OD-7 ORDER SHEET

WPO No.110 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

STILTON DESIGNS PRIVATE LIMITED & ANR.
-Versus-
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date:30th January, 2023.

Appearance:
Mr. Arindam Banerjee, Adv.
Mr. Debdut Mukherjee, Adv.
Mr. N. Ghosh, Adv.
Mr. Siddharth Gupta, Adv.
Mr. Rahul Sharma, Adv.
...for Petitioners.

Mr. Biswajit Mukherjee, Adv.
Ms. Manisha Nath, Adv.
...for KMC.

Mr. Ashish Chokhani
Respondent No.8. appears in person.

The Court:-The petitioner no.1 represented by the petitioner no.2 is a tenant in respect of 1502 sq. ft. [super built-up area] of a flat on the first floor of 127A, Park Street, Kolkata-700 017.

The petitioner pays a sum of Rs.5,000/- per month as rent to the landlords, being the respondent nos.5 to 9 herein, directly in the bank account of the landlords. The petitioner contends that no amount is pending on account of the rent in respect of the tenanted premises.

The petitioner is aggrieved by the act of the Corporation in putting a padlock on the tenanted premises consequent to the distress warrant issued under Section 219(1) of the Kolkata Municipal Corporation Act, 1980 in August, 2022.

The amount of tax pending in respect of the subject premises as mentioned in the distress warrant is to the tune of Rs.2,32,54,512/-. The petitioner submits that apart from putting a padlock on its tenanted premises, the Corporation has not taken any further steps to recover the due amount.

The petitioner no.1 submitted repeated representations before the Municipal Commissioner and alleges that none has been taken up for consideration till date.

The petitioners rely upon judgment delivered by this Court in Machinnon Machenzie & Co. Ltd. Vs. The Calcutta Municipal Corporation & Ors. reported in (1999) 2 CHN 545.

It has been contended that the petitioner no.1 being the tenant is liable to pay only rent and is not primarily liable to pay property tax in respect of the tenanted premises. Provisions of the Kolkata Municipal Corporation Act, 1980 have been relied upon by the petitioners in support of the aforesaid submission.

Learned advocate representing the Kolkata Municipal Corporation submits, upon instruction that, the men and agents of the Kolkata Municipal Corporation went to the subject premises but as there was no clear signage of the petitioner no.1, the Corporation mistook the tenanted property of the petitioner no.1 as the property of the landlords and put the padlock thereon.

It has been submitted that as the representation filed by the petitioner no.1 is pending consideration, the same shall be taken up for consideration by the authority.

Respondent no.8, Mr. Ashish Chokhani, appears in person and admits that there is property tax due and payable but an issue has been raised with regard to the amount mentioned in the distress warrant.

As presently the writ petition filed by the one of the tenants of the subject premises challenging the power and authority of the Corporation to put a padlock on the tenanted premises allegedly for recovery of property tax which is due in respect of the entire property is under consideration before this Court, accordingly, the Court is not concerned with the amount mentioned in the distress warrant. It will be open for the aggrieved person to take appropriate steps in accordance with law to challenge the amount mentioned in the distress warrant.

In Machinnon Machenzie (supra) the Court held that it is absurd to suggest that recovery of tax can be made by attachment of the properties belonging to a person who is not liable therefor and against whom no assessment proceeding has been initiated. Recovery of tax can only be made from a person who has been made liable therefor under the Act and in the manner laid down in the statute.

In the present case, the recovery proceeding was initiated against the predecessor in interest of the private respondents. There is no proceeding against the petitioners. According to the statute, the petitioners being tenants of the subject property are not primarily liable to pay tax.

In view of the above, the action of the Kolkata Municipal Corporation in padlocking the tenanted premises of the petitioner with view to recover the pending property tax, cannot be supported in law.

The Chief Manager-Revenue [South] of the Kolkata Municipal Corporation is accordingly directed to remove the padlock from the tenanted premises of the petitioner no.1 within 48 hours from the date of communication of this order.

It will be open for the Kolkata Municipal Corporation to take steps in accordance with law for recovery of the property tax which is due, including attachment of rent.

The writ petition being WPO No.110 of 2023 stands disposed of.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all legal formalities.

(AMRITA SINHA, J.)

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