ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

A.P.O. No. 125 of 2020
(IA No: GA/1/2020)

Rakesh Kumar Jindal & Anr.
Versus
The Kolkata Municipal Corporation & Ors.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
-And-
The Hon'ble JUSTICE KAUSIK CHANDA
Date : 23rd November, 2021.

Mr. Jayanta Sengupta with Mr. Dibyendu Chatterjee
Ms. Madhurima Sarkar & Mr. Tirthankar Das, Advs.
… for Appellants.

Mr. Alok Kr. Ghosh with Mr. Swapan Kr. Debnath, Advs.
… for respondents/KMC.

The writ petitioners approached the learned Single Judge challenging an assessment order dated 11th February, 2016 passed by the relevant hearing officer of the Kolkata Municipal Corporation.

Learned Single Judge declined to entertain the writ petition on the ground of availability of the remedy of appeal under Section 189 of the Kolkata Municipal Corporation Act, 1980 observing that though there is no absolute bar to entertaining a writ petition on the ground of existence of alternate remedy, the writ petitioners should approach the appellate authority in view of the efficacious appeal procedure provided in the scheme of the said Act.

Mr. Jayanta Sengupta, learned advocate for the appellants, strenuously argues that copy of the assessment order has not been supplied to the writ petitioners/appellants as per Form 'H' of Rule 9 of the Kolkata Municipal Corporation (Taxation) Rules, 1987. He submits that in view of such non-compliance of the statutory provision, the appellants are not in a position to avail the alternative remedy of appeal under the statute.

Mr. Ghosh, learned advocate appearing for the Corporation, does not dispute the fact that copy of the order was not supplied in accordance with Form 'H' of Rule 9 of the Kolkata Municipal Corporation (Taxation) Rules, 1987. He, however, submits that as a matter of practice the appellate authority under section 189 of the Kolkata Municipal Corporation Act, 1980 regularly entertains appeal on the basis of such type of orders, as was served upon the appellants.

Mr. Ghosh further submits that the relevant authority may entertain the appeal of the petitioners if the same is preferred annexing the assessment order that has been served upon the appellants.

In view of the submissions made on behalf of the Corporation before this Court, we do not think that the petitioners will suffer any prejudice due to non-supply of copy of the order as per Form 'H' of the Kolkata Municipal Corporation (Taxation) Rules, 1987. We also do not see any infirmity in the order of the learned Single Judge in relegating the petitioners before the statutory appellate authority since no other ground has been urged by the appellants so as to bypass the alternative remedy of statutory appeal.

The appeal is not entertained.

The writ petitioners/appellants will, however, have the liberty to approach the appellate authority to assail the impugned order of assessment. If any appeal is preferred under Section 189 of the Kolkata Municipal Corporation Act, 1980, the appellate authority shall exclude the time period between the date of filing of the writ petition and the date of this order in computing the period of limitation.

Needless to mention that we have not gone into the merits of the matter. The appellate authority, if so approached, will decide the appeal without being influenced by the observations made hereinabove. The appellate authority shall also take into consideration the deposits, if any, made by the appellants for the relevant assessment years.

The appeal being A.P.O. No. 125 of 2020 and the connected application being G.A. No. 1 of 2020 are accordingly disposed of .

We are inclined to impose costs in the appeal, but have been dissuaded by the eloquence of the learned advocate appearing for the appellants.

(ARIJIT BANERJEE, J.)

(KAUSIK CHANDA, J.)

K. Banerjee
A.R. [C.R.]