

(2008) 08 CAL CK 0066

Calcutta High Court

Case No: G.A. No. 1234 of 2008, A.P.O. No. 157 of 2008, W.P. No. 229 of 2006

Kolkata Municipal Corporation
and Others

APPELLANT

Vs

Ram Niranjana Kajaria and Others

RESPONDENT

Date of Decision: Aug. 8, 2008

Acts Referred:

- Calcutta Municipal Corporation Act, 1980 - Section 148, 180, 183, 184, 185

Hon'ble Judges: Pratap Kumar Ray, J; Manik Mohan Sarkar, J

Bench: Division Bench

Advocate: A.K. Das Adhikari, Sandip De, Debangshu Mondal, for the Appellant; S. Ghosh, S. Deb, B. Das, for the Respondent

Final Decision: Dismissed

Judgement

Pratap Kumar Ray, J.

The Judgment of the Court was delivered by:

1. Heard learned Advocates for the parties.
2. Challenging the judgment and order dated 14th January, 2008 passed by the Learned Trial Judge in W.P. No. 299 of 2006, this appeal has been preferred by the Kolkata Municipal Corporation. By the impugned judgment under appeal, the Learned Trial Judge allowed the writ application and thereby on quashing the impugned rate cards and consolidated rate bills (fresh and supplementary) for the quarters in question as noted thereto directed de novo hearing of the matter to determine the valuation afresh on hearing the writ petitioner, who as per findings of the Learned Trial Judge being the recorded owner got no opportunity of hearing to oppose the annual valuation proposed, as no notice was served upon him.
3. An opposition was filed with reference to the writ application by the Appellant-Corporation contending, inter alia, that the writ petitioner was never the

recorded owner/occupier/lessee/sub-lessee of the premises in question and as such he had no legal right to claim right of hearing with reference to the annual valuation as was done in terms of Section 184 of the Kolkata Municipal Corporation Act. It was further contended that the notice was duly served to the recorded owner under certificate of posting in terms of the statutory provision of Sub-section (4) of Section 184 whereby and where under statute provides scope to issue notice of annual valuation under certificate of posting by declaring such mode of service by certificate of posting statutorily legal and valid.

4. The appellant before us has contended the same thing as urged before the Learned Trial Judge.

5. The writ petitioner since pleaded that he was the owner of the premises in question accordingly got a right to be heard for annual valuation with reference to the assessment years impugned in the writ application being the 4th quarter of 1990-91 and 4th quarter of 1996-97, the Court directed to file an affidavit disclosing his ownership right with reference to the premises in question. A supplementary affidavit on behalf of the writ petitioner was filed. However, it was contended that in the property in question the writ petitioner accrued legal right as owner in terms of the following transactions namely, (a) due to arbitration Award dated 13th September, 1956 whereby 8.33% of total area of the premises in question was allotted in his favour and thereby he accrued a right, (b) by registered Deed of Conveyance dated 22nd July, 2005 writ petitioner No. 1 acquired 16.66% share in the said premises and (c) by another registered Deed of Conveyance dated 22nd July, 2005 acquired 16.66% share in the said premises.

6. It is an admitted fact as it appears from the pleading of the writ application that the impugned rate cards and the annual valuation issued, relate to the 4th quarter of 1990-91 and 4th quarter of 1996-97 and the writ petitioner must satisfy that he was either the owner/occupier/lessee/sub-lessee of the premises in question or part thereof with reference to the property under annual valuation as indicated vis-a-vis the respective quarters of such valuation in the annual valuation notice and the rate cards impugned. So far as acquiring of right in the premises in question in the year 1956 due to the arbitral Award a document has been submitted by way of supplementary affidavit affirmed on 11th June, 2008 to satisfy this Court that a letter was addressed to the Assessor, Corporation of Calcutta on 5th March, 1957 by the learned Advocate of P.D. Himat singha & Co. on behalf of the petitioner requesting to mutate the name of the writ petitioner as owner of the undivided 1/6th share of the concerned premises namely, 6, Russell Street in the Assessment Register of the Corporation. So far as subsequent other two Deeds as have been referred to being the source of accrual of ownership of respective shares in the premises in question, those were not intimated to the Corporation for mutation of the name of the writ petitioner in the record of the Corporation. Save and except the letter of 1957, no other documents has been placed before us to prove that the writ petitioner

intended to mutate his name by dint of purchase of the property in the year 2005 by two separate registered Deeds of Sale in respect of the shares as mentioned thereto. Furthermore, as the impugned rate cards and annual valuation do not relate to the year 2005 or subsequent years too. If the writ petitioner accrues a right in the premises in question, in the year 2005, it will not improve the case of the writ petitioner to claim his status in the premises in question as owner/occupier/lessee/sub-lessee to raise objection of the annual valuation in terms of Section 184 of the said Act as at the material time relating to the annual valuation of 1990-91 the writ petitioner admittedly was not the owner in respect of the portion of the property which was purchased in the year 2005.

7. By the documents relating to arbitral award, as placed before us, the petitioner intended to claim his right on the basis of the letter addressed to the Assessor of the Corporation on 5th March, 1957 showing his ownership right of undivided 1/6th share of the premises in question. But there was no acknowledgment of the said letter by the Municipality. Now we have to test that whether the said letter would be considered as a letter intimating the Corporation to mutate his name in the respective records at the material time. The Kolkata Municipal Act, 1951 was the relevant Act at that time wherein u/s 186 there is a provision for notice of transfer of title for mutation of name. Section 186 reads such:

186. Notice of transfer of title, when to be given - whenever the tile in any land, or building or in any part of share of any land or building is transferred, the transferee shall, within six months after the execution of the instrument of transfer, or, if no such instrument be executed, after the transfer is effected, give notice in writing of such transfer to the Commissioner:

Provided that in the event of the death of the person in whom such title vests, the person to whom as heir or otherwise, the title of the deceased is transferred by descent or devise, shall, within one year from the death of the deceased, give notice in writing of such transfer to the Commissioner.

8. On a bare reading of the said Section, it appears that whenever someone accrues a right over a property in question any Deed of Conveyance or other instruments, same is required to be informed by proper notice to the Commissioner. The statute never directed the purchaser concerned or any person accrued any right in the premises in question to inform such to the Assessor of the Corporation of Calcutta. The business of the Assessor is only assessment of tax and he is not the Commissioner of the Corporation for the purpose of mutating the name of any owner in the Corporation record, as such power is vested statutorily to the Commissioner of the concerned Municipality in terms of Section 186 of the said Act. From the writ application it appears that there is grievance made about non-hearing before fixing the annual valuation by the Corporation in respect of the premises in question. Even if we assume that the writ petitioner became a recorded owner and thereby was legally entitled to have a notice of hearing on the basis of letter dated

5th March, 1957, it is the case of the writ petitioner that except the annual valuation of the said two years and more precisely two quarters in question of the respective years, the earlier notices were duly received by the recorded owners and they paid the property tax.

9. The law now has been changed in view of the change of the Kolkata Municipality to Kolkata Municipal Corporation. At the present moment the specific provision is Section 184 of Kolkata Municipal Corporation Act, 1980 to determine the property tax by assessing the same under annual valuation procedure as mentioned thereto, by detailing the procedure for service of notice and the manner by which such notice be served. Section 185 deals with amendment of assessments. Section 186 speaks about submission of an objection and Section 187 of the said Act deals with appointment of the hearing officer. Section 188 deals with hearing of objection and to make finality of the annual valuation in the form of an order which is required to be supplied to the objector, if any. Section 189 is the provision for preferring an appeal against such annual valuation as finally determined u/s 188 of the said Act. Section 183 is the provision whereby a change of title over the property or change of occupation of the property could be intimated for recording the name of the person concerned therein. The relevant provisions of Sections 183, 184 and 188 read such:

183. Notice of transfers. -

(1) Whenever the title of any person to any land or building is transferred, such person, if primarily liable for the payment of [property tax] on such land or building, and the person to whom the title is so transferred shall, within three months after the execution of the instrument of transfer or after its registration, if it is registered, or after the transfer is effected, if no instrument is executed, give notice of such transfer in writing to the Municipal Commissioner.

(2) In the event of the death of any person primarily liable as aforesaid, the person on whom the title of such land or building devolves shall, within six months from the date of death of the former, give notice of such devolution in writing to the Municipal Commissioner.

(3) The notice under this section shall be in such form as may be prescribed, and the transferee or the person on whom the title devolves shall, if so required, be bound to produce before the Municipal Commissioner any documents evidencing the transfer or devolution.

(4) If any person, who transfers his title to any land or building, fails to give any notice under this section to the Municipal Commissioner, he shall, in addition to any penalty to which he may be subject under this Act, continue to be liable for payment of the [property tax] on such land or building until he gives such notice but nothing in this section shall be deemed to affect the liability of the transferee for payment of the [property tax] on such land or building.

(5) The Municipal Commissioner shall on receipt of a notice of transfer or devolution of title under this section [and upon payment of such fee as may be determined by regulations], record such transfer or devolution in a book and also in the Municipal Assessment Book : [Provided that nothing in this sub-section shall derogate from the power of the Corporation to refuse mutation in a case where there is arrear of any dues to the Corporation on account of the transfer or the predecessor-in - interest of the applicant.]

(6) On a written request by the Municipal Commissioner, the Registrar of Assurances, Kolkata, or the District Registrar, 24 Parganas, shall furnish such particulars regarding registration of instruments of transfer of immovable properties in Kolkata as the Municipal Commissioner may, from time to time, require.

(7) Notwithstanding anything contained in sub-section (6), the Registrar of Assurances, Kolkata, or the District Registrar, 24 Parganas, shall furnish to the Municipal Commissioner such particulars soon after the registration of an instrument of transfer is effected, or, if the Municipal Commissioner so requests, such periodical returns at such intervals as the Municipal Commissioner may fix.

184. Public notice and inspection of assessment list.- (1) When a general revaluation under sub-section (1) of section 180 in any ward of the Corporation or part thereof, as the case may be, has been completed, the Municipal Commissioner shall cause the respective valuation to be entered in an assessment list in such form and containing such particulars with respect to each land or building as may be prescribed.

(2) When the assessment list has been prepared the Municipal Commissioner shall give public notice thereof and of the place where the list or a copy thereof may be inspected, and every person claiming to be the owner, lessee, sub-lessee or occupier of any land or building included in the list and any authorised agent of such person shall be at liberty to inspect the list and to take extracts there from free of charge.

(3) The Municipal Commissioner shall give public notice of the place, time and date, not less than one month after the preparation of the assessment list as aforesaid, when he will proceed to consider the annual valuations of 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 value of any land or building is increased, he shall 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.

[(4) Before making any revision of annual value under sub-section (2) of section 180 and clause (a), clause (b) and clause (c) of section 185, the Municipal Commissioner shall give the owner, any lessee, sub-lessee or occupier of any land or building,

notice of not less than thirty days that he proposes to make the revision and consider any objection which may be made by such owner, lessee, sub-lessee or occupier.]

188. Hearing of objections.- (1) Objections filed u/s 186 shall be entered in a register maintained for the purpose in such manner as may be prescribed.

(2) On the date, time and place specified under sub-section (3) or sub-section (4) of section 148 and after giving the person filing the objections an opportunity of being heard either in person or through an authorised agent, the officer appointed u/s 187 shall determine the objections.

(3) When an objection has been determined, the order in this behalf shall be recorded in the register maintained under sub-section (1) with the date, and a copy of the order shall be supplied within [thirty days] thereof [to the person filing the objection] in such form and manner as may be prescribed.

(4) The procedure for hearing and disposal of objections shall be such as may be prescribed.

(5) The valuation fixed after determination of objection under this section shall take effect from the quarter in which such valuation would have taken effect and shall continue to remain in force during the period such valuation would have remained in force, had no objection been filed.

10. On a bare reading of Section 183 of the said Act, it appears that in a prescribed format an application seeking recording of the name in the Municipal records by acquiring the title over the property in question is required to be served to the Municipal Commissioner.

11. In the instant case, admittedly no such notice either u/s 183 of the present Act or u/s 186 of Calcutta Municipal Act, 1951 addressing to the Municipal Commissioner was served. The earlier provision of Section 187 of said Act of 1951 categorically stipulated that for the purpose of making an entry as owner or occupier in the assessment book with reference to the transfer of ownership or transfer of title in terms of the documents as relied upon should be served to the owner or occupier as and when a notice u/s under Section 186 could be received by the Municipal Commissioner.

12. In the instant case admittedly the procedure of Sections 187 and 186 were not followed and the writ petitioner never invited Municipal Commissioner to do such in terms of the old Act of 1951. Even if it is assumed that the petitioner acquired ownership of undivided 1/6th share of the premises in terms of the arbitral Award mentioned in the letter of 5th March, 1957, this Court is of the view that the petitioner never was a recorded owner in respect of the part of the premises.

13. Now we have to deal with Section 184 which is the basic Section to assess the annual valuation already quoted. Under Sub-section (4) of Section 184, a written notice of such revision of annual valuation is required to be served to the owner, any lessee, sub-lessee or occupier of such land or building inviting objection thereof. Under explanation of Sub-section (4) there is a deeming clause of due service of notice even if it is posted under certificate of posting. Hence, it appears under Sub-section 4 that only the owner or any lessee, sub-lessee or occupier of the concerned land or building is entitled to have the notice of annual valuation which obviously means the recorded owner or recorded lessee, recorded sub-lessee or recorded occupier, otherwise it is impossible for the corporation to find out while serving the notice of annual valuation of the property though in the statute it is specifically not mentioned as recorded owner, recorded lessee, recorded sub-lessee or recorded occupier but it will be deemed for all purposes that for claiming any legal right of service of notice with reference to the annual valuation, the person concerned must be a recorded owner, recorded lessee, recorded sub-lessee or recorded occupier of such land or building.

14. For that reason there is a provision for recording the name of owner/occupier/lessee/sub-lessee in terms of Section 183 whereby and where under there is a mandatory provision that as and when any transfer of title of such land or building to be effected failing to give notice of such transfer to the Municipal Commissioner, the person concerned will have to suffer the penal consequence and under sub-section (4) of Section 183 there is a specific provision that so long the name of the new purchaser of the property in question or person concerned who acquires right over the property in question in any manner, is not properly recorded the liability of the transferee for payment of the property tax on such land or building will remain. Hence under the said statutory provision the owner of the land in question or building in question even after transfer of the title of the property to anybody carries the liability for payment of the property tax until and unless the transferee's name is recorded in the assessment register of the Corporation in terms of notice u/s 183 as to be given by the transferor and transferee both along with the necessary documents as a proof of such transfer. Having regard to such, as admittedly the writ petitioner never recorded such transfer of title in his favour by the original transferor, the owner of the property, the owner of the property has to carry the liability of the property tax including the statutory enhancement of such property tax in terms of Section 184 by way of annual valuation and the writ petitioner cannot be said as a party affected in terms of the judgment to create a locus to file a writ application as has been relied upon by the learned advocate appearing for the writ petitioner/respondent being the judgment passed in the case of [Ghulam Qadir Vs. Special Tribunal and Others](#). It is true that earlier rigors of locus standi now has been changed and thereby a right concept has been evolved to entertain any writ application and on that score the Apex Court considered the issue that when any person is adversely affected so far as his right is concerned, the locus

standi point is nothing but a mere technicalities in the Ghulam Qadir (supra) case cited by the learned advocate for the writ petitioner/respondent. The Court held that when action impugned is a clear violation of the law, the locus standi point becomes the technical one in terms of the judgment passed in the case of [M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others](#), as relied upon by the learned advocate for the writ petitioner/respondent. There is no dispute on the legal principle reflected in the judgment referred to by the respondent/writ petitioner. The principle of law is quite settled that the earlier concept of locus standi has got a sea change. Now a party adversely affected may approach the writ court. Recorded owner who is a party of the writ proceeding did not file any affidavit in opposition supporting the claim of the writ petitioner that no notice of hearing was served. Furthermore the recorded owner is also not a party aggrieved by the action of the municipality serving the rate card determining the annual valuation in terms of Section 188 which has been duly received by them as claimed in the writ application save and except a notice of hearing under sub-section (4) of Section 184. The recorded owner is one of the respondents. He has not raised any grievance on issue of service of notice. Accordingly we are not concerned whether the recorded owner has duly been served or not, as has been intended to agitate by the learned advocate appearing for the writ petitioner before us. In support of this point he relied upon the judgment passed in M.S. Jayaraj (supra) to contend that the action of the appellant corporation is on breach sub-section (4) of Section 184 which has provided a scope to entertain the writ application.

15. We have already held that the writ petitioners are not at all the recorded owner or lessee or sub-lessee or occupier of premises in terms of the records as are being maintained by the Corporation following the procedure of making such entry of names of the persons concerned who acquires title over the property in question in terms of Section 183 of the said Act. Under Rule 6 of the Kolkata Municipal Corporation (Taxation) Rules, 1987 notice of transfer or devolution of title of land or building is required to be filed in a prescribed form namely Form D to the Municipal Commissioner by detailing the particular thereof as mentioned thereto whereby the Municipal Commissioner is bound to consider the same on giving an opportunity of hearing by serving a written notice in Form E-1 to the concerned person in terms of Rule 7 and thereby to enter the name of the person concerned in the assessment register. The petitioner did not comply those. As such he cannot claim himself as a recorded owner. The Rules 6 and 7 of the Kolkata Municipal Corporation (Taxation) Rules, 1987 read thus :

6. Notice of transfer or devolution of title of land or building. - Any person to whom the title of any land or building is transferred or devolved shall as required under sub-section (1) or sub-section (2) of section 183, give notice of such transfer or devolution in Form D to the Municipal Commissioner. The Form D shall before issue be authenticated by an officer so empowered by the Municipal Commissioner and sold at such price as may be fixed by the Mayor-in-Council from time to time.

7. Recording of transfer or devolution. - The Municipal Commissioner shall, on receipt of a notice of transfer or devolution in Form D, record such transfer or devolution in Form E after giving the parties an opportunity of being heard of service of written notice in Form E-1 either by hand or under certificate of posting.

16. Reliance may be placed in the case of [Ahuja Industries Ltd. Vs. State of Karnataka and Others](#), by the appellant-Corporation wherein in identical situation the Apex Court dealt with the issue as to whether a person whose name is not recorded in the records maintained by the Land Reforms Department would be entitled to have a notice of acquisition under Land Acquisition Act by holding that the unrecorded persons are not entitled to have a notice of acquisition proceeding.

17. Considering all the aspects of the matter, accordingly we are of the view that the writ petitioner failed to satisfy the point that he is the recorded owner or occupier or sub-lessee of the premises in question and as such the Corporation had no legal duty and responsibility to serve any notice upon him u/s 184 of concerned Act. Since the Corporation had no legal liability and duty to serve a notice to the writ petitioners, it is immaterial whether any notice was served to the recorded owner under certificate of posting or not for the purpose of adjudicating the instant case. Accordingly we are of the opinion that the writ petitioner has no legal right to file a writ application and he is not a party aggrieved at all due to annual valuation of property relating to the years when he never was the recorded owner/occupier of the premises in question to carry the tax liability. The writ petition accordingly stands dismissed. The impugned judgment under appeal is set aside and quashed. The appeal succeeds.

18. In view of the dismissal of the appeal on merit, nothing remains to adjudicate the stay application. The stay application accordingly stands disposed of on said term.

19. Urgent xerox certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

Manik Mohan Sarkar, J.