02.07.2024
Sl. No.27.
Suman
Ct.No.15

WPA 7321 of 2024

Jagjeet Singh Kohli
Vs.
Kolkata Municipal Corporation and Ors.

Mr. R. Lakhmani
Mr. Emon Bhattacharya
Ms. P. Sah
..for the petitioner

Mr. Alok Kumar Ghosh
Mr. Srijan Nayak
Mr. Atish Biswas
..for the KMC

Ms. Piyali Sengupta
Mr. Victor Chatterjee
..for respondent no.8

Mr. Kaushik Chatterjee
Mr. Tirthankar Dey
..for respondent no.9

In an earlier round of writ petition, the writ petitioner challenged an order dated November 17, 2021 passed by the Chief Municipal Law Officer of Kolkata Municipal Corporation whereby he suggested that name of respondent no.8 might be incorporated in the record of the Corporation for the purpose of property tax as “person liable to pay tax” under the ownership of the writ petitioner against the relevant property.

The backdrop in which the aforesaid order was passed may be summarized as follows:

A development agreement dated August 14, 2007, for construction of a G+5 storeyed building was entered into between the writ petitioner as landlord and respondent no.8 as the developer.

Admittedly, after the building had been constructed, the petitioner was allotted the ground, first, fifth and sixth floor of the building by the developer. The allocation of the developer in respect of the second and third floor is not disputed by the petitioner; the dispute centers on the fourth floor.

The petitioner contends that the development agreement entitles him to the fourth floor, which is disputed by respondent no.8. It appears that the developer/respondent no.8 sought to transfer the fourth floor in favour of respondent no.9 in the year 2013, under an agreement for sale. Ultimately, the fourth floor could not be transferred in favour of respondent no.9 and the amount paid in advance was returned to developer/respondent no.8.

The learned advocate appearing for respondent no.8 has drawn attention of this Court to an order dated October 12, 2018 passed in Special Leave Petition (CRI) 8695 of 2018 by the

Supreme Court to suggest that by filing an affidavit before the Supreme Court the petitioner admitted that the possession in respect of the fourth floor was handed over in favour of respondent no.9.

Respondent nos. 8 and 9 are ad idem that after cancellation of the agreement for sale, the possession has been returned to respondent no.8 who presently occupies it.

The petitioner strenuously disputes the possession of the fourth floor in favour of respondent no.8 and submits that the fourth floor is in his possession.

Respondent no.9 submits that while in possession of the fourth floor in between 2013 to 2018, they had approached the Corporation for mutation of records in its name as a "person liable to pay tax". On his application, the order dated November 17, 2021, was passed declaring him as a "person liable to pay tax".

The said order dated November 17, 2021, was challenged by the writ petitioner by filing WPA 21118 of 2022 before this Court. A Co-ordinate Bench of this Court by an order dated September 25, 2023, directed the Corporation for a fresh hearing to ascertain the facts and to come to a decision regarding the "person liable to pay tax".

In compliance of the said order dated September 25, 2023, the Corporation again took up the matter for consideration. After hearing all concerned parties, the Chief Manager, (Revenue/South) Assessment and Collection Department of the Kolkata Municipal Corporation by an order dated November 23, 2023 directed as follows:-

> *"1. If Jagjeet Singh Kohli makes full payment of property tax including Outstanding and Current one within 07 (seven) days from the receipt of this order and continues to make payment of all present and future taxes, the Assessee No.110694600268 in respect to the 4th floor in the premises 54 Syed Amir Ali Avenue shall be recorded in the name and style as follows:*
> *Recorded Owner:*
> *Jagjeet Singh Kohli*
> *Occupier:*
> *Chetki Properties Pvt. Ltd.*
> *2. If Jagjeet Singh Kohli fails to make payment of property tax and Chetki Properties Pvt. Ltd. makes payment of the same within 07 (seven) days, immediately after expiry of stipulated time as noted above and also agrees to and make payment of outstanding property tax and continues to make payment of existing as well as future property taxes, the present status will be continued in the name and style as follows:*
> *Recorded Owner:*
> *Jagjeet Singh Kohli*
> *Occupier & Person Liable to Pay Tax:*
> *Chetki Properties Pvt. Ltd.*
> *However this order will abide by further direction of any court of law and/or outcome of arbitration proceeding."*

This order dated November 23, 2023 has been challenged by the petitioner by filing this writ petition.

The learned advocate appearing for the petitioner submits that the order impugned is beyond the scope of the provisions of the Kolkata Municipal Corporation, 1980 and the rules/regulations made thereunder. He submits that such order should not have been passed.

I am, however, not inclined to entertain the challenge for the petitioner as he has failed to demonstrate the prejudice resulting from the order impugned.

Needless to mention that an order of mutation does not confer any substantive right, title or interest in favour of the parties involved. It may give rise to rebuttable presumption with regard to possession.

Therefore, in my view, the order impugned passed by the Corporation cannot be considered as a definitive determination of the right, title and interest in relation to the fourth floor. The actual possession or right, title and interest regarding the fourth floor can only be decided by a Civil Court.

The parties are at liberty to approach the civil court for declaration of their right, title or the possession.

Needless to mention that the Corporation shall act in terms of the order that may be passed by a competent Civil Court.

With the aforesaid observations, **WPA 7321 of 2024** is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, J.)