself. The various other judgments of High Court of Delhi as well as Apex Court have time and again held that if charges and/or amenities are clubbed in the rent which takes the rent beyond ceiling limit as specified in Rent Act then protection of Rent Control Act is not available to the premises.

28. It has been contended by the learned senior counsel for the respondent that it is worth mentioning that amendment under DRC Act in form of Section 3 (c) and section 6-A was done in December, 1988. By virtue of Section 3 (c) of the Act, all such premises whose rent exceeds Rs.3500/- per month ceased to be protected under DRC Act. Use of the word rent of the premises and not rent received by landlord in the said provision clinches the issue to the effect that it is the premises which is of paramount importance and not receipt of rent by landlord from tenant. In *Atma Ram Properties Pvt. Ltd. vs. P.S. Jain Co. Ltd.*, 57 (1995) DLT 131, law to this effect was laid down by the learned Single Judge of this Court which was affirmed by Division Bench of the Delhi High Court in *P.S. Jain Company Ltd. vs. Atma Ram Properties Ltd.*, 55 (1997) DLT 308 (DB), which was even upheld by Hon'ble Supreme Court of India. Narrower meaning of rent is not possible as keeping in view of the judgment of apex court and definition of rent the legislature in its wisdom used the word premises whose monthly rent exceeds 3500/- in section 3(c) of the Act and not the amount received by the landlord from tenant. In

Atma Ram's case rent paid by the tenant to the landlord was less than Rs.3500/- but the sub-tenant inducted by the tenant was paying more than Rs.3500/- to the tenant who was his landlord. It was held that the tenant in such case will not have the protection of the Rent Act. But these judgments are not applicable to the facts of the present case whatsoever.

29. Further, it was contended Section 2 (i) of DRC Act defines 'premises'. Needless to mention, the premises includes 'land' which can even be borne out by said definition of 'premises'. As such by harmoniously reading Section 2(i) and 3(c) of DRC Act, it is evident that it is the rent being fetched by the premises and not the rent received by landlord which determines the applicability or the non-applicability of protection given under D.R.C. Act.
30. Another contention of the learned counsel for the respondent is that NDMC Act and byelaws passed therein prevail over Delhi Rent Control Act and do not prohibit recovery of the tenanted premises for recovery of arrears of property tax under Section 67 (3) of the Act.
31. It was also contended that Full Bench of this Court in *Ganga Ram vs. Mohd. Usman*, ILR 1973 Delhi 139, while dealing with Section 121 of DMC Act (which is *pari materia* to Section 67 of NDMC Act) vis a vis Section 7 (2) of DRC Act held that provisions of Municipal Corporation Act being latter and special provisions, will prevail over Section 7(2) and Section 4 of DRC Act and thus the landlord is entitled to recover enhanced house tax from the tenant

notwithstanding the contract or provisions of Section 7 (2) of DRC Act. This Full Bench judgment overruled an earlier Division Bench judgment in *Sunderdass Tola Ram & Ors. vs. MCD* in C.M. (M) No. 197 of 1971 decided on 26. 03.1973. But what is worth noting is that this was not a case where eviction of the tenant was involved. Further, the Section 121 of the MCD Act has since been deleted from the Act and therefore cannot be the basis of holding in the present case that property tax is part of rent and if it exceeds Rs.3500/- then the tenant loses protection of the Rent Act.

32. It was next contended that NDMC Act, 1994 came into operation in the year 1994 while as amendment in DRC Act in 1988 was already in existence and the legislature in its wisdom used the word '*rights and remedies*' in Section 67 (3) of NDMC Act. If legislature intended to restrict the right of owner/landlord to recovery of rent only, then legislature would not have used the word such as rights and remedies in the clause and simply would have mentioned the same amount as recoverable.
33. Even otherwise, the word rights and remedies if read in harmony with right of recovery, then such right of recovery of difference of tax as rent, entitles the landlord to file eviction petition and for such eviction petition non-payment of such tax leads to eviction order. If recovery of arrears of entire composite rent (including house tax) entitles the landlord to file eviction petition under DRC Act under which eviction petition in Delhi has to be under Section 14 (1) (a) of DRC Act and for such eviction if such tax is being

considered as part of rent and on non-payment of composite amount, eviction order is the result, then similarly if tax added with previous amount of rent exceeds Rs.3500/- per month, it is only civil court which has jurisdiction to entertain such suit of ejectment as the premises fetching above Rs.3500/- per month are out of protection of DRC Act. In nutshell what emerges is that if today there would not have been Unit Area Method, house tax would be continued to be on actual rent, then landlord has rights and remedies by virtue of 67 (3) of NDMC Act to file eviction petition under Section 14 (1) (a) of DRC Act, if tenant fails to pay the composite amount after demand. So, the landlord has such remedies when composite amount remains below and if said composite amount exceeds Rs.3500/- p.m. it is only civil court which has jurisdiction to try and entertain the suit for ejectment/possession as the premises get governed by Transfer of Property Act.

34. It is contended that the appellant/tenant is enjoying the suit premises at the cost of landlord (house tax being paid by respondent after commencement of unit area method), then such cost necessarily forms part of rent, in view of the judgment as aforementioned.
35. Another argument of the respondent was with regard to the effect of Section 6-A of the DRC Act. It was contended that reference by appellant to Section 6-A of the DRC Act is misplaced as Section 6-A and Section 14 of DRC Act are in different chapters of the Rent

Act. Plain and simple reading of Section 6-A shows that if there is increase of rent by operation of any other statute or law (Section 67 NDMC Act in this case) then Section 6-A cannot obstruct the effect of such other statute and as soon as by virtue of any other statute, (i.e. S. 67(3) NDMC Act herein) rent stands increased or is deemed to be increased, Section 3(c) of DRC Act comes into play if the composite rent of the premises exceeds Rs.3500/- per month the tenant loses the protection of the Rent Act.

36. It was further stated that even the word 'agreed rent' used in Section 6A is required to be construed in a wider sense to include, apart from narrow connotation, any payment made for use of land where the quantum as may have been fixed otherwise than by agreement. Even the word 'tenant' as mentioned in Section 2 (1) of the Act makes this clear.
37. It has been contended by the learned senior counsel for the respondent that in case title *Ishwar Swarup Sharma vs. Jagmohan Lal* in CA NO.6755/2000 decided on 24.11.2000, language, effect and purport of Section 6A is altogether different from Section 14 of the Act which provides for eviction and these two provisions cannot be intermixed. Section 6A was inserted for benefit of landlord and not the tenant. Word 'may' used in 6A shows that the increase is not limited to 10% only and may exceed owing to other provisions of other statutes and if by virtue of such statutes rent exceeds Rs.3500/- per month (on premises) then Section 3(c) of the Act comes into play.

(a) Reliance placed on *Santosh Vaid vs. Uttam Chand* in CM(M) 48/2011 and RSA 116/2011, decided on 15.02.2012 and *Atma Ram Properties Pvt. Ltd. vs. Escorts Ltd.* MANU/DE/0982/2012 and *Model Press vs. Mohd. Saied*, 155 (2008) DLT 403 (DB) by the appellant is misguided and misplaced as in all these cases the issue involved was whether pursuant to striking down of Section 4,6,9 of DRC Act, the landlord can increase the rent unilaterally or not, while the issue involved in the present appeal is whether the property tax payable by the tenant by agreement or by virtue of statute would form a part of rent for the purposes of seeking ejectment of the tenant under DRC Act, 1958 or whether he can recover the property tax only in a civil court and not seek eviction?

38. It was contended that the right of the landlord in view of Section 67(3) cannot be restricted to recovery only as imposition of house tax of property is recurring process year after year and no court of law can interpret any provision of law which promotes litigation in perpetuity i.e. filing of suit for recovery year after year for all times to come and resorting to repeated execution proceedings for recovering the said amount.
39. It is contended that the rateable value of the suit property is such that annual property tax on it has exceeded far above Rs.42000/- per annum and thus any property having property tax above Rs.42000/- per annum cannot remain under the protection of DRC Act.

40. The protection of DRC Act is only for weaker Section of Society. DRC Act was enacted for protection of weaker Section of the society. Such protection should not and cannot be made available to affluent tenants. (*D.C. Bhatia & Ors. vs. U.O.I. & Anr., (1995) 1 SCC 104*). Constitutional validity of Section 3 (c) of DRC Act was also upheld by Apex Court in the said judgment. The answer to this shall be found in the paras hereinafter.
41. A perusal of the aforesaid case law and the submissions of the learned counsel would show that following deductions can be made on the basis of the case law:-
- (i) That the charges which are payable by the tenant for the various services or amenities enjoined by the tenant in respect of the tenanted premises then it shall form a part of the rent and in case by addition of such component the rent exceeds Rs.3500/- then the tenant loses the protection of the DRC Act.
 - (ii) The tenant also loses the protection of the DRC Act in case he is paying to the landlord a sum of less than Rs.3500/- but he has sub-let the premises to a third party on a monthly rent of more than Rs.3500/- then irrespective of the fact whether the sub-tenancy is legal or illegal the premises ceases to have the protection of the DRC Act so far as tenant is concerned. Meaning thereby, the tenant would be losing the protection of Section 3(C) of the DRC Act.

- (iii) The education cess or property tax or any other charge which is payable by the tenant under **an agreement, oral** or in **writing** shall in the view of this Court form a part of the rent and if by doing so the rent exceeds more than Rs.3500/- then in the eventuality the tenant would lose the protection of the DRC Act.
- (iv) Thus, the only contingency which has been left is whether the landlord is called upon to pay the difference between the property tax payable under Section 67 on the basis of the old property tax and the property tax calculated on the basis of unit area method that the difference between the two is payable by the tenant. Section 66 sub-clause (1) lays down that the property tax is the principal liability of the lessor. The landlord has only been given the right to recover the said differential property tax as arrears of rent from the defendant. Further, under Section 102 of the NDMC Act, the NDMC has a right to attach the rentals which are payable by the tenant towards the satisfaction of the property tax. Failing the realization of the complete property tax payable to the NDMC it has also the power to attach the property itself and auction the property and realize the same.

42. The learned counsel for the respondent has vehemently contended that in case the property tax is payable for the entire property which includes the land also, therefore, it becomes a charge or a payment made for the use of a service of the plot and has to be added to the

monthly rental and if it exceeds more than Rs.3500/- then the tenant loses the protection of the DRC Act. Meaning thereby, that in case the property tax of the suit property is more than Rs.42,000/- annually, which if divided into 12 and comes more than Rs.3500/- then in such an eventuality the tenant ceases to have the protection of the DRC Act.

43. It was contended that the DRC Act is essentially meant for the protection of the poor people but the very fact that the tenant is paying more than Rs.3500/- as rentals or the property tax then he ceases to be a poor person and is not entitled to the protection under the DRC Act.
44. This contention of the learned counsel for the respondent was vehemently contested by the learned counsel for the appellant, who contended that what has been conferred on the respondent is only the right to recovery and not the right to seek eviction and therefore, apart from recovery the tenant cannot be evicted who enjoys the protection of the statute under Section 14 of the DRC Act.
45. I have carefully considered the submission of the learned senior counsel. No doubt the submission made by the learned senior counsel for the respondent may have some merit but the fact of the matter is that apparently there is a conflict between the two provisions of Section 67 sub-clause (3) which gives the right to recovery of property tax as arrears of rent from the tenant and under whose grab the present respondent is trying to seek recovery

as well as eviction of the tenant by depriving him of the protection of Section 14 (1) (a) read with Section 7 (2) of the Rent Act by contending that the rent plus the property tax is more than Rs.3500/- and therefore the provisions of the rent Act are not applicable.

46. In the present case, Section 7 sub-clause (2) categorically lays down that the landlord cannot recover more than the agreed rate of rent. Section 14 (1) of the Rent Act does not deal with recovery of rent. It gives protection to the Rent Act and as a matter of fact, it starts with a *non-obstante* clause. It reads that notwithstanding anything contained to the contrary either in a statute or a contract, no tenant can be evicted unless and until one of the conditions as envisaged under Section 14 is satisfied. This provision gives the protection to the tenant and the factum of the tenant being rich or poor is not to be determined by his status or accommodation but by the rent paid by him to the landlord to this rent. To my mind, property tax which is in the nature of a tax and not a charge for services etc. cannot be added so as to take away the protection granted to the tenant.
47. Further, there is a double protection under Section 14 (1) (a). The first is the *non-obstante* clause that means the provisions of Section 14 (a) are having overriding effect on anything contained to the contrary in any statute or contract. Meaning thereby in the event of there being a conflict between Section 14 (1) (a) of the Rent Act and a statute or a contract to the contrary, the provisions of Section

14 (a) will prevail. Meaning thereby, the legislature was very clear in its mind that while protecting the tenant there has to be an overriding effect given to the provisions of Section 14 (1) (a) and it will prevail over in other provision of a contract or a statute. This protection granted to the tenant cannot be brought to a naught by the interpretation which the learned senior counsel for the respondent seeks to place on the definition of the word 'rent'. Admittedly, in all the three present appeal, the rent which was being paid by the tenant is less than Rs.3500/-. It is also an admitted fact that in case the differential component of the property tax which is payable by the owner and recoverable from the tenants under Section 67 sub-clause (3) of the Act is taken into consideration and added to the component of rent then the total amount of rent plus property tax payable by the tenant would be much more than Rs.3500/- and if the interpretation of the learned senior counsel for the respondent is accepted then the tenant would lose the protection of the Rent Act. Thereby the provisions of the Rent Act so far as the protection to the tenants is concerned, it will be brought to a naught. While as one provision of Section 67 (3) will be given an overriding precedence over Section 14 (1) (a) of the Rent Act. This is not the intention of the legislature. In such an eventuality, the interpretation of statute clearly lays down that in the event of there being an apparent conflict between the two statutes or two provisions of a statute as far as possible a harmonious interpretation has to be given. This harmonious interpretation is possible only when the differential of the property

tax which is payable by the tenant under Section 67 (3) is not permitted to be added to the rent though it may be recoverable as arrears of rent unless shown to the contrary by an agreement. The recovery of the said property tax as arrears of rent would mean that it has to be recovered only as a civil suit by filing a case for recovery of the quantum of money from the tenant and not by seeking his eviction under Section 14 (1) (a) or under civil law on account of the tenant paying more than Rs.3500/-.

48. For the above mentioned reasons, I am of the considered view that the submission made by the learned senior counsel for the respondent is without any merit and in case the interpretation which is given by the learned senior counsel for the respondent is accepted then all the tenants in the commercial like area of Connaught Place will be thrown out of their premises by virtue of realization of the differential in the property tax. This could be the intention.
49. I have carefully considered the submissions made by the respective sides and gone through the relevant provisions of law as well as the case law. I find myself in agreement with the submissions made by the learned counsel for the appellant that the component of property tax payable by the tenant under Section 67 (3) of the NDMC Act, though may be recoverable from the tenant as arrears of rent but it cannot be added to the rent despite the fact that it is to be recovered as arrears of rent so as to take away the protection of the DRC Act unless and until the tenant has either by an agreement

in writing or oral has contested to treat such payment of property tax or the differential thereof calculated in terms of Section 67 (1) as a part of rent. Since there is no pleading much less evidence produced in this regard, therefore, all the three appeals are allowed. The decree dated 30.4.2013 passed in RFA No.356/2013 and the order dated 23.7.2013 passed in RFA No.451/2013 are set aside. In these two appeals, the respondents may, if they have evidence in their possession that property tax or the differential thereof in terms of Section 67 (1) was payable by the tenant, then they can initiate fresh action in accordance with law if deemed fit.

50. So far as appeal bearing RFA No.480/2013 is concerned, the same is remanded back to the trial court with the directions that the appeal shall be decided on merits after framing of issues and permitting the parties to adduce evidence. The parties are directed to appear before the learned District Judge (Central) on 9.6.2016.

V.K. SHALI, J.

MAY 30, 2016/vk