S/L 5
24.03.2022
Court. No. 19
GB

W.P.A. 4739 of 2022

Amit Saha
Vs.
The State of West Bengal & Ors.

Mr. Dipankar Pal.
... for the Petitioner.

Mr. Lalit Mohan Mahata,
Mr. Prasanta Behari Mahata.
... for the State.

Mr. Alok Ghosh,
Mr. Subhrangsu Panda.
... for the K.M.C.

Mrs. Juin Dutta Chakraborty.
... for the Respondent No. 7.

The writ petition has been filed by one of the assesses recorded in the assessment register of the Kolkata Municipal Corporation challenging the action of the Corporation of imposing the entire liability of the property tax in respect of Premises No.392/1, Prince Anwar Shah Road, Kolkata against the Assessee No.210930943952, on the petitioner.

It is submitted that the property is owned and enjoyed by the petitioner and the heirs of Ahindra Nath Saha (since deceased), apart from a part of one floor, which has been sold to Lizard's Skin Tattoos. The petitioner is aggrieved with the findings in the notice of rent attachment dated January 25, 2022, where the petitioner has been stated to be the recorded owner/person liable to pay the entire outstanding dues of Rs.50,87,563/-. According to the petitioner, the entire burden of the property tax in respect of the said premises has been shifted on the petitioner and the rent payable by the respective tenants to the petitioner has been attached whereas the predecessor-in-interest of the added respondent nos.7 and 8 are also equally responsible and liable to pay the tax. Support has been drawn from the letter of intimation of the Kolkata Municipal Corporation, from which it appears that Ahindra Nath Saha (since deceased) was also one of the recorded assessees. Thus, according to the petitioner, the Corporation ought to have attached the rent by holding both Amit Saha and legal heirs and representatives of late Ahindra Nath Saha, would be the persons liable to pay the property tax.

Mr. Pal, learned advocate further submits that the Corporation has also threatened to attach the flat in the occupation of the petitioner, without deciding to take steps in respect of the flat owned and occupied by the heirs of late Ahindra Nath Saha. Hence this writ petition has been filed for a direction upon the Corporation to apportion the tax payable by Amit Saha and the heirs of late Ahindra Nath Saha, (the other recorded assessee) in the assessment register of the Corporation.

Mr. Ghosh, learned advocate appearing on behalf of the Corporation submits by placing reliance on the decisions of the Hon'ble Apex Court in the matter of Union of India & Anr. versus Ashok Kumar Aggarwal reported in (2013) 16 Supreme Court Cases 147 and in the matter of Siliguri Municipality & Ors. versus Amalendu Das & Ors. reported in AIR 1984 Supreme Court 653, that this Court may not pass an order for consideration of the representation of the petitioner when huge amount of property tax, is due and payable.

Mr. Ghosh further submits that the fact that Ahindra Nath Saha had died and his heirs were liable to pay equal share of the outstanding property tax, was not known to the Corporation. He further submits, that the property tax is a charge on the property and the owners are jointly and severally liable. It is a fact, that in the letters of intimation the persons liable to pay the tax has been named as Amit Saha and Ahindra Nath Saha. Several letters of intimation were issued to the assessees. Thereafter, the notice of rent attachment was issued. In the notice of rent attachment it has been stated that Amit Saha as the recorded owner was liable to pay the entire tax of Rs.50,87,563. Although, Mr. Ghosh submits that the statement with regard to Amit Saha being liable to pay the entire tax may not be taken seriously, this Court is of the opinion that the notice of attachment of the rent must have been preceded by issuance of an order of attachment of the rent. In case, in the proceeding for attachment, the petitioner was held to be the only person liable to pay the property tax, the same would be unjustified and not in accordance with law as the Corporation's records itself includes the names of both the owners. The heirs of the said co-owner has been added in the proceeding, and are represented.

Mrs. Dutta Chakraborty, learned advocate appearing on behalf of the respondent nos.7 and 8 does not deny that the respondent nos.7 and 8 who have inherited 50% of the property from Ahindra Nath Saha (since deceased) are also equally liable to pay the property tax. Thus the petitioner cannot be saddled with the entire liability.

Under such circumstances, the writ petition is disposed of with liberty to the petitioner to approach the Corporation in accordance with law for apportionment of the tax between two co-sharers and also to pay up the dues as per the letters of intimation by availing the waiver scheme, which has been permitted in the letters of intimation itself. The petitioner shall approach the Corporation within two weeks. A copy of the application shall also be served upon the respondent nos.7 and 8, who shall also appear before the Assessor Collector, Tolly Tax Department, Kolkata Munnicipal Corporation. The petitioner and the respondent nos.7 and 8 shall appear before the authority. The parties are entitled to be represented by their learned advocates. Prayer for apportionment shall be made and necessary orders shall be passed by the concerned authority on the basis of the prayers made by the parties for apportionment of the entire dues of Rs.50,87,563 and current dues if any. The said opportunity for waiver of interest and penalty shall be given to the parties, once the entire issue is decided.

The entire exercise shall be completed within a period of two months from receipt of the application. No coercive measures against the residential premises of the petitioner shall be taken by the Corporation till a decision in respect of the issue is arrived at by the Corporation.

If the parties pay up the dues as assessed after application of the waiver scheme then the order of attachment shall stand automatically revoked and the amounts which have been recovered, if any, from the tenants shall be adjusted against the dues.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the learned advocate's communication.

(Shampa Sarkar, J.)