Item No. 6

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

21.11.2022
Ct-24

WPA 25020 of 2022
Biplab Naha
-vs.-
The Kolkata Municipal Corporation & Ors.

Mr. Biswaroop Bhattacharya
Ms. Mayuri Ghosh
… for the petitioner.

Ms. Nandini Mitra
Mr. Sanjay Saha
Mr. Triptimoy Talukdar
Mr. Diptomoy Talukdar
Mr. Abhiraj Tarafdar
… for the respondent nos. 6 to 10.

Mr. Biswajit Mukherjee
Mr. Gopal Chandra Das
… for KMC.

The petitioner is aggrieved by the order dated July 17, 2018 passed by the Assessor-Collector (South), Kolkata Municipal Corporation. The matter relates to property tax in respect of Premises No. 2B, Pandit Rabi Sankar Sarani (formerly Burdwan Road).

The said premises is fully occupied by two tenants, the petitioner and the respondent no. 11. Respondent nos. 6 to 10 are the landlords.

As the property tax in respect of the property remained unpaid, the Corporation attached the rent of the petitioner. The said attachment was made by the Collector, Kolkata Municipal Corporation in May 1993.

Since thereafter, the rent of the petitioner remains attached and is credited to the Kolkata Municipal Corporation to liquidate the tax due.

According to the petitioner, the impugned order of apportionment of tax has been passed contrary to the provisions of Section 230 of the Kolkata Municipal Corporation Act, 1980.

It has been submitted that according to the aforesaid provision, the property tax is to be apportioned, in the event there are more than one occupier in the said premises.

The petitioner submits that the Corporation ought not to realize tax only from the tenant without assessing the liability of the landlord. The petitioner stresses upon the fact that the landlord is the person primarily liable to pay tax and the Corporation ought to direct the landlord to pay the proportionate share of tax.

It has been argued that the petitioner, as tenant, is bearing the entire amount of property tax, a portion of which ought to have been borne by the landlord.

It has been submitted that the Assessor-Collector, while passing the impugned order, failed to take into consideration that the rent of the petitioner is attached since 1993 and the amount lying in the account of the Corporation has not been calculated properly.

Prayer has been made for directing the Assessor-Collector to revisit the issue once again.

Learned advocate representing the landlords submits that the petitioner is not paying anything more than the rent that is payable by him. The amount which the landlords were liable to receive from the petitioner as rent, is attached by the Corporation, as property tax.

It has been contended that on account of the rent attachment, it is the landlords who are the ultimate sufferers as the landlords are not getting any amount on account of rent of the said property.

Learned advocate representing the Kolkata Municipal Corporation submits that the authority have acted in accordance with the provision of Section 230 read with Section 195.

According to Section 195(2) of the Act of 1980 an occupier, from whom any sum is recovered under sub-section (1), shall be entitled to be reimbursed by the person primarily liable for the payment of such sum, and may, in addition to have recourse to other remedies that may be open to him, deduct the amount so recovered from the amount of any rent becoming due from time to time from him to such person.

According to Section 193(1)(a), property tax of lands and buildings shall be primarily leviable- if the land or building is let, upon the lessor.

Proviso to Section 193(3) mentions that the Municipal Commissioner may apportion the amount of property tax on such land or building among the co-owners.

193(3)(A) lays down that in case of any land or building which is not self-occupied and where the owner is refrained, by any law, Order of the Government or Order of a Court, from recovering the property tax due form the occupier or occupiers, such tax shall be recovered from the occupier or occupiers, as the case may be.

According to the aforesaid provision, the person primarily liable to pay tax, is the owner of the property.

Section 230 deals with apportionment of property tax by the person primarily liable to pay. The said provision lays down the mode and manner in which the property tax is to be apportioned amongst the occupiers of the building.

The Assessor-Collector (South) has taken into consideration the amount already paid by the petitioner by way of rent attachment and has directed the occupiers of the property to bear the responsibility of the property tax as none of the tenants pay any rent to the landlords.

It appears that the petitioner in the present case is not paying anything extra to the Kolkata Municipal Corporation on account of property tax. The amount which the petitioner is liable to pay to the landlords as rent, is being attached by the Corporation on account of property tax. If the petitioner is aggrieved by any conduct of the landlord, then it is for him to approach the appropriate forum for relief.

Section 195 lays down the entitlement of reimbursement by the occupier from the person primarily liable to pay tax. If the petitioner is at all aggrieved he may seek reimbursement and will also be entitled to have recourse to other remedies that may be open to him.

It does not appear that the petitioner is in any manner aggrieved or prejudiced by the impugned order, as claimed.

The submission of the petitioner that the said order was passed without taking into consideration the rent attachment which is continuing from 1993 till date is incorrect as the impugned order clearly mentions the figures which the petitioner has paid to the Kolkata Municipal Corporation on account of property tax in lieu of rent.

In view of the above, the Court is not inclined to exercise jurisdiction in the matter. The order passed by the Assessor-Collector (South) on July 17, 2018 is not interfered with.

The writ petition stands disposed of.

Affidavit-of-service filed in Court today is taken on record.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

Sh **(Amrita Sinha, J.)**