12.05.2026
SL No.26
Court No.12
(gc)

MAT 767 of 2026
CAN 1 of 2026
CAN 2 of 2026
CAN 3 of 2026

Ideal Real Estate Private Limited
Vs.
The Kolkata Municipal Corporation & Ors.

Mr. Chayan Gupta,
Mr. Ramendu Agarwal,
Ms. Apoorva Choudhury
…for the Appellants.
Ms. Tanushree Dasgupta
…for the KMC.
Ms. Reshmi Ghosh,
Ms. Parna Mukherjee
….for the Landlord.

Re: CAN 1 of 2026

1. This is an application for condonation of delay. There is a delay of 106 days in preferring the appeal.

2. Considering the averments made in the petition, we are satisfied that the delay has been sufficiently explained.

3. Accordingly, the delay of 106 days is condoned.

4. CAN 1 of 2026 is accordingly allowed, and disposed of.

5. The appeal is regularized.

Re: MAT 767 of 2026
CAN 2 of 2026
CAN 3 of 2026

6. The appeal arises out of a judgment and order dated December 9, 2025 in WPA 27914 of 2025. By the order impugned, the learned Court dismissed the writ petition of the appellant, seeking a direction upon the municipal authorities to revoke, recall and/or rescind the order of attachment of rent passed under Section 220 of the Kolkata Municipal Act, 1980 (hereinafter referred to as the "said Act") and for a further direction upon the municipality to release the property by handing over possession thereof to the appellant.

7. The appellant is a company and was in occupation of approximately 4000 sq.ft. on the 11th floor of Rear Block Building along with three car parking spaces at the property situated at premises no.50, Jaharlal Neheru Road, Kolkata – 700 071, under an agreement of sublease which was executed in favour of the appellant by Singhania Developers, a Limited Liability Partnership Firm.

8. According to the case made out by the appellant, the Assistant Collector (S), KMC by a memorandum dated March 3, 2022, had requested the appellant to disclose the

rental/occupation charges payable by the appellant in respect of the portion under its occupation. By a letter dated May 6, 2022, the appellant was informed by the Assessor Collector (S), KMC, that by order dated March 4, 2022, the rent of the subject premises had been attached by the authorities in respect of the outstanding property tax amounting to Rs.6,31,14,419/-. The appellant was asked to comply with the order. The appellant was served with a reminder on May 16, 2023, and was further asked to comply with the order of attachment of rent. According to the appellant, on account of non-compliance of the order of attachment of rent passed on March 4, 2022, the KMC initiated proceedings under Section 218 read with Section 220(2) of the said Act and seized the property upon preparing a seizure list. The appellant filed undertaking on June 21, 2023, before the municipal authorities, undertaking to pay two months' rent till the arrears of the above mentioned memorandum were updated. The appellant also undertook to pay monthly rent of Rs.6,96,000/- to the KMC within 21st of each month. The appellant made a one-time payment of Rs.25,00,000/- against the rent payable from the month of March, 2022 for the premises in question.

9. His Lordship recorded the above factual aspects and also came to a finding that, there was default. The extent of default was also notified to the appellant by the KMC and the appellant was directed to pay a sum of Rs.70,00,000/- up to the period of October, 2025.

10. The appellant's case was that, prior to the seizure of the property, further payment of Rs.5,00,000/- was made on November 14, 2025 and an additional payment of Rs.5,00,000/- was made on November 28, 2025, thereby, leaving a balance of Rs.60,00,000/-.

11. His Lordship recorded that, by filing the writ petition, the appellant/ writ petitioner had stated on oath that the appellant would undertake and was ready and willing to pay the current rent from the month of December, 2025 onwards, regularly, and also undertake to pay the arrear amount of Rs.65,00,000/- in favour of the respondents by the end of February, 2026. His Lordship had given an opportunity to the appellant to pay off the amount by issuing post-dated cheques, but the appellant was not willing to hand over post-dated cheques of the entire amount.

12. A legal issue with regard to the competence of the KMC to seize the appellant's tenanted premises, and the belongings, was raised. By placing reliance on the provisions of Sections 193 and 195 of the said Act, the appellant had tried to make out a case that the primary responsibility to pay the property tax vested upon the owner and, as such, the occupier/appellant could not be saddled with the burden of the owner. Also, the occupier/appellant could not be deprived from entering into property, in respect of which rents had been paid to the owner. It was further urged that the agreement between the owner and the occupier/appellant did not provide for proportionate payment of the property tax, by the occupier.

13. Heard the parties. His Lordship rightly found that KMC could enforce the property tax on the occupier and recover the same by way of attachment of the rent. A specific power was conferred by the statute and the contractual relationship between the landlord and the tenant would not limit or restrict the statutory power conferred by law upon KMC. His Lordship also recorded that, distress warrant had been issued in respect of the premises in question, in accordance with law.

14. Although the appellant may not be primarily liable to pay the property tax, but upon the attachment order being served upon the appellant, the appellant chose not to take any steps against the said order and further undertook to make payment of the same to the Corporation. Sporadic payments were also made. The decision for attachment of rent was acted upon by the parties.

15. In Paragraph 14 of the impugned order, His Lordship recorded the undertaking which was given by the appellant. The same is quoted below:-

> *"14. The petitioner simultaneously with the execution of the aforesaid undertaking and in compliance with the memorandum dated 3rd March, 2022, had made over a sum of Rs.25 lakhs by way of a pay order in favour of the municipality vide Pay Order dated 20th June 2023, drawn on Indian Bank. To appreciate the terms of the above undertaking given by the petitioner on 21st June 2023, the relevant portion thereof is extracted hereinbelow:*
>
> > *"We understand that KMC has executed Distraint Warrant and locked our office realize the rent attached vide the referred Notice of Rent Attachment which we undertake to pay the rents due till now through the following steps; unfortunately did not comply with. Therefore, in order to make such payments of Rent we undertake to pay the rents due till now through the following steps;*

1. In compliance with the memo number AAC(S)/063/XVIII/1861/21-22 dated 03/03/2022, we are making a payment of Rs.25,00,000/- (Rupees Twenty five lakhs) by pay order no. 057316 dated 20.06.2023 drawn on Bank of India, J.L. Nehru Road Branch, Kolkata to the Kolkata Municipal Corporation against the rent payable from March 2022 for the office premises on the 11th floor of the rear building of the premises no. 50 JL Nehru Road, Kolkata - 700071.

2. In further compliance with the memo number AAC(S)/063/XVIII/1861/21-22 dated lakhs) on 30th June, 2023 to the Kolkata Municipal Corporation against the rent payable 03/03/2022, we shall make another payment of Rs.25,00,000/- (Rupees Twenty five from March 2022 for the office premises on the 11th floor of the rear building of the premises no. 50 JL Nehru Road, Kolkata.

3. In further compliance with the memo number. AAC(S)/063/XVIII/1861/21-22 dated 03/03/2022, we shall subsequently make payment to the KMC the equivalent of 2 months rent on the 21st of each month commencing on 21st July, 2023.

4. We shall continue to pay 2 months rent till the arrear against the above mentioned memo is updated post which we shall pay the monthly rent viz. Rs.6,96,000/- to the KMG on 21st of each subsequent month.”

16. Following the decision of a Division Bench, His Lordship dismissed the writ petition and, inter alia, held as follows:-

> *"19. In this factual backdrop that the above writ petition was moved and the Hon'ble Division Bench while deciding an appeal was, inter alia, pleased to observe as follows :*
>
> > *"Section 220 in our opinion should be construed strictly inasmuch as it does not authorise an officer or other employee of the Corporation to attach any or every moveable property found in the premises but such property must be belonging to the person liable to pay taxes.*
> >
> > *Section 193 of the Act clearly states as to who would be the person liable for payment of such taxes.*
> >
> > *The said provision, furthermore is, required to be considered along with Section 232 of the Act which provides that the consolidated rate on lands and buildings due from any person shall, subject to the prior payment of land revenue (if any) due to the Government thereupon, be a first charge upon the land or the building belonging to such person and upon the moveable property (if any) found within or upon such land or building. The word 'moveable property' used in Section 232, in our opinion, shall also bear the same meaning.*
> >
> > *So far as the occupiers are concerned, in liability is confined to Section 225 of the Act.*
> >
> > *Thus, unless and until a person's name is mutated; be he a purchaser or a lessee,*

his liability under the Act must be held to be confined to Section 225 and not otherwise. Only rent could be attached from the occupiers but not their personal properties."

20. I find that the facts based on which the above judgment was delivered and the present case are entirely different. While in the case at hand the petitioner had given an undertaking and has acted in breach of such undertaking. This matter does not simplisitor pertain to recovery of tax. In any event as per Section 225(3) of the said Act on the failure of the occupier to pay any rent due, which is required to be paid can be recovered by the corporation by way of recovery of tax. To morefully appreciate the same Section 225 of the said Act is extracted hereinbelow:

"225. Occupiers may be required to pay rent towards satisfaction of [property taxes]*.-(1) For the purposes of recovery of any [1][property tax] from any occupier under section 195, the Municipal Commissioner, notwithstanding anything contained in the West Bengal Premises Tenancy Act, 1956 (West Ben. Act XII of 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 the 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."

21. In light of above, the petitioner having acted in breach of undertaking the question that falls for consideration is whether a writ in the nature of mandamus could be issued to aid a defaulting party without such party rectifying the default in the first instance. I find that the petitioner has failed to adhere to its own undertaking and now seeks the blessings of the Court to overreach its own undertaking by challenging the competence of the municipal authority to seize the petitioner's property under Section 220 of the said Act. In my view the Court cannot be used as the means to ward of admitted payments by relying on an interpretation of Section 220 of the said Act which was recorded in separate set of facts. However, ever as per above judgment of ***Abdul Halim Gaznavi Molla*** *(supra) the petitioner having failed to pay the admitted rentals attached, the provisions of Section*

225(3) stands attracted. It is true that under ordinary circumstance section 220 could not have been invoked for the municipal authorities for attaching petitioner's property only for securing payment of tax. However, extraordinary circumstances require extraordinary measures to be taken. In this case, the municipal authorities having regard to the failure on the part of the petitioner to adhere to its own undertaking and there being outstanding in excess of Rs. 70 lakhs in relation to payment of attached rent despite notice, had adopted extraordinary measure to secure compliance of the undertaking given by the petitioner."

17. We do not find any patent illegality or irregularity in the order impugned.

18. Accordingly, the appeal and the connected applications are disposed of without any interference.

19. However, as per the law, the books of accounts cannot be distrained. The appellant will be at liberty to approach the Corporation to take out the physical copy of the files and any information stored in the data-base/ servers can be taken by copying the same in a separate hard disk. No other equipments appliances, furniture fixture etc. shall be removed. The computers, hard-disks etc. cannot be removed.

20. The appellant will inform the concerned police station as also the KMC, the date and time when such exercise will be undertaken by them. It shall be a working day. The KMC will depute an authorized representative during such process. An inventory shall be prepared. Police assistance may be taken by KMC. The entire process shall be videographed.

21. There shall be no order as to costs.

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

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)