

(2005) 12 CAL CK 0045

Calcutta High Court

Case No: Writ Petition No. 19179 (W) of 2005

Aniruddha Basu

APPELLANT

Vs

Kolkata Municipal Corporation
and Others

RESPONDENT

Date of Decision: Dec. 14, 2005

Acts Referred:

- Calcutta Municipal Corporation Act, 1980 - Section 180, 180(3), 183, 183(5)

Citation: (2006) 1 CALLT 496 : 110 CWN 380

Hon'ble Judges: Jyotirmay Bhattacharya, J

Bench: Single Bench

Advocate: Tapabrata Chakrabarty and Abhijit Basu, for the Appellant; Sandip Kumar Dey and Rituparna Sarkar, for the Respondent

Judgement

Jyotirmay Bhattacharya, J.

The petitioner has filed this writ petition by challenging the inaction on the part of the concerned respondent of Kolkata Municipal Corporation for not considering the petitioner's application for mutation as well as his application for reassessment of the flat in question.

2. The petitioner purchased a flat being flat No. 5 in a multi-storied building namely Heera Apartment situated at premises No. 42F, Bedia Danga, 2nd Lane (presently New Ballygunge Road, P.S. Kasba) from the erstwhile recorded owner thereof by a registered deed of conveyance dated 29th October, 2004.

3. Immediately after purchase of the said flat, the petitioner applied for mutation of his name as owner of the said flat in the place of the petitioner's vendor in the municipal records. The requisite formalities which are required to be complied with, has all been completed by the petitioner in this regard.

4. The grievance of the petitioner in this writ petition is against the Municipal authority, as the said authority, in spite, of receipt of the petitioner's said application for mutation as back as on 1st March, 2005, has not taken any step in this regard till date.

5. Prior to the purchase of the said flat by the petitioner, the said flat was let out to a tenant by the erstwhile owner thereof. Accordingly, the annual valuation of the said premises was assessed by the Municipal authority by taking into account the actual rent which was payable by the tenant in respect of the said flat to the erstwhile owner thereof.

6. The said tenant subsequently vacated the said flat to the vendor of the petitioner before its sale to the petitioner and as such the petitioner received vacant possession of the said flat from his vendor. Since then, the said flat is in actual possession of the petitioner.

7. Under such circumstance, the petitioner submitted an application for reassessment of his flat by taking into account such change of the nature of occupation of the said flat. The said application which was received by the Assessor-Collector of the Kolkata Municipal Corporation on 23rd June, 2005, still remains unattended.

8. Accordingly, the petitioner also prays for issuance of necessary direction upon the concerned Municipal authority for early consideration of the petitioner's prayer of reassessment of the said flat in terms of the provision of Section 180 of the Kolkata Municipal Corporation Act, 1980.

9. The petitioner has also challenged the validity and/or legality of the demand notice by which payment of arrear rates and taxes for the period from 2nd quarter of 2002-2005 to the 1st quarter of 2005-2006 at the existing rate was demanded from the petitioner.

10. Mr. Tapabrata Chakrabarty, learned Advocate, appearing for the petitioner, drew attention of this Court to Annexure "P-2" to this writ petition at page 22 to show that the Municipal authorities themselves acknowledged the receipt of the rates and taxes of the said premises upto 2nd quarter of 2004-2005. Mr. Chakraborty pointed out from Annexure "P 6" to this writ petition that the Municipal authority again demanded the payment of rates and taxes for the period of 2nd quarter of 2004 - 2005.

11. Mr. Chakrabarty, thus submitted that subsequent demand of the rates and taxes for the very same period which was included in their demand notice being annexure "P-6" to this writ petition at page 28, is illegal.

12. Mr. Chakrabarty further submitted that the Municipal authority also cannot demand payment of the rates and taxes of the said flat from the petitioner at the existing rate which was fixed by taking into consideration the actual rental income

received by the erstwhile owner thereof from the then tenant of the said flat. Mr. Chakrabarty contended that the Municipal authority should first reassess the annual valuation of the said flat by taking into account the altered situation as disclosed in his application being Annexure "P-5" to this writ petition at page 26 and then should have demanded payment of the rates and taxes of the said flat from the petitioner on the basis of reassessed annual valuation of the said flat.

13. Accordingly, Mr. Chakrabarty prayed for quashing of the demand as contained in annexures "P-6", "P-7" and "P-8" to this writ petition.

14. Mr. Dey, learned Advocate, appearing for the Corporation authorities, submitted that the petitioner's application for mutation cannot be considered unless the entire up-to-date dues on account of rates and taxes of the said flat, are paid by the petitioner. By referring to the averment made in the petition itself Mr. Dey pointed out that admittedly the petitioner has not paid up-to-date rates and taxes of the said flat.

15. Mr. Dey further contended that even the reassessment of the said flat in terms of the petitioner's prayer as contained in his application being Annexure "P-5" to this writ petition at page 26, cannot be considered by the concerned respondent as no such prayer was made by the petitioner in the prescribed form being form No. A-75.

16. Mr. Dey further submitted that until and unless reassessment is made, the petitioner is liable to pay the rates and taxes of the said flat at the current rate. Mr. Dey contended that under the Kolkata Municipal Corporation Act, reassessment always takes effect prospectively and as such the petitioner cannot avoid payment of the rates and taxes at the existing rate pending consideration of his prayer for reassessment of the said flat.

17. Mr. Dey, thus, supported the actions of the Kolkata Municipal Corporation and invited this Court not to interfere with the impugned action of the concerned respondent.

18. Heard the learned Advocate of the parties.

19. Let me now consider the respective submissions of the learned Advocate of the parties with regard to the petitioner's various prayers, as contained in this writ petition one after another.

20. So far as the petitioner's prayer for mutation of his name as owner of the said flat is concerned, this Court holds that in view of the proviso to Sub-section (5) of Section 183 of the said Act, the Municipal authority cannot withhold the consideration of the petitioner's prayer for mutation on the ground of nonpayment of arrear dues to the Corporation either on account of the transfer or on account of predecessor-in-interest of the applicant.

21. Accordingly, this Court does not find any substance in the contention of Mr. Dey to the effect that the petitioner's prayer for mutation cannot be considered unless the entire arrear rates and taxes are paid by the petitioner.

22. Thus, this Court directs the concerned authority, viz., the respondent No. 4 herein to consider the petitioner's application for mutation being Annexure "P-3" to this writ petition and dispose of the same by passing a reasoned order after giving an opportunity of hearing to the petitioner as well as the other interested party positively within a period of four weeks from the date of communication of this order. It is, however, made clear that non-payment of arrear dues cannot be a ground for refusal to mutate the name of the petitioner as a owner of the flat in question in terms of the provision of Section 183 of the said Act.

23. Regarding the petitioner's prayer for reassessment of the said flat, this Court, however, finds substance in the submission of Mr. Dey, as it appears from the writ petition that no such prayer was made by the petitioner in the prescribed form.

24. This Court was informed by the learned Advocate for the petitioner that such forms are supplied by the Municipal authority themselves and as such unless such form is supplied to the petitioner by the Municipal authority, the petitioner is unable to apply in the prescribed form.

25. Accordingly, it is made clear that if the petitioner approaches the concerned authority for supply of such form, the concerned respondent will supply the prescribed form to the petitioner positively within a period of one week from the date of such approach. It is further made clear that in the event the petitioner applies for reassessment of the said flat in the prescribed form, the concerned respondent should consider the petitioner's prayer for such reassessment in accordance with law and will dispose of the same by passing a reasoned order after giving an opportunity of hearing to the petitioner positively within a period of four weeks from the date of submission of such prayer in the prescribed form.

26. In view of the provision as contained in Sub-section (3) of Section 180 of the said Act, this Court does not find any illegality in such demand which was made vide Annexures "P 6, P-7" and "P-8" to this writ petition. Sub-section (3) of Section 180 of the said Act is set out hereunder:

Section 180(3). Any revision in the annual valuation of any land or building or portion thereof under this section shall come into force from the beginning of the quarter of a year ending on the 30th June or 30th September or 31st December or 31st March, as the case may be, following that in which such revision becomes applicable and shall remain in force for the unexpired portion of the period during which but for such revision such annual valuation would have remained in force.

27. Plain reading of the aforesaid provision makes it clear that the revision of assessment u/s 180 of the said Act is prospective which will come into force the

beginning of the quarter of a year ending on 30th June 30th September or 31st December or 31st March, as the case may be, following that in which such revision is made.

28. In such view of the matter, this Court does not find any substance in the submission of Mr. Chakrabarty to the effect that the Municipal authority cannot raise any demand for payment of rates and taxes at the existing rate, pending consideration of his application for reassessment. It may also be noted herein that even as on this date no competent application of reassessment of the said flat has yet been filed before the concerned authority. As such, the petitioner's prayer for quashing of the said demand as contained in Annexures "P-6", "P-7" and "P-8" to this writ petition stands rejected.

29. But at the same time the Municipal authority is directed to verify its records regarding the petitioner's claim for payment of rates and taxes of the said flat for the period, 2nd quarter 2004-2005 and in the event it is found that such payment had already been made, then the concerned respondent will recast its demand by excluding the amount which had already been paid as indicated above.

30. The writ petition, thus, stands allowed in part.

31. Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible.