IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

Present :- Hon'ble Justice Amrita Sinha

WPO 1350 of 2023

Smt. Indra Devi Rathi & Ors.
Vs.
The Kolkata Municipal Corporation & Ors.

For the writ petitioners	:-	Mr. Raghunath Chakraborty, Adv. Ms. Tanusree Das, Adv.
For KMC	:-	Mr. Biswajit Mukherjee, Adv. Mr. Fazlul Haque, Adv.
Heard on	:-	12.07.2023
Judgment on	:-	24.07.2023

Amrita Sinha, J.:-

The order dated 24th February, 2021 passed by the Assessor-Collector (North), Kolkata Municipal Corporation ('KMC' for short) allegedly in compliance of the direction passed by this Court on 26th August, 2019 in WP No. 24 of 2019 (Indra Devi Rathi & Ors. vs. KMC & Ors.) is impugned in the present writ petition.

By the said order annual valuation of the premises was assessed at Rs. 1,65,510/- including non-residential annual valuation of Rs. 1,37,810/- with effect from 3rd quarter of 2005-2006. Bills were accordingly raised considering the premises as partly residential and partly non-residential.

The petitioners are aggrieved by the same. It has been contended that the petitioners have let out most of the portions of the subject property which is a seven storied building. The ground and the first three floors of the premises are used for commercial purpose and the rest for residential use.

The petitioners contend that the Corporation ought to have valued the property by taking into consideration the mode of use of the same. The Corporation ought to have apportioned the tax amount by segregating the portion used for non-residential purpose and the portion used for residential purpose.

It has been contended that there are several tenants in the said property and the Corporation ought to have issued notices upon all the tenants individually prior to fixing the annual valuation of the subject property.

It has been argued that the tenants and occupiers of the subject property ought to be made liable for payment of tax and the entire burden of payment of tax ought not to be thrust upon the petitioners who are the sebaits of the debottor property.

In support of the submission that the tenants and occupiers of the subject property will be liable to pay tax, learned advocate for the petitioners relies upon the decision passed by the Hon'ble Supreme Court in the matter of ***Calcutta Gujrati Education Society & Anr. vs. Calcutta Municipal Corporation & Ors.*** reported in ***(2003) 10 SCC 533.***

The petitioners contend that it is the obligatory duty of the Corporation to inspect each premises and prepare the assessment book pursuant to which valuation of a property is required to be calculated. In support of such submission the learned advocate for the petitioners relies upon the provision of Section 178(6) of the Kolkata Municipal Corporation Act, 1980 ('the Act' for short).

Prayer has been made for setting aside the impugned order of the Assessor-Collector with further direction to apportion the property tax by segregating the portion used for commercial purpose and residential purpose.

Learned advocate representing the Kolkata Municipal Corporation submits that the petitioners are in possession of the subject property since 1983. The petitioners, being owners of the property, are obliged to furnish a return in the prescribed form in accordance with Section 182 of the Act. According to Rule 5 of the Kolkata Municipal Corporation, (Taxation) Rules, 1987 return in Form C is to be filed by the owner or the person responsible to pay tax for the purpose of revision of annual valuation of the property. The same has not been done. The petitioners failed to submit any such return.

In compliance of the direction passed by the Court in the earlier writ petition filed by the petitioners, the Assessor-Collector considered the issue and passed reasoned order on 24th February, 2021. It was clearly mentioned in the said order that the petitioners did not submit the detail list of tenants with rental status of the individual tenants. Only memorandum of agreement dated 16th August, 1983 and two tenancy agreements of shop rooms for letting out to the sub-tenants was submitted by the petitioners.

As the property is recorded in the inspection book records of the Corporation as partly commercial and partly residential, accordingly, the assessment of tax has been made. The first four floors have been assessed as non-residential as there are several shops/ offices/ godowns and the top three floors were assessed as residential.

The annual valuation of the property was assessed at Rs. 1,65,510/- out of which non-residential annual valuation is Rs. 1,37,810/- with effect from 3rd quarter of the year 2005-2006.

It has been submitted that the petitioners failed to approach the Court in proper time. More than two years have elapsed since the impugned order rejecting the prayer of the petitioners for setting aside the impugned demand was made known to them. There isn't sufficient explanation in approaching the Court after such long delay.

The decision relied upon by the petitioners in the matter of Calcutta Gujrati Education Society (supra) will not be applicable in the present case as the said decision was passed relying upon the pre-amended provision of the Act. The present demand has been raised on the basis of the amended provision.

The respondents pray for dismissal of the writ petition.

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

According to the provisions of the amended Act, it is obligatory for the owner to submit before the Corporation return within the prescribed time and in the prescribed format disclosing the details of the tenants and the rent received from each of them. The petitioners, for the reasons best known to them, failed to submit the relevant details to the Corporation. In the absence of the necessary details, it is not possible for the Corporation to apportion the tax to be paid by the tenants/ occupiers of the subject property.

The Corporation has disclosed in the impugned order that out of the seven floors of the subject property, first four floors have been assessed as non-residential and the top three floors as residential. The non-residential annual valuation has also been disclosed in the impugned order.

As the petitioners defaulted in providing the required details to the Corporation, accordingly, the case made out by the petitioners that the Corporation failed to apportion the tax amount cannot be accepted. The impugned annual valuation has attained finality by now. The Court is not minded to interfere with the same at this stage.

The demand impugned in the present writ petition is of the year 2018. The petitioners, through their learned advocate, by communicated dated 10th February, 2021 intimated the Assessor-Collector that there were tenants in the first, second and third floor and the average rent of the shop room is rupees six thousand per month. A prototype agreement was allegedly annexed with the advocate's communication. Had the details of the tenants been made available to the authority, then the necessary apportionment could have been made. By forwarding the details of the tenants/occupiers of the subject premises in February 2021, the petitioners cannot claim apportionment of tax prior thereto. The apportionment of tax, if any, will be prospective in nature.

According to provision of Section 184 of the Act as amended in July 2019, the Municipal Commissioner is to give written notice for revision of annual valuation to the recorded owner or the recorded person liable to pay tax. The same suggests that the names of the owners and/ or the persons liable to pay tax ought to have been recorded in the records maintained by the Corporation. In the absence of proper recording of names of the persons liable to pay tax, the Commissioner raises tax demand on the recorded owner.

In the present case, as the details of the occupiers of the subject premises are not recorded in the records of the Corporation, accordingly, the tax demand has been raised on the recorded owners. It does not appear that there is any illegality or irregularity in raising such demand.

In Calcutta Gujrati (supra) the Hon'ble Supreme Court, inter alia, held that the returns submitted by the tenant or occupier with regard to determination or revision of annual valuation shall be considered by the Corporation. Non issuance of public notice or notices and/or non service of written notices to the persons primarily liable to pay would not necessarily invalidate the proceedings of assessment or reassessment of valuation, unless it is established by the party aggrieved that a serious prejudice was caused for want of notice.

The Hon'ble Supreme Court further held that the portion of tax liable to be paid by the occupier is recoverable through the landlord and the landlord has the right of reimbursement by demanding it from the tenant/occupier.

It has already been discussed in the previous paragraphs of this judgment that as the details of the persons liable to pay tax were not updated in the records of the Corporation, accordingly, there was no scope on the part of the Corporation to issue any notice to them. In such a situation the petitioners being the owners of the subject premises shall remain primarily liable to pay tax and it will be open for them to recover the proportionate amount of tax from the tenants/occupiers in accordance with law.

If the petitioners provide the details of the tenants along with their respective rental, then the Corporation shall take steps to apportion the tax amount in accordance with law from the future assessment year.

The writ petitions stand disposed of.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)