11.4.2022
Court No. 19
Item No. 8
sn

WPA 16251 of 2019

Kiaan Udyog Private Limited & Anr.
Vs.
Kolkata Municipal Corporation & Ors.

Mr. Pratin Bag
Mr. Manish Shukla
Ms. Debabrata Das
...for the petitioners

Mr. Ratul Das
Mr. Amit Agarwalla
Mr. Aniruddha Agarwalla
Ms. Debarshri Mukherjee
..for the respondent no.3

Mr. Ranajit Chatterjee
Mr. Gopal Chandra Das
..for the KMC

This writ petition has been filed challenging certain demands towards property tax in respect of the premises being Flat No. 1/A, measuring 1150 Sqt. Ft. at 41B, N.S.C. Bose Road, Kolkata 700 040. Further challenge has been made to the decision dated February 28, 2019 of the Assessor Collector, Tolly Tax Department, within Ward No. 37 of the Kolkata Municipal Corporation.

The petitioners allege that after having issued a 'no due certificate' on March 30, 2016, the demands for property tax could not have been raised upon the petitioners by the Kolkata Municipal Corporation. Under the deed of sale, the petitioners were liable to pay the property tax only for the periods after

October 3, 2016. The apportionment of the property tax had not been made as per the directions of the Hon'ble High Court in W.P. 7166(W) of 2018 and W.P. 7190(W) of 2018.

The learned advocate for the petitioners submits that once the 'no due certificate' was issued by the Corporation, the liability of the property tax prior to the date of purchase should not be saddled on the petitioners. The petitioners had gone ahead with the purchase of the flat on the basis of the 'no due certificate'. The flat originally belonged to the respondent no.3 and the respondent no.3 would be liable to pay the property tax for the periods prior to the sale. He next contended that when this Court had directed the apportionment, the same would imply that the total demands as raised by the Corporation must be apportioned in respect of the occupier as also the person liable. It is also submitted that the direction of this Court was to apportion the amount, but the other parts of paragraph 2 of page 2 of the order of this court were observations of His Lordship, on the basis of the submissions of the Corporation. The ultimate directions of His Lordship was upon the Corporation to undertake the exercise of apportionment of the property tax between the occupier and the person liable to pay the same.

Mr. Das, learned advocate for the respondent no.3 submits that the 'no due certificate' would indicate that there were no outstanding dues with regard to the property tax payable by the respondent no.3, prior to March 30, 2016.

Mr. Chatterjee, learned advocate appearing on behalf of the Corporation submits that the petitioners have agitated such issues and questions, which have already attained a finality, by an order of a Co-ordinate Bench dated February 1, 2019. He next submits that the even the order of attachment of rent made by the Corporation, pursuant to the non-payment of demands raised, was not interfered with.

He relies on relevant portions of the order of His Lordship to show that His Lordship, had directed the petitioners to pay the demands as per the dues. Finally, Mr. Chatterjee submits that the petitioners purchased the property along with the licensee, namely, Kotak Securities. Kotak Securities was the licensee under the original owner, Padma India Limited. The petitioners having stepped into the shoes of Padma India Limited were liable to pay 100% of the property tax and payable by the licensor and the licensee was liable to pay the surcharge.

Having considered the rival contentions of the parties, this Court is of the view that the allegations of discrepancies and irregularities in the demands for property tax, for periods prior to the purchase by the petitioner being contrary to the ‘no due certificate’ issued in 2016, are no longer available to the petitioners, in view of the order passed by this court on February 1, 2019. The contentions that those observations were neither the findings nor the directions of His Lordship, is not accepted.

Upon reading the entire decision as a whole, this court finds that His Lordship had held that the petitioner was liable to pay the demands, which were raised upon revaluation of the property tax. His Lordship held that the recorded owner as per the assessment register of the Corporation, was given a notice prior to the revaluation of the property tax and as such the property tax was payable by the petitioners, who had stepped into the shoes of the erstwhile owner Padma India Limited. The subsequent demands raised after the issuance of the ‘no due certificate’ were raised upon the petitioners, after such revaluation. The revaluation was made after giving adequate notice to the vendor of the petitioners as the Corporation was not aware of the transfer of the property. His Lordship also did not interfere with the attachment order passed by the Corporation.

Thus, the validity of the demand notices, the order of attachment and the imposition of the tax on the petitioners, had already been decided by this Court. The only question which remains to be ascertained is whether the order dated February 28, 2019 was a decision on the apportionment, as per the direction of this Court.

The order of apportionment is cryptic. The same does not mention the background with regard to the arrangement between the vendors of the petitioner and the licensee. The reasons as to why the petitioners were liable to pay 100% of the property tax payable by their vendor, has not been disclosed. Although, Mr. Chatterjee relies upon certain documents including the agreement between Kotak Securities & Padma India Limited, but the Court is of the view that the contents of those documents as to how the petitioners were made liable to pay 100% of the property tax payable should have been mentioned in the order.

However, the other allegation of Mr. Bag, that the entire property tax of premises no. 41B, N.S.C. Bose Road, Kolkata 700 040 has been imposed upon the petitioners, is not correct, as the Corporation has categorically stated that 100% of the tax liability of the vendor of the petitioners, that is, Padma India Limited had been imposed, on the petitioner.

The reasons behind the order impugned may be justified, but such reasons do not appear in the order and this Court is of the opinion that the order dated February 28, 2019 should have reflected the facts on which the decision was based.

Under such circumstances, the matter shall be reconsidered only on the point of apportionment of the property tax between the occupier and the person liable to pay the same. The decision dated February 28, 2019 is set aside.

Before the said exercise is undertaken by the competent authority, the petitioners, the respondent no.3 and the occupier if any, at present, shall be heard.

A reasoned order shall be passed and communicated to all.

This order shall not prevent from the Corporation from proceeding against the petitioners to proceed as per law for recovery of the property tax due and payable on the basis of the order passed earlier, by this court.

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.)