

**In the High Court at Calcutta**  
**Constitutional Writ Jurisdiction**

**Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya**

**W.P.A. No.756 of 2007**

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**CAN 2 of 2010 (Old CAN 4570 of 2010)**

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**CAN 3 of 2014 (Old CAN 4048 of 2014)**

**Sri Manoj Parmar and others**

**Vs.**

**Union of India and others**

For the petitioners : Mr. Soumya Mazumer,  
Mr. Subhajit Das,  
Mr. Gour Baran Sau

For the respondents : Mr. P. Dudhoria

Hearing concluded on : 14.03.2023

Judgment on : 17.03.2023

**Sabyasachi Bhattacharyya, J:-**

1. The writ petitioners are the owners of one Parmar Building situated at 2, Apcar Garden, Asansol. The entire building has been let out to the Union of India for use by the Income Tax Department.
2. The Executive Engineer, Central Public Works Department (CPWD) was designated as the authority to issue certificate of revised rent. Upon holding an inspection, the Assistant Engineer, Asansol submitted a report to the Deputy Commissioner of Income Tax recommending fair rent with effect from January 30, 1989 exclusive of

Municipal Taxes. The total rent for the three floors was Rs.34,032/- per month, the fair rent of each floor having been determined at Rs.11,344/- per month.

3. Subsequently, the Board of Finance (Income Tax) reduced the rent for the building to Rs.21,458/- inclusive of Municipal Tax. The said order was challenged in a writ petition, which gave rise to CR No.18829(W) of 1993. Ultimately, the rule initially granted in the said writ petition was made absolute, against which the respondents preferred an appeal, bearing MAT 3571 of 2001. *Vide* order date July 10, 2003, a Division Bench allowed the appeal and directed the Trial Court to rehear the writ petition.
4. Upon such rehearing, the learned Single Judge directed the respondent no.5 (the Chief Commissioner of Income Tax), to reconsider the matter.
5. The said respondent held on April 8, 2004 that the rent of Rs. 34,032/- per month, as recommended by the CPWD with effect from January 30, 1989, was fair and reasonable.
6. The respondents did not fix fair rent for the subsequent periods, despite the rule being that such assessment had to be made every five years. Being thus aggrieved, a writ petition bearing WP No.4178(W) of 2005 was filed, which was disposed of by a co-ordinate bench on August 23, 2005 by directing the respondent no.2 (the Chief Commissioner of Income Tax, Burdwan) to consider the matter by giving hearing to the petitioners and to pass a reasoned order.

7. The petitioners, through their learned advocate, intimated the respondent-Authorities that they were agreeable to accept the fair rent fixed by respondent no.2, without prejudice to their right to claim further enhanced rate after considering the report of the CPWD.
8. The respondent-Authorities wrote to the petitioners asking for payment of Municipal Taxes for a particular period and asking the petitioners to enter into an agreement for accepting rents fixed by them. The petitioners conveyed their agreement thereto, subject to their claims and without prejudice to their rights.
9. Thereafter the petitioners wrote a letter dated December 27, 2006 indicating that instead of paying the fair rent fixed by the Chief Engineer, CPWD the respondents had stopped paying rent from September, 2006 and claimed rents as determined by the Chief Engineer, CPWD with arrears, etc.
10. On the subsequent inaction of the respondents-Authorities to do so, the present writ petition has been preferred.
11. Learned counsel for the petitioners submits that *vide* Office Memo dated January 30, 1987, the rent was revised in terms of paragraph 134 of the CPWD Code. The Chief Commissioner, Income Tax, *vide* Order dated April 8, 2004, fixed the fair rent in terms of the CPWD recommendation.
12. However, the respondents did not fix fair rents from time to time as per the revised CPWD recommendations.
13. It is submitted that since the CPWD rates were being followed all along and even the fair rent was ascertained on the basis of such

rates, there was no reason for the respondent-Authorities to withhold the rent to the petitioners in terms of the CPWD rates, as they came out from time to time.

- 14.** By placing reliance on the Office Memo dated January 30, 1987, learned counsel appearing for the respondents contends that even as per the fair rent decided by the Authorities, the Municipal Tax and maintenance and repair charges in respect of the dilapidated old building were payable by the landlords/petitioners. However, such charges have not been paid by the petitioners. Hence, it is argued that the respondents cannot be directed to pay the alleged rents at the CPWD rates without deducting such amounts spent for municipal taxes, repairs and maintenance charges.
- 15.** It is further submitted by the respondents that the CPWD rates of rent as per the Manual on Infrastructure of CBDT is merely advisory in nature. Hence, such rates do not have any binding effect insofar as the assessment of rent payable for the disputed premises is concerned.
- 16.** In reply, learned counsel for the petitioners places reliance on Section 151 of the Asansol Municipal Corporation Act, 1990 (for short, "the 1990 Act"). As per the said provision, the person liable to pay property tax at the first instance in terms of the said provision is entitled to apportion the same among the occupiers of the premises.
- 17.** As such, the petitioners deny the claim of Municipal Taxes made by the private respondents/tenants.

- 18.** A perusal of the Office Memo dated January 30, 1987 (Annexure P-1 at page 33 of the writ petition) shows that the same pertained to issuance of certificate of reasonableness of rent and reconstitution of Hiring Committees and ad hoc Committee in respect of private buildings hired by Central Government Departments. It was specifically iterated therein that the issuance of certificate of reasonableness of rent in respect of private buildings proposed to be taken on hire/revision of rent would be in terms of paragraph 134 of the CPWD Code.
- 19.** *Vide* order dated April 8, 2004, the Office of the Chief Commissioner of Income Tax, Kolkata fixed the fair rent for all the three floors of the disputed building, that is, the Parmar Building, Asansol as recommended by the CPWD at Rs.34,032/- per month excluding Municipal Taxes.
- 20.** However, it was also stipulated therein that the Municipal Taxes and the maintenance and repairing charges should be borne by the landlords/petitioners. Upon subsequent inaction of the respondents regarding revision of rents as per the changing CPWD rates, the petitioners had to move WP No.4178 (W) of 2005. A co-ordinate bench of this Court, *vide* order dated August 23, 2005, sent back the matter to the respondent no.2. A copy of the said order was sent to the said respondent. However, the respondents dilly-dallied over the matter for a prolonged period and failed to incorporate the revised CPWD rates as the quantum of rent for the building-in-question.

- 21.** It is clear from the documents annexed to the writ petition that the respondent-Authorities themselves have revised the rent on April 8, 2004, fixing fair rent as per the CPWD recommendation and, as such, are estopped from resiling from such position subsequently.
- 22.** Although the respondents have argued that the CPWD rates, as per the Manual on Infrastructure of CBDT, are merely advisory, the Chief Commissioner of Income Tax, while fixing the fair rent for the premises lastly, had himself relied on the CPWD rates. As such, there is no plausible reason to deviate from such rent structure subsequently.
- 23.** The respondents have all along acted on the basis of the CPWD rates for assessing the rent for the premises-in-question. Since the Circular dated January 30, 1987 also indicates that the rent has to be revised in respect of buildings hired by the Income Tax Department as per the CPWD Code, the respondent-Authorities cannot deviate from such norms now, more so in the absence of any alternative yardstick.
- 24.** The petitioners, in their supplementary affidavit, have clearly enumerated the arrears of rent as per the CPWD rates.
- 25.** Admittedly, the respondent no.1 vacated the rented premises “Parmar Building” and gave possession of the same to the petitioners on June 30, 2021. As such, the rent due to the petitioners has to be cleared by the respondents in favour of the petitioners up to the said date.
- 26.** Such date has been disclosed by the petitioners in their supplementary affidavit filed in connection with the writ petition. The respondents’ opposition thereto does not, in specific terms, deny

either the date of handing over possession by the respondent-Authorities or the calculations made by the petitioners in the said supplementary affidavit.

- 27.** As per the calculations made by the petitioners, the total amount receivable in terms of the CPWD rates for the period of January 31, 1994 to June 30, 2021 comes to Rs.2,82,39,242/-.
- 28.** There is no specific denial of the said quantum by the respondent-Authorities, nor has any counter calculation been filed by the respondents. As such, on the basis of the detailed calculations set out in the supplementary affidavit, there is no reason as to why the respondent-Authorities ought not to pay the entire arrear rents to the petitioners, after deducting the amount already paid by them in terms of the interim order passed by a co-ordinate bench of this Court, at the CPWD rates as they prevailed from time to time.
- 29.** Inasmuch as the respondents' claim of Municipal Tax and maintenance and repair charges due from the landlords/petitioners is concerned, the document on record clearly indicate that the fair rent adjudicated by the Chief Commissioner, Income Tax indicated that Municipal Taxes and maintenance and repair charges were to be borne by the petitioners.
- 30.** Although learned counsel for the respondents has vociferously argued that such amounts were not paid by the petitioner, neither has it been averred by the respondents as to whether they paid such sums and, if so, what was the quantum paid by them, nor has any such claim been made by the petitioners before any forum till date. Moreover, the said

question has to be adjudicated by taking detailed evidence, which is beyond the scope of the writ court.

- 31.** Another component which has to be considered is whether the order of the Chief Commissioner, Income Tax would prevail in the teeth of the specific provisions laid down in Section 151 of the 1990 Act, which applies to the present case and provides for apportionment of property tax by the person primarily liable to pay, by recovery of the same from the occupiers of the premises. As the entire building was occupied by the respondent-Authorities, it is an arguable question as to whether at least half of the amount of taxes was to be borne by the respondents in accordance with law. There can neither be any agreement against the statute, nor can the assessment of fair rent by the Chief Commissioner, Income Tax prevail over the provisions of law. Since the 1990 Act prevails in respect of the building-in-question in view of it being situated within the territorial jurisdiction of Asansol, such question is also required to be decided prior to observing that any amount, if at all, is due by way of Municipal Taxes from the petitioners to the respondents.
- 32.** Inasmuch as the maintenance and repair charges are concerned, the respondents have produced precious nothing to substantiate their claim of having borne the expenses in that regard. Unless specific pleading is made and proof is furnished in that regard, in any event, the respondents are not entitled to get any such amount from the petitioners.



- 33.** Insofar as the question of adjustment of such dues from the amount payable by way of rent to the petitioners is concerned, such argument has to be negated at the outset, also on another score. It is well-settled that unless there is a specific agreement between the lessor and lessee and/or landlord and tenant to the effect that repair and maintenance charges shall be adjusted from the rent, such adjustment cannot be claimed as a matter of right by the respondents/lessees.
- 34.** If the respondents are entitled to their claim of Municipal Taxes and repair and maintenance costs at all, it is the prerogative of the respondents to file a regular civil suit claiming such amounts.
- 35.** Since the possession was handed over as long back as on June 30, 2021, the respondents are undoubtedly at liberty to institute a regular civil suit to make such money claim before a competent court of law.
- 36.** However, in view of the above discussions, there is no scope of this Court adjusting such amount of Municipal Taxes and alleged repair and maintenance charges within the ambit of the present writ petition.
- 37.** Hence, WPA No.756 of 2007 is allowed, thereby directing the respondents to disburse to the petitioners the arrears of rent to the tune of Rs. 2,82,39,242/- in terms of the respective CPWD revisions of rent for the period from January 31, 1994 to June 30, 2021. Such payment shall be made by the respondents to the petitioner positively by May 31, 2023. In default of such payment, the respondents shall pay to the petitioner interest on such amount on and from June 1,

2023 at the rate of six per cent per annum till the date of its disbursal.

- 38.** It is, however, made clear that the respondents will be at liberty to institute a proper civil suit in respect of their money claim on the alleged Municipal Tax arrears and repair and maintenance charges, if incurred by the respondents, from the petitioners. If such a claim is made, the same shall be adjudicated in accordance with law by the competent civil court upon following due process of law. Nothing in this order shall prejudice the rights and contentions of the parties in such suit, if instituted by the respondents within the period of limitation.
- 39.** In view of the disposal of the writ petition itself, CAN 2 of 2010 (Old CAN 4570 of 2010) and CAN 3 of 2014 (Old CAN 4048 of 2014) are also treated to be disposed of.
- 40.** There will be no order as to costs.
- 41.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

**( Sabyasachi Bhattacharyya, J. )**