

(1974) 03 CAL CK 0023
Calcutta High Court
Case No: Matter No. 226 of 1973

Harendra Nath Ghosh

APPELLANT

Vs

Commissioner of
Corporation, Calcutta
and Others

RESPONDENT

Date of Decision: March 7, 1974

Acts Referred:

- Constitution of India, 1950 - Article 19, 19(1)(f), 265, 31

Citation: 78 CWN 590

Hon'ble Judges: Salil Kumar Datta, J

Bench: Single Bench

Advocate: Gopal Chakraborty, for the Appellant; Bankim Chandra Dutt and Braten Banerjee, for the Respondent

Judgement

Salil Kumar Datta, J.

The Court: This rule was obtained by the petitioner challenging certain demands made by the Corporation of Calcutta on account of consolidated rates for premises No. 105 Park Street, Calcutta. The petitioner, according to his case, purchased from Norm Construction Company P. Ltd. Flat No. 22 (4th floor) of Kohinoor building situate at the said premises on the basis of registered conveyance dated July 23, 1971. The said building contains fifty flats of various sizes and the petitioner became the owner of flat No. 22 by his purchase as stated above. On September 7, 1971 the petitioner wrote to the Assessor of the Corporation requesting him to mutuate his name as owner of the said flat and to issue rate bills in his name in respect thereof. The Sub-Assessor informed the petitioner by letter dated November 18, 1972 that the request "for apportionment of valuation resulting in issue of separate rate-bills" could not be taken till the valuation of the entire premises was finalised, which was then under consideration. The petitioner did not hear further from the Corporation till he received its letter dated February 2, 1973, enclosing eight notices of demand

u/s 236 of the Calcutta Municipal Act, 1951. The particulars of the demands are as follows:

Serial	Amount of Tax	Period &	Nature of demand
1.	Rs. 63,063.35	3/71-72 to 3/72-73 @ Rs. 12.612.17	As owner of House No. 105
2.	Rs. 63,063.35	-do-	As occupier of House No. 105
3.	Rs. 257.73	Sup. 2/60-61 to 3/66-67 On 2/67-68 to 2/68-69 @ Rs. 33.97	As owner of House No. 105B
4.	Rs. 257.73	-do-	As occupier of House No. 105B
5.	Rs. 2,278.17	2/65-66 to 2/66-67, 2/67-68 to 2/68-69 @ Rs. 253.13	As owner of House No. 105C
6.	Rs. 759.39	3/65-66 to 3/67 -68, 2/68-69	As occupier of House No. 105C
7.	Rs. 459.95	2/60-61 to 3/66-67 2/67-68 to 2/68-69	As owner of House No. 105D
8.	Rs. 290.06	Sup. 2/60-61 to 3/66-67 on 3/67-68, 2/68-69	As occupier of House No. 105D

The demands bearing serial Nos. 1 and 2 were addressed to the petitioner as owner and occupier respectively of house No. 105 while the other demands did not bear his name at all. The petitioner stated that he is the owner of Flat No. 22 which is entirely independent and capable of separate enjoyment and accordingly it was contended that the petitioner was entitled to separate valuation and number or alternatively to apportionment of valuation out of the valuation for the entire premises No. 105 Park Street, Calcutta. In violation of the provisions of Chapter XI, Part 4, in particular of sections 174 176, 180, 182, 187, 188 and other provisions of

the Act, the Corporation has imposed consolidated rates in respect of both shares of taxes of the premises treating the different flats as one unit while the petitioner is the owner only of Flat No. 22. It was further contended that the impugned levy and demand on the petitioner is in violation of Articles 19, 31 and 265 of the Constitution. The petitioner through his Advocate demanded justice of the Commissioner and the Administrator of the Corporation by letter dated February 23, 1973 but to no effect. In these circumstances the petitioner moved this Court in Constitutional Writ Jurisdiction praying inter alia for a writ in the nature of certiorari, quashing the impugned demands and also for a writ in the nature of mandamus forbearing the said officers of the Corporation from giving effect to the same.

On this application a rule nisi was issued on April 2, 1973 in terms of the prayer and an interim order was also issued restraining the respondents from giving effect to the said demands-pending the rule. The respondents-the Administrator, the Commissioner and the Assessor of the Corporation appeared on service of the rule and opposed the application by filing a joint affidavit-in-opposition affirmed by Pratip Kumar Ghosh, its Assessing Inspector, on June 4, 1973. It was stated there in that by his purchase the petitioner become a joint owner of the premises there by be coming jointly and separately liable for all rates and taxes in respect of premises No. 105 Park Street, where in there are 48 flats on upper floors and 7 offices and shops on the ground floor. The prayer of the petitioner for mutation of name also for issue of separate rate bills could not be entertained without physical separation of the said flat from the rest of the building making the same independent and capable of being separately enjoyed and the valuation of the said premises with effect from 4th quarter 1972-73 had not been finalised. The flats comprised in the building are not capable of being enjoyed separately from each other. The premises Nos. 105A, 105B, 105C and 105D were amalgamated and valued as premises No. 105 from 2nd quarter 1968-69 which had been accepted by all and the-petitioner has been jointly and severally liable to pay the demands. As petitioner's name was not mutated in the assessment register he was not entitled to receive any notice addressed in his name. The bills containing demands were on basis of general valuation from 4th quarter of 1966-67 which had become final and the petitioner becoming a co-owner on July 23, 1971 was not entitled to any notice. Further his name not having recorded so far, he is also not entitled to any notice, though due notice as required was given to persons interested while general notice was also given. It was lastly contended that, as the petitioner had become a co-owner he was jointly and severally liable for the demands impugned and there was no illegality or defect in procedure in taking steps for recovery of the dues. The respondents disputed the submissions made in the petition and submitted that the petitioner failed to lodge objection within fortnight as provided which was also not availed of. The rule in the premises should be discharged.

2. The petitioner filed an affidavit-in-reply reiterating his allegations and contentions made in the petition. It was further stated that the petitioner moved this Court for

upholding his fundamental rights guaranteed by the Constitution and alternative remedy could never be a bar to defeat his application. It was contended that as the petitioner is a owner of a divided portion of the premises and he could not be jointly or severally liable for outstanding rates and taxes for the entire premises.

3. At the hearing Mr. Gopal Chakrabarty learned Advocate appearing for the petitioner submitted that the petitioner admittedly was a co-owner of a divided portion of the property and he could not be liable in law, jointly or severally, for the entire consolidated rates and taxes of the entire premises. The Calcutta Municipal Act, 1951 in terms provide for inclusion of the petitioner's name in Corporation records as owner and also to apportionment of his specific share of taxes, for non-payment whereof he would be liable. The imposition of demand for the outstanding taxes in respect of the entire premises for a colossal amount of over Rs. 1.30 lakhs, when the flat itself was purchased at Rupees forty thousand, is an unreasonable restriction in the exercise of the fundamental right to hold property guaranteed by Article 19(1) (f) of the Constitution.

4. Mr. Bankim Chandra Dutt, appearing with Mr. Braten Banerjee learned Advocates for the respondents contended that the Corporation, being a Corporation created by statute, its activities are confined to the discharge of functions and powers as have been provided in such statute. The Act does not provide for apportionment of tax in respect of the interest the petitioner has in the flat and in the premises. Further the liability of any owner of the premises is joint and several with its other co-owners so that there is no illegality in the demands served on the petitioner whose remedy in event of payment being made in excess of his liability will be in appropriate proceedings for contribution.

5. Section 174 provides for valuation of land or building sub-divided into separate shares and three types of cases have been contemplated in the section as indicated below:

(i) Where ownership is subdivided into two or more shares without separate allotments or with separate allotment of such land, building or portions into two or more separate portions not entirely independent or capable of separate enjoyment, the Commissioner may apportion the valuation among shareholders according to value of their shares without assigning any separate number.

(ii) If as a result of such subdivision, there are separate allotment of land or building or portion, entirely independent and capable of separate enjoyment though not in conformity with the Act by laws and rules thereunder, the Commissioner may value such portion separately after assigning them separate numbers.

(iii) If such separate portions of land, building or portion are entirely independent and capable of separate enjoyment in conformity with the Act, by laws and rules thereunder, the Commissioner shall value each portion separately by assigning a separate number thereto. The apportionment of valuation provided herein under

the above clauses is to be made on the application of any of the co-owners.

6. The petitioner by his conveyance dated July 23, 1971 purchased Flat No. 22 in the fourth floor of the multistoreyed building Kohinoor at No. 105 Park Street, "with the fractional share equivalent to what the covered area of the said flat in the land contained in the said entire premises", with like share in landings, lobbies, corridors, stair case, lifts and in all common amenities like tube wells, electric pumps motor transformers and electric installations etc. and yards, courts, compounds, ancient and other lights privileges and easements subject to covenants mentioned therein. The flat and the fractional share in the land of the premises as also in other common portions of the buildings and installations therein which the petitioner has acquired, do not come under any of the classes (ii) and (iii) referred to above as the flat is not entirely independent or capable of separate enjoyment without utilising landings, lobbies, yards, amenities common to all co-owners. The type of sub-division of ownership of land and building and separate allotments of building into separate portions which are not entirely independent and capable of separate enjoyment as contemplated in class (i) very nearly covers ownership flat with rights of the nature acquired by the petitioner, though it has been contended that the said clause strictly interpreted will have no application to ownership flats. There is no dispute that there are no other provision in the Act for separate valuation of shares of land and building on sub-division of ownership.

7. Ownership flats in multistoreyed buildings are an usual and common feature in big cities in modern times, and, the city of Calcutta is no exception. The plans of such buildings before construction are required in law to be sanctioned by the appropriate authorities of the Corporation of Calcutta and it is only to be presumed that the Corporation and the Government are aware that such flats are transferred in permanent ownership to persons usually for their residence and may be for other purpose. Purchasers of such flats can reasonably ask for apportionment of the valuation of their respective shares even without any separate number. The provisions in the Act accordingly has to be interpreted liberally as otherwise it will create a highly unsatisfactory state of affairs. While the owners of flats cannot reasonably be asked to pay rates and taxes for the entire premises, which naturally will be for enormous amount, the collection of rates and taxes will be seriously impeded involving legal proceedings while at once affecting public services. The provisions of the Act must therefore have liberal and harmonious interpretation to the benefit of all.

8. Section 174 in clause (i) in my opinion, covers the cases of ownership flats. It contemplates a sub-division of ownership, of land and building with or without separate allotments. In case of allotment of such land or building into two or more different portions, such portions may not be entirely independent or capable of separate enjoyment, implying that enjoyment of other portions may be in common with other owners. This common enjoyment by the owners of flats over other

portions of the land or building must be on basis of legal right over landings, stair cases lifts and the like. Such rights are ensured by the petitioner's document of title.

9. It may be noted that the petitioner by his letter of September 7, 1971 while informing his purchase of the flat asked for mutation of his name in the premises and also for issue of rate bills in respect thereof in his name and the Corporation in its reply of November 18, 1972 informed the petitioner that the matter could not be taken up till the "valuation of the entire premises is finalised, which is now under objection." No objection was taken by the Corporation that such apportionment of valuation could not be taken up at all on ground that it was not warranted by law as now contended.

10. It may be of interest to consider the recent legislation that has since come into existence. The West Bengal Apartment Ownership Act, 1972 (West Bengal Act XVI of 1972) was promulgated on June 5, 1972 and while section 1 was brought into force on the same day the remaining portions of the Act came into force on June 7, 1973. The Act was intended to provide for the ownership of an individual apartment and to make such apartment heritable and transferable property. The Act however is applicable only to property in respect whereof a declaration is executed and registered setting out the requisite particulars mentioned in section 10. The declaration is to contain the description of the property, apartment, common areas and facilities and the like. Section 4 provides that each apartment, with its undivided interest in common areas and facilities, shall be heritable and transferable immovable property within the meaning of any law for the time being in force. Section 18 provides that provisions of the Transfer of Property Act 1882 will apply to every apartment with its undivided interest in the common areas and facilities as those provisions apply in relation to any other immovable property. Section 14 provides that each apartment and its percentage of undivided interest in common areas and facilities shall be deemed to be separate property for purposes of assessment, notwithstanding anything to the contrary in any other law for the time being. Section 16 provides that upon sale of an apartment the purchaser of the apartment shall be jointly and severally liable with the vendor for all unpaid assessments against the latter for his share of the common expenses upto the time of the sale. This Act however does not apply to the apartment we are concerned with, as there is no dispute, no declaration has been executed and registered under this Act.

11. There is no dispute that there was a general revaluation with effect from 4th quarter 1966-67 and the other with effect from the 4th quarter of 1972-73 with an intermediate revaluation from 2nd quarter 1970-71, the latter two valuations being yet to be finalised on account of objections. It has been stated that the premises Nos. 105, 105A, 105B, 105C and 105D were amalgamated and valued as premises No. 105 Park Street with effect from 3rd quarter of 1968-69 which was accepted by all concerned. The major demands for consolidated rates is for five quarters 3/71-72

to 3/72-73 - @ Rs. 12,612.67 each for the premises No. 105.

12. The Commissioner under the statute may issue rate bills on a valuation finally determined and in event of any objection to valuation, pending final determination of the objection, the consolidated rates shall be payable on previous valuation u/s 207. If however proviso (1) of section 207 is attracted, the consolidated rates shall be payable as in the present case on the intermediate revaluation from quarter 2/1970-71. In either case, there appears to be no legal impediment for apportionment of valuation u/s 174, as prayed for by the petitioner, particularly even when the final determination of objection is pending, on the valuation as may then be existing. Such apportionment of valuation must necessarily be subject to alteration in case on final determination the valuation of the entire premises is altered. It may be noted that 207 contemplates adjustment of excess amount of rate paid in case the valuation is altered following final determination.

13. In these circumstances it seems incumbent in law for the Commissioner to consider the application of the petitioner for apportionment of valuation on the valuation on amalgamation even when it is not finally determined on account of objection. Till such apportionment is made as prayed for or the application for apportionment of valuation is rejected for any reason, it cannot be said that the co-owner is liable for the consolidated rates for the entire premises. If the co-owner in the circumstances is not liable for the consolidated rates for the entire premises, no demand can be raised against him therefore during the pendency of his application for apportionment. The occupier's liability follows the liability of the owner and if the co-owner is not liable for the tax as demanded, the occupier under the co-owner will also have no liability therefore except for the consolidated taxes payable on apportionment of the co-owner's share unless the prayer for apportionment is refused. For these reasons I am of opinion that the demand for consolidated rates as contained in the tax bills for quarters 3/71-72 to 3/72-73 in both shares, as at present advised, is untenable in law.

14. The larger question raised at the bar that the demands for consolidated rates for the entire premises imposed on a owner of a part of the land and building in respect of such multistoreyed buildings with ownership flats constitute an unreasonable restriction violating provisions of Article 19(1) (f) need not be considered for the present. If the co-owner is at all refused apportionment of valuation of his share in the land and building, such question may require consideration by Court at appropriate stage.

15. The other bills need not detain us long. They relate to a period long over one year prior to the date of purchase and as such the owner is not liable personally for the same as provided in section 247. The occupier who is the owner himself also has no liability for the said demands. The Commissioner if he so advised is always at liberty to enforce the first charge it has in the land and building for the recovery of the said amount.

16. Mr. Dutt has submitted that if the petitioner pays any sum in excess to what is payable by him as contended, he is always entitled in law to recover the same from other co-owners for saving the property and he also cited a number of decisions in support. There is no dispute about this principle but the question does not arise in view of my finding that the disputed demands are not tenable in law as at present advised. A small dispute has been raised about the conveyance deed of the petitioner whereby he has purchased his share in the land and building. The Corporation authorities have denied that the document was ever produced by the petitioner which may not be correct in view of the seal of the Corporation appearing on the deed itself. In any event, the petitioner will forward a true copy of the conveyance to the Corporation without delay and will produce the original whenever called upon to do so. In the view I have taken the rule succeeds and is made absolute. Let a writ in the nature of mandamus issue forbearing the respondents from enforcing the demands comprised in the bills annexed to the petition and let also a writ in the nature of certiorari issue quashing the said demands and proceedings in connection therewith. Let also a writ in the nature of mandamus issue directing the Commissioner, Corporation of Calcutta and other appropriate authorities of the Corporation of Calcutta, to dispose of the application of the petitioner dated September 7, 1973 annexed to the petition in accordance with law. This order however will not prevent the Corporation of Calcutta from recovering otherwise the consolidated rates of the premises in accordance with law. There will be no order for costs in this rule.