(2018) 07 CAL CK 0157

In the Calcutta High Court

Case No : Writ Petition 852 of 2015

Sumit Kumar Datta & Anr. APPELLANT

Vs

Kolkata Municipal Corporation & Ors. RESPONDENT

Date of Decision : 27-07-2018

Acts Referred:

Kolkata Municipal Corporation Act, 1980 — Section 178, 178(5), 178(6), 195, 225

Citation : (2018) 07 CAL CK 0157

Hon'ble Judges : DEBANGSU BASAK, J

Bench : Single Bench

Advocate : Sakya Sen, Bhaskar Mukherjee, Lakshmi Shaw, Ambika Law, Sarbopriyo Mukherjee, Ashok Bose, Saikat Saraogi, Alok Kr. Ghosal, Dilip Kr. Chatterjee

Judgement

The petitioners seek cancellation of a notice of demand dated June 17, 2015 in respect of Premises No. 6A, Bishop Lefroy Road, Flat No. 1, ground

floor, Ward No. 70, Kolkata- 700020. The petitioners also seek a direction upon the Corporation to recover the property tax, interest and penalty from

the tenants and occupiers of such premises. Learned Advocate appearing for the petitioners submits that, the premises comprises of about 2,300

square feet. The premises was rented at a rent of Rs.350/- per month. Presently the petitioners are not receiving any rent. The property has been

assessed for tax at an exorbitant rate. The tenants and occupiers of the premises are not paying the property tax despite their obligation to do so under

the provisions of the Kolkata Municipal Corporation Act, 1980. He relies upon Section 195 thereof. He also relies upon Section 225 of the Act of 1980

and submits that, the Corporation authorities have the right to attach the rent in respect of the premises concerned for realizing the arrear property tax.

He submits that, the revision in the annual valuation took place on the basis of an inspection. The Corporation authorities found the respondent nos. 6

and 7 to be paying huge rent to the respondent no. 5.

Learned Advocate appearing for the Corporation submits that, a sum in excess of Rs.1,08,00,000/- is due and payable as property tax in respect of the

property. The consolidated tax is to be apportioned in terms of Section 178(6) of the Act of 1980. There are three tenants at the premises concerned.

Such tenants need to pay property tax in accordance with the provisions of the Act of 1980. Learned Advocate appearing for the respondent no. 5

questions the maintainability of the writ petition. He submits that, the petitioner has a statutory alternative remedy by way of an appeal. The petitioner

has filed an appeal in respect of the annual valuation. Therefore, the present writ petition is not maintainable.

He relies upon 2000 Volume 2 Calcutta High Court Notes page 707 (Adarsh Mohila Siksha Pratisthan & Ors. v. The Kolkata Municipal Corporation

& Ors.) as well as 2003 Volume 10 Supreme Court Cases page 533 (Calcutta Gujrati Education Society & Anr. v. The Kolkata Municipal

Corporation) and submits that, apportionment of the occupied share of the taxes has not been made till date. The respondent no. 5 has not received

any demand for tax. The respondent no. 5, therefore, cannot be called upon to pay any property tax at this stage. He submits that, the procedure under

Section 178(6) of the Act of 1980 has not been followed for the purpose of apportionment. Therefore, the respondent no. 5 is not liable to pay any

property tax. He points out that, the contention that, the annual valuation of the property was increased due to the inspection of the Corporation is not

pleaded in the writ petition. In any event, he submits that, such contentions are disputed by the respondent no. 5.

Learned Advocate for the Corporation relies upon an inspection book which shows that, the flat is occupied by three occupants, two of whom are not

parties in the present proceeding. On a query from the Court as to whether the respondent no. 5 has inducted any of the three persons noted in such

inspection book into the premises, learned Advocate on record for the respondent no. 5 after taking instructions from the respondent no. 5 submits

that, his client is not in a position to inform the Court whether any of the three persons named in such inspection report is occupying the property or not.

In the present case, an assessment order is under challenge. Apart therefrom, the petitioners seek a direction upon the Corporation to realize the

property tax from the occupants. The records produced by the Corporation disclose that, there are two other occupants in the flat apart from the

respondent nos. 5 and 6. The inspection report also says that, the respondent no. 5 is realizing rent from those three occupants. As noted above, the

respondent no. 5 is not in a position to inform the Court whether the flat is occupied by any other person or not. In the affidavit filed by the respondent

no. 5, it has denied induction of one of the occupants. True, an opportunity needs to be given to the respondent no. 5 to deal with such records of the

Corporation. At the same time, the respondent nos. 5 and 6 and all occupants of the property cannot deny their statutory liability to pay property tax, in

accordance with law.

At this stage, there is nothing to disbelieve the contents of the inspection report of the Corporation. That apart, the respondent no. 5 is admittedly

occupying the property. Under Section 178(6) of the Act of 1980, it is the duty of any owner, lessee or sub-lessee or occupier of any land or building

to apply to the Corporation, upon payment of requisite fees, to apportion the property tax payable by it. In the present case, the respondent no. 5 as an

occupier has not done so. It is liable to pay property tax. Pendency of a valuation proceeding does not mean that, the respondent no. 5 will enjoy a

property tax holiday for the entirety of the period of such proceedings. It is liable to pay its portion of the property tax to the Corporation authorities.

Failure to pay, will entitle to the Corporation authorities to undertake the provisions of recovery enshrined under the Act of 1980.

Adarsh Mohila Siksha Pratisthan & Ors. (supra) is of the view that, where there is a statutory alternative remedy available, a writ petition is not

maintainable. In the present case, apart from the petitioners challenging the valuation, the petitioners seek a direction upon the Corporation to realize

the property tax from the occupiers, in accordance with law. The petitioners have no statutory alternative remedy available so far as the second

prayer in the writ petition is concerned. Therefore, the writ petition should not be thrown out on the ground of availability of statutory alternative

remedy alone. In any event, the existence of statutory alternative remedy is not an absolute bar to the maintainability of a writ petition. A writ petition is maintainable notwithstanding the availability of a statutory alternative remedy, if the petitioners are in a position to substantiate that their fundamental rights have been breached or that the action complained of is without jurisdiction or where there is abject failure on the part of an authority to discharge statutory duties.

As noted above, the petitioners do not have any statutory alternative remedy so far as the second relief sought. Calcutta Gujrati Education Society & Anr. (supra) is of the view that, a proceeding for apportionment should not be undertaken without notice to the occupiers. It also notes a situation, where in a given case, all the occupiers cannot be notified. In the present case, the respondent no. 5 is in occupation of an immovable property. It did not apply under Section 178(5) of the Act of 1980. It is the allegation of the petitioners and the stand of the Corporation that, by reason of the conduct of the respondent no. 5 in respect of the property, the annual valuation of the property stand enhanced. The respondent no. 5 as an occupier of the property is liable to pay property tax. In fact all occupiers therein are liable to pay property tax. The liability of the occupiers of the property needs to be apportioned. The Act of 1980 cannot be read to mean that, an occupier of a property need not pay property tax or the liability to property tax by an occupier does not arise till such occupier applies under Section 178 for apportionment. Such a reading would allow a dishonest occupier never to pay property tax by not applying under Section 178 for apportionment.

In this case, a property of 2,300 square feet area in the heart of the city is being occupied by the respondent at an occupation charge of Rs.350/- per month and that too not being paid to the owner, and with no property tax being paid at all. It is alleged that by reason of the respondent no. 5 inducting few other persons into the property and realizing rent from them, the property has attracted a tax in excess of Rs.1.08 Crores. Such property tax remains unpaid. It would be iniquitous to call upon the owner who is not even receiving the princely sum of Rs.350/- per month from the respondent no. 5 to discharge the liability of property tax rustled up at the behest of the respondent no. 5 and then realize the same from the respondent no. 5.

That would be putting premium on the utter dishonesty of the respondent no. 5.

In such circumstances, the Corporation will apportion property tax payable in respect of the flat in question amongst the occupiers within 7 days from

date. Individual notices for such purpose need not be served upon the appearing respondents as they are represented. The Corporation is at liberty to

paste notice of the apportionment proceeding on the outer wall of the property concerned. Such notice will be construed as notice under Section 178

of the Act of 1980 for all the occupiers of the flat in question. Upon such apportionment being made, the Corporation authorities will raise the demands

on the occupiers.

Such demand must be raised within 10 days from date. The occupiers will have 5 days thereafter to discharge their liability on the demands so raised.

The Corporation will initiate recovery proceedings under the Act of 1980 against the occupiers immediately on the expiry of a fortnight from date in

the event, such demands remain unpaid. List the writ petition under the same heading on August 14, 2018 for further consideration.