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WPO 983 of 2016
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

BROADWAY CENTRE & ANR.
VS
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date : 25th February, 2021.

Appearance:
Mr. R.N. Chakraborty, Adv.
Mr. M. Ahmed, Adv.

Mr. Biswajit Mukherjee, Adv.
Mr. Gurudas Mitra, Adv.
Ms. Manisha Nath, Adv.
...for KMC.

Mr. Paritosh Sinha, Adv.
Ms. Tapati Samanta, Adv.
...for State.

The Court : This petition has been filed with the sole intent of procrastinating payment by the petitioners of their dues payable to the respondent Corporation.

The petitioner no. 1 is partnership firm and the owner of premises no. 14, 14/1, 14/2 and 14/3 Old China Bazar Street, Kolkata – 700001. The premises is commonly known as the "Bikaramchand Market".

The prayers in this petition primarily relate to a challenge to the annual valuation for, inter alia, the period beginning 2nd quarter 1990-1991, 4th quarter 1992-1993 and 4th quarter 1998-1999 respectively.

It is alleged on behalf of the petitioners that the entire premises is predominantly tenanted. The challenge in this petition is also directed against a hearing notice dated 11th March, 1998. By virtue of the impugned hearing notice, the respondent authorities had called upon the petitioners to participate in the adjudication of the municipal taxes for the assessment year March 1998. It is also stated in the impugned notice that the total rent receivable by the petitioners for the premises at the relevant point of time was approximately Rs. 55,070/-.

It appears that after issuance of the impugned notice, diverse hearings had taken place before the Hearing Officer and several orders have also been passed from time to time. Even though the writ petition was filed in 2016, the petitioners seek to assail the subsequent steps taken by the Corporation by way of filing a supplementary affidavit. Curiously, the orders annexed to the supplementary affidavit pertain to years 2002 and 2003 of which the petitioners feign ignorance in the petition.

Counsel on behalf of the petitioners submits that the contractual rent was liable to be taken into consideration and has not been taken into account in fixing the annual valuation of the premises. He further submits that no order or notice of hearing was served by the Corporation on the petitioners and there has been a violation of the principles of natural justice. It is also submitted on behalf of the petitioners that no amount can be due and payable on account of interest or penalty in respect of the outstanding dues payable to the Corporation.

Mr. Mukherjee appearing on behalf of the Corporation submits that the petition is a brainchild of an ingenious litigant. By assailing a notice dated

11th March, 1998, the petitioners seek to reopen the entire assessment of the premises since 1990. Mr. Mukherjee further highlights on the fact that the aggregate dues in respect of the premises as on date are approximately Rs. 8 crores. Mr. Mukherjee further relies on section 190 of the Kolkata Municipal Corporation Act to contend that the annual valuation in respect of the premises with the passage of time has attained finality. He further submits that the petitioners have no intention of paying any amount to the Corporation and are simply delaying matters on false and frivolous pretexts. He submits that at the hearing held on 2nd January, 2003, before the respondent Corporation, the authorized representatives of the petitioners were duly present. He also submits that there are approximately 350 tenants at the premises and a list of such tenant had been made available to petitioners. He further submits that the aggregate rent receivable by the petitioners at the relevant point of time was approximately Rs.1,63,990/-. He submits that all the aforesaid facts have been duly verified by an authorized representative of the petitioners and is countersigned by the said representative.

I have considered the submissions made on behalf of the parties.

At the outset, it is significant to point out that by an order dated 11th February, 2021, I had directed the petitioners to take instructions as to what amount they were ready and willing to pay even on an interim basis in respect of the staggering dues payable to the Corporation. Notwithstanding such directions, the petitioners categorically declined to make any offer towards payment of such outstanding dues.

The grievance of the petitioners is also directed against a hearing notice dated 11th March, 1998. The petition was filed in 2016. It is alleged on behalf of the petitioners that they had received no notice nor orders from the respondent authorities. I am of the view that by assailing the annual valuation for the period beginning from 1990-91 the petitioners seek to indirectly re-open the entire issue of Corporation taxes in respect of the premises for a period more than two decades.

In the supplementary affidavit filed by the petitioners, the petitioners allege that they came to learn of the orders and the subsequent proceedings initiated by the respondent authorities for the first time on 3rd May, 2017. It appears from the order sheet before the Hearing Officer, Kolkata Municipal Corporation that diverse hearings had been held before the Hearing Officer from time to time. Infact, it is apparent from the order dated 3rd October, 2002, 31st October, 2002, 2nd January, 2003, respectively that the petitioners' authorized representatives were duly present and had participated at such hearings. Accordingly, I am of the view that the petitioners not only had notice of all such proceedings but had also actively participated in the same. In any event, in view of the mandate of section 190 of the Kolkata Municipal Act, I hold that the orders passed by the Hearing Officer have attained finality. In any event, I am also of the view that the petitioners deserve no equity. The taxes in respect of the aforementioned premises have been outstanding for a period or more than two decades. The petitioners choose to adopt a dubious and ingenious method of assailing a notice dated 11th March, 1998 to reopen the entire issue of annual valuation of the premises for a period of more than two decades. I am of the view that the petitioners were fully aware and had participated in the proceedings before the Hearing Officer. There is no merit in this petition. This is mischievous petition, which has been filed for oblique and collateral purposes. There are no grounds which have been made out warranting any interference with the impugned assessments by the respondent Corporation.

The supplementary affidavit filed in Court today be kept with the records.

WP 983 of 2016 is dismissed accordingly.

Costs are assessed at Rs. 1 lakh payable by the petitioners to the respondent Corporation.

(RAVI KRISHAN KAPUR, J.)

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