(2009) 02 CAL CK 0092

In the Calcutta High Court

Case No : G.A. No. 2936 of 2008, A.P.O. No. 327 of 2008 with W.P. No. 1100 of 2007

KMC and Others — APPELLANT

Vs

Ms. Joyee Laheri and Others — RESPONDENT

Date of Decision : 06-02-2009

Acts Referred:
Calcutta Municipal Corporation Act, 1980 — Section 183

Citation : (2009) 02 CAL CK 0092

Hon'ble Judges : Pratap Kumar Ray, J;Manik Mohan Sarkar, J

Bench : Division Bench

Advocate : A.K. Das Adhikari, for the Appellant;Jaydeep Kar for Respondent No. 1, Mr. Partha Sarathi Mullick for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Pratap Kumar Ray, J.—Heard learned advocate appeared for the parties.

2. Affidavit filed by respondent No.1, the purchaser of the property, Ms. Joyee Laheri and affidavit filed by respondent Nos. 2 and 3, the erstwhile owners of the property affirmed through Sri Ranajit Chatterjee be kept with the record.

3. The very short question involved in this appeal as filed assailing the judgment and order dated 21st July, 2008 passed in W. P. No. 1100 of 2007 by the Kolkata Municipal Corporation is that whether in terms of section 183 sub-section (5) proviso, the Corporation has the power to refuse mutation in a case where there is arrear of any dues to the Corporation on account of the transfer or the predecessor-in-interest of the applicant praying for mutation. Learned trial Judge relying upon the judgment passed in the case "Anniruddha Bose v. KMC" reported in (2006) 2 CHN 535 held that under the said proviso of sub-section (5) of section 183 of said Act Corporation was bound to grant mutation and had no power to refuse it even if there was arrear of any property tax to the Corporation for the concerned premises. In course of hearing however sellers and purchaser

have agreed to clear the Corporation dues by sharing liability at the rate of 50% each and to that effect two affidavits have been filed with undertaking for payments of such. Those affidavits to be considered later on. To decide the question raised about the power of the Corporation to refuse mutation in the event there is arrear of any dues to the Corporation, the relevant section 183 will give the answer. Section 183 reads thus:

"183. Notice of transfers. - (1) Whenever the title of any person to any land or building is transferred, such person, if primarily liable for the payment of [property tax] on such land or building, and the person to whom the title is so transferred shall, within three months after the execution of the instrument of transfer or after its registration, if it is registered, or after the transfer is effected, if no instrument is executed, give notice of such transfer in writing to the Municipal Commission.

(2) In the event of the death of any person primarily liable as aforesaid, the person on whom the title of such land of building devolves shall, within six months from the date of death of the former, give notice of such devolution in writing to the Municipal Commissioner.

(3) The notice under this section shall be in such form as may be prescribed, and the transferee or the person on whom the title devolve shall, if so required, be bound to produce before the Municipal Commissioner any documents evidencing the transfer of devolution.

(4) If any person, who transfers his title to any land or building, fails to give any notice under this section to the Municipal Commissioner, he shall, in addition to any penalty to which he maybe subject under this Act, continue to be liable for payment of the [property tax] on such land or building until he gives such notice but nothing in this section shall be deemed to affect the liability of the transferee for payment of the [property tax] on such land or building.

(5) The Municipal Commissioner shall, on receipt of a notice of transfer or devolution of title under this section [and upon payment of such fee as may be determined by regulations], record such transfer or devolution in a book and also in the Municipal Assessment Book;

[Provided that nothing in the sub-section shall derogate from the power of the Corporation to refuse mutation in a case where there is arrear of any dues to the Corporation on account of the transfer of the predecessor-in-interest of the applicant.]

(6) On a written request by the Municipal Commissioner, the Registrar of Assurances, Kolkata, or the District Registrar, 24 Parganas, shall furnish such particulars regarding registration of instruments of transfer of immovable properties in Kolkata as the Municipal Commissioner may, from time to time, require.

(7) Notwithstanding anything contained in sub-section (6), the Registrar of

Assurance, Kolkata, or the District Registrar, 24 Parganas, shall furnish to the Municipal Commissioner such particulars soon after the registration of an instrument of transfer is effected or, if the Municipal Commissioner so requests, such periodical returns at such intervals as the Municipal Commissioner may fix."

4. The proviso of sub-section(5) of section 183 was due to effect of amendment of earlier proviso by section 9 of Calcutta Municipal Corporation (Amendment) Act, 1997 (West Bengal, Act, XXVI of 1997) effective from 22nd December, 1997. Earlier the proviso prior to such amendment effective from 22nd December, 1997 was to this effect. The said proviso reads thus:

"Proviso subs. By section 9 of the Calcutta Municipal Corporation (Amendment) Act, 1997 (West Bengal Act, XXVI of 1997), w.e.f. 22.12.1997 for the proviso, which was formerly added by section 12 of the Calcutta Municipal Corporation (Amendment) Act, 1996 (West Bengal Act, VI of 1996), w.r.e.f. 4.12.1995, as under:

"Provided that nothing in this sub-section shall be construed to mean that mutation in a case, where there is arrear of any dues to the Corporation on account of the transferor or the predecessor-in-interest of the applicant, shall be refused."

5. On a bare reading of the proviso of sub-section (5) at its pre and post amendment stage. It is clear that prior to 22nd December, 1997 the law was completely different whereby Corporation was debarred to refuse mutation on the ground of non-payment of Corporation''s dues on account of property tax. But this was amended whereby a completely reverse power has been vested to the Corporation authorising it to refuse mutation in the contingency of non-payment of arrear dues of the Corporation on account of property tax.

6. Having regard to the statutory provision we are of the view that the finding of the learned trial Judge that Corporation had no power to refuse mutation and irrespective of non-payment of the arrear dues of the Corporation on account of property tax, was bound to mutate, is not legally acceptable. The learned trial Judge relied upon the judgment passed in the case of Aniruddha Basu (supra) a judgment of learned single Judge of this Court wherein the learned Judge in deciding the case in paragraph 20 though had observed that under sub-section (5) of section 183 of the Kolkata Municipal Corporation Act, 1980 the Municipal Authority had no power to withheld the mutation on the ground of non-payment of arrear dues of the Corporation, but learned Judge did not discuss the amended provision in its proper perspective. Rather we are of the view that the learned trial Judge considered the issue in the angle pre-amended provision of the said proviso to sub-section (5) of section 183.

7. Having regard to the clear statutory provision, accordingly we hold that Corporation has power to refuse mutation in a case where there is arrear or any dues to the Corporation on account of the transfer or the predecessor-in-interest of the applicant. In view of such finding the impugned judgment under appeal

accordingly is not sustainable in law and it is set aside and quashed.

8. As already observed that the parties i.e., the ex owners of the property and the new purchaser who applied for mutation of his name u/s 183 of the said Act, have filed their respective affidavits giving an undertaking to clear the Corporation dues. The affidavit of the ex owners of the property is affirmed by one Ranjit Chatterjee on behalf of the self and Pranab Kumar Chatterjee. In paragraph 3 such undertaking has been stipulated which reads as follows:

"3. I state that the respondent No.2 and I hereby undertake to make payment of 50 per cent of the Principal (demand) portion of the alleged arrears disclosed by the Kolkata Municipal Corporation in the LOI dated 10.12.2008 in respect of the subject property, amounting to Rs.48,336/-. A reasonable time may, however, be given for making such payment."

Similar affidavit has been affirmed by Ms. Joyee Lahiri. In paragraph 8 and 9 of the said affidavit such undertaking has been stipulated, which reads as follows:

"8. In terms of the above settlement, I undertake to pay 50% of the said amount of Rs.96,673.00 i.e. Rs.48,336.00 by cheque/cash to the Kolkata Municipal Corporation within a period of 15 days from date of the order to be passed herein.

9. In view of such commitment made by me this Hon''ble Court be pleased to direct the Kolkata Municipal Corporation to accept, process and mutate my name in respect of the said Flat on receipt of payment made by me or give such other direction as to this Hon''ble Court my deem fit and proper."

9. Having regard to such undertaking before this Court, we are of the view that the writ application should be disposed of by directing the respective partiers viz. the ex owners of the property being respondent Nos. 2 and 3 and the purchaser of the property being respondent No.1 who is practically the actual sufferer in this case as her name has not been recorded in the Kolkata Municipal Corporation as an owner of the property in question, will deposit arrear dues of the Corporation tax within four weeks from this date proportionately relating to the amount as already mentioned in the respective undertaking viz, the respondent No. 2 and 3 jointly will pay Rs. 48,336/- on or before 6th March, 2009 and respondent No. 1 will pay Rs.48,336/- on or before 6th March, 2009. A compliance report to be filed by those respondents Nos. 1, 2 and 3 before the High Court Registry after making such payments of the property tax to the Corporation. It is made clear that as the purchaser of the property is suffering, default of making payment as per undertaking by the ex owner viz. respondent Nos. 2 and 3 should not be looked favourably by this Court and harsh treatment will follow by initiating a Contempt Proceedings.

10. The writ application accordingly stands disposed of on the aforesaid terms. The appeal is allowed by quashing impugned judgment under appeal. The stay application also stands disposed of on the aforesaid findings.

11. It is made clear that the Corporation will mutate the name after payment of

all requisite fees as per law. The Registry will place the file for consideration of compliance report as directed above on 6th March, 2009.

Urgent xerox certified copy of this order be given to the parties, if applied for, upon compliance of all requisite formalities.

Manik Mohan Sarkar, J.

12. I agree.