31.07.2024
Sl. No.5(DL)
srm

W.P.A. No. 2173 of 2024

Biswanath Biswas & Ors.

Versus

State Bank of India & Ors.

Mr. Sayan Chattopadhyay,
Ms. Payel Shome
…for the Petitioners.

Ms. Deblina Lahiri,
Mr. Mrinmoy Chatterjee
…for the Respondent Nos.1 to 3.

Mr. Dipankar Ghosh,
Ms. Manisha Nath
…for the KMC.

1. Affidavit-of-service is taken on record.
2. The writ petition has been filed alleging that the State Bank of India (SBI) did not adhere to its undertaking and obligation as per the lease agreement and also in terms of the letter of surrender.
3. The petitioners contend that the Kolkata Municipal Corporation (KMC) had *suo motu* reassessed the property tax of the premises in question. The SBI was the tenant in respect of the ground floor. The said tenancy was for commercial purpose. The lease agreement provided that the corporation taxes and other statutory tax compliances towards payment of taxes etc. would be done by the SBI. Thus, the SBI had an

obligation under the said contract to pay up the corporation taxes. The SBI surrendered the premises and shifted to another location. In the letter of surrender, the SBI had categorically undertaken to pay up all corporation dues, etc. as and when such dues would be raised. Subsequently, the corporation reassessed the property tax and saddled the petitioners with a number of bills, claiming an exorbitant amount.

4. Aggrieved, the petitioners approached the SBI and also the corporation, for apportionment of the tax and necessary information as to how such bills had been arrived at. The petitioners contended before the corporation that as the SBI was using the ground floor for commercial purpose, there should be an apportionment of the tax payable upon such reassessment. The SBI would be liable to pay the occupier's share of the tax at the commercial rate as would be arrived at by the corporation upon making a calculation. Neither the SBI nor the corporation responded to the petitioners' representation.

5. Aggrieved by such inaction, the petitioner No.1 moved a learned coordinate Bench under Article 226 of the Constitution of India by filing WPA No.21587 of 2022. The coordinate Bench passed the following order:

> "As it appears that the legal representation filed on behalf of the petitioner is pending consideration at the

end of the Assessor Collector (North), accordingly. the present writ petition is disposed of by directing the Assessor Collector (North) to consider the representation filed on behalf of the petitioner on 10% July, 2022 in accordance with law after giving a reasonable opportunity of hearing to all the necessary parties and pass a reasoned order at the earliest, but positively within a period of twelve weeks from the date of communication of a copy of this order and communicate the same to the parties immediately thereafter.

It is made clear that this Court has not entered into the merits of the claim made by the petitioner and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representation of the petitioner.

The petitioner is directed to forward a copy of the representation dated 10th July, 2022 to the aforesaid respondent at the time of communicating the order of the Court.

The writ petition stands disposed of."

6. Upon disposal of the writ petition, the corporation issued a notice to the petitioners and also the Manager, Beliaghata Branch of the State Bank of India. The bill containing the apportionment of the proportionate liability of the petitioners and the SBI was issued on April 1, 2023 by the Assistant Assessor-Collector (North) Division-XII. The petitioners submit that the petitioners have already paid their share but the same had been kept in a suspense account.

7. Under such circumstances, the petitioners are directed to pay up the owners' share as per the bills of the corporation. If the

petitioners pay the entire amount payable by the owners along with other interest and penalties that may be charged on account of delayed payment, no coercive measures will be taken against the petitioners and their part of the payment of the corporation bills will be regularised. For non-payment of the erstwhile occupier's, the petitioners shall not be penalised. The corporation will issue a bill exclusively containing the owners' share of corporation tax to the petitioners within three weeks from date.

8. Learned advocate appearing on behalf of the SBI submits that the reassessment was not done in accordance with law. Thus, the SBI also cannot be saddled with such a huge amount as the occupier's share of the tax.

9. Learned Advocate appearing on behalf of the Kolkata Municipal Corporation submits that more than a crore was due and payable in respect of the property in question.

10. The writ petition deals with the claim of the petitioners against the SBI. A direction upon SBI to honour the terms of the lease agreement and the letter of surrender, is being prayed. However, this Court is conscious of the fact that the corporation cannot be restrained from claiming what is due to them. It appears that the SBI received the apportioned bill in April 2023, but till now no steps have been taken to challenge

either the apportionment or the reassessment. The SBI was also a party to the earlier writ proceeding and was aware of the issues which led to the revision of the corporation tax in respect of the premises in question.

11. The SBI is always at liberty to challenge the said reassessment but the fact remains that upon reassessment the portion of the occupier's share is yet to be paid and for which, the SBI is liable in terms of the undertaking given to the petitioners in the letter of surrender as also in terms of the lease agreement. Moreover, the authority under Article 226 of the Constitution of India cannot back out from its liability, responsibility and contractual obligations.

12. The SBI shall deposit a sum of Rs.15,00,000/- with the corporation within a period of three weeks from the date communication of this order, without prejudice. Thereafter, the corporation can proceed in accordance with law against the SBI for recovery of the occupier's share. The corporation can also proceed against the petitioner's for recovery of the owners' share if the petitioners fail to comply with the direction of this Court.

13. This order does not deal with the merits of the calculation arrived at by the corporation.

14. The SBI also may seek the possibility of a settlement by paying a certain amount by approaching the corporation. All payment and acceptance will be subject to final decision that the corporation may arrive at upon hearing the petitioners and the SBI, in the event SBI approaches the corporation within two weeks from date.
15. The writ petition is, thus, disposed of.
16. There shall be no order as to costs.
17. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)