

(2002) 09 CAL CK 0038

Calcutta High Court

Case No: Writ Petition No. 251 of 2001 with G.A. No. 2091 of 2002

Purnima Bagaria

APPELLANT

Vs

Calcutta Municipal Corporation
and Others

RESPONDENT

Date of Decision: Sept. 22, 2002

Acts Referred:

- Calcutta Municipal Corporation Act, 1980 - Section 174(5), 180, 180(2), 184, 184(3)

Citation: 107 CWN 301

Hon'ble Judges: Bhaskar Bhattacharya, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Bhaskar Bhattacharya, J.

By this writ application the writ petitioner, a lessee of 3rd degree in respect of the premises in question has prayed for direction upon the Calcutta Municipal authorities to withdraw the assessment of annual valuation of the property commencing 4th quarter of 1999-2000 and not to give effect to the consolidated rate bills issued on the basis of such valuation. The writ petitioner has further prayed for restraining the respondents from taking recourse to any distress proceedings in order to recover the aforesaid demand on the basis of annual valuation so assessed. The following facts are not in dispute.

2. The respondent No. 7. M/s. Stephen Court Limited, is a lessee of Premises No. 18G, Park Street Calcutta-700 016 under the Official Trustees of West Bengal, the respondent No. 6 herein who are Trustees of the said property on behalf of the Trust Estate of P.C.E. Paul. The respondent No. 7 let out a portion of the ground floor of Premises No. 18G, Park Street, Calcutta-700 016 measuring about 4736 sq. ft. on a monthly tenancy to M/s. Trade Link Securities Limited, the respondent No. 8 herein. The said respondent No. 8 as landlord had let out the said premises to the

present petitioner at a monthly rental of Rs. 22,000/-. The petitioner in her turn had let out the said premises to Music World Entertainment Limited, the respondent No. 9 herein, in accordance with an agreement dated December 30, 1999 and the said tenancy was to commence with effect from January 1, 2000. In respect of the period from the 4th quarter of 1996-1997. the Municipal Authorities assessed the annual valuation of the said premises at Rs. 57,240/- on the basis of rental of Rs. 5,300/- per month although the actual rent was Rs. 5,000/-. For the period commencing 4th quarter of 1999-2000, the Municipal authorities issued a notice u/s 184(3)/184(4) of the Calcutta Municipal Corporation Act, 1980 ("Act") proposing to assess the said premises at Rs. 58,32,000/-. Ultimately on December 7, 2000, the Hearing Officer (VI), Calcutta Municipal Corporation determined the annual valuation of the said premises at Rs. 44,49,600/- from the 4th quarter of 1999-2000 and a rate card and a consolidated rate bill were issued demanding the difference of consolidated rate bill payable on the previous annual valuation of Rs. 54,000/- and the new valuation. There is no dispute that before enhancing the aforesaid valuation no notice was even sent to the present petitioner but the same was given only to the Official Liquidator, the owner of the building.

3. Being dissatisfied with the aforesaid enhancement of valuation from Rs. 54,000/- to the new valuation of Rs. 44,49,600/- the petitioner has come up with the instant writ application.

4. The present application has been opposed by the Calcutta Municipal Corporation and Mr. Das Adhikary, the learned counsel appearing on behalf of the Corporation has taken various pleas in opposing the application.

5. Mr. Das Adhikary points out that the Municipality has duly served a notice upon the Official Trustee of West Bengal, the recorded owner, with the proposed valuation and gave opportunity to file objection against the said proposal. Although, notice was served upon recorded owner but lessee of the 1st degree viz. M/s. Stephen Court Limited filed their objection by showing the agreement reached between the writ petitioner and the Music World Entertainment Limited. The Official Trustee also contested at the hearing but the Hearing Officer passed an order of enhancement. Mr. Das Adhikary contends that the lessee of the 1st degree viz. M/s. Stephen Court has filed an appeal against such annual valuation and the prayer for waiver of the obligation to deposit current rates and taxes till finalization of appeal having been refused, the said Stephen Court preferred a writ application before this court. Mr. Das Adhikary alleges that the petitioner had full knowledge of the aforesaid notice and date of hearing but did not care to file any objection against proposed valuation before the Hearing Officer nor did she contest the hearing although the lessee of the 1st degree filed objection and contested. Mr. Das Adhikary submits that there is a collusion between the petitioner and the lessee of the 1st degree and the sole object of this petitioner is to stall the recovery.

6. Mr. Ghosh, the learned senior counsel appearing on behalf of the petitioner on the other hand contends that the Corporation had sought to enhance the valuation in view of transfer of the property by the petitioner to the Music World Entertainment Limited but in such a case law requires that a notice of hearing and a notice inviting objections should also be served upon all the sub-lessees including the petitioner and the Music World. Mr. Ghosh contends that if the Corporation wants to enhance valuation by reason of any agreement entered into between the petitioner and Music World, law enjoins that before proceeding further for such enhancement both the petitioner and Music World should be given opportunity of hearing as the petitioner and the Music World both will be affected by the adjudication. Mr. Ghosh points out that now the Corporation proposes to attach the rent payable by Music World to petitioner for realization of the enhanced amount of tax.

7. Therefore, the sole question that arises for determination in this writ application is whether for the purpose of enhancement of valuation due to intermediate transfer of property between two regular assessments, the Corporation is under obligation to issue notice to the persons who are parties to such intermediate transfer.

8. In this connection Mr. Das Adhikary has placed strong reliance upon the decision of the Supreme Court in the case of Assistant General Manager, Central Bank of India vs. Commissioner of Municipal Corporation for the City of [Asstt. General Manager, Central Bank of India and Others Vs. Commissioner, Municipal Corporation for the City of Ahmedabad and Others](#), In the said, case, the question was whether apart from a public notice under Rule 15(1) under Bombay Provincial Municipal Corporation Act, 1949, a tenant had right to have special notice under Rule 15(2) proposing enhancement of valuation. The Supreme Court answered the aforesaid question in negative, although upheld the right of the tenant to prefer appeal against the order of enhancement. By relying upon the aforesaid decision Mr. Das Adhikary submits that there is no necessity of issuing separate notice upon the lessee/sub-lessee or occupier of the building in terms of Section 184(4) of the Act.

9. After hearing the learned counsel for the parties and after going through the materials on record I find that according to the scheme of the Calcutta Municipal Corporation Act, annual valuation of a premises may be determined on two different occasions: one is the general revaluation which occurs at the interval of every six years and such general revaluation remains in force ordinarily for a period of six years or until the next valuation is made. Sub-section (3) of Section 184 deals with a situation in which the Corporation makes a general revaluation. On that occasion, the first obligation of the Municipal Corporation is to give a public notice. Thereafter in addition to public notice, if it is a valuation for the first time or if the annual value is increased from the previous last general revaluation, there is an additional

requirement of service of individual notices on owner/lessee/sub-lessee/occupier of the land and building.

10. Apart from the aforesaid general revaluation at the interval of six years, there may be an intermediate revaluation under the circumstances mentioned in Section 180(2) and in such a case the provision of subsection (4) of Section 184 is attracted and on that occasion there is no question of service of public notice as it is a case of revaluation of a particular premises. In such a situation, the Municipal Commissioner is required to give a written notice on the owner/lessee/sub lessee/occupier of such land and building. The present case is one of the latter type. Thus, in the present case no public notice was given and at the same time the writ petitioner was not favoured with any individual notice.

11. In the instant case, in the last general revaluation which took place from 4th quarter of 1996-1997, the annual valuation was determined at Rs. 57,240/-. The said valuation at the general revaluation was to remain in force up to 2002-2003 but in between the said periods, with effect from 4th quarter of 1999-2000 the Municipal authority proposed to make an intermediate revaluation on the ground of creation of new sub-tenancy by the petitioner in favour of Music World and while making such intermediate revaluation individual notice was addressed only to the Official Trustee, West Bengal and the same was sent to lessee of the 1st degree viz. M/s. Stephen Court Limited.

12. It is an admitted position that under the provisions of the Act although the owner is the person primarily liable to pay the consolidated rate, the owner is entitled to recover 1/2 of the consolidated rate and the whole of the commercial surcharge from the occupier vide Section 230 of the Act. In addition to that with the aid of Section 194 of the Act, each degree of lessee is required to pay to his lessor the differential amount of taxes taken into consideration the rent paid by him to his lessor. For the above reason, the Act imposes an obligation to give notice not only to the owner but also to lessee/sub-lessee/occupier etc. so that a person likely to be affected by the determination of the annual valuation, gets an opportunity to raise an objection to such revaluation. The decision of the Supreme Court in the case of Asstt General Manager, Central Bank of India vs. Commissioner, Municipal Corporation for the City of Ahmedabad and others, (1995) 4 SCC 696 relied on by Mr. Das Adhikary, in my view, has no application to the fact of the present case. In the said case, the question was whether in addition to public notice, a tenant is entitled to get special notice apart from the one served upon the owner. The Supreme Court was of the view that a public notice was sufficient. In the instant case I have already pointed out that this being a case of intermediate valuation between two general revaluations, there was no scope of public notice and thus the principle laid down in the said case cannot have any application to the case in our hand. In the present case, the Municipal authority proposes to enhance valuation in view of a transfer by one of the sub-lessees in favour of another. Thus, equity demands that before

arriving at any decision as regards revaluation on the basis of such transfer, the parties to such transfer should be heard as they will be affected by such decision. I have already pointed out that Section 184(4) of the Act specifically enjoins that in a case where Section 180(2) is attracted, a special notice must be given to owner/lessee/sub-lessee/ occupier. Therefore, the Municipal authority did not follow the aforesaid provision of the Act apart from the fact that the principles of natural justice has been violated.

13. I am not at all impressed by the submission of Mr. Das Adhikary that in this case the petitioner had knowledge of the date of hearing and as such there is no necessity of sending any notice. Once the governing statute commands that before proceeding with a case of reassessment on the basis of intermediate transfer notice must be given not only to the owner but also to lessee/sub-lessee/occupier, the Municipal authority cannot take a plea of dispensing with the necessity of sending such notice on the ground that the sub-lessee who is a party to transfer has knowledge of such proceedings. Therefore, even if the petitioner had any knowledge of the proceedings, the Corporation, not having complied with the requirement of law by even issuing the notice upon the petitioner a party to transfer, the assessment of revaluation on the basis of such hearing cannot bind the petitioner. It is needless to mention that the Corporation gets authority to proceed with revaluation only in compliance (sic) the requirements of law.

14. Mr. Das Adhikary in this connection tried to impress upon this court that a Municipality is not supposed to know who are tenants of the property and as such it cannot be obligatory upon the Municipal authority to serve notice upon all those tenants who did not mutate their names in the record of the Corporation. I am not at all convinced by such submission. In this case, on the basis of inspection of the premises and on the basis of definite information that there is necessity of intermediate revaluation for a new sub-tenancy created by a particular sub-tenant in favour of another, the Corporation having started the proceedings for revaluation, it cannot plead ignorance of the names of those sub-tenants when the Corporation itself is relying upon a transaction between such persons.

15. I now proceed to deal with the other decisions cited by Mr. Das Adhikary.

16. In the Full Bench decision of this Court in the case of Land and Brick Entertainment Limited vs. CMC, reported in (2000) 1 CHN 594, the question before Full Bench was whether the provisions of levy of commercial surcharge are ultra vires the Constitution of India and whether the lessor or the superior lessor is primarily liable for payment of the said amount. In such a context, submission was made that principle of natural justice was not complied by not protecting the rights of tenants. The Full Bench rejected the aforesaid contention holding that in terms of sub-section (3) of Section 184 the Municipal Commissioner is required to give public notice of the place, time and date not less than one month after the preparation of the assessment list as to when they should proceed to consider annual valuation of

the lands and buildings entered in the assessment list and in all cases in which any land or building is for the first time assessed or the annual valuation of any land or building is increased he should, also give written notice thereof to the owner or to any lessee, sub-lessee or occupier of such land or building and shall also specify in the notice the place, time, and date not less than one month thereafter when he will proceed to consider such valuation. Therefore, the aforesaid decision is no authority in support of the contention of Mr. Das Adhikary that in case of an intermediate revaluation u/s 184(4) of the Act necessitated in view of any of the circumstances mentioned in Section 180(2) of the Act. no notice need be given to the tenant, sub-tenant or occupier of the building.

17. In the case of Pravin K. Popat vs. The Calcutta Municipal Corporation, reported in (2000) 2 CHN 304, the owner of the premises raised an issue before court that notice not having been given to the tenant, the reassessment was bad. A Division Bench of this court did not accept the aforesaid contention on the ground that a general public notice had been issued and it was not a case of revision of consolidated rate within the meaning of sub-section (2) of Section 180 of the Act. Moreover, in paragraph 15 of the judgment it was clarified that since the appellant himself had been served with notice it was not open to him to complain about non-service of notice to tenant. Therefore, it is apparent that the said decision has nothing to do with a case where provision contained in Section 180(2) of the Act is attracted.

18. In the case of [Machinnon Machenzie and Co. Ltd. Vs. The Calcutta Municipal Corpn. and Others](#),) the question before Division Bench was whether movable properties belonging to tenants can be attached in execution of a distress warrant. The Division Bench held that it was absurd to suggest that recovery of tax can be made by attachment of the properties belonging to a person who is not liable therefore and against whom no assessment proceeding had been initiated. However, in the fact of the said case the Division Bench ultimately held that any amount deposited by the tenants might not be refunded and they would be entitled to exercise their respective rights as against the owners or their superior lessors or immediate lessors, as the case may be by way of adjustment of rent or otherwise as is permissible in law. I fail to understand how the said decision can be of any help to the Corporation in this case where the question is whether a tenant/lessee/sub-lessee/occupier is entitled to get notice u/s 184(4) of the Act.

On consideration of the entire materials of record I am thus of the view that the Hearing Officer acted illegally and with material irregularity in assessing revaluation for the disputed period without issuing any notice upon the present petitioner although the Hearing Officer took into consideration the transfer effected by the petitioner in favour of her subtenant. In such a case, as provided in Section 184(4) the petitioner is entitled to get a notice of hearing.

19. I thus quash the order of assessment of annual valuation in respect of the ground floor shop room at Premises No. 18G, Park Street, Calcutta for the period

commencing 4th quarter of 1999-2000. The Corporation is restrained from enforcing the said valuation. The Hearing Officer is directed to give notice of the fresh hearing upon the petitioner and other occupiers of the building in terms of Section 184(4) of the Act before proceeding further.

20. Since I have decided to quash the assessment on the ground of non-compliance of the provision contained in Section 184(4) of the Act. I have not considered the other prayer of the petitioner that some of the provisions of the Calcutta Municipal Corporation Act viz. Sections 174(5), 194, 195, 230, 231 or explanation to Section 184 are ultra vires Constitution of India. The aforesaid question is kept open. The writ application thus succeeds.

21. No order as to costs. In view of disposal of the main writ application the other interlocutory application being G. A. No. 2091 of 2002 has become infructuous and the same is disposed of accordingly.