

(2005) 08 CAL CK 0075
In the Calcutta High Court

Case No : G.A. No. 3945 of 2004 and C.S. No. 314 of 1997

Feroz Belal and Others

APPELLANT

Vs

Bengal Properties Pvt. Ltd.

RESPONDENT

Date of Decision : 24-08-2005

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 193, 225
Transfer of Property Act, 1882 — Section 114

Citation : (2006) 1 CHN 145

Hon'ble Judges : Soumitra Sen, J

Bench : Single Bench

Advocate : Ranjan Bachawat, Sayantan Basu and R.N. Barik, for the Appellant; Ashok Banerjee, Sourav Banerjee and S.K. Poddar for respondent No. 1 and Ashoke Kumar Das Adhikari, Sandip Kumar De and Nikhilesh Mittal, for the Respondent

Judgement

Soumitra Sen, J.—The petitioner has filed a suit against the respondent No. 1, inter alia, for a decree for recovery of peaceful and vacant possession of Premises No. 54/2, Rafi Ahmed Kidwai Road, Calcutta-700 016, and a money decree for a sum of Rs. 3.50 crores towards rates and taxes to be paid to the respondent No. 2 and for other reliefs. The circumstances leading to the filing of the said suit are as follows :

(i) The suit property is a wakf property. The original plaintiff was the mutawalli of the said property. The petitioners are now the mutawalli in place and stead of the original plaintiff.

(ii) Pursuant to a sanction given by this Court a lease for 51 years was granted in respect of the suit property in favour of the respondent No. 1. The said lease was for a period of 51 years commencing from 5th of April, 1967.

(iii) Under the said lease the respondent No. 1 was to pay a premium of Rs. 2,30,000/- and a monthly lease rent of Rs. 3,000/-.

(iv) It is alleged by the petitioner that the obligation to pay the monthly lease rent was without any abatement and/or deduction on any ground whatsoever. It is further alleged that in terms of the said lease deed the respondent No. 1 as a lessee was required to pay both the owners and occupiers share of corporation rates and taxes and other outgoing and charges payable to the Kolkata Municipal Corporation or the Government in respect of the 2/3rd portion of the said suit premises and all buildings and constructions made or to be made thereon.

(v) Due to non-payment of municipal rates and taxes the Municipal Authorities on or about March, 1997 sought to attach the suit premises alleging that sum exceeding Rs. 3.5 crores were outstanding to the Kolkata Municipal Corporation on account of rates and taxes.

(vi) On the alleged failure of the respondent No. 1 to pay the municipal rates and taxes which amounted to a breach of covenant, the petitioners terminated the lease by a notice dated 11th of April, 1997 and asked the respondent No. 1 to quit and vacate and to deliver peaceful possession of the suit premises.

(vii) In the said suit the petitioners filed an application whereupon by an order dated 19th of July, 2000, the petitioners were directed to pay a sum of Rs. 5,00,000/- to the Kolkata Municipal Corporation towards arrears of municipal taxes and upon deposit of the said sum the Municipal Authorities were restrained from further realization of municipal taxes for a period of 12 weeks from the date of the said order. It is an admitted position that 2/3rd portion of the vacant land in the premises in question were demised in favour of the respondent No. 1 with a right to construct a building thereon and along with the right to grant sub-lease.

2. On behalf of the petitioners it is submitted that it is the contractual obligation of the respondent No. 1 to pay the municipal rates and taxes. Due to the prolonged non-payment of municipal taxes huge amount of taxes have fallen due. According to the petitioners, the dues would now exceed Rs. 5 crores (approximately).

3. It is submitted that after the expiry of the lease the property is to revert back to the lessor and in that event, the lessor would be saddled with huge amount of liability towards unpaid rates and taxes. It is, therefore, prayed that an appropriate order should be passed for attachment of the rents received by the respondent No. 1. from the tenants for the purpose of liquidating the dues of the Kolkata Municipal Corporation.

4. On behalf of the respondent No. 1 it was submitted that the primary obligation to pay the rates and taxes under the provisions of the Kolkata Municipal Corporation Act, 1980 is of the owner and any agreement entered into by and between the parties contrary to the said provisions is unenforceable in law.

5. It was submitted that the owners have not taken any interest in the suit property and have taken no steps to challenge the valuation of the KMC. It was submitted that the valuation made by the KMC in respect of the suit premises

was erroneous and the demand towards rates and taxes was unsustainable in law. It is further submitted that in terms of orders passed by the Writ Court a sum of Rs. 3,00,000/- (approximately) is now being paid month by month towards liquidation of the rates and taxes.

6. It is also submitted that the question of the validity and/or correctness of the demand of the KMC is still pending adjudication in the writ proceedings and therefore, unless the same is adjudicated the respondent No. 1 should not be directed to pay any further amount towards rates and taxes.

7. On behalf of the respondent No. 1 it was further submitted that since there was no default in payment of rent the lease could not have been terminated and the respondent No. 1 was entitled to a relief against the forfeiture in accordance with the provisions of Section 114 of the Transfer Property Act.

8. It was further submitted on behalf of the respondent that the alleged non-payment of municipal rates and taxes does not amount to non-payment of rent and therefore, the lease deed could not be terminated.

9. Mr. Banerjee appearing on behalf of the respondent No. 1 took great pains in time to establish that the respondent No. 1 has from time to time paid large sums of money towards rates and taxes to the KMC and is still continuing to pay large sums of money without actually deriving any benefit from the suit property.

10. The submissions have been made on behalf of the respondent No. 1 in order to establish that in law the primary liability to pay the rates and taxes is of the lessor and municipal rates and taxes can be realized from the lessee only after the lessor has paid the same.

11. Various decisions have been cited in support of the said proposition. On behalf of the KMC it was submitted that the right of the tenant to pay the municipal rates and taxes has not been absolved in spite of the various decisions that has been passed wherein the primary liability of the owners to pay the municipal rates and taxes have been recognized.

12. The decision of Saturday Club Ltd. v. Calcutta Municipal Corporation and Ors. reported in 1999 (1) CWN 511, decision of Machinnon, Machinnon Machenzie and Co. Ltd. Vs. The Calcutta Municipal Corpn. and Others, , decision of Praduman Kumar Vs. Virendra Goyal (Dead) by L. Rs., , decision of the Calcutta Municipal Corporation and Others Vs. Abdul Halim Gaznavi Molla and Others, and the decision of Savitri Devi Tolasaria Vs. Union of India and Others, were relied upon on behalf of the respondent No. 1 in support of the proposition that the primary liability to pay tax is upon the owner. In the said decisions the Court was primarily concerned with regard to interpretation of Section 193 of the Kolkata Municipal Corporation Act. Interpreting the said section the Division Bench has come to a finding that the primary liability to pay tax is of the owner. Therefore, there is no absolute power vested on the Municipal Authorities to realize the amount of consolidated rent from any person whomsoever. But at the same time,

the Division Bench has noticed the power of the KMC to realize corporation tax out of rents payable by the tenants or occupiers in terms of Section 225 of the said Act.

13. It is needless to mention that the value of the property increases on the basis of the user by a tenant and/or occupier and under the Act an occupier is to pay his share of rates and taxes.

14. It was submitted on behalf of the KMC that in the decision of Calcutta Gujrati Education Society and Another Vs. Calcutta Municipal Corporation and Others, , the obligation of the tenants and/or occupiers has been clearly recognized. It is submitted that the right of hearing given to a tenant and/or occupier in terms of the said decision has been given only because the tenants and/or occupiers have an obligation and/or to share the burden of tax to an appreciable extent.

15. From the various decisions cited on behalf of the parties it clearly appears that the right of the KMC to realize the outstanding dues of tax by attachment of rent in terms of Section 225 of the said Act has not been interfered with.

16. It is a well-settled principle of law that since the expression "rent" has not been defined in any Act, all amounts paid towards enjoyment of the tenancy would mean and include rent. Moreover, as there is no privity of contract between the KMC and the landlord and tenant, the terms of agreement of tenancy and/ or lease will not bind the KMC and a landlord cannot take recourse to the tenancy agreement to contend before the KMC that he has no liability to pay the tax, which should be paid by the tenant. But the agreement between the landlord and tenant is binding as between themselves. The KMC is not expected to run after hundred of tenants and/or occupiers on the strength of the tenancy agreement entered into by and between the landlord and the tenant and for that purpose the Act recognizes the primary liability of the landlord to pay the tax. When we examine the terms of agreement between the landlord and the tenant we are to examine the same on the basis of the terms and conditions contained in the said agreement. In my opinion, it would be incorrect to contend that the term contained in the agreement of the tenancy whereby the tenant is required to pay the rates and taxes can be said to be unlawful and/or violative of statutory provision. The agreement of tenancy and the provisions of the KMC Act operate in two different realms. The first is required to be examined in accordance with the provisions of the Contract Act and the other in terms of the provisions of the KMC Act. Such provisions are not contrary and/or inconsistent with each other but co-exist together. From the agreement entered into between the petitioner and the respondent No. 1, in the instant case, it is clear that the respondent No. 1 had the obligation to pay both the occupier and the owner share of rates and taxes which obligation cannot be avoided.

17. It is true that the validity of the demand raised by the KMC is under challenge, but, however, I cannot loose sight of the fact by the time there is a final decision in the matter the term of the lease might expire. Moreover, at this

stage it is difficult to presume that the challenge made by the respondent No. 1 with regard to the demand of the KMC will succeed. What would be the outcome of the pending writ proceedings cannot be prejudged at this stage? The outstanding tax and/or debt has reached an alarming portion. Even by payment of Rs. 3,00,000/- per month as have been directed by the Writ Court, as contended on behalf of the respondent No. 1, the arrear tax will not be liquidated for a long time. Furthermore, the current dues are also increasing day by day. If I add the penalty and interest, which may be charged on the said sum, the outstanding amount will be such that the property itself might be put into a jeopardy.

18. The question of the respondent No. 1 getting a relief against the forfeiture u/s 114 of the Transfer of Property Act is to be decided in the suit. In this proceeding, I am merely concerned with the interim relief, which is to be granted in favour of the petitioner.

19. Considering all aspects of the matter and the law as discussed above, I dispose of the application with the following directions :

The respondent No. 1 is directed to pay the current dues of the KMC Act in accordance with the bills raised by the KMC. The amount, which is being paid in terms of the direction of the Writ Court, is to be adjusted towards arrears. The payments to be made in terms of this order is without prejudice to the right and contention of the parties both in the suit as well as in the pending writ application. In the event, it is ultimately held that the demand raised by the KMC is not correct, then the respondent No. 1 shall be given due adjustment in respect of any excess payment made, after taking into account all payments made as on that date. The excess amount so computed shall be reimbursed by the KMC to the respondent No. 1 and will not be adjusted towards future rates and taxes to be paid in respect of the suit property.

20. The application is thus disposed of. No order as to costs.

LATER;

21. Let the urgent xerox certified copy of this judgment be made available to the parties, if they applied for.