

22-04-2024
Item No.8
S.H.
AR(C)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA No.8672 of 2023
Smt. Sarbani Ghosh @ Sarbani Pal Singh
-vs-
Kolkata Municipal Corporation & Ors.
with
CAN No.1 of 2024

Mr. Dhiraj Trivedi
Ms. Upama Nandy ...for the petitioner

Ms. Jayeeta Sinha
Mr. Sandip Mondal ...for the State

Ms. Koyeli Bhattacharya
Mr. S. Panda ...for the Corporation

Challenging the notice for rent attachment dated March 27, 2023 the petitioner, a tenant of the premises no. 55B, S.P. Mukherjee Road, Ground Floor, is before the Court with the instant writ petition. The landlords remain unrepresented.

During the pendency of the writ petition Distress Warrant has been issued under Section 219(1) of the Kolkata Municipal Corporation Act, 1980 in favour of the landlords of the subject property mentioning that a sum of Rs. 9,39,375/- was due and payable on account of property tax dues in respect of the ground floor of the subject property.

On issuance of the Distress Warrant, the men and agents of the Corporation put a padlock on the shop room of the petitioner with all the movables of the petitioner inside.

The petitioner has challenged the same by filing an interlocutory application being CAN 1 of 2024.

Judgment passed by the Hon'ble Division Bench of this Court in the matter of ***Calcutta Municipal Corporation & Ors. v. Abdul Halim Gaznavi Molla & Ors.***, reported in **1998 CWN 538** and the order passed by this Bench on ***June 9, 2022 in WPO 2165 of 2022 Smt. Ashalata Jayaswal & Ors. v. The Kolkata Municipal Corporation & Ors.*** have been relied upon by the learned advocate representing the petitioner.

Prayer has been made for restraining the Corporation from implementing the Distress Warrant in respect of the petitioner and to direct the Corporation to remove the padlock from the shop room in question.

Learned advocate representing the Corporation opposes the prayer of the petitioner.

It has been submitted that the petitioner was all along aware that her name was recorded in the municipal records. A separate assessee number was generated by the Corporation in respect of the shop room in question and the petitioner sublet the shop room in favour of M/s. Hot Spot Sales and Solutions Private Limited. A separate certificate of enlistment in the name of one Parveen Mittal was generated way back on August 26, 2016.

It has been submitted that a huge sum of money is due and payable on account of property tax and the petitioner will be liable to pay property tax on account of occupation of the subject shop room. Prayer has been made for dismissal of the writ petition.

The provisions of Sections 181, 182, 183, 184, 195, 200, 219, 220(2), 225 of the KMC, Act, 1980 have been placed before this Court by the parties in support of their respective stand.

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

Admittedly, it appears that the petitioner is not the owner of the subject property and agreement has been annexed to the writ petition showing that the petitioner is a tenant of the property in question. There is nothing on record to suggest that the petitioner entered into any agreement to sublet the shop room in favour of M/s. Hot Spot Sales.

The petitioner being a tenant would be liable to pay rent and it is perfectly justified for the Corporation to issue notice for rent attachment in favour of the petitioner for recovery of arrear property tax dues. The Corporation, however, is not entitled to direct the petitioner to pay property tax in respect of the subject property by raising bills in the name of the landlords of the property in question.

The Hon'ble Court in the matter of Abdul Halim (supra) has clearly laid down that the tenant, not being the owner, will not be liable to pay any amount; and distress proceedings against him is bad. Only rent can be attached. Law does not authorize the Corporation to attach any or every movable property found in the premises but such property must be belonging to the person liable to pay tax.

In the present case the Corporation, though issued the distress warrant in the name of the owners,

but erroneously put padlock on the shop room of the petitioner by keeping all the movables of the petitioner inside. The same is impermissible in law.

In view of the above, the Corporation will be at liberty to execute the Distress Warrant in accordance with law in respect of the owners of the subject property but will be entitled to attach the rent of the tenant as mode of recovery of property tax dues.

The padlock of the subject premises shall be removed within a period of twenty-four hours from the date of communication of this order.

The writ petition stands disposed of.

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

[Amrita Sinha, J]

