

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPO 903 of 2021

M/S. Monotona Marketing (P) Ltd.

Vs.

The Kolkata Municipal Corporation & Ors.

For the Petitioner : Mr. Dhiraj Trivedi
: Mr. Bikash Kr. Singh
: Mr. Sunil Gupta
: Ms. Swapna Jha

For the KMC : Mr. Alak Kr. Ghosh
: Mr. Manojit Pal

Judgment on : **13/05/2025**

Rai Chattopadhyay, J. :-

1. The writ petitioner is the lessee of the premise in question, who is aggrieved with the letter of intimation issued by the respondent/Kolkata Municipal Corporation, dated March 25, 2021, enumerating there in the total outstanding property tax of the petitioner to be Rs. 55,15,196/-. The petitioner is also aggrieved and dissatisfied with the notice of demand issued by the said respondent dated August 6, 2021, demanding payment of Rs. 59,37,328/- as property tax including interest and penalty for the premise No. 27, Ezra Street. The petitioner's further grievance is that the said respondent Authority has not even taken up it's written representation dated June 17, 2021 for consideration, by dint of which the petitioner has ventilated its grievances and sought for redress thereof. The petitioner is also aggrieved that in spite of the premises having been declared as a Grade-I heritage property, the

respondent/Corporation has willfully refuted to enter into any agreement with the petitioner as per provision under section 425K of the Kolkata Municipal Corporation Act, 1980, in order to exonerate the petitioner from payment of municipal taxes, in respect of the said heritage property. According to the petitioner, it's statutory and legal rights are infringed in this way due to the inaction as above of the respondent Authority. Hence, this petition is filed.

2. Mr. Tribedi, learned counsel, has represented the writ petitioner. He says that the petitioner holds the legal and valid leasehold rights over the premises No. 27 and 31, Ezra Street, Kolkata - 700001 and also No. 19, Parsi Church Street, Kolkata- 700001. Two separate lease deeds were executed on December 9, 1994, by the trustee-shebait/lessor namely, Rustomjee Cowasjee Fire Temple/Agiari Religious Endowment, for a term of 99 years and having separate renewal clause. That, the petitioner has been maintaining, preserving and looking after the premise in terms of the said lease deed, since the year 2003. It is stated that though a few tenants are residing there in, but the property is heavily infested with illegal occupants and trespassers. It is submitted that the petitioner's endeavour for repair and expansion of the existing building, by obtaining a sanctioned plan for the same from the respondent/Corporation has gone in vain, in so far as, for reasons unknown, the said respondent has refused to accept the statutory fees for sanction of plan. Hence, according to the petitioner, neither repair of the building could be done nor any construction could be made at the same premise and the existing building lies in a dilapidated condition.

3. Mr. Tribedi learned counsel has stated that the said property at premises No. 27, Ezra Street, Kolkata 700001, has been declared as a Grade-I heritage property by incorporating the same into the 'List of heritage properties, volume -XI', published as on February 25, 2009, by the Heritage Conservation Committee of the respondent Corporation. The petitioner as the lessee thereof and possessing the valid leasehold rights for 99 years, therefore having status akin to that of the owner of the premises, has been duly discharging the responsibility for preservation, conservation, and maintenance of the said premises that being a heritage property. As the premises is largely occupied by the illegal occupants, the petitioner has expressed grievance that it is deprived of the usufructs by utilisation of the premises for generating income sufficient for maintenance of the said premises. In such circumstances, the petitioner has sought for that the respondent/Corporation may invoke provision under section 425K of the Kolkata Municipal Corporation Act, to enter into an agreement with the petitioner for exemption of taxes and charges with respect to the said property. Mr. Tribedi has mentioned about a writ petition earlier filed by the present petitioner, with respect to the self-same property. He says that in the order of the Court dated June 14, 2023, in WPO 2346 of 2022, the Court has mentioned about the illegal occupants and trespassers within the premises of the said heritage building and it's dilapidated condition. A conservation architect was appointed by the Court to chalk out a plan for preservation and conservation of the heritage premises 26, Ezra Street. It is submitted that the conservation architect appointed by the Court has submitted his report that due to non-demarcation of the boundary wall of the premises No. 26, 27 and 31 Ezra Street and due to serious hindrance in egress and ingress to

and from the said premises due to the occupation by the unauthorised occupants and trespassers, the said appointee was not at all able to enter the premise. Hence, in spite of paying remuneration to the Court appointed conservation architect, the petitioner has not been able to obtain a plan as desired by the Court. According to the petitioner, the income from rent collected from the tenants in the said premises is insufficient for maintenance thereof and there is serious crunch of adequate fund, so that a Grade-I heritage building like that at premises No. 26, Ezra Street, can be maintained as per the standards akin to its status. That with such meagre income, the petitioner is also unable to bear the tax burden of the said heritage property. Mr. Trivedi has argued that the petitioner's case is the apt one in which the respondent should invoke provisions under section 425K of the Kolkata Municipal Corporation Act and enter into an agreement with the petitioner, to exonerate it from the tax burden of the said heritage building.

4. The writ petitioner's further contention is that certificates of enlistment have been unauthorisedly and illegally issued by the respondents to the persons who have illegally occupied the premises, without any verification whatsoever. That, such certificates have been issued as against the premises numbers, which do not actually even exist.
5. The writ petitioners have prayed for the reliefs as enumerated in the said writ petition.
6. The respondent Corporation is not in unison with the ground pleaded by the petitioner that the petitioner is entitled for the benefit and appropriate action under the statutory provision as per section 425K of the Kolkata Municipal Corporation Act. It

has been submitted that the petitioner is only the occupier and not the owner of the premises in question. It is submitted further that there are categories prescribed under the said provision of law as regards the persons who would be eligible to be entered into an agreement with the respondent Corporation. It is submitted that the same includes an owner of the premises but not an occupier thereof. Therefore, according to the respondent, the petitioner lacks the eligibility, competence and authority under the law for the statutory provision as above to be invoked for it. That the petitioner does not come within the meaning of the word "owner" under the Explanation-II of section 425A of the Act of 1980 for the purpose of Chapter-XIIIA thereof. It is stated that entering into an agreement for exemption from payment of property tax in respect of declared heritage building is not a matter of course, but there should be a genuine and valid requirement for the same. That, the power of the Corporation to execute such an agreement is absolutely discretionary. Therefore, according to the respondent, it is the matter of objective satisfaction of the respondent Authority, as to whether or not the legal provisions as afore stated, may be invoked in case of the petitioner. It is submitted that the Court sitting in writ jurisdiction may not extend any such relief as prayed for in the instant case in so far as the petitioner is unable to bring on record any violation of its statutory or legal rights to be successful to obtain relief from the writ Court, as prayed for. Instead, according to the respondent, the petitioner is a habitual defaulter who has intentionally avoided paying property tax for the said property. It is also submitted that commercial activities are being carried on from the said heritage building. The respondent has stated that in order to avoid paying property tax, as stands outstanding for the said premises, this case has been filed only involving one premise,

out of the total four premises numbers which have been declared as Grade-I heritage property. It is submitted that the Parsi Fire Temple actually situates in the other adjoining premises being 26 Ezra Street. According to the said respondent, the petitioner's alleged action of evading taxes for the said premises is in violation of the lease agreement, under which it has claimed rights as regards the premises in question. Also, that the petitioner has not been discharging its statutory obligation under section 425A of the Kolkata Municipal Corporation Act by duly maintaining, preserving and conserving the heritage property. According to the respondent, it bears no statutory obligation under section 425K of the Act of 1980 towards the petitioner, who is the lessee and occupier of the premises and not the owner, to enter into an agreement with as per the said provision of law. On the contrary, the petitioner, in terms of the lease agreement as mentioned above and as it is the lessee thereof, is obliged to pay property taxes to the respondent for the said premises, which it has admittedly defaulted to pay.

- 7.** It is also an admitted fact in the instant case that, the premises at 27, Ezra Street, along with the adjoining premises No. 26 and 31, Ezra Street 19, Parsee Church Street have been declared as heritage premises being religion/Parsee Fire Temple, of Grade-I category. The duties and responsibilities for maintenance, conservation and preservation of the heritage premises as above, lies with the person in charge of maintenance thereof, in this case being the writ petitioner in his capacity as lessee and possessing leasehold right of the said property.
- 8.** The factual background is more or less undisputed in this case. The petitioner is the lessee with respect to the premises in

question, by dint of a lease deed being executed by the trustee thereof in its favour. Since the date of execution of the lease in favour of the petitioner for 99 years, the petitioner is in possession of the premises and resides therein. These are the admitted facts in the case. Also admitted is that, a letter of intimation dated March 25, 2021 and notice of demand dated August 6, 2021 have been served upon the writ petitioner being the occupier of the premises for payment of Rs. 5937328.18/- including interest and penalty as the property tax of the premises.

- 9.** Therefore, the solitary issue remains for adjudication in this case is whether the lessee/occupier/writ petitioner shall have a right under Chapter XXIII A of the Kolkata Municipal Corporation Act, 1980, more precisely under Section 225 K thereof, that the provisions thereunder be invoked in this case and an agreement be entered into with it by the respondent/Corporation, granting exemption to the writ petitioner to remit taxes for the said heritage property.
- 10.** Chapter XXIII A of the Act of 1980 has been introduced by dint of the Kolkata Municipal Corporation (Amendment) Act, 1997 (West Bengal Act XXVI of 1997). Chapter XXIII A is to introduce provisions as to how the heritage buildings within the jurisdiction of Kolkata Municipal Corporation can be identified, declared, maintained, preserved and conserved. The same has provided for obligation of the owner/occupier in case of the property having been declared heritage, constitution of the Heritage Conservation Committee and its powers and functions and many other facets relating to identification, preservation and conservation of the heritage property including power of the respondent to exercise discretion to exempt for payment of

property tax partly or fully for a property declared as a heritage property.

11. The respondents have raised objection to the contentions and prayer of the writ petitioner for the reason that in terms of Section 225 K, the petitioner would not be eligible for benefit thereunder in so far as the petitioner is not the owner of the premises. It is stated that the owner of the premises has never come up seeking for exemption of taxes thereof.
12. It is necessary that relevant statutory provisions be gone into to ascertain the status of a lessee/occupier of the premises like the petitioner who possesses leasehold right of the property by virtue of a lease of 99 years. The word “occupier” has been defined under Section 2(60) in the following words:-

“(60) “occupier” includes any person for the time being paying or liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which the word is used or for damages on account of the occupation of such land or building, and also a rent-free tenant.

Provided that an owner living in or otherwise using his own land or building shall be deemed to be the occupier thereof;”

13. Under the Kolkata Municipal Corporation Act, 1980 an “occupier” is primarily defined in relation to property taxes and the enforcement of building regulations. Essentially, an occupier is a person who has possession or control of a land or building and may be required to pay property taxes or to carry out work required by the Corporation. It is evident in this case that according to its own assertion, the Corporation has raised bills for property tax against present petitioner. Obviously it being “occupier” of the premises by virtue of the lease deed, has been entrusted for payment of property tax for the same to the Corporation, in accordance with law.

14. For the purpose of this case, one need to understand that an “occupier” in accordance with the statutory provision as mentioned above, is a person who pays rent for the property kept by him, to the owner thereof. The Act of 1980 outlines provisions for recovery of property tax from occupiers. Section 225 K of the Act permits the Municipal Commissioner to issue notices to the occupiers requiring them to pay to the Corporation to satisfy property tax dues. The Municipal Commissioner can also direct the occupiers to undertake work that the owner might otherwise be required to perform under the statute, as laid down in Section 299 of the Act of 1980. Occupiers are also bound to carry out such work with provisions for them to deduct expenses from rent or recover them from the owner, unless there is an agreement to the contrary. Occupiers are also subject to the building regulations and other provisions of the said Act, related to use and maintenance of buildings for example, they may be required to comply with safety regulations or to cover their building that it does not cause a nuisance. Section 181 of the Act outlines the requirement for the owners and the occupiers to comply with the notices issued by the Corporation to provide returns related to their property. Occupiers may also have obligations related to the maintenance of public areas within their premises, compliance with zoning regulations and other provisions of the Act. In view of “explanation” under Section 266 of the Act of 1980 it appears that the words ‘the person at whose instance’ shall mean the owner, occupier or any other person, who causes the creation of any building or execution of any work to be done, including alterations or additions if any, or does it by himself.

- 15.** Therefore, on a careful perusal of the provisions in the statute in general it appears that, the law has bestowed similar responsibility to the occupier of the building that is, a person who pays rent for his occupation therein to the original owner of the building, akin to the original owner and the occupier is responsible for discharging of all statutory liabilities in respect of the building as if he was the owner thereof, in the event of his occupation in the building, in lieu of rent.
- 16.** The scheme of the Act as above cannot be understood to have been diverted from while promulgation of Chapter XXIII A containing Sections 425 A to 425 P, introduced by the Kolkata Municipal Corporation (Amendment) Act, 1997 (West Bengal Act XXVI of 1997), with effect from December 22, 1997.
- 17.** Section 425 A bears the heading “Owner to Maintain, Preserve and Conserve Heritage Building”. The Section itself has considered the owner and occupier of any heritage building on similar footing which would be evident from the words used in the Section as above. Let those be mentioned has hereinbelow:-
- “Every owner or occupier of the heritage building declared as such by the Corporation shall maintain, preserve and conserve it...”***
- 18.** Explanation II says that the word “owner” under Section 425 A includes a joint owner or successor in title of any joint owner or the Manager, trustee, person vested with power of management of a heritage building or successor in office of such Manager or trustee. Pertinent is to note that none of the provision as contained in the said Chapter has excluded in express terms, either the word “occupier” or any of the responsibilities/statutory liabilities of the “occupier”, has to be performed by him as per the statute and in place instead of the

owner of the property. For the sake of reiteration, it would also be beneficial to mention that Section 425 A has bestowed the right for maintenance, preservation and conservation of the heritage building, either upon the owner or the occupier thereof.

- 19.** Keeping in mind the scheme of the Act including that contemplated in Chapter XXIII A as regards the status of an occupier in the heritage building, let the provisions under Section 425 K be considered for once:-

“425K. If the owner of a heritage building enters into an agreement with the Corporation to maintain, preserve and conserve such heritage building property at his own expenses, the Corporation may, in such case, exempt wholly or partly the owner of such heritage building from payment of rates or taxes or fees for supply of water or any other charge in respect of such heritage building.”

- 20.** The respondents have heavily relied on this provision of law and their contention is that, excepting owner no one would be a competent person as per the said provision of law to enter into an agreement with the Corporation for exemption wholly or partly of the rates of taxes or fees to the said heritage building.
- 21.** The Court is afraid that the submission of the respondent runs contrary to the scheme of the Act itself. As discussed elaborately hereinabove, the occupier of a premises has been bestowed with the similar responsibility to comply with the statutory provisions as that of the owner. His occupation in the building is acknowledged so much so, that in case of the property being declared as a heritage building, an occupier has been bestowed with the responsibility of maintaining, preserving and conserving the said heritage building. Therefore, one cannot find any difference between the occupier and the

owner of a building so far as control of the building is concerned as well as compliance with the statutory provision towards the respondent/Corporation for the said building is concerned. By arguing as above, the respondents have intended to create a class between the class. Though, the said respondent has not denied petitioner's liabilities as an occupier and lessee of the concerned premise, to comply with the statutory provisions. But in case of extending benefit under the statute itself, it raised objection which is not only irrational but arbitrary.

22. After discussing the statutory provisions as above, the Court is of considered opinion that the legislature has not made a discrimination between the owner and the occupier in lieu of rent, so far as application of provision of this statute upon them is concerned. Hence, if an occupier in lieu of rent of the premises, is entrusted for due compliance with the liabilities as provided under the Act with respect to the said building, it would only be arbitrary and unjust to find that he cannot similarly, rightfully claim benefit under the said Act, in this case particularly, in terms of Section 425K. The Court finds that the statutory scheme has put the occupier in lieu of rent in a premises including in a heritage building, in the shoes of the owner and virtually no classification between the owner and the occupier in lieu of rent can be made so far as the provisions of 1980 Act is concerned.

23. Therefore, the Court is of considered opinion that the word owner occurring in Section 425K would mean and include the owner and the occupier who resides in the premises in lieu of rent. The petitioner would definitely come within the said category being the lessee over there, who has been inducted by

dint of a validly executed lease deed. It is pertinent also to note that the said lease deed has not been challenged in the instant case.

24. For the reasons as discussed above, the Court is of considered opinion that it would be irrational, arbitrary and illegal to distinguish the petitioner from that of an owner of the premises, in view of the statutory scheme as discussed above. In such view of the fact, the Court further finds that the petitioner would be eligible for being granted the benefit as per Section 425K of the Kolkata Municipal Corporation Act, 1980 by entering into an agreement with it by the Corporation. Hence, this writ petition is allowed with the following directions:-

- i. The notice of demand issued by the respondent/Corporation dated August 6, 2021 for payment of Rs. 59,37,328.18/- be kept in abeyance till completion of the process as directed bellow;
- ii. Let the Corporation consider entering into an agreement with the petitioner in terms of Section 425K and in order to grant exemption wholly or partly of the taxes or fees for such heritage building.
- iii. In doing so, the respondent/Corporation shall seek attendance of the petitioner for a meeting with it and pass a detailed resolution in the said meeting. The resolution as above, shall bear the reasons, if not an agreement is immediately entered into by the

Corporation with the writ petitioner, in accordance with law;

- iv. The entire exercise as above, should be concluded by the respondent/Corporation within a period of 8 weeks from the date of communication of this judgment.
- v. A fresh demand notice may be issued, if at all necessary, only after conclusion of the exercise as directed above and in terms of the decision arrived at during the course.

25. Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)