IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR No. 1231 of 2014 (O&M)
Date of Decision: 22.03.2018

Bhagwant Singh ....Petitioner

VERSUS

Preet Mohinder Singh and another ....Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. Rakesh Gupta, Advocate
for the petitioner.

Mr. Vikas Mohan Gupta, Advocate
for the respondents.

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SURINDER GUPTA, J.

This is revision petition filed by Bhagwant Singh, tenant in the shop situated in New Shopping Center, Tripari Road, Patiala, as fully described in headnote of the plaint, against order of learned Rent Controller, disposing off the petition filed by respondents seeking ejectment of petitioner from demised premises on the ground of non-payment of rent and house tax with directions as follows:-.

> *"12. In view of my findings on above issues, the application of the petitioners under Section 13 of the East Punjab Urban Rent Restriction Act is disposed off by directing the respondent to pay the entire outstanding house tax to the petitioners after adjusting the house tax already paid by him in addition to the rent within three months from the date of order, failing which the petitioner is entitled to get the vacant possession of the shop in dispute from the respondent by filing execution application as per law."*

2. Appellate Authority dismissed the appeal filed by revision-

petitioner and negated the plea of revision-petitioner calling upon respondents-landlords to apprise him about total due amount towards house tax.

3. It is not disputed that the shop in question was let out to revision-petitioner at monthly rent of ₹1200/- plus house tax. Landlords-respondents alleged that revision-petitioner was in arrears of rent and house tax w.e.f. 01.04.2004 till the date of filing of ejectment petition. The tenant while admitting the rate of rent has alleged that he is not liable to pay the house tax assessed for whole of the building. The shop let out to him is in a big building, having 7-8 rooms, which have been let out by landlords-respondents to different labourers. About 3-4 labourers are residing in each room and landlords-respondents are fetching ₹7000/- as rent per month approximately from those labourers. The revision-petitioner is liable to pay house tax of his share, but has already paid house tax in excess. Pleadings of parties led to framing of the issues as follows:-

(i) Whether the respondent is liable to pay house tax, if so to what extent alongwith rent? OPP.

(ii) Whether the respondent is in arrears of rent? OPP

(iii) Whether the present petition has been filed with *mala fide* intention? OPR

(iv) Relief.

4. As per rent note dated 05.12.1988 (Ex. P-4), tenant had undertaken to pay the house tax of the shop in addition to settled rent of ₹1200/- per month. In the petition filed by landlords-respondents, they have alleged that tenant is liable to pay "full house tax, which has been imposed on the premises".

5. Raghbir Singh appeared as attorney of landlords-respondents and has stated that earlier house tax was assessed on whole of the property including shop in dispute but before the year 2000, the house tax was assessed only on the shop in possession of the tenant. He received notice with regard to proposed enhancement of assessment of house tax on the shop in dispute and the proposal was to increase the valuation of the assessed rent @ ₹2500/- per month but on the objection being raised the assessed rent was reduced to ₹1500/- per month. In support of his contention he has placed on file notice (Ex. P-2) received by him and bills of payment of house tax as Ex. P-3 to Ex. P-5. In cross-examination, he has admitted that the shop in dispute was purchased by landlords but he has not produced on file the sale deed to find as to what was the total area of the property in question, which was purchased. He had admitted that there were 3-4 rooms but denied that these rooms were part of the property purchased by landlords-respondents.

6. In documentary evidence, landlords-respondents have placed on file a notice received by respondents proposing the house tax of the property bearing no. 6877/5-I as ₹4050/-. This notice was received on 04.02.2000. Landlords-respondents have placed on file copies of receipts of house tax for the years 2006-2007 as Ex. P-3 and 2007-2008 as Ex. P-4, which show that the house tax of ₹2309/- was paid for the property bearing no. 6877/5-I. Another receipt (Ex. P-5) was produced on file for the house tax for the year 2008-2009 whereby ₹3100/- was paid as house tax of this property.

7. No evidence was produced by landlords-respondents to show that as to what was the house tax on the suit property and whether the house tax paid was for the entire property owned by respondents or only for the

shop, which is on rent @ ₹1200/- per month. Official of Municipal Corporation was called but not examined on this issue. Even learned Rent Controller has recorded a sketchy finding while deciding this issue. The rent claimed in this petition is for the period 01.04.2004 till the date of filing of this petition, which was filed on 30.10.2006. Landlords-respondents have not produced any evidence regarding the house tax for the period 2004-2005 and 2005-2006. They have produced the receipt of payment of house tax for the year 2006-2007. Landlords-respondents were required to prove on file that the house tax assessed for the property bearing no. 6877/5-I is only for the shop in question and secondly, what was the quantum of house tax assessed for this building for the year 2004-2005 and 2005-2006. They are also required to prove that if the house tax has been assessed for the whole building, then what is the ratio of house tax payable by the revision-petitioner. Directions were given to revision-petitioner to pay the entire outstanding amount of house tax without recording any finding as to what was the house tax of the disputed period and how much amount is payable by him.

8. Learned Rent Controller while pondering over the issue has observed in para 10 as follows:-

> *"10. The petitioners have produced on file copy of house tax assessment register Ex. A1, showing the assessment of the house tax by the Municipal Corporation, Patiala by taking into consideration the rent accrued from the said shop under the possession of respondent Bhagwant Singh as tenant. It is nowhere mentioned in the said assessment register that there are other rooms given on rent by the petitioners to other persons. So, when the house tax assessed by the Municipal Corporation, Patiala is qua the shop in dispute given on rent to the*

respondent, then it is for the respondent to pay entire house tax assessed by the Municipal Corporation, Patiala in addition to the rent. The respondent has paid the arrears of rent @ ₹1200/- per month along with interest, costs assessed by the Court and house tax @ ₹120/- per month. Since the respondent has to pay entire house tax assessed by the Municipal Corporation, Patiala, therefore, he is directed to pay the outstanding house tax after adjusting the house tax already paid by him to the petitioners. Thus, both these issues are decided in favour of the petitioners and against the respondent."

9. Above findings of learned Rent Controller are not based on evidence on record. From payment receipt of house tax of whole building and in the event of absence of assessment order or any such evidence, no presumption could be drawn that it was assessed for shop in question only.

10. Even the Appellate Authority has not looked into this aspect that no evidence has come on record regarding house tax assessed by the Municipal Corporation for the property in dispute for the period for which rent was claimed and whether receipt of payment of house tax were only for the house tax levied on shop in question. It has also acted upon the house tax receipt for the subsequent years.

11. Keeping in view above facts, I am of the considered opinion that learned Rent Controller as well as Appellate Authority instead of recording finding as to how much house tax the revision-petitioner is liable to pay for the period for which the rent was claimed, have recorded finding that petitioner is liable to pay entire amount of house tax levied by Municipal Corporation for the years 2006-2007 onward. Issue raised by revision-petition that he is to pay the house tax of his shop and not of entire

building and his request to determine the exact house tax payable by him remained unanswered. Without any evidence on file, learned Rent Controller recorded finding that house tax paid by landlord(s) is only for shop. In the absence of evidence on this issue, learned Rent Controller and Appellate Authority have committed legal error, while directing the revision-petitioner to pay arrears of house tax – specific amount of which was also not determined. The findings of learned Rent Controller and Appellate Authority on these issues are perverse, not based on evidence on record, as such, are not sustainable in the eyes of law. This revision petition is accepted and the matter is remitted to learned Rent Controller to record finding on the issue raised by revision-petitioner, which are as follows:-

(i) What is the house tax levied on the shop in possession of the revision-petitioner?

(ii) Whether the house tax assessed by the Municipal Corporation on the property bearing no. 6877/5-I, is for the entire building or only for the shop in possession of the revision-petitioner?

(iii) How much amount of house tax is due towards revision-petitioner, which he is liable to pay?

12. Learned Rent Controller will provide two opportunities each to landlords and tenant to lead evidence in support of their contention.

13. Parties are directed to appear before learned Rent Controller on 17.04.2018.

14. Disposed of in above terms.

March 22, 2018 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No