8 08.3.2022
Ct.No.15
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**W.P.A. 1139 OF 2016**

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Swapan Kumar Ghosh
Vs.
The Kolkata Municipal Corporation
& Ors.

Mr. Sourav Sen
.... For the Petitioner

Mr. Biswajit Mukherjee
Mr. Swapan Kumar Debnath.
.... For the State

The writ petitioner is the owner of Premises No. 41/1, Chand Mohammad Road, Calcutta – 700092, within the jurisdiction of the Kolkata Municipal Corporation. The dispute arose on issuance of 'Letter of Intimation' dated 21st October, 2014 which is at page - 54 of the writ petition whereby a demand to the tune of Rs.3,32,717/- was made by the Kolkata Municipal Corporation against the petitioner. Such 'Letter of Intimation' was put under challenge by the petitioner in a previous writ petition being W.P. No. 5177 (W) of 2015, which was disposed of by a coordinate Bench *vide* order dated 3rd June, 2015 thereby directing the Assessor Collector (Tolly Tax), Kolkata Municipal Corporation to take a decision on the representation of the petitioner. Pursuant to such direction, passed by the coordinate Bench, the concerned authority of the Kolkata Municipal Corporation heard the issue and finally passed two orders, one dated 24th July, 2015 and another dated 29th September, 2015. Such decision of the Kolkata Municipal Corporation has been put under challenge in the present writ petition.

Mr. Sourav Sen, learned advocate appearing for the petitioner has contended that the impugned 'Letter of Intimation' dated 21st October, 2014 contains two parts, one is demand relating to payment of property tax in connection with bills which were presented prior to 31st March, 2011 and another part relates to demand for enhancement of the annual valuation from 4th Quarter 2006-2007 and another from 3rd Quarter 2010-2011. It has been strenuously argued on behalf of the petitioner that demand relates to bills which were presented prior to 31st March, 2011 has no basis since those bills were already paid by the petitioner at the relevant point of time and in support of the same Mr. Sen takes this Court to paragraphs 3, 4 and 5 of the supplementary affidavit filed on behalf of the petitioner. From those paragraphs of the supplementary affidavit it appears that the petitioner has taken a plea that the bills were paid but the original receipts were deposited with the office of the Kolkata Municipal Corporation on demand as a result whereof such receipts are not lying with the petitioner.

In addition thereto, the petitioner has been aggrieved in a manner the hearing was conducted by the authority of the Kolkata Municipal Corporation for revaluation of the property in question. According to the petitioner, the date for hearing, prior to revaluation, was initially fixed on 20th July, 2011 and he prayed for time since for a considerable period of time he was out of Kolkata. Therefore, to be prepared on this issue, he prayed for an adjournment by submitting a letter dated 20th July, 2011. Subsequently, the date of hearing was fixed by the concerned authority of the Kolkata Municipal Corporation on 29th August, 2011 and, accordingly, the property was revaluated. On the date of hearing, which was fixed on 29th August, 2011, it has been contended by Mr. Sen appearing for the petitioner that notice was not duly served on the petitioner.

Therefore, to sum up the contentions of the petitioner it can be said that the decision which has been taken by the Kolkata Municipal Corporation *vide* orders dated 24th July, 2015 and 29th September, 2015, are not tenable in view of the fact that the bills which were presented prior to 31st March, 2011 were already paid by the petitioner and revaluation of the property was improperly made since there was no notice relating to date of hearing on 29th August, 2011.

Mr. Biswajit Mukherjee, learned advocate appears on behalf of the Kolkata Municipal Corporation and he has defended the decisions taken by the Assessor Collector (Tolly Tax), Department, Kolkata Municipal Corporation on 24th July, 2015 and subsequently on 29th

September, 2015. Upon placing reliance on the relevant part of the decision dated 24th July, 2015, it has been contended on behalf of the Kolkata Municipal Corporation that if the petitioner produces proper payment receipts against the outstanding demand reflected from the 'Letter of Intimation' that will be considered and the petitioner will not be required to pay against those bills.

In order to answer the second question raised on behalf of the petitioner relating to manner in which the hearing was conducted by the concerned authority of the Kolkata Municipal Corporation, it has been submitted that on first date when the hearing was fixed on 20th July, 2011, no decision was taken based on the prayer of adjournment made on behalf of the petitioner *vide* letter dated 20th July, 2011 but subsequently decision was taken to revaluate the property of the petitioner on 29th August, 2011 and on that day the petitioner remained absent before the hearing authority.

During the course of argument Mr. Mukherjee has drawn attention of this Court to Section 189 (5) of The Kolkata Municipal Corporation Act, 1980 (hereafter referred to as 'the Act of 1980') which relates to preferring an appeal before the Municipal Assessment Tribunal. Therefore, the contention of the Kolkata Municipal Corporation is this – if the petitioner is aggrieved by the decision of revaluation with effect from 3rd Quarter 2010-

2011, the appropriate course left open to him is to prefer an appeal under Section 189(5) of the Act of 1980.

This Court has heard learned advocates representing the parties and also perused the materials available on record.

On perusal of the 'Letter of Intimation' dated 21st October, 2014 along with the decisions taken by the concerned authority of the Kolkata Municipal Corporation dated 24th July, 2015 and 29th September, 2015 it appears that the demand raised by such 'Letter of Intimation' dated 21st October, 2014 consisting of two components ; one is demand relating to payment of unpaid bills raised on property tax and another is demand relating to arrears accrued on revaluation of the property with effect from 4th Quarter 2006-2007 and subsequently with effect from 3rd Quarter 2010-2011.

It has been submitted on behalf of the Kolkata Municipal Corporation that the demand relating to unpaid bills of property tax was not presented before 31st March, 2011 as a result thereof by issuing 'Letter of Intimation' such demand has been made, which has been disputed by the petitioner by making statements in the supplementary affidavit, paragraphs 3, 4 and 5.

On bare perusal of the statements made in paragraphs 4 and 5 of the supplementary affidavit, affirmed by the petitioner, it transpires that the stand of the petitioner is after thought. He has made statements that those bills were presented prior to 31st March, 2011 and were duly paid by the petitioner but original receipts were deposited with the office of the Kolkata Municipal Corporation. Such averments, made in the supplementary affidavit, do not impress upon this Court. Therefore, considering the 'Letter of Intimation' dated 21st October, 2014 as well as the averments made in paragraphs 4 and 5 of the supplementary affidavit this Court grants fortnight time to the petitioner to produce the original receipts against the bills which have been indicated in the 'Letter of Intimation' dated 21st October, 2014 on demand of unpaid property tax. If the petitioner is able to produce those receipts against such demand, the concerned authority of the Kolkata Municipal Corporation is directed to waive such demand by passing necessary order within a period of seven days thereafter and such order is to be communicated immediately to the petitioner.

However, in the event of failure to produce those receipts before the appropriate authority of the Kolkata Municipal Corporation, the petitioner is directed to make payment of such bills as indicated in the 'Letter of Intimation' dated 21st October, 2014 within thirty days from this date.

Regarding revaluation of the property with effect from 4th Quarter 2006-2007 and 3rd Quarter of 2010-2011 as made by the concerned authority of the Kolkata

Municipal Corporation on the basis of hearing on 29th August, 2011, if the petitioner is aggrieved, he shall be at liberty to prefer an appeal under Section 189(5) of the Act of 1980 within a period of fortnight from this date.

If such an appeal is filed within the time as aforesaid, the appellate authority shall not dismiss the appeal by taking the point of limitation since the petitioner has approached this Court on two consecutive occasions by filing writ petitions.

The appellate authority, under Section 189 of the Act of 1980 is directed to dispose of the appeal, if preferred by the petitioner, within a period of six months from the date of instituting the appeal.

With the above direction and observation, the writ petition stands disposed of.

However, there will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously on usual undertaking.

**(Saugata Bhattacharyya, J.)**