

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

Present :- Hon'ble Justice Amrita Sinha

WPO No. 81 of 2019

Anil Saraf & Ors.

Vs.

The Kolkata Municipal Corporation & Ors.

For the writ petitioners	:-	Mr. Mainak Bose, Adv. Ms. S. Mukhopadhyay, Adv. Mr. A. Chakraborty, Adv.
For the respondent no. 5	:-	Mr. Jayak Gupta, Adv. Mr. Pradeep Gupta, Adv. Mr. Pawan Kumar Jajodia, Adv.
For KMC	:-	Mr. Biswajit Mukherjee, Adv. Mr. Swapan Kr. Debnath, Adv.
Hearing concluded on	:-	29.07.2022
Judgment on	:-	23.09.2022

Amrita Sinha, J.:-

The matter relates to 3117 sq.ft. in the third floor of the building situated at premises no. 20B, Abdul Hamid Street formerly known as British India Street, Kolkata 700069. The petitioners are the lessees of the aforesaid portion under the respondent no. 5, the lessor EIC Holding Private Limited, formerly known as, East India Commercial Company Limited, a Company registered under the Companies Act. The indenture of lease dated 3rd March, 1967 entered by and between the parties was registered before the Registrar of Assurances, Calcutta on 21st March, 1967. The lease is valid till 27th May, 2053.

In terms of the aforesaid indenture of lease the petitioners were required to pay lease rent at the rate of twelve paise per sq.ft. of the floor area per month to the lessor on ownership basis amounting to Rs. 360/- per month.

According to Clause 13 of the indenture of lease, in the event of future enhancement of rates and taxes by the Kolkata Municipal Corporation ('KMC' for short) over and above the existing rate, the same is to be borne exclusively by the lessor. The lessor was also exclusively liable to bear and pay all future statutory taxes, levies and charges which may be imposed in respect of the lease hold property. Apart from the above clause there is no other provision in the lease deed requiring the lessees to pay any additional municipal rates and taxes.

By a notice dated 21st March, 2003 addressed to the petitioners, the lessor, through the learned advocate, claimed enhancement of rent under the West Bengal Premises Tenancy Act, 1997 and reserved its right to claim commercial surcharge and municipal rates and taxes. The petitioners through their learned advocate submitted a reply to the aforesaid notice.

Hearing notice under Sections 184(3)/184(4) of the Kolkata Municipal Corporation Act, 1980 dated 12th June, 2013 was issued to the petitioner no. 4, Anita Saraf addressing her as 'person liable to pay tax' in respect of the third floor of the premises in question indicating that the premises have been assessed at an annual value of Rs. 42,750/- with effect from first quarter of 1967-68. Hearing notices were issued mentioning an assessee number, different from the previous assessee number which was allotted in respect of the said building. Six similar notices were issued whereby the annual valuation stood revised from separate quarters and the date for hearing was fixed on 15th July, 2013. The petitioner no. 1 filed objection on behalf of all the petitioners before the hearing officer on 12th August, 2013.

Letters of Intimation dated 5th December, 2017 were issued in favour of the petitioner no. 4 intimating that a sum of Rs. 38,57,060/- was due and payable on account of property tax of the leased property. The assessee was requested to pay the amount if the figures mentioned in the Letters of Intimation were correct, and if the amount mentioned was incorrect, then to contact the Assessor-Collector within fifteen days with copy of document in support of their claim, failing which, it

would be presumed that the assessee does not have any objection to the statement of the outstanding dues.

According to the petitioners, the Letters of Intimation were nullity and void *ab initio* as the KMC did not have the jurisdiction to revise the annual valuation. It has been submitted that the act of the KMC was contrary to the decision passed by the Hon'ble Supreme Court in the matter of ***East India Company Private Limited vs. The Corporation of Calcutta*** reported in ***(1998) 4 SCC 368***.

It is the further case of the petitioners that the premises in question had a single assessee number. It was not proper for KMC to allot fresh assessee number in respect of the portion of the premises leased out in favour of the petitioners. According to the petitioners, the act of the KMC in suo motu taking steps to allot a new and separate assessee number in favour of the portion possessed by the petitioner is *ex facie* bad in law.

The petitioners contend that as per the indenture of lease the petitioners are not the persons liable to pay tax. KMC acted illegally and arbitrarily in concluding that the petitioners are liable to pay tax. No prior notice was issued to the petitioners before shifting on them the burden of payment of taxes in respect of the said portion of the premises. The written objection filed by the petitioners in response to the hearing notice was not taken into consideration by KMC at the time of issuance of the Letters of Intimation.

The petitioners contend that the Letters of Intimation could not be issued upon revision of the valuation of the portion of the said premises with retrospective effect. The revision/ reassessment was not done in accordance with the provision of law and the same is contrary to the order passed by the Hon'ble Supreme Court.

It has been strongly contended that there is no outstanding on account of property tax due of the said premises as all dues have been cleared by the owner of the said premises. No document had been annexed to the affidavit in opposition filed by KMC in support of the revision of annual valuation with retrospective effect.

The petitioners have prayed for setting aside the act of the KMC in separating the petitioner's portion from the mother property and assigning a new allotment number in respect of the same. The petitioners also pray for a direction upon the respondents to quash and set aside the Letters of Intimation issued in favour of the petitioner no.4 and further direction upon the Corporation to delete the name of the petitioner no. 4 as the 'person liable to pay tax'.

In support of their stand the petitioners rely upon the order passed by the Hon'ble Supreme Court in the matter of East India Commercial Company Private Limited (supra) wherein the Hon'ble Supreme Court laid down that the annual value under Section 168 of the Municipal Act has to be fixed on the basis of fair rent determinable under Section 8 of the Tenancy Act. The annual value of the building for the period of eight years from the first letting has to be fixed on the basis of contractual rent and thereafter the annual value will have to be revised and fixed as per the formula contained in Section 8(1) (d) of the Tenancy Act.

The Hon'ble Supreme Court specifically laid down that it would be necessary to determine as to when the property was first let out so that for a period of eight years during the subsistence of tenancy, the contractual rent being the fair rent will be regarded as the basis for fixing the annual value under Section 168 of the Act. Thereafter the annual value has to be determined in accordance with Section 8 (1) (d) of the Tenancy Act.

The petitioner also relies upon the judgment delivered by this Court in the matter of **Sahujain Charitable Society & Anr. -vs- The Kolkata Municipal Corporation & Ors.** reported in **(2018) 3 CHN 328** wherein the Court held that the period for which valuation of a property can be raised must not be more than three years before the date of the revising order.

According to the petitioners, the Kolkata Municipal Corporation ought not to have revised the valuation from 1967 onwards as the same is contrary to the law laid down by this Court in the matter of Sahujain (supra).

Prayer has been made for setting aside the impugned property tax bills raised upon the revised valuation from the first quarter of 1967-68 to the second quarter 2009-10.

Learned advocate representing KMC vehemently opposes the prayers of the petitioners. It has been submitted that the KMC acted strictly on the basis of the judgment delivered by the Hon'ble Supreme Court in the matter of East India Commercial Company Pvt. Ltd. (supra). It has been submitted that East India Commercial Co. Pvt. Ltd. is the lessor of the petitioners. KMC revised the valuation as per the direction of the Hon'ble Supreme Court whereby the Court directed the assessing authority to make fresh assessment in accordance with law.

The manner in which the assessment is required to be made has also been laid down by the Hon'ble Supreme Court. KMC merely acted in accordance with the said direction.

The impugned bills are dated 12th June, 2013. The petitioners sought to challenge the same in the year 2019. KMC afforded opportunity of hearing to the petitioners prior to giving effect to the revised annual valuation. The petitioners did not submit any objection within the time as specified in the hearing notice. Objection was submitted after the date of filing objection was over.

It has been submitted that the representation filed on 28th September, 2013 objecting to the valuation notice mentions that the assessment should have been made taking into account the assessable rate and the valuation of the year 1967-68 as the base rate. The same implies that the petitioners admitted their liability to pay tax, albeit, at a lower rate.

If the petitioners are aggrieved by the assessment of annual valuation, then they ought to have approached the Municipal Assessment Tribunal. The present writ petition under Article 226 of the Constitution of India ought not to be entertained.

It has been contended that the petitioners being assignees/transferees and in possession and occupation of the premises in question are, as such, liable to

pay tax. As per the deed of assignment, the petitioners took possession on ownership basis of the property in question and hence they are liable to pay property tax. KMC invoked the provision under Sections 174 and 178(3) of the KMC Act, 1980 and suo motu apportioned the premises of the petitioner to identify the person liable to pay tax.

Though the order was passed by the Hon'ble Supreme Court in the year 1998, the lessor, i.e, the respondent no. 5 intentionally and deliberately raised disputes preventing KMC to make assessment of the annual valuation.

After the order was passed by the Supreme Court, assessment of the premises was started in two phases – first, under the Calcutta Municipal Act, 1951 and thereafter under the KMC Act, 1980. The hearing of assessment under the Calcutta Municipal Act, 1951 was made without change in the status of occupiers and it was only during the assessment for the period under the KMC Act, 1980 that the petitioners were declared as assignees/transferees and the petitioners were not treated as tenants but as owners in terms of the deed of assignment.

It has been argued that after the deed was executed in favour of the petitioners, they ought to have applied for mutation of their names in the municipal records. But as the petitioners failed to do so, it was the KMC's duty, to suo motu mutate the name of the transferee/assignee as 'person liable to pay tax' with a separate assessee number when the same came to the knowledge of the Corporation.

It has been contended that the decision of Sahu Jain will not be applicable in the present case as the assessment was made in terms of the direction passed by the Hon'ble Supreme Court.

Learned advocate representing the respondent no. 5 i.e. the lessor of the premises adopts the submissions made on behalf of the KMC and submits that the petitioners have been rightly identified as the persons liable to pay tax.

I have heard and considered the rival contentions of the parties.

It appears that in respect of the self same premises and on a similar issue, the Hon'ble Supreme Court by judgment dated 30th March, 1998 in East India Commercial Company Pvt. Ltd. (supra) was pleased to set aside the decision of the assessing authority and directed the assessing authority to make fresh assessment in accordance with law. The annual valuation of the building which was in dispute was with effect from the third quarter of 1966-67.

The Court, being aware of the fact that the issue was pending consideration for nearly thirty years, directed the assessing authority to make fresh assessment in accordance with law. The manner in which the property is required to be assessed has also been laid down by the Hon'ble Supreme Court. KMC was duty bound to comply the direction passed by the Supreme Court. The Hon'ble Supreme Court permitted reassessment of annual valuation to be made from the year 1966-67. The Court consciously did not restrict the KMC to reassess only for the preceding three years. On the contrary, the Court directed reassessment to be made for the last thirty years and more.

After the assessing authority reassessed the annual valuation, the petitioners have taken recourse to the ratio laid down by this Court in the matter of Sahu Jain (supra). In Sahu Jain (supra), there was no direction from the Hon'ble Supreme Court for reassessment of the annual valuation. Direction passed by a superior forum always prevails over any order passed by the subordinate authority. Accordingly, the decision of Sahu Jain cannot be applied in the facts and circumstances of the present case to nullify the order passed by the Hon'ble Supreme Court in respect of the self-same premises, the lessor of the property being the same. KMC cannot be expected to apply different yardsticks to assess the annual valuation of the same property.

As regards the liability to pay tax, the petitioners in their objection never denied their liability to pay the same. The petitioners are primarily aggrieved by the quantum of the tax that has been assessed. The petitioners, holding the property on ownership basis, are liable to pay property tax in the mode and manner as laid down by the Supreme Court.

Opportunity was provided to the petitioners to file objection to the valuation of assessment within a specified time period. The petitioners filed their objection out of time. The allegation of the petitioners that they have been doubly charged as the owner of the property already cleared the dues is also misconceived. The tax deposited by the owner in respect of the said property is abysmally low compared to the area occupied by the petitioners. The Corporation accordingly charged the petitioners in the manner as set out by the Hon'ble Supreme Court.

The building where the subject property is located consists of several tenements. For collecting the tax in respect of the portion of the property which the petitioners are possessing, the Commissioner was required to apportion the same and identify the person liable to pay tax. The Corporation is concerned only with collection of tax from the person liable to pay. The petitioners holding the subject portion of the property on ownership basis is liable to pay tax in accordance with the provisions of law and in line with the judgment passed by the Hon'ble Supreme Court.

The Corporation is not a party to the indenture of lease between the lessor and the lessee. If the petitioners have any issue with the lessor/landlord as regards payment of tax, they can always approach the appropriate forum for relief. The Corporation ought not to be dragged into the private dispute in between the parties.

Whether liability to pay tax in respect of the leasehold property is to be borne by the petitioner or the private respondent, being the lessor, as per indenture of lease, is a private dispute in between the lessor and the lessee and the same is not decided in the present writ. The party paying tax before the KMC, if permitted in law, may initiate proceedings for reimbursement of the same before the appropriate forum, in accordance with law, if so advised.

This Court is of the opinion that there is no error on the part of KMC in exercising jurisdiction to reassess the value of the property in question. No interference is called for.

WPO No. 81 of 2019 fails and is hereby dismissed.

No costs.

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(Amrita Sinha, J.)