12.05.2026
Court No. 12
Item No.21
Cp

M.A.T. 538 of 2026
I.A. No : CAN 1 of 2026
CAN 2 of 2026

Sambhu Nath Sadhukhan & Ors.
-Versus-
Amarchand Agarwal & Ors.

Mr. Arindam Guha
Mr. S. Sengupta
Ms. Shalini Dey

.....for the appellants.

Mr. Biswajit Mukherjee,
Ms. Piyali Sengupta,
Mr. Debanjan Mukherjee,
Ms. Gulnaz Quraishi
....for the KMC.

Mr. Abhirup Chakraborty

....for the respondent nos. 1 to 17.

CAN 2 of 2026 is an application for leave to appeal from the judgment and order dated March 6, 2026, passed by a learned Single Judge in CAN 2 of 2025 and CAN 3 of 2025, arising out of WPA No.24686 of 2024.

Although, the applicants were not added as parties to the writ petition, His Lordship disposed of their applications for intervention and addition of party, inter alia, permitting them to take out their vehicles from the vacant land which had been sealed by the Kolkata Municipal Corporation on account of non-payment of property tax by the owner, subject to the applicants depositing a sum of Rs.60,000/- for each vehicle, with KMC.

CAN 2 of 2026 is accordingly allowed, as it is evident that the applicants were not parties to the said writ petition and prima facie, it appears that the order dated March 6, 2026 is not supported by law. Considering the prayer of the applicants, we grant the leave to file the appeal.

The appeal is registered.

Mr. Sengupta, learned advocate for the appellants, submits that the learned Single Judge erred in directing the appellants to pay future garage charges. The corporation had sealed the premises and the question of parking the vehicles on the said land in future, did not arise. The learned court went into a speculation that, as the appellants parked their vehicles in the said premises the average garage charges would be around Rs.5000/- per month.

Mr. Sengupta submits that, all that the appellants prayed for before the learned court, was to allow them to remove their vehicles which were lying inside the property under lock and key, affixed by the corporation.

Mr. Mukherjee, learned advocate for the corporation, submits that the third proviso to Section

193(3) of the Kolkata Municipal Corporation Act, 1980, permits the Kolkata Municipal Corporation to attach rent and recover the money due towards property tax from the person in occupation of the premises in question. On the basis of such statutory provision, His Lordship had rightly directed the appellants to deposit the money.

Admittedly, the vehicles of the appellants were inside the premises, which was sealed by the corporation. Distress warrant has been issued. The owner of the premises has challenged the demand of the corporation for property tax, before the writ court. The appellants parked their vehicles in the said premises on an arrangement with the owner.

Proceedings have to be initiated as per law, for attachment of rent payable by the occupier of the property. This was not done. The corporation had proceeded against the owner of the property and has sealed the property. All that the appellants prayed for, was that their commercial vehicles should be allowed to be taken out, as they did not have any direct liability to the corporation. They used to just park their vehicles on and off, against payment of some daily charges.

The relevant provisions of law are quoted below :-

> **193. Incidence of [property tax] on lands and buildings.** (1) The (property tax) on lands and buildings shall be primarily leviable-

(a) if the land or building is let, upon the lessor;

(b) if the land or building is sublet, upon the superior lessor;

(c) if the land or building is sublet, upon the person in whom the right to let such land or building vests.

(2) The property tax) on any land or building, which is the property of the Corporation and the possession of which has been delivered under any agreement or licensing arrangement, shall be leviable upon the transferee or the licensee, as the case may be.

(3) The liability of the several owners of any [land or] building constituting a single unit of assessment, which is or purports to be severally owned in parts or flats or rooms, for payment of [property tax] or any instalment thereof payable during the period of such ownership shall be joint and several:

Provided that the Municipal Commissioner may apportion the amount of [property tax] on such [land or] building among the co-owners.

[Provided further that in any case where the Municipal Commissioner is, for reasons to be recorded in writing, satisfied that the owner is not traceable, the occupier of such land and building, land or building for the time being, shall be liable for payment of property tax so long as the owner remains untraced and shall be entitled to the rebate, if admissible.]

(3A) In the case of any land or building or portion thereof which is not self-occupied and where the owner is refrained, by any law, Order of the Government or Order of a Court, from recovering the property tax due from the occupier or occupiers, such tax shall be recovered from the occupier or occupiers, as the case may be: Provided that the owners shall continue to pay such amount of property tax as he was liable to pay before coming into force of the Kolkata Municipal Corporation (Amendment) Act, 2006, and only the balance amount of the property tax, when determined after coming into force of the Kolkata Municipal Corporation (Amendment) Act, 2006, if any, shall be recovered from the occupier.]

[(4) Notwithstanding the vesting of any land in the State under the Kolkata Thika Tenancy (Acquisition and Regulation) Act, 1981 (West Ben. Act XXXVII of 1981), in the case of any land comprised in a thika tenancy, the [property tax] assessed in respect of such land and any hut or building made thereon shall be primarily leviable upon the thika tenant.]

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195. Recovery of '[property tax] on lands and buildings from occupiers.-(1) On the failure to recover any sum due on account of '[property tax) on any land or building from the person primarily liable therefor under section 193, [the Municipal Commissioner shall, notwithstanding anything contained in the West Bengal Premises Tenancy Act, 1956 (West Ben. Act XII of 1956) or in any other law for the time being in force, recover] from every occupier of such land or building, by attachment of the rent payable by such occupier, a portion of the total sum due which bears, as nearly as may be, the same proportion to that sum as the rent annually payable by such occupier bears to the total amount of rent annually payable in respect of the whole of such land or building.

(2) An occupier, from whom any sum is recovered under sub-section (1), shall be entitled to be reimbursed by the person primarily liable for the payment of such sum, and may, in addition to have recourse to other remedies that may be open to him, deduct the amount so recovered from the amount of any rent becoming due from time to time from him to such person.

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220. Distress. (1) It shall be lawful for any officer or other employee of the Corporation to whom a warrant issued under this Chapter is addressed to distrain, wherever, it may be found in any place in Kolkata, any movable property belonging to the person '[liable], subject to the following conditions, exceptions and exemptions, namely:-

(a) the following property shall not be distrained:-

(i) the necessary wearing apparel and bedding of the defaulter, his wife and children and their cooking and eating utensils;

(ii) tools or artisans;

(iii) books of account.

(b) the distress shall not be excessive, that is to say, the property distrained shall be as nearly as possible equal in value to the amount recoverable under warrant, and if any property has been distrained which, in the opinion of the Municipal Commissioner, should not have been distrained, it shall forthwith be released.

(2) The person charged with the execution of a warrant shall in the presence of two witnesses forthwith make an inventory of the property which he seizes under such warrant, and shall, at the same time, give a written notice in such form as may be specified by the Corporation by regulations to the person in possession thereof at the time of seizure that the said property will be sold as therein mentioned.

(3) If there is reason to believe that any property seized under a warrant (under sub-section (2) of section 220,] if left in the place where it is found, is likely to be removed by force, the officer executing the warrant may take it to the office of the Corporation or to any other place appointed by the Municipal Commissioner.

(4) An Officer or other employee of the Corporation charged with the execution of a warrant, if he has reasons to believe that a building contains property liable to be distrained, may exercise the power of entry into the building in accordance with the provisions of section 546.
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225. Occupiers may be required to pay rent towards satisfaction of '[property taxes].-(1) For the purposes of recovery of any (property tax) from any occupier under section 195, the

Municipal Commissioner [, notwithstanding anything contained in the West Bengal Premises Tenancy Act, 1956 or any other law for the time being in force,] shall cause to be served on such occupier a notice requiring him to pay to the Corporation any rent due or falling due from him in respect of the land or building to the extent necessary to satisfy the portion of the sum due for which he is liable under the said section.

(2) Such notice shall operate as an attachment of such rent unless the portion of the sum due shall have been paid and satisfied, and the occupier shall be entitled to credit in account with the person to whom such rent is due for any sum paid by him to the Corporation in pursuance of such notice:

Provided that if the person to whom such rent is due is not the person primarily liable for payment of the '[property tax), he shall be entitled to recover from the person primarily liable for payment of such tax any amount for which credit is claimed as aforesaid.

(3) If any occupier fails to pay to the Corporation any rent due or falling due which he has been required to pay in pursuance of a notice served upon him as aforesaid, the amount of such rent may be recovered from him by the Corporation as an arrear of tax under this Act."

The owner is traceable, thus, circumstances did not necessitate recovery of proportionate property tax from the appellants. KMC had not proceeded to attach any rent payable to the owner, for recovery of the property tax. No such notice was issued to the appellants.

Under such circumstances, the direction upon the appellants to deposit the money as a pre-condition for taking out the vehicles from the property, which has already been taken possession of by the corporation towards realization of the property tax, is not supported by law.

We set aside the order impugned.

We allow the appellants to take out their vehicles from the premises in question, by making an application to the concerned authority of the corporation, indicating the date and time when they propose to take out their vehicles. An intimation shall be sent to the local police station.

An authorized representative of the corporation shall facilitate the same upon verifying the identity of the person who has been authorized by the owner of the vehicle along with suitable documents. The appellants will issue proper receipt upon receiving their vehicles.The entire process shall be videographed.

This order shall not prejudice the pending writ petition and the right of the corporation under the law to recover the property tax.

The corporation shall open the lock and allow the vehicles to be taken out. An inventory shall be made in the presence of the appellants and also the owner and thereafter the property shall be resealed. The appellants cannot park their vehicle in the said property hereafter.

The corporation may seek assistance of the local police station during such process, in order to maintain peace.

Accordingly, the appeal and the connected application being CAN 1 of 2026 are disposed of.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)