OD-3

ORDER SHEET
WPO No.1239 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

KOHLBROS WIRELESS SOLUTIONS LLP & ANR.
-Versus-
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 9th June, 2023.

Appearance:
Mr. Chayan Gupta, Adv.
Mr. Pourush Banerjee, Adv.
Mr. Altamash Alim, Adv.
Mr. Sumit Biswas, Adv.
Mr. Rajashee Bhowmick, Adv.
...for Petitioners.

Mr. Biswajit Mukherjee, Adv.
Mr. Swapan Kr. Debnath, Adv.
...for KMC.

The Court:- The petitioners claim to be the licensee under one Varun Roshan Kohli who happens to be a sub-tenant under one Sati Mulchandani Business Centre in respect of 1200 sq. ft. in the ground floor flat at 1, Paul Mansions, Ground Floor, 6A, Bishop Lefroy Road, Kolkata-700020. A sum of Rs.1,53,48,418/- is due on account of property tax in respect of the ground floor of the subject premises.

In the process of recovery of the property tax dues, the Kolkata Municipal Corporation issued a notice of rent attachment against the petitioners on 06.06.2023.

The petitioners allege that the men and agents of the Kolkata Municipal Corporation along with four armed police personnel visited the subject premises and forced the petitioners to sign seven cheques in favour of the Kolkata Municipal Corporation aggregating to a sum of Rs.1 crore.

The petitioners further allege that no notice of demand was ever raised on the petitioners and the petitioners are not aware of the property tax dues in respect of the subject premises.

It is also the case of the petitioners that they are not liable to pay property tax in respect of the entire ground floor and the Kolkata Municipal Corporation has already apportioned the property tax which is to be paid in respect of the ground floor of the subject premises amongst the occupiers.

Reliance has been placed on a communication dated 26.04.2023 addressed by the Assessor Collector (South), Kolkata Municipal Corporation to one Anand Pratap Singh licensee of North–East entire portion of the Unit No.1 admeasuring 1200 sq. ft. in the ground floor of the subject premises.

According to the petitioners, the aforesaid Anand Pratap Singh is no way connected to the petitioners and the petitioners are in actual possession of 1200 sq. ft. in the ground floor of the subject premises.

The petitioners rely upon the order dated 06.02.2020 passed by a coordinate Bench of this Court in WP No.852 of 2015 in the matter of Sumit Kumar Datta & Anr. Vs. Kolkata Municipal Corporation & Ors. wherein the Court was pleased to set aside the impugned notices of demand dated 11.03.2005 and 17.06.2015 which was raised on the owner of the subject premises. The Court, however, was pleased to direct the Kolkata Municipal Corporation to take all necessary steps in accordance with law for recovery of their outstanding dues in respect of the aforesaid flat.

According to the petitioners, they are in actual occupation of the subject premises since 2015 but prior to issuance of the notice for rent attachment dated 06.06.2023 no further communication or demand was ever raised upon the petitioners. It has been admitted that Kohlbros Communication Pvt. Ltd. which previously occupied 1200 sq. ft. at the subject premises has gone into liquidation and presently the petitioners are in physical occupation of the said portion of the subject premises.

The petitioners pray for a direction upon the Kolkata Municipal Corporation to refrain from taking any coercive steps against them for recovery of the outstanding property tax dues.

Learned advocate representing the Kolkata Municipal Corporation submits, upon instruction that, the Corporation has acted strictly in accordance with the direction passed by the Court on 27.07.2018 and 06.02.2020 in WP No.852 of 2015.

It has been submitted that admittedly a sum of Rs.1,53,48,418/- is due and payable on account of property tax. The Corporation has not been made aware of any change of tenancy or licensee in the said premises and the men and agents of the Corporation visited the premises on 06.06.2023 and found the petitioners to be in possession of 1200 sq. ft. of the subject premises. Rent attachment notice has been issued accordingly.

According to the Corporation, one Concept Communication is occupying 500 sq. ft., Rupayan Tourism & Exploring Society is occupying 150 sq. ft. and the balance 1200 sq. ft. is being occupied by the petitioners. Demand has been raised in respect of the portion occupied by the petitioners only.

It has been submitted that the Corporation has acted in accordance with the statutory provision and the Corporation may be permitted to take steps for recovery of the property tax dues.

I have heard the submissions made on behalf of both the parties.

The Corporation is entitled to recover the property tax dues in accordance with the Kolkata Municipal Corporation Act, 1980. The notice of demand initially raised by the Kolkata Municipal Corporation against the owner of the subject premises primarily liable to pay tax, appears to have been quashed by the Court on 06.02.2020 in WP No.852 of 2015. The Court was, however, pleased to grant leave to the Corporation to take all necessary steps in accordance with law for recovery of the outstanding dues.

The petitioners admit to be in possession of 1200 sq. ft. of the subject premises. It will be open for the Corporation to raise demand upon the petitioners to recover the property tax dues in respect of the area which is actually possessed by the petitioners. An opportunity of hearing shall be provided to the petitioners prior to initiating steps for recovery of the tax dues.

Since the petitioners admit to be in possession of 1200 sq. ft. of the subject premises, the Corporation shall proceed against the occupiers for recovery of the property tax dues in accordance with law in respect of the said area of 1200 sq. ft.

The Corporation, for the time being, is restrained from encashing the cheque being no.575154 dated 06.06.2023 amounting to Rs.58,00,000/- only and six post dated cheques which were issued by the petitioners in favour of the Kolkata Municipal Corporation.

In the event the cheque dated 06.06.2023 has already been submitted to the bank for encashment, then the said amount shall be kept in a separate suspense account; but if the said cheque is yet to be deposited in the bank for clearance, then the Corporation shall not proceed for encashment of the same.

After the Corporation apportions the tax dues proportionately amongst the occupiers of the subject property, then the Corporation shall take a decision in respect of the aforesaid cheque dated 06.06.2023 amounting to Rs.58,00,000/-, if cleared in the meantime.

Steps shall be taken in the matter by the Chief Manger (Revenue-South) at the earliest, but positively within a period of eight weeks from the date of communication of this order.

The Kolkata Municipal Corporation is further restrained from giving any effect or further effect to the letter allegedly forced to be written by the petitioners on 06.06.2023 addressed to the Chief Manger (Revenue-South), Assessment Collection Department.

Writ petition stands disposed of.

Leave to file affidavit of service in course of the day.

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

(AMRITA SINHA, J.)

nm