

(2025) 05 CAL CK 0806
In the Calcutta High Court, Original Side
Case No : W.P.O. No. 1227 Of 2024

Tanweer Ebadullah

APPELLANT

Vs

Kolkata Municipal Corporation And Ors

RESPONDENT

Date of Decision : 20-05-2025

Acts Referred:

Constitution of India, 1950 — Article 226
Kolkata Municipal Corporation Act, 1980 — Section 184, 573
Limitation Act, 1963 — Article 113

Citation : (2025) 05 CAL CK 0806

Hon'ble Judges : Gaurang Kanth, J

Bench : Single Bench

Advocate : Raghunath Chakraborty, Supratik Shyamal, Manisha Nath, Sonali Sengupta, Biswajit Mukherjee, Piyali Sengupta

Final Decision : Dismissed

Judgement

Gaurang Kanth, J.

1. The petitioner, by way of the present writ petition, challenges the revised annual valuation and consequential property tax demand raised by the respondent corporation in respect of the premises bearing No. 7/1, Topsia Road, associated with assessee numbers 110592207102, 110592208490, 110592208349, 110592208337, and 110592201525 on the ground that the same pertains to a period beyond the permissible limitation of three years.

2. The facts leading to the present writ petition are as follows:

3. The petitioner submits that he is the owner of five apportioned units situated at premises no. 7/1, Topsia Road (South), Kolkata. The said ownership has been acquired through duly executed deeds of gift and conveyance. According to the records maintained by the municipal corporation, the mutation of the respective assessee numbers stands as follows:

(i) Assessee Nos. 110592207102 and 110592208337 stand mutated in the name

of the Petitioner;

(ii) Assessee No. 110592201525 stands mutated in the name of Khalid Edadullah;

(iii) Assessee Nos. 110592208490 and 110592208349 stand mutated in the name of Fazal Edadullah.

4. After acquiring ownership, the petitioner has, from time to time, made payments towards the property tax. According to the petitioner he paid Rs. 5,00,000/- on 20.07.2023 qua Assessee No. 110592208349, Rs.4,50,000 qua Assessee Nos. 110592207102 vide various cheques dated 28.08.2023, 11.12.2023, 07.03.2024 and Rs. 2,00,000/- on 01.10.2024 dated qua Assessee No.110592208337.

5. On 20.11.2024, he visited the office of the respondent corporation and submitted two demand drafts totaling Rs. 20,95,000/- towards outstanding dues. At that time, officials of the respondent corporation informed him that a sum of Rs. 1,18,06,993/-, comprising property tax, interest, and penalty, was outstanding against the said five assessee numbers. He was further informed that warrants of distress were likely to be issued. Under pressure from the municipal officials, the petitioner was compelled to provide an undertaking dated 20.11.2024, undertaking to clear the entire outstanding amount by December 2024.

6. Subsequently, on 21.11.2024, the petitioner deposited an additional sum of Rs. 2,00,000/- via demand draft towards the outstanding dues.

7. In order to verify the dues, the petitioner accessed the demand details pertaining to the above-mentioned assessee numbers. He discovered that in respect of assessee nos. 110592207102, 110592208349, and 110592201525, the outstanding demand relates to the period commencing from 2009–2010, i.e., over one and a half decades ago. In respect of assessee nos. 110592208490 and 110592208337, the demands pertain to periods starting from 2019 and 2020, respectively.

8. The petitioner contends that, in terms of Section 573 of the Kolkata Municipal Corporation Act, 1980, the respondent corporation is legally entitled to recover dues only within three years from the date the sum fell due. Therefore, any demand predating February 2021 is time-barred and non-recoverable under the law.

9. The petitioner further states that the respondent corporation has arbitrarily and unilaterally revised the annual valuation of the property and enhanced the property tax without affording him an opportunity of hearing. Such action is in violation of the principles of natural justice.

10. The petitioner, through a legal notice dated 10.12.2024, requested the respondent corporation to grant an opportunity of hearing and to pass a reasoned order after excluding time-barred claims exceeding the three-year

limitation. However, the said legal notice has elicited no response from the respondents.

11. In light of the above, the petitioner has been constrained to approach this Hon'ble Court by way of the present writ petition.

Arguments on behalf of the Petitioner

12. Learned Counsel for the petitioner submits that the acts and actions of the respondent municipality are dehors any statutory provisions of law. The recovery of property tax beyond the period of 3 years from date is barred by limitation and thus prohibited under the law in terms of Section 573 for Kolkata Municipal Corporation Act, 1980.

13. Learned Counsel for the petitioner further submits that the respondent authorities revised the annual valuation of the property without issuing the notice under Section 184 of the KMC Act, 1980 and also without giving an opportunity of hearing to the petitioner.

14. In order to substantiate his contention, Learned Counsel for the petitioner relies upon PS Group Reality Ltd. Vs Kolkata Municipal Corporation (WP No. 1083/ 2009 (Single Bench) & Division bench Judgment reported as 2012(3) WBLR (Cal) 916), Sudip Kusarye Vs Kolkata Municipal Corporation (APO/7/2023), Sahu Jain Charitable Society & Anr. Vs Kolkata Municipal Corporation (APO 265/2015), Swapana Kumar Ghosh Vs Kolkata Municipal Corporation (FMA 657/2022), Mohanlal Mitra Vs Kolkata Municipal Corporation (WP No. 420 of 2005), Calcutta Municipal Corporation Vs Abdul Halim Gaznavi Molla (AIR 1998 Calcutta 345), Nepal Chandra Kar Vs Calcutta Municipal Corporation (WP No. 978/2022).

15. In view of the said submission, Learned Counsel for the petitioner prays for the setting aside and quashing of the impugned demand notice.

16. The Learned Counsel for the respondent submits that, with respect to the scheduled property, there exist five apportioned units, four of which are child assessee under a single mother assessee bearing the number 11052201525. The child assessee numbers were generated at different periods following mutation, as per the registration records. According to the respondent corporation's records, each apportioned unit is self-occupied by its respective owner, each holding a separate certificate of enlistment to conduct their respective businesses. For each apportioned unit, the annual value has been determined after issuing a hearing notice and providing an opportunity for hearing to the respective assessee.

17. The annual value for assessee number 110592207102 was fixed, effective from the 4th quarter of 2016-2017, at Rs.1,65,580; for assessee number 110592208337, effective from the 4th quarter of 2012-13, at Rs.1,87,920; for assessee number 110592208490, effective from the 2nd quarter of 2013-14, at Rs.1,94,400; and for assessee numbers 110592208349 and 11052201525,

effective from the 4th quarter of 2013-14, at Rs.1,94,400 each.

18. The Learned Counsel for the respondent further submits that property tax is due against these assessee numbers from the time of their generation. Despite repeated requests, the respective owners of the apportioned units have failed to remit payment against the bills generated. Consequently, notices of demand and distress warrants have been issued.

19. The respondent submits that the outstanding property tax dues (inclusive of interest and penalty) for each assessee number are as follows:

Assessee Number

Amount due

110592207102

Rs.32,27,205/-

110592208337

Rs. 37,19,118/-

110592208490

Rs. 9,76,675/-

110592208349

Rs. 37,99,784/-

110592201525

Rs.5,03,237/-

20. Subsequent to the issuance of the distress warrant, the petitioner remitted a payment of Rs.20,95,000/- on 20.11.2024 and has undertaken to deposit the remaining balance by December 2024.

21. The respondent denies the assertion that the liability to pay property tax expires after a period of three years, and contends that the petitioner is obligated to settle the outstanding dues irrespective of the time elapsed.

22. In light of the foregoing, the Learned Counsel for the respondent respectfully prays for the dismissal of the present writ petition.

Legal Analysis

23. This Court has duly heard the submissions advanced by the learned counsel appearing for the respective parties and has perused the materials available on record.

24. The principal contention raised on behalf of the petitioner is that the respondent is seeking to recover property tax dues pertaining to a period

exceeding three years, which, according to the petitioner, is barred by the law of limitation.

25. In terms of Article 113 of the Schedule to the Limitation Act, 1963, any suit for recovery of a debt or dues must be instituted within a prescribed period of three years from the date on which the debt becomes due. Statutory levies such as municipal taxes, including property tax and water tax, fall within the category of statutory dues. The jurisprudence developed by the courts has consistently held that where recovery is initiated through a civil suit, adherence to the limitation period prescribed under the Limitation Act is mandatory. However, in cases where the recovery process is undertaken by the municipality through statutorily prescribed mechanisms such as attachment of property or distress warrants under municipal laws, the provisions of the Limitation Act may not apply unless explicitly incorporated within the governing statute. In this regard, it is settled law that unless the governing municipal statute provides a specific limitation period, the statutory powers conferred upon the municipal authority for recovery of dues are not subject to the general limitation prescribed under the Limitation Act.

26. In the present matter, the statutory provision relevant to the issue of limitation is Section 573 of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as "the KMC Act"). This provision, contained in Part IX, Chapter XXXV of the KMC Act, stipulates as follows:

"Recovery of certain dues of Corporation.— Save as otherwise provided in this Act or the rules or the regulations made thereunder, any sum due to the Corporation on account of any charge, cost, expense, fee, rate or rent or on any other account under this Act or the rules or the regulations made thereunder shall be recoverable from the person from whom such sum is due as if it were a property tax.

Provided that no proceeding for the recovery of any such sum under this section shall be commenced after the lapse of three years from the date on which such sum becomes due."

27. The interpretation and application of Section 573 of the KMC Act has been the subject of judicial scrutiny by this Court on several prior occasions.

28. In *Calcutta Municipal Corporation and Ors. v. Abdul Halim Gaznavi Molla & Ors.*, reported in AIR 1998 Cal 345, a Division Bench of this Court observed that Section 573, though situated within the broader statutory framework dealing with powers, procedures, offences, and penalties, does not automatically govern recovery proceedings under different chapters unless expressly stipulated. The Division Bench clarified that the limitation provision contained in the proviso to Section 573 applies to certain imposts to be recovered as consolidated rates but not necessarily to tax recovery unless the legislature unambiguously provides so in the relevant chapter. The Court further held that taxation statutes must be interpreted strictly and cannot be subjected to implications or presumptions,

particularly in matters concerning recovery and limitation.

29. Subsequently, in *Sahujain Charitable Society & Ors. v. The Kolkata Municipal Corporation & Ors.*, reported in 2018 (3) CHN (Cal) 328, another Division Bench of this Court held that the Corporation may initiate proceedings for recovery of dues within three years from the date on which such dues became payable, in accordance with Section 573 of the KMC Act.

30. Thereafter, two coordinate Single Benches of this Court, in *Kanak Projects Limited & Anr. v. Kolkata Municipal Corporation & Ors.* (2020 SCC OnLine Cal 1710) and *Sudip Kusarye v. Kolkata Municipal Corporation* (2022 SCC OnLine Cal 3993), considered the Corporation's power to recover property tax for periods beyond three years. These judgments distinguished the ratio laid down in *Sahujain* (Supra) on the ground that the issue of non-compliance with Section 182 of the KMC Act was not considered therein. The Single Benches opined that the failure of an assessee to discharge statutory obligations under Section 182, relating to the filing of returns, could have a bearing on the authority's power to revise annual valuation and that such issues raised mixed questions of law and fact, not amenable to resolution in writ jurisdiction.

31. The order passed in *Sudip Kusarye* (supra) was carried in appeal before the Division Bench in APO/7/2023. While affirming the decision of the learned Single Judge, the Division Bench held that the obligations imposed by Section 182 of the KMC Act were not considered in the earlier decision in *Sahujain* (Supra). The Bench observed that although the provision does not prescribe penal consequences, it nevertheless imposes a statutory obligation to furnish returns to facilitate fair valuation by the Municipal Corporation. In cases of potential fraudulent concealment by an assessee, the doctrine of fraud could justify the relaxation of limitation, as statutory authorities should not be disabled from exercising powers due to the assessee's deliberate suppression of material facts. The Division Bench concluded that whether there was fraudulent concealment was a question of fact, which ought to be determined by the appropriate statutory forum and not in writ proceedings. The said Judgment, inter alia, reads as follows:

"As held by the learned Single Judge and rightly in our opinion, the effect of breach of the statutory duty of an assessee imposed on him/her by Section 182 of the KMC Act, was not in issue before the Division Bench which decided *Sahujain's* case. Learned Advocate for the appellants argued that the provisions of Section 182 of the KMC Act are not mandatory but only directory. No penal consequences have been stipulated for failure on the part of the assessee to comply with the said provisions. Therefore, KMC cannot try to gain any leverage out of the non-filing of returns by the appellants under Section 182 of the KMC Act. The said Section itself envisages that even if the assessee fails to file such returns, the Municipal Commissioner may proceed to revise the annual valuation of the concerned premises.

It is not necessary for us to decide whether the provisions of Section 182 of the KMC Act are directory or mandatory. What is clear is that the section imposes an obligation on an assessee to file returns. This section obviously was incorporated so that the KMC is kept abreast of the current status of the particular property, e.g., whether or not it is tenanted, whether the rent has increased, whether or not a property is commercially exploited, etc. This would enable the authorities to decide whether a revaluation of the concerned property for the purpose of computing property tax is necessary.

The returns would also help the authorities to correctly, to the extent possible, revise the annual valuation of the concerned property.

It is not inconceivable that an unscrupulous assessee deliberately fails to file returns as contemplated in Section 182 of the KMC Act only with the fraudulent motive of not informing the KMC authorities of the changed status of his property or of any higher benefit that he may be deriving out of such property. It would be difficult for the authorities to find out on their own about any changed status of a property. In Such cases where an assessee with a view to defrauding the Municipal Authorities purposely does not file returns under Section 182, the application of the ratio in Sahu Jain's case must stand relaxed. After all, fraud unravels everything. A statutory authority should be allowed a reasonable time period to exercise a statutory power after discovering fraudulent concealment of material facts, even if in the meantime, the time period prescribed for exercise of such statutory power has expired. If the law is otherwise, it will put a premium on fraud practiced by a dishonest assessee. It may also amount to a fraud on the statute. This aspect was not placed for consideration before the Division Bench which decided Sahu Jain's case.

We are not suggesting or coming to a finding that the appellants have fraudulently concealed the relevant information from the KMC Authorities by not filing returns under Section 182 of the KMC Act. However, whether or not there was such fraudulent motive on the part of the appellants is a question of fact which the writ court cannot decide. If the appellants approach the appellate forum prescribed by the KMC Act, such a forum would be better equipped to go into that question. Since such a disputed question of fact arises in the present case, it is all the more desirable that the writ court declines to exercise jurisdiction and relegates the appellants to the statutory remedy by way of appeal before the Municipal Assessment Tribunal."

32. In light of the foregoing judicial exposition regarding Section 573 of the KMC Act, this Court is of the considered view that the issue of limitation, as raised by the petitioner, involves mixed questions of law and fact, and cannot be adjudicated upon in the present writ proceedings. The forum prescribed under the KMC Act is better suited for examining such factual disputes.

33. In the instant case also, determination of the limitation issue necessarily involves an inquiry into the applicability of Section 182 of the KMC Act. Given the

factual matrix, such inquiry falls outside the purview of this Court's writ jurisdiction.

34. In view of the above, this Court declines to exercise its discretionary jurisdiction under Article 226 of the Constitution of India. All issues raised by the parties are left open to be agitated before the appropriate appellate authority. Nothing stated herein shall be construed as an expression of opinion on the merits of the case, and this judgment shall not operate as condonation of delay or extension of limitation for the purpose of any statutory appeal.

35. The writ petition stands dismissed accordingly.