

MAT NO. 1394 OF 2023
REPORTABLE

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

RESERVED ON: 13.05.2024
DELIVERED ON: 17.05.2024

CORAM:

**THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

MAT/1394/2023

WITH

**IA NO. CAN 1 OF 2023
&
IA NO. CAN 2 OF 2023**

**PRINCIPAL COMMISSIONER OF INCOME TAX, ASANSOL
VERSUS**

SRI MANOJ PARMAR AND OTHERS

Appearance:-

**Mr. Ashok Chakraborty, Ld. Additional Solicitor General
Mr. Om Narayan Rai, Sr. Adv.
Mr. Prithu Dudhoria, Sr. Adv.**

.....For the Appellant.

**Mr. Soumya Majumder, Adv.
Mr. Gour Baran Sou, Adv.**

.....For the Respondent Nos. 1 to 3.

JUDGMENT

(Judgment of the Court was delivered by T.S. Sivagnanam, CJ.)

1. This appeal has been filed by the Principal Commissioner of Income Tax, Asansol challenging the order passed by the learned Single Bench in WP No. 756 (W) of 2007 dated 17.03.2023. The appellants/ Income tax Department was impleaded as the respondents 2 to 5 in the writ petition. By the impugned order the learned Single Bench allowed the writ petition and directed the appellant Department to disburse to the writ petitioners the arrears of rent to Rs. 2,84,39,242/- in terms of the respondent CPWD revisions of rent for the period from January, 31, 1994 to June 30, 2021 and the payment was directed to be made positively by May 31, 2023 in default the Income Tax Department was directed to pay to the writ petitioner interest on such amount from 1st June, 2023, 16% per annum till the date of disbursement. The Income Tax Department was given liberty to institute a proper civil suit in respect of the money claimed on the alleged Municipal tax arrears and repair and maintenance charges, if incurred by the Income Tax Department, from the writ petitioners. If such a claim is made, the same was directed to be adjudicated in accordance with law by the competent civil Court upon following due process of law and nothing in the order passed in the writ petition shall prejudice the rights of the department in such suit if instituted by them within the period of limitation. The Income Tax Department being aggrieved by such directions has filed the present appeal.

2. We have elaborately heard Mr. Ashok Chakraborty, learned Additional Solicitor General assisted by Mr. Om Narayan Rai and Mr. Prithu Dudhoria, learned Senior Standing Counsel for the Income Tax Department and Mr. Soumya Majumder and Mr. Gour Baran Sou, learned Advocates appearing for the contesting respondents/ the writ petitioners.
3. The first point which has to be raised by the learned Additional Solicitor General is by contending that the learned Single Bench has virtually passed a money decree, adjudicated disputed, questions of fact and directed the sum of Rs. 2,84,39,242/- to be paid to the writ petitioners being the arrears of rent alleged to be payable to the writ petitioners. It is submitted that such a prayer is not maintainable since the matter is purely a contractual relationship between the owner of the building namely, writ petitioner and the appellant Department who had taken the building on rent. It is submitted that in such a contractual dispute purely in the private law realm writ petition is not maintainable when admittedly the contract is a non-statutory contract. In support of his contention the learned Additional Solicitor General relied upon the judgment of this Court in ***The Ghani Khan Choudhury Institute of Engineering and Technology & Ors. Versus Subham Enterprise & Ors.*** in MAT No. 1412 of 2023 etc. batch dated 02.05.2024.
4. The learned Advocate appearing for the respondents/ writ petitioners contended that the writ petition was maintainable. There was no dispute on facts which were already on record and the appellant department willfully defaulted to pay the rents revised from time to time as per their CPWD Norms

and as per the orders and instructions given by the Income Tax Department and the learned Single Bench rightly took note of the factual position had allowed the writ petition and issued the directions contained therein and the order does not call for any interference. With regard to the maintainability of the writ petition is concerned, it is no doubt true that in a non-statutory contract and when facts are in serious dispute a writ petition will not be maintainable.

5. In ***Ghani Khan Choudhury Institute*** judgment we have taken note of the legal position. In Paragraph 10 of the said judgment, we have noted the judgment of the Hon'ble Supreme Court in ***Union of India and Ors. Versus Puna Hinda***¹, ***Bharat Coking Coal Limited and Ors. Versus Amr Dev Prabha and Ors.***² and ***M.P. Power Management Company Limited, Jabalpur Versus Sky Power South-East Solar India Private Limited and Ors.***³

6. The Hon'ble Supreme Court held that the writ jurisdiction is a public law remedy and a matter which lies entirely within a private realm of affairs of public body may lend itself for being dealt with under the writ jurisdiction of the Court. It was further held the same fact of relief is sought under a contract which is not statutory, will not entitle the State in a case by itself to ward off scrutiny of its action or inaction under the contract, if the complainant party is able to establish for the action/ inaction is arbitrary. Further it was held that

¹ (2021) 10 SCC 690

² (2020) 16 SCC 759

³ (2023) 2 SCC 703

without intending to be exhaustive, it may include the relief of seeking payment of amount due to the aggrieved party from the State as the State can, be called upon to honour its obligations of making payment, unless it be that there is a serious and genuine dispute raised relating to the liability of the State to make the payment. Further it was held that the question as to whether the writ petitioner must be told off the gates would depend upon the nature of the claim and the relief sought for by the petitioner, the questions, which would have to be decided and, most importantly, whether there are disputed questions of fact, the resolution of which is necessary, as an indispensable prelude to the grants of the relief sought for.

7. Thus, the Court can exercise jurisdiction even in a private law realm subject to the “caveats” pointed out by the Hon’ble Supreme Court in the aforementioned judgment. Thus, we are required to see as to whether there are any serious disputed questions of fact or the facts had been admitted and could be ascertained to the documents placed and whether the action of the appellant department was arbitrary for the Court to entertain a writ petition for payment of the arrears of rent. The building in question was occupied by the Income Tax Department for several years and in the year 2021 they have vacated the premises. The bunch of correspondence which has been filed along with the writ petition which was filed in the year 2007 would clearly demonstrate that the writ petitioners have been driven from pillar to post by the Income Tax Department for the purpose of securing the rent payable for their building at the approved rates. The Central Public Works Department

(CPWD) by office memorandum dated 30th January, 1987 revived the hiring committee which immediately issued the Reasonable Rent Certificate in respect of hiring within their jurisdiction. The basic calculations of the reasonable rent was to be done by the Executive Engineer in whose jurisdiction the building proposed to be hired stands and send the same to the hiring committee for approval. The hiring committee was to examine the recommendations of the Executive Engineer and after the approval the committee shall send the Certificate of Reasonable Rent (CRR) to the concerned department which intends to hire the private buildings for further necessary action in accordance with the delegation of financial powers.

8. On 27th February, 1991 the Executive Engineer, Central Public Works Department, Dhanbad made the fair rent assessment of the said building at Asansol which was to be hired by the Income Tax Department as well as the land appurtenant to the building. In the year 2004, to be precise on 08.04.2004, an order was passed by the Chief Commissioner of Income Tax to, Kolkata-I with regard to the subject building on the issue of revision of rent. In Paragraph 6.1 of the order it has been stated as follows:

“6.1 I have carefully considered the submissions of the landlords. I have seen the records and apprise myself of the facts. I am of the opinion that the rent of Parmer Building, Asansol should be fixed at Rs. 34,032/- per month as recommended by the CPWD with effect from 30.01.1989 as consolidated rent for all the three floors as I consider this to be fair and reasonable. I am unable to accept the rent of Rs. 4.60 per sq. ft. per month as the same was not recommended by the CPWD. The

representatives of the landlords agreed to accept the rent of Rs. 34,032/- per month with effect from 30.01.1999 as consolidated rent as final and they have agreed to withdraw pending court cases, if any.”

9. As could be seen from the above paragraph the recommendation of CPWD has been accepted. So far as the matters pertaining to maintenance and repair charges the same was to be borne by the land lords / writ petitioners. Earlier another writ petition was filed since the revised rent was not paid to the writ petitioners and the said writ petition in WP 4178 (W) of 2005 was disposed of by the order dated 23rd August, 2006 by directing to consider the writ petitioner's application for fixation of rent in accordance with law, upon hearing the writ petitioner and pass a speaking order, a direction to be complied with within a period of 8 weeks. The order was communicated by the writ petitioner to the Chief Commissioner of Income Tax by letter dated 12.05.2006. The Chief Commissioner of Income Tax, Durgapur by communication dated 26.06.2006 addressed to the Chief Engineer, CPWD, Kolkata informed that the fair rent and market rent of the building as, on a reference from the income tax department has been determined by the Executive Engineer by communication dated 24.04.2006 and according to the Income Tax Department the rents are excessive considering the age of the building, and the Income Tax Department requested the Chief Engineer, CPWD to review the valuation of fair rent done by the Executive Engineer. In compliance with the directions issued in WP 4178 (W) of 2005 the Chief Commissioner of Income Tax, Durgapur sent a communication to the writ

petitioner dated 28.07.2006 and fixing the revised rent on the interval of 5 years and also making certain observations which deals with reimbursement of municipal tax, stating that the owners of the building should pay the same and make a claim for reimbursement and the reimbursement of the municipal tax rate effective from the date of execution of the agreement and this is to the exclusion to the water tax if any levied by the Municipality.

10. There is also an observation regarding the vacant plot of land which was exclusively used by the Income Tax Department. There has been subsequent communication between the owners of the building and the department. By communication dated 08.09.2006, the Income Tax Department addressed the writ petitioners stating that reimbursement of municipal taxes of Rs. 3,57,831/- for the period 28.06.2004 to 22.03.2006 paid by the landlords may be made on production of evidence of payment. Though this appears to be the stand of the Income Tax Department that it is consistently following the CPWD rates. However there has been unilateral fixation of the rent by the Income Tax Department without reference to the writ petitioners and without opportunity and the concerned order unilaterally fixing the rent was not in communicated/furnished to the writ petitioners. This is evident from the admissions in paragraph 12 of the affidavit-in-opposition filed by the Income Tax Department which was impleaded as the respondents 2, 3 and 5 of the writ petitioners. These factors were considered by the learned writ court.

11. Before us the revenue sought to contend that the Manual on Infrastructure as issued by the Central Board of Direct Taxes should be taken

note of particularly, the aspect regarding the revision of rent as contained in Chapter 6 of the Manual. Admittedly this was never the stand taken by the department at any earlier point of time. Nonetheless in paragraph 6.1 of chapter 6 of the Manual, it has been stated that the hiring department will nominate a representative of appropriate seniority as member of hiring committee as CPWD who will associate with the said committee's work in market survey enquiries for collection of relevant data. Further it has been observed that the reasonable rent certificate given by the CPWD Hiring Committee is only an advisory and all other aspects with regard to the adhoc percentage of increase, negotiation with the landlord for settlement of mutual agreeable rent budget provision etc. did not fall under the purview of the hiring committee but are the responsibility of the hiring department. The Manual on Infrastructure is an guideline which has been prescribed to be enforced by the hiring department and it cannot be said that it is a binding directive on the owners of the premises which is sought to be hired. In any event, this present stand raised before us was not the stand taken by the appellant Income Tax Department at any earlier stage of the proceedings.

- 12.** As pointed out earlier, the Chief Commissioner of Income Tax fixed the rent at Rs. 34,302/- per month. This fixation was unilaterally not communicated to the writ petitioner which has been admitted by the department in affidavit-in-opposition. To be noted, that in spite of the direction issued in the earlier writ petition in WP No. 4178 (W) of 2005, the appellant department did not take any constructive steps to comply with the direction

and to reasonably deal with the writ petitioners who are admittedly owner of the premises. Therefore, the learned Single Bench was right in observation that the department was delaying the matter for a prolonged period and failed to incorporate the revised CPWD rates as the quantum of rent for the building in question.

13. As pointed out earlier and as well as rightly noted by the learned Single Bench all along the appellant department have acted on the basis of CPWD rates for assessing the rent for the premises in question. The circular issued in 1987 is also to the same effect and therefore the appellant department cannot deviate from such norms.

14. In the writ petition out of which the impugned order arises there was an interim order passed on 26.06.2008 wherein the court took note of the order of the Deputy Commissioner dated 28.07.2006 fixing the fair rent of Rs. 80,620/- to be effective on an from 01.02.2004 and accordingly there was a direction upon the department to release rent at Rs. 80,620/- with effect from 01.07.2008 and for the period from 01.02.2004 to 30.06.2008, the writ petitioners were entitled to rent at Rs. 80,620/- minus amount already paid. The receipt of the amount by the writ petitioner was without prejudice to their rights and contentions in the writ petition. Thus, ultimately a partial reprieve was given to the owners of the building by virtue of the interim order. Considering all these aspects it is evidently clear that there is no disputed question of fact and all that the hiring department was harping upon with regard to the CPWD rates. As noted by us above all along the department has

been adopting the CPWD rates and they cannot make a departure at this juncture.

15. One more aspect which was rightly noted by the learned Single Bench is that the rent payable or the figures were not in dispute. This was placed before the learned Single Bench by way of supplementary affidavit to which there has been no specific denial by the appellant department. The details of the arrears of the rent was given by the writ petitioners in a tabulated format i.e. from 31.01.1994 to 30.01.1999, 31.01.1999 to 30.01.2004, 31.01.2004 to 30.01.2009, 31.01.2009 to 30.01.2014, 31.01.2014 to 30.01.2019 and 31.01.2019 to 30.06.2021. There were five columns in the tabulated statement of which column A was the amount according to the recognized principle of valuation. Column B was according to the prevailing market rate of rent. Column C was the amount already received. The next column was A minus C i.e. the balance to be received according to principles of valuation and the last column being B minus C i.e. the balance to be received according to the market price of rent. The learned Single Bench rightly took note of the rent which was calculated according to the recognized principles of valuation and deducted the amount already received by the writ petitioners and the balance receivable was Rs. 2,82,39,242/- which has been directed to be paid by the department to the writ petitioners.

16. Thus, we find that not only the writ petitioners/owners of the building were unfairly dealt for all these years, driven from the pillar to post and the department being the State ought to have dealt with its citizen/landlord in a

better manner, that apart there is no dispute which requires any adjudication in the matter and therefore the writ petition was maintainable and rightly entertained by the learned Single Bench and the directions issued therein are sustainable in law.

- 17.** In the result, no grounds have been made out by the appellant to interfere with the order under appeal. The appeal fails and stands dismissed. No costs.

(T.S. SIVAGNANAM, C.J.)

I Agree.

(HIRANMAY BHATTACHARYYA, J.)

Later:-

After we have pronounced the judgment, the learned Additional Solicitor General submits that two weeks time may be granted to comply with the directions issued by the Hon'ble Single Bench.

We have heard the learned advocate for the respondent on the above submission.

In the light of the prayer made, the time for compliance of the order passed by the learned Single Bench is extended by a period of two weeks from the date of receipt of the server copy of this order.

(T.S. SIVAGNANAM, C.J.)

I Agree.

(HIRANMAY BHATTACHARYYA, J.)