
(1998) 06 CAL CK 0007

In the Calcutta High Court

Case No : A.F.O.O. No. 547 of 1998 (in Writ Petition No. 649 of 1997)

Machinnon Machenzie and Co. Ltd.

APPELLANT

Vs

The Calcutta Municipal Corpn. and Others

RESPONDENT

Date of Decision : 25-06-1998

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 193, 225, 225(1), 225(2), 225(3)
Constitution of India, 1950 — Article 265

Citation : AIR 1999 Cal 205 : 104 CWN 764

Hon'ble Judges : Satyabrata Sinha, J; Dibyendu Bhusan Dutta, J

Bench : Division Bench

Advocate : P.K. Roy, for the Appellant; A. Deb Adhikary, for the Respondent

Judgement

1. The liability of a tenant to pay consolidated rate in respect of a building in its occupation to the Calcutta Municipal Corporation under the Calcutta Municipal Corporation Act, 1980 (hereinafter referred to as the Act) falls for our consideration in this appeal.

2. The basic fact of the matter is not in dispute. Strand Properties Ltd, respondent No. 9 in the writ application was owner of premises at 16, Strand Road, Calcutta-1 which was leased out to the 1 st petitioner. A sub-lease has been granted by the petitioner to 12 companies, viz. (1) Steel Authority of India Ltd., (2) Blacker & Company Pvt. Ltd., (3) ITC Limited, (4) Pigott Chapman & Company, (5) Eastern Railways, (6) India Jute & Industries Ltd., (7) ICI (India) Limited, (8) Indian Bank, (9) Luoyds Register of Shipping, (10) Allahabad Bank, (11) Ratnakar Shipping Company Ltd., and (12) West Bengal Rolling Mills Association.

3. Allegedly in terms of the deed of lease, Municipal rates, taxes etc. are to be paid by the superior lessor. A suit was filed by the petitioners in the City Civil Court questioning a notice of the Corporation demanding from them a sum of Rs. 6,82,69,457/- for the following reliefs :--

"(a) Declaration that the plaintiff is not liable to pay municipal rates and taxes of premises No. 16, Strand Road, Police Station Hare Street, Calcutta-700 001 to the defendant No. 2.

(b) Declaration that the purported demands of the defendant No. 2 upon the plaintiff towards arrear municipal rates and taxes are bad and are of no effect.

(c) Permanent injunction restraining the defendants, their men, agents, servants, assigns and employees and each of them from creating any disturbance of the plaintiffs lawful use and enjoyment of the suit premises mentioned in the schedule hereunder in any way or manner whatsoever."

4. An admission was made by the Calcutta Municipal Corporation that such a notice was served by mistake and accordingly by a judgment dated 12th September, 1997 the suit was decreed on admission, pursuant where to a declaration was made that it was not liable for payment of any tax to the Calcutta Municipal Corporation for premises No. 16 Strand Road, Calcutta. However, on 21st March, 1997 some officers of the Collection Department demanded the alleged arrears of municipal taxes and threatened the employees of the petitioners. The officers of the Corporation gave out that they have come to execute a Distress Warrant. Allegedly a writ petition was sought to be moved orally before Chatterjee, J. who declined to hear such application. In such circumstance an application was moved before the learned Judge 7th Bench of the City Civil Court in the said suit in terms of the said application passed an order of injunction. Despite showing the same, the petitioners were threatened that unless some payment was made immediately they would start removing the movables from the petitioner's office. The police also supported the respondents as a result whereof the petitioners were compelled to hand over a few cheques, details whereof are as follows :--

Cheque No.	Amount	Date
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575158	Rs. 20,00,000/-	31-3-97
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575159	Rs. 10,00,000/-	31-5-97
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575160	Rs. 10,00,000/-	30-6-97
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575161	Rs. 10,00,000/-	31-7-97
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5. Allegedly the officers of the Corporation were intimated that no sufficient fund is available at the Bank. Similarly other sub-tenants had also to pay certain amount by way of cheque as their moveable assets were threatened to be taken away. In the aforementioned premises the writ application was filed.

6. The contention of Calcutta Municipal Corporation in the writ petition appears to be that under the provisions of the Calcutta Municipal Corporation Act (hereinafter referred to as the Act) and in particular Section 232 thereof moveable property belonging to any person whatsoever can be attached.

7. The learned trial Judge upon referring to various provisions of the Act inter alia, held :--

"From the different provisions of the Act as indicated above, the following facts shall emerge :

1. The consolidated rate and taxes shall be primarily leviable on the person mentioned in Section 193(1) of the Act.

2. On the failure to recover any sum due on account of consolidated rate of any land or building from the person primarily liable, therefore, u/s 193, the Commissioner shall recover such consolidated rate and taxes from every occupier of such land or building by attachment of the rent payable by such occupier. The user of the word "every occupier of such land or building" means, in my view, all the occupiers of such land or the building. Therefore, on a plain reading of the aforesaid provisions of the Act relating to realisation of consolidated rate and taxes, it is clearly evident that primarily the persons named in Section 193(1) of the Act would be liable to pay such consolidated rate and taxes in respect of any land or building. But, if there is a failure to recover any sum due on account of such consolidated rate on any land or building from the person primarily liable, it is open to the Authorities to recover such consolidated rate from every occupier of such land or building by attachment of the rent payable by such occupier. As Section 195(2) of the Act gives a right to an occupier from whom any sum is recovered under Sub-section (1) to be reimbursed by the person, primarily liable for the payment of such sum, it is clearly evident that on failure to recover any sum from the person primarily liable, the Calcutta Municipal Corporation can proceed against every occupier in respect of the land and building in question."

8. Mr. Roy, the learned senior counsel appearing on behalf of the appellant has raised a short question in support of this appeal. The learned counsel contended that a bare perusal of the provision contained in Sections 193, 194, 195(0,214 and 225 of the said Act would clearly demonstrate the extent of the tenant's liability and, thus, the movable properties belonging to them cannot be termed in execution of a distress Warrant. According to the learned counsel on a true and proper construction of the said provisions it has to be held that the liability of the tenant is only to the extent of amount of rent, which can be attached by an appropriate order.

8A. Mr. Das Adhikary, the learned counsel appearing on behalf of the respondent-Corporation, however, sought to distinguish the words "primarily liable and personally liable" occurring in different provisions of the Act and submitted that although an owner or superior lessor of the land and building is primarily liable to pay rates and taxes, under the Act the arrears of taxes can also be recovered from the persons who are persons liable for payment thereof. Reference in this connection has been made to Sections 184(4), 186, 189, 216, 217, 230, 231 and 232 of the said Act.

9. The Calcutta Municipal Corporation Act, 1980 was enacted to amend and

consolidate the law relating to the municipal affairs of Calcutta. It is not disputed that the matter relating to payment of consolidated rate in respect of land and building is governed by the provision of the Act. It is also beyond any cavil of doubt that the Corporation being a creature of statute can realise taxes only within the four corners of the provisions of the said Act.

"Taxation" has three elements viz. (1) taxable event, (2) assessment of tax, and (3) recovery of tax, Municipal Tax by way of consolidated rate or otherwise can be levied in respect of land or the buildings constructed thereupon. Primarily the owner of such land and building would be liable to pay tax from the date of acquisition of the land or completion of the construction of the building.

10. In the Municipal Records, the name of owner of such building is recorded. In case of any transfer an order of mutation is passed mutating the name of the transferee, the said Act provides that in absence of such mutation the original owner shall continue to liable to pay the consolidated rate.

11. Section 184 merely provides for public notice and inspection of the assessment list. Upon revision in the annual valuation the Municipal Commissioner is under statutory obligation to cause the respective valuation to be entered in the assessment list and give a written notice thereof to every person claiming to be the owner, lessee sub-lessee or occupier of any land or building.

12. Section 186 provides for objection to the annual value of a land or building. Section 189 provides for an appeal after the hearing of the objection is made and an order passed therein.

13. Section 191 provides for maintenance of the Municipal Assessment Book. Section 193 which is important for the purpose of this appeal provides for the incidence of consolidated rate on lands and buildings in the following manner :--

"The consolidated rate on lands and buildings shall be primarily leviable -

- (a) if the land or building is let, upon the lessor
- (b) if the land or building is sublet, upon the superior lessor;
- (c) if the land or building is unlet, upon the person in whom the right to let such land or building vests."

14. A bare perusal of Clauses (a) and (b) of Sub-section (1) of Section 193 leaves no manner of doubt that the consolidated rate is primarily leviable upon the lessor in case a building is let and upon the superior lessor in case the building had been sublet, namely, the owner of the land or the building.

15. The word "owner" has been defined in Section 2(62) of the Act to mean :--

"Section 2(62) -- "Owner" includes the person for the time being receiving the rent of any land or building or of any part of any land or building, whether on his own account or as agent or trustee for any person or society or for any religious

or charitable purpose or as a receiver who would receive such rent if the land or building or of any part of the land or building were left to tenant."

16. Section 194 which provides for apportionment of liability for consolidated rate on land or building when the premises assessed are let or sublet. The said Section reads thus :

(1) If the annual valuation of any land or building exceeds the amount calculated on the basis of the rent of such land or building payable to the person upon whom the consolidated rate on such land or building is leviable u/s 193, such person shall be entitled to receive from his tenant the difference between (he amount of the consolidated rate on such land or building and the amount which would be leviable if the consolidated rate on such land or building were calculated on the basis of the rent payable to him.

(2) If the annual valuation of any land or building which is sublet exceeds the amount calculated on the basis of rent of such land or building payable to the tenant by his sub-tenant or to the sub-tenant by the person holding under him, the tenant or the sub-tenant shall be entitled to receive from his sub-tenant or the person holding under him, as the case may be, the difference between any sum recovered under this Act from such tenant or sub-tenant and the amount of consolidated rate on such land or building which would be leviable if the annual valuation of such land or building were calculated on the basis of rent payable to, the tenant by his subtenant or the sub-tenant by the person holding under him"

17. A bare perusal of the aforementioned provision would clearly show that no right thereby is created in the Corporation but merely a right is created upon the landlord in case of letting the building and upon the lessees in case the building has been sublet provided the conditions precedent laid down therein are satisfied. The said provision, therefore, was enacted for the purpose of benefit of those who had let out or sublet the building in question so as to entitle them to realise the excess amount from the lessee or the . sublessee irrespective of any contract stipulating payment of rent to the lessor or lessee, as the case may be.

Reference to Section 184(4) by Mr. Das Adhikary appears to be misplaced. The notices of revision evidently are also issued upon owner, lessee or sub-lessee so as to enable them to file objections as in terms of the provision of the statutes ultimately he would be liable therefore keeping in view the clear provision laid down in Section 193(1). Assuming such a notice had been issued u/s 184(4), the petitioners or their sub-lessees cannot be made liable for payment of consolidated rate which would clearly be contrary to or inconsistent with the provision of Section 193 of the Act. In other words Section 193 being related to the incidence of tax and the liability thereunder having been fixed on the lessor or the superior lessor, as the case may be, such liability cannot be fastened upon the lessee or the sub-lessee in violation of the provision of the statute.

18. Section 195 of the said Act reads thus:--

"Recovery of consolidated rate on lands and buildings from occupiers (1) On the failure to recover any sum due on account of consolidated rate on any land or building from the person primarily liable therefore u/s 193, (the Municipal Commissioner shall, notwithstanding anything contained in the West Bengal Premises Tenancy Act, 1956 or in any other law for the time being in force, recover) from every occupier of such land or building, by attachment of the rent payable by such occupier, a portion of the total sum due which bears, as nearly as may be, the same proportion to that sum as the rent annually payable by such occupier bears to total amount of rent annually payable in respect of the whole of such land or building.

(2) An occupier, from whom any sum is recovered under Sub-section (1), shall be entitled to be reimbursed by the person primarily liable for the payment of such sum, and may, in addition to have recourse to other remedies that may be open to him, deduct the amount so recovered from the amount of any rent becoming due from time to time from him to such person."

19. The aforementioned provision in no uncertain terms conferred power on the Corporation for recovery of consolidated rate on lands and buildings from occupiers. The Corporation is a creature of the statute. It, therefore, must act in terms of the provisions of the said statute or not at all.

20, Section 216 provides for presentation of the bill to the person liable for payment thereof. Section 217 provides for issuance of notice of demand, notice fee, interest and penalty.

Section 225 of the said Act reads thus :

"Occupiers may be required to pay rent towards satisfaction of consolidated rates (1) for the purpose of recovery of any consolidated rate from any occupier u/s 195, the Municipal Commissioner (notwithstanding anything contained in the West Bengal Premises Tenancy Act, 1956 or any other law for the time being in force), shall cause to be served on such occupier notice requiring him to pay to the Corporation any rent due or falling due from him in respect of the land or building to the extent necessary to satisfy the portion of the sum due for which he is liable under the said section.

(2) Such notice shall operate as an attachment of such rent unless the portion of the sum due shall have been paid and satisfied, and the occupier shall be entitled to credit in account with the person to whom such rent is due for any sum paid by him to the Corporation in pursuance of such notice :

Provided that if the person to whom such rent is due is not the person primarily liable for payment of the consolidated rate, he shall be entitled to recover from the person primarily liable for payment of such tax any amount for which credit is claimed as aforesaid.

(3) If any occupier fails to pay to the Corporation any rent due or falling due which he has been required to pay in pursuance of a notice served upon him as

aforesaid, the amount of such rent may be recovered from him by the Corporation as an arrears of tax Under this Act,"

21. Section 230 provides for apportionment of consolidated rate .by the person primarily liable to pay. Sections 231 and 232 upon which strong reliance had been placed by Mr. Das Adhikary read thus :--

"Section 231. Mode of recovery--if any person primarily liable to pay any consolidated rate on any land or building and is entitled to recover any sum from an occupier of such land or building, he shall have, for recovery thereof, the same rights and remedies as if such sum were rent payable to him by the person from whom he is entitled to recover such sum.

Section 232. The Consolidated rate on lands and building to be first charge on premises the consolidated rate on lands and buildings due from any person shall, subject to the prior payment of land revenue (if any) due to the Government thereupon, be a first charge upon the land of the building belonging to such person and upon the moveable property (if any) found within or upon such land or building."

22. It is now a well settled principles of law that there cannot be any intendment for tax, Imposition of tax or assessment or steps for recovery thereof being governed by the provision of law, the Calcutta .Municipal Corporation could not have gone beyond the statute. The provision contained in Section 193 in no uncertain terms states that only the "owner" (respondent. No. 9) would be primarily liable. In the event of failure of the owner to pay consolidated rate and other taxes, recovery can be made from the occupiers of the building but such a provision must be carried into effect strictly in accordance with law. The provision of the said Act nowhere states that the liability to pay consolidated rate is also on a lessee or sub-lessee. It merely empowers the Corporation to collect that arrears of such consolidated rates and taxes from the occupiers of the building only in the manner laid down u/s 225 and not otherwise. Only in a case where the occupiers of the building failed to comply with the direction as contained in Sub-sections (1) and (2) of Section 225, a tax can be recovered from the occupiers of the building in the same manner as could be done in the case of lessor or the superior lessor.

23. It is, therefore, preposterous to contend that Sections 231 and 232 of the said Act confer an absolute, unguided unbridled uncanalised off naked power upon the authorities to realise the amount of consolidated rent from any person whomsoever.

24. Section 231 of the Act is for the benefit of the person who is primarily liable. The said provision cannot be taken recourse to by the Corporation. Section 232 merely states that the land and the building belonging to any person who in the facts and circumstances of this case must be held to mean the person liable to pay the consolidated rate tax as first charge. The words upon which moveable property (if any), found within or upon such, land or building must be the

moveable property belonging to the person liable to pay such tax. The distinction between a person primarily liable and persons liable to pay tax is explicit and unambiguous. So far as the payment of consolidated rate and taxes on lands and buildings is concerned, the owner namely, the lessor or the superior lessor, as the case may be, would be primarily liable. Apart from the consolidated rate various other taxes which may be personal in nature can also be levied and persons upon whom such taxes are levied, are persons liable to pay such taxes. The liability of an occupier to pay consolidated rate so as to make it a person liable therefore would come into play only in terms of Sub-section (3) of Section 225 of the Act i.e. when he has failed and/or neglected to comply with the directions as contained in Sub-sections (1) and (2) thereof.

25. In view of the aforementioned findings the submission of Mr. Das Adhikary that even in terms of Section 232 the moveable properties of the occupiers can be attached irrespective of the fact as to whether they have complied with the direction as contained in Sub-sections (1) and (2) appear to us to be preposterous and must be rejected as such.

26. It is not the case of the Corporation that there had been an order of attachment as against the occupiers of the building, viz. lessee and sublessee in terms of Section 225 of the Act. Assuming that such an order has been passed, it is not their case that the petitioners or their sub-lessees have failed to abide by the direction contained in subsections (1) and (2) of the said provision. In absence of the failure on the part of the petitioners and their sub-lessees to abide by the direction contained in Sub-sections (1) and (2) of Section 225, Sub-section (3) thereof cannot come into play. When, it goes without saying, the said provision comes into play; the provision of Section 232 can be taken recourse to albeit, upon complying with the other requirements laid down under statutes viz. the provision of Section 197.

27. This aspect of the matter has recently been considered by this bench in Calcutta Municipal Corporation and Others Vs. Abdul Halim Gaznavi Molla and Others,

28. In the aforementioned case this Court quashed attachment of a car belonging to a third party holding :

"However, the demand made in respect of interest and penalty being vague, no distress warrant could have been issued for realisation of the said sum. As noticed hereinbefore, the writ petitioners have paid certain amount and as such they are directed to pay the balance amount within 4 weeks from date. The appellant shall also be at liberty to calculate the amount of interest payable in terms of Sub-section (3) of Section 206 of the Act and if it thinks fit and proper may also initiate penalty proceeding and in case of nonpayment of such amount, it may take recourse to law.

However, so far as the Appeal No. 582/97 is concerned, evidently the writ petition has rightly been allowed. No demand had been served upon him. He was

not a person liable in terms of Section 193 of the said Act. In fact in paragraph 12 of the affidavit-in-opposition it has been admitted that his car had been released only on furnishing a sum of Rs. 2 lakhs. Furthermore, as there is nothing on record to show that the said writ petitioner was liable to pay any amount, no distress proceedings could have been initiated against him. Assuming that he is a tenant in respect of one of the cutlets only his rent could have been attached."

29. If the construction of Section 232 as has been put forth by Mr. Das Adhikary is accepted, the same would render the provision unconstitutional. It is now well known that the Court is entitled to read down a statute so as to render the same constitutional. The intention of legislature in making the said provision, in our opinion, is explicit, clear and unambiguous. If a literal interpretation is made, the same would give rise to absurdity as in such an event the cars, moneys and other moveable properties of the officers of the lessee and such lessee and/or the stranger who perchance happens to be in the premises would come within the mischief of the said provision. The statute must be presumed to have been enacted for doing justice and avoid injustice. See *Malpe Vishwanath Acharya and Others Vs. State of Maharashtra and Another*, . It is further well settled that if a literal interpretation is given to a statute resulting in manifest injustice and absurdity, the same has to be avoided. It is further well known that for the purpose of construction of a statute, the same has to be read as a whole and then chapter by chapter and then section by section. Section 232 read in such a manner, in our opinion would clearly show that the persons in the facts and circumstances of this case would come within the mischief of Section 232. It is absurd to suggest that recovery of tax can be made by attachment of the properties belonging to a person who is not liable therefore and against whom no assessment proceedings had been initiated. The liability of a third party must clearly be stated in the statute. The liability of a third party can neither be presumed nor intended as in terms of Art, 265 of the Constitution of India a tax can be levied only in accordance with law. Recovery of a tax can thus only be made only from a person who has been made liable therefore under the said Act of those from whom the same can be realised in the manner laid down under the statute and no other.

30. It is true that the Court while interpreting statutes neither can re-write the same nor can interpret in any manner so as to violate the plain language employed therein but it is equally true when a statute is vague and unambiguous, the Court is entitled to "iron out the creases".

31. For the reasons aforementioned the judgment and order passed by the learned trial Judge cannot be upheld. We, however, keeping in view the fact that there is a huge arrear and it is admitted that the petitioner No. 1 had been making all correspondences with the Calcutta Municipal Corporation relating to payment of tax, any amount deposited by the petitioner or its sublessees, may not be refunded and they shall be entitled to exercise their respective rights as

against their owners or superior lessors or lessors, as the case may be, by way of adjustment of rent or otherwise as is permissible in law. It is further made clear that if any order of attachment has been served upon the lessees or sub-lessees by the appellant-corporation the same shall be abided by the respective parties in accordance with law. This appeal is allowed with the aforementioned observations and directions but in the facts and circumstances of this case there will be no order as to costs.

D.B. Dutta, J.

32. I agree.