

ORDER SHEET

APOT/74/2024
WITH
WPO/25/2024
IA NO: GA/1/2024

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

SUMAN SAHA
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE JOYMALYA BAGCHI
And
The Hon'ble JUSTICE GAURANG KANTH
Date : 29th July, 2024.

Appearance:
Mr. Raghunath Chakraborty
Mr. Supratik Shyamal
Ms. Sabarnee Chatterjee
...for the petitioner

Mr. Alak Kumar Ghosh
Mr. Dilip Kumar Chatterjee
...for KMC

The Court: This is the third round of litigation wherein the appellant has assailed judgment and order dated 5th February, 2024 whereby the Hon'ble Single Bench declined to interfere with the order passed by the Assessing Officer/Collector, Tolly Tax Department on 11th December, 2023 refusing to rectify old inspection book pertaining to premises no. 1A, N.S.C. Bose Road,

Assessee No. 21-097-12-0002-9 under Ward – 097 from the date of expiry of lease deed executed in favour of respondent no.4.

Factual matrix of the case giving rise to the appeal is as follows:-

Appellant is the owner of the premises and had made a representation to Kolkata Municipal Corporation on 19th February, 2022 for deleting the name of respondent no.4 from the inspection book as lessee on the ground that the lease deed executed in favour of respondent no.4 had expired in 1968. Respondent Corporation failed and/or neglected to act on such prayer and the appellant approached this Court in WPO/3232/2022. Hon'ble Single Bench dismissed the prayer observing the respondent Corporation was not the appropriate authority to adjudicate whether respondent no.4 was a lessee or not. The matter was taken up in appeal and a Co-ordinate Bench directed the respondent Corporation to consider and dispose of the representation for correction of the inspection book by passing a reasoned order after giving an opportunity of hearing to the appellant, private respondent and any other authority concerned.

Pursuant thereto, the respondent authorities passed the following order:-

“HPCL could not produce any cogent document (like extension of lease, agreement of tenancy, any order of competent authority for adverse possession or holding over and the like) in respect of the possession of the subjected premises. However they submitted that Misc. case is lying pending before The Controller of Calcutta Thika Tenancy vide number 49 of 2022 under section 5(3) of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 1981 for determination of Thika Tenancy against their return and challan (samples submitted).

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Sri Suman Saha through his Advocate Ms. Sonali Sengupta submitted before the chair, that the name of M/s. HPCL should not be written in the documents of KMC as Lessee as the period of Lease has expired a long ago.

So it is hereby ordered that the name of M/s HPCL should be recorded as occupier in KMC Assessment Form accordingly. Department will make a red ink note in Inspection Book regarding the Mis. Case lying before the Controller of Thika Tenancy.”

In terms of the order, respondent no.4 HPCL was recorded as an occupier in the inspection records on and from 2018.

Being aggrieved by correction of the inspection records from 2018 and not from the date of expiry of the lease, the appellant again approached the respondent authorities. The respondent authorities did not take any steps and the appellant moved another writ petition being WPO/1439/2023 wherein the respondent authorities were directed to take appropriate decision in the matter.

The respondent no.3 by the order dated 11.12.2023 refused to correct the inspection book from the date of expiry of lease, inter alia, on the ground that the appellant himself is a beneficiary of respondent no.4 and the thika tenancy application filed by the said respondents was still not decided. The authority further held such correction may create a conflicting situation as certified copies of the earlier corrected records had been issued to various parties. This decision being upheld by the Hon’ble Single Bench, appellant is before us.

Mr. Chakraborty contends the thika proceeding had become infructuous and there was no justification for the records being corrected from the date of expiry of the lease.

Inspite of notice, nobody appears for respondent no.4.

Mr. Ghosh appearing for the respondent Corporation submits respondent no.4 was recorded as an occupier instead of a lessee as prayed by the appellant.

We have perused the deed of lease annexed to the stay application. From the recitals of the deed, it appears the lease expired in 1968. While correcting the inspection book vide order dated 12th May, 2023, the respondent no.3 recorded that respondent no.4 could not produce any cogent document i.e., extension of lease, agreement of tenancy or any order of competent authority for adverse possession/holding over and the like in respect of the subject premises.

Under such circumstances, it was incumbent on the respondent authorities to correct the inspection book and record respondent no.4 as occupier in place of lessee from the date of expiry of the lease deed i.e., 1968.

Contention raised by respondent no.3 that such correction may create confusion as certified copies of the earlier record had already been issued is of little substance as no material could be placed before the said authority by respondent no.4 even during the initial hearing to justify its possession in the property as lessee after the expiry of the term of the lease.

For the aforesaid reasons, we set aside the order impugned as well as the order dated 11th December, 2023 passed by respondent no.3 and direct the said respondent to rectify the inspection book and record respondent no.4 as occupier in place of lessee from the date of expiry of the lease deed dated 25th May, 1949 instead of 2018.

Appeal is allowed.

There shall be no order as to costs.

(GAURANG KANTH, J.)

(JOYMALYA BAGCHI, J.)

bp/R.Bhar