(2022) 03 CAL CK 0005

In the Calcutta High Court

Case No : WPO No. 1051 Of 2022

Dipak Jamnadas Popat And Ors. — APPELLANT

Vs

State Of West Bengal And Ors. — RESPONDENT

Date of Decision : 02-03-2022

Acts Referred:

Kolkata Municipal Corporation Act, 1980 — Section 178(6), 194, 195, 230
West Bengal Premises Tenancy Act, 1997 — Section 5(8)

Citation : (2022) 03 CAL CK 0005

Hon'ble Judges : Shampa Sarkar, J

Bench : Single Bench

Advocate : Saptangshu Basu, Sankarsan Sark, Biswajit Mukherjee, Ambar Nath Banerjee, Tapan Kumar Mukherjee, Tuli Sinha

Judgement

This Court prima facie finds that the writ petition has been based on an incorrect interpretation of the provisions of Section 194 and Section 195 of the Kolkata Municipal Corporation Act, 1980. The Court also prima facie finds that borrowing the provisions of Section 5(8) of the West Bengal Premises Tenancy Act, 1997 would not strengthen the challenge of the writ petitioners to the annual valuations made by the Corporation with regard to the property tax payable by a owner/landlord in respect of tenanted premises.

The Court is of the opinion that the Kolkata Municipal Corporation Act, 1980 provides for the method of assessment and/or procedures to be followed in case of default on the part of the owner to pay the property tax. The law also allows the owner to recover the occupier’s share of the property tax from the tenants under certain circumstances.

Mr. Mukherjee submits that the law also empowers the landlord to apply before the Corporation for an apportionment of the rent payable in terms of Section 178(6) of the said Act. These points have been raised in connection with the demand notices issued by the Corporation. There is no scope for any interim order.

The decision referred by Mr. Basu in the case of Popat and Kotecha Property and Others –versus- Ashim Kumar Dey reported in (2018) 9 Supreme Court Cases 149 does not prima facie seem to be applicable. The question which was decided by the Apex Court is, as hereunder:

"2. The matter lies in a very short compass and the question arising may be formulated as hereunder:

"Whether after the amendment of the West Bengal Premises Tenancy Act by Amendment Act 14 of 2001 with effect from 10-7-2001 [which had incorporated sub-section (8) to Section 5] whether a tenant who defaults in payment of his/ her share of municipal tax as apportioned by the landlord would be in default of rent rendering him/her liable to eviction."

The Supreme Court came to the conclusion which is as hereunder:

"11.While the provisions of the 1980 Act make it very clear that an occupier as distinguished from the owner i.e. "person primarily liable" is entitled to pre-assessment notice and to participate in the assessment proceedings and also to question the same by way of an appeal, etc., assessment of a part of the premises in occupation of a tenant or different parts of such premises in occupation of different tenants is not contemplated under the 1980 Act. Rather from the provisions of Section 230 of the 1980 Act, it is clear that the person to be assessed to tax is the person primarily liable to pay i.e. the owner who is vested with the right to recover the portion of the tax paid by him on behalf of the tenant, if required, proportionately to the extent that the value of the area occupied bears to the value of the total area of the property. Under the 1980 Act, in the event of any default on the part of the owner to pay the tax the rent payable by the tenant(s) is liable to be attached."

The Supreme Court has held that assessment of different parts of the premises in occupation of different tenants is not contemplated under the 1980 Act. The Court is of the prima facie view that in view of such observation, the prayer of Mr. Basu that the assessment of the tenanted portion should be made separately in view of the provisions of Section 5(8) of the West Bengal Premises Tenancy Act, 1997 does not hold good, rather the Hon'ble Apex Court has held that the person primarily liable to pay the tax would be the owner who was vested with the right to recover the portion of the tax paid by him on behalf of the tenant, if required, proportionately to the extent that the value of the area occupied bears to the value of the total area of the property.

The Court also is of the prima facie view that apportionment of the taxes to be paid by the tenant and by the landlord may also be regulated by the agreement which is entered into by the landlord and the tenant.

Let affidavit-in-opposition be filed within four weeks from date; reply thereto, if any, be filed two weeks thereafter.

Liberty to mention.

Pendency of this application shall not preclude the corporation from proceeding to recover property tax from the petitioner as per law.

All parties are act on the basis of the server copy of this order.

