

ORDER SHEET

WP NO.235 OF 2016

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

ORIGINAL SIDE

RAMESHWAR PROPERTIES PVT. LTD.

Versus

KMC & ORS.

.....

BEFORE:

The Hon'ble JUSTICE I. P. MUKERJI

Date : 17th March, 2016.

Mr. U. Majumder, Mr. S. Bose...appear.
Ms. L. Banerjee, Mr. D. Mantosh...appear.
Mr. P.K. Dutta, senior advocate,
Mr. Fazlul Haque, Mr. G.Das...appear.

The Court : The subject premises is Stephen House, at premises no.6E, R.N. Mukherjee Road, Kolkata-700 001. Since 1st February, 1982, the writ petitioner is in occupation of 1366 sq.ft. on the ground floor of the said premises on a long lease of 75 years.

Admittedly, the lessee had the power to underlease. They have underleased their leasehold interest in favour of Central Bank of India.

Now, the problem is this. The demised portion is being used by the bank for commercial purposes. Commercial surcharge in addition to property tax is payable in respect of the said portion.

Now, section 178[6] of the Kolkata Municipal Corporation Act, 1980 is in the following terms :

“The Municipal Commissioner, shall upon an application made in this behalf by an owner, lessee or sub-lessee or occupier of any land or building and upon payment of such fees as may be determined by the Corporation by regulations, furnish information to such person regarding the apportionment of the [property tax] of such land or building among the several occupiers within such land or building for the current period or the period immediately preceding:

Provided that nothing in this Sub-section shall prevent the Corporation from recovering the dues from any such person.”

It permits a lessee to approach the Municipal Commissioner to inform the lessee as to the apportionment of the property tax with regard to his occupation. In other words, when the Commissioner is approached with this application, he is required to determine the proportionate tax to be paid by the occupier.

The proviso makes it even more clear. It says that ‘nothing in this sub-section shall prevent the Corporation from recovering the dues from any such person’. Therefore, if the Corporation has the power to recover its dues from a person asking for apportionment, that person is immediately vested with a duty to pay the apportioned tax.

All that the writ petitioner wants is apportionment of the tax from 1982. It also follows that while making this apportionment the Corporation will also give credit to the amount of tax paid on account of this 1366 sq. ft. area on the ground floor in the occupation of the writ petitioner.

In those circumstances, the Municipal Commissioner or if it is so permitted his delegate will make an apportionment of the tax payable by the petitioner from 1st February, 1982 and the amount of tax due and payable by it, as of today, after giving hearing to the petitioner’s representative and the lessor, Dalhousie Properties Pvt. Ltd. by a reasoned order within 12 weeks of communication of this order. I clarify that this apportionment will only be made of the lessee’s share of tax.

As proposed by Mr. Majumder, the apportioned tax may be paid off by his client, the petitioner.

All papers are before this court. No affidavit has been called for. Allegations, if any, contained in this petition are deemed not to have been admitted.

This application is, accordingly, disposed of.

All parties concerned are to act on a signed photocopy of this order on the usual undertakings.

(I. P. MUKERJI, J.)

