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**(2018) 09 CAL CK 0022**  
**In the Calcutta High Court**  
**Case No : Writ Petition No.27685 (W) Of 2017**

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|----------------------------------------|----|------------|
| Yashika Reality Private Limited & Ors. | Vs | APPELLANT  |
| Kolkata Municipal Corporation & Ors.   |    | RESPONDENT |

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**Date of Decision :** 12-09-2018

**Acts Referred:**

Kolkata Municipal Corporation Act, 1980 — Section 183(5), 232  
Security Interest (Enforcement) Rules, 2002 — Rule 8, 8(6)

**Citation :** (2018) 09 CAL CK 0022

**Hon'ble Judges :** Debangsu Basak, J

**Bench :** Single Bench

**Advocate :** Chayan Gupta, Asok Bhaumik, Anirban Ray, Siddhartha Banerjee, Anirban Pramanick, Ranajit Chatterjee, Gopal Chandra Das

**Final Decision :** Disposed Off

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## Judgement

DEBANGSU BASAK, J.

The petitioners have assailed a notice of demand dated March 23, 2017 and a notice for immediate payment of outstanding dues dated November 2,

2017 issued by Kolkata Municipal Corporation (K.M.C.). Learned Advocate appearing for the petitioners has submitted that, the first petitioner had

purchased the flat in a sale conducted by the authorised officer of State Bank of India, exercising jurisdiction under the provisions of the Securitisation

and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The sale was free from all encumbrances. The first

petitioner, therefore, cannot be foisted with any Property Tax liability for the period prior to the date of the sale.

The sale certificate was issued on May 15, 2017. The first petitioner is liable for Property Tax on and from May 15, 2017. The first petitioner is not

liable for Property Tax or any other liability in respect of the flat prior to May 15, 2017. The first petitioner is a bona fide purchaser without notice of

the past liabilities. The two impugned notices raise demands upon the first petitioner on account of Property Tax for periods prior to May 15, 2017.

The petitioners are not liable to pay such Property Tax. In support of such contentions, learned Advocate for the petitioners has relied upon 2013 SCC

Online All page 13203 (Smt. Rekha Sahu v. UCO Bank & Ors.) and 2009 Volume 4 Supreme Court Cases page 486 (AI Champdany Industries

Limited v. Official Liquidator &Anr.).

Learned Advocate appearing for the Bank has submitted that, the property was put on sale on the basis of the terms and conditions of the sale notice.

He has drawn the attention of the Court to the terms and conditions of the sale notice governing the sale. He has submitted that, it was the duty of the

first petitioner, as the purchaser, to make necessary enquiries with regard to the liabilities of the property. The petitioners not having done so, it does

not lie in their mouth to contend that, they are not liable for the Property Tax dues prior to May 15, 2017. Significantly, the sale notice specifies that,

the property would be sold on as is where is basis. He has submitted that, the petitioners had inspected the property. He has relied upon Rule 8 of the

Security Interest (Enforcement) Rules, 2002. In support of his contentions, he has relied upon 2008 Volume 1 Supreme Court Cases page 125

(Transcore v. Union of India & Anr.) and 2012 Volume 2 Supreme Court Cases page 197 (Punjab Urban Planning and Development Authority &

Ors. v. Raghu Nath Gupta & Ors.).

Learned Advocate appearing for the Corporation submits that, there are dues in respect of the immovable property concerned. KMC is entitled to

realise its claim from the purchaser. KMC is entitled not to grant mutation till arrears are cleared. In support of his contentions he has relied upon 2012

Volume 2 Calcutta High Court Notes (Cal) page 765 (Rashmay Das v. Kolkata Municipal Corporation).

The authorised officer of State Bank of India, exercising jurisdiction under the Act of 2002, issued a sale notice dated July 29, 2016 to put up various

immovable properties of various borrowers, for sale. The sale was on as is where is basis and as is what is basis. The first petitioner participated in

such sale. The first petitioner became successful in respect of the property

concerned. A sale certificate was issued in favour of the first petitioner on May 15, 2017. The sale certificate states that, the sale was made free from all encumbrances known to the secured creditor.

The property concerned was occupied by a tenant. KMC revalued the property on May 10, 2016. It raised bills in respect of the property on

November 18, 2016. It thereafter, issued the impugned notices of demand upon the petitioner. AI Champdany Industries Limited (supra) has held that,

the Companies Act, 1956 creates no encumbrance over a property for Municipal Tax dues. The Municipality deserves no preferential treatment in

respect of such tax dues. Dues in relation to the Municipality Tax in terms of the provisions of the Companies Act, 1956 do not create any

encumbrance on the property. It is considered to be a personal liability. Dues of the Municipality would not come within the purview of the Crown

debt. Even a Crown debt could be discharged only after the secured creditors stand discharged. In that case, the Municipality, in which the assets of

the company in liquidation were situated, issued a notice, claiming payment of arrears of Property Tax for the period prior to the company going into

liquidation, on the purchaser. In such context, it has held that, the purchaser is not liable for Property Tax dues for the period prior to the date of

purchase.

Smt. Rekha Sahu (supra) has considered a situation where, an application for mutation made by a purchaser of an immovable property in a proceeding

under the Act of 2002 was turned down on the ground that, there was arrear Property Tax payable. The purchaser filed a writ petition directing the

Bank to make payment of the arrear tax due on the property. Reliance was placed on AI Champdany Industries Limited (supra) and Transcore

(supra). The provisions of the Act of 2002 were considered therein. The Bank was directed to pay the arrear Municipal Tax and Electrical Charges

which were outstanding against the property till the date of issuance of the sale certificate together with interest/penalty.

Rashmay Das (supra) has held that, till such time, dues of the K.M.C. are paid, a writ of mandamus cannot be issued directing K.M.C. to mutate the

name of the purchaser in respect of the property concerned. AI Champdany Industries Limited (supra) was cited therein. It has held that, Kolkata

Municipal Corporation Act, 1980 provides two separate procedures for the

purpose of recovery of debts due. Section 232 of the Act of 1980 creates a charge and/or encumbrance upon the property, which runs with the property. In exercise of the right under Section 232 of the Act of 1980, K.M.C.

can proceed to sell the property for the purpose of recovery of debts due. The other mode of recovery is under Section 183(5) of the Act of 1980, by

which K.M.C. can refuse to mutate the transferee except upon payment of its outstanding dues. In the present case, the petitioners are not seeking

any mandatory order on KMC to mutate the name of the first petitioner in its records.

Raghu Nath Gupta & Ors. (supra) has considered the question whether, allottees of commercial plots are liable to pay interest, penal interest and

penalty on account of delayed payment of the instalments after having accepted the allotment by way of auction. It has held that, the allottees are

bound by the terms and conditions governing such allotment as contained in the auction notice and the allotment letter. The allotment was on as is

where is basis. Having accepted the allotment on as is where is basis the allottees are estopped from contending that, basic amenities were not

provided by the Development Authority when the plots were allotted and therefore, are not liable to pay interest, penal interest and penalty for belated

payment of instalments. They were found liable to pay the same.

Transcore (supra) has dealt with the question whether, a proceeding initiated under the then Recovery of Debts Due to Banks and Financial

Institutions Act, 1993 was required to be withdrawn for a secured creditor to proceed under the provisions of the Act of 2002. Such question was

answered in the negative.

In the facts of the present case, the first petitioner purchased the immovable property, on the terms and conditions appearing in the sale notice dated

July 29, 2016 and the certificate of sale dated May 8, 2017. The sale notice puts up the immovable property for sale on as is where is basis and as is

what is basis. The sale certificate states that, sale was made free from all encumbrances known to the secured creditor. The secured creditor took

possession of the immovable property on February 19, 2015. It was in possession of the immovable property till it issued the sale certificate dated May

8, 2017 to the first petitioner. Arrear Property Tax is a liability which can be ascertained by KMC. Had the secured creditor exercised due diligence, it

would have come to know of the quantum of the arrear Property Tax in respect of the property. Apparently, KMC revalued the Property Tax on May

10, 2016 which was prior to the date of the issuance of the notice for sale and the issuance of the sale certificate.

The property concerned is lying and situated within the territorial limits of KMC. It is therefore, subject to property tax. Property tax is a liability

imposed by statute. A secured creditor can ascertain the liability on account of property tax with considerable exactitude. Consequently, the secured

creditor cannot claim that, property tax and arrears of it, is a liability not known to it. It cannot be allowed to plead ignorance of law as a defence. Rule

8(6) of the Security Interest (Enforcement) Rules, 2002 requires the authorised officer to state in the notice of sale, amongst other details specified

therein, the encumbrances of the property put up for sale, known to the secured creditor.

Statutory liabilities of the property put up for sale must be deemed to be within the knowledge of the secured creditor putting it up for sale. In my

understanding, the expression "encumbrances known to the secured creditor" used in Rule 8(6) of the Rules of 2002 will include, all liabilities and

encumbrances in respect of the property put up for sale which a person of ordinary prudence acting diligently ought to have known. Any other

interpretation of Rule 8(6) of the Rules 2002 or the sale certificate would result in accepting pleading of ignorance of law by a secured creditor as a

complete defence to statutory claims. Therefore, the petitioners are not liable for the Property Tax dues in respect of the Property concerned prior to

the issuance of the sale certificate dated May 8, 2017 as the sale was free from encumbrances known to the bank.

In view of the decision above, the impugned notices of demands issued by KMC upon the petitioners are quashed to the extent that it contains any

demands of Property Tax from the petitioners for the period prior to May 8, 2017. This Court has not been called upon to enter into the arena as to

who is liable for payment of the Property Tax prior to the date of the issuance of the sale certificate being May 8, 2017. Such issue is left open in view

of the scope and ambit of the present writ petition as circumscribed by the prayers of the writ petition. W.P. No. 27685 (W) of 2017 is disposed of

accordingly. No order as to costs. Urgent certified website copies of this judgment and order, if applied for, be made available to the parties upon

compliance of the requisite formalities.