(1992) 02 KAR CK 0008

In the Karnataka High Court

Case No : W.Ps. No''s. 4025 to 4032 of 1991

City Toilet House APPELLANT

Vs

Commissioner RESPONDENT

Date of Decision : 25-02-1992

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 112, 456, 470

Citation : (1992) ILR (Kar) 1982 : (1992) 2 KarLJ 259

Hon'ble Judges : Shivaprakash, J

Bench : Single Bench

Advocate : D.L.N. Rao, for the Appellant; P.G. Gowri, for R-1 and R-2 and H.G. Kaladgi, HCGP for R-3, for the Respondent

Final Decision : Allowed

Judgement

Shivaprakash, J.—The Petitions are taken up for final hearing by consent of the parties.

2. In these Petitions, the petitioners challenge the legality of the demand notices dated 25-1-1991 marked as Annexure-''F'' series, demanding payment of arrears of property tax in respect of the premises in their occupation. The notices in question are issued by the second respondent purporting to be under the provisions of Sections 112 and 470 of the Karnataka Municipal Corporations Act (hereinafter referred to as ''Act''). Under the impugned notices, the arrears of tax demanded is for the period between the year 1987 and March 1991.

3. Sri. D.L.N. Rao, learned Counsel appearing for the petitioners submitted that the impugned notices are issued without the authority of law. The relevant part of Section 112 of the Karnataka Municipal Corporations Act which provides for payment of property tax reads thus:-

"112. Property tax from whom and when payable:- (1) Subject to the provisions of Sub-section (2) the properly tax shall be primarily payable as follows, namely:-

(a), if the premises are held immediately from Government or the Corporation, from the actual occupier thereof:

Provided that the property tax due in respect of premises owned by the Government and occupied by any person on payment of rent, shall be payable by the Government:

Provided further that no property tax shall be payable in respect of premises owned by the Corporation and occupied by any person on payment of rent:

(b) if the premises are not so held-

(i) from the lessor if the premises are let;

(ii) from the superior lessor if the premises are sub-let;

(iii) from the person in whom the right to let the premises vests, if they are unlet.

(2) If any land has been let for any term exceeding one year to a tenant and such tenant or any person deriving title howsoever from such tenant has built upon the land the property tax assessed upon the said land and upon the building erected thereon shall be primarily payable by the said tenant or such person whether or not the premises be in the occupation of the said tenant or the person.

(3) The property tax shall be paid by the person primarily liable within sixty days after the commencement of every half- year."

4. A Division Bench of this Court in Broadway Complex Vs. Administrator, Corporation of the City of Bangalore and others, while considering the provisions of the said Section has held that u/s 112(a) of the Act, the primary liability to pay the tax in respect of a building belonging to the Government or Corporation is that of the occupier, but in respect of a premises held by any person other than the Government or Corporation, according to Clause (b) of Section 112, the primary liability to pay the tax on the property would be that of the lessor if the premises are let and that of the superior lessor if the premises are sublet or that of the person in whom the right to let the premises vests, if they are unlet.

5. In the instant case, it is not disputed that one V.N. Gowda, took on lease the land in question from the 3rd respondent. The said lease period was to commence from the year 1969 expiring with the end of September, 1989. After obtaining the land on lease, the said V.N. Gowda constructed the shop premises which are now in the occupation of the petitioners. After the expiry of the lease period ending September, 1989, the petitioners state that they have been paying rents to the 3rd respondent. Annexure-J dated 5.2.1991 is a copy of the letter addressed by the 3rd respondent to the 2nd respondent. From a reading of the said letter, it becomes obvious that the petitioners have been paying rents regularly to the 3rd respondent from 1.10.1989 after the expiry of the lease period in favour of the said V.N. Gowda. In the said letter, it is also stated that the 3rd respondent would pay the tax due in respect of the premises in the

occupation of the petitioners, to the Corporation of the City of Bangalore for the period from 1.10.1989 onwards.

6. Smt. Gowri Kuranga, learned Counsel appearing for respondents 1 and 2 submitted that in view of Section 456 of the Corporation Act which entitles the occupier of the premises to recover from the owner any sum paid by him, which under the Act the owner is liable to pay and not the occupier, the petitioners are obliged to pay the tax due from the said V.N. Gowda in respect of the premises in question. Section 456 of the Act does not confer any right on the Corporation to recover tax in respect of the premises from the occupiers of the premises. It only entitles the occupiers to react sixth sums which are paid by them for and on behalf of the owner, from the owner by deducting it from the rent then or thereafter due by them to the owner. No provision in the Act is brought to my notice which empowers the Corporation of the City of Bangalore to recover the said tax from the occupiers of the premises, if the premises in question are not held immediately from the Government or the Corporation, Therefore, the impugned notices cannot be sustained and the same are quashed.

7. Sri. H.H. Kaladgi, learned H.C.G.P. appearing for the 3rd respondent submits that if the Corporation were to submit a revised bill for payment of tax in respect of the period from 1.10.1989 on wards, the 3rd respondent would arrange for its payment. The said submission is placed on record.

Writ Petitions are allowed. Rule discharged. No costs.