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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 5926 of 2022

Kishore Kumar Bhan & Ors.
-vs.-
Kolkata Municipal Corporation & Ors.

Ms. Sucharita Roy,
Ms. Jhuma Sen
...for the petitioners

Ms. Moyeli Bhattacharyya,
Ms. Tanushree Dasgupta
...for the KMC

The grievance of the petitioners is that, despite the petitioners having submitted a request for individual apportionment of tax of their purchased premises for the purpose of payment of taxes, on December 22, 2015, instead of doing so, the Kolkata Municipal Corporation, (for short K.M.C.), without giving due consideration to the banker's cheque issued in support of their request by the petitioners, proceeded under Sections 217, 219 and 220 of the Kolkata Municipal Corporation Act, 1980 successively.

It is fairly submitted by learned counsel for the petitioners that the banker's cheque was returned by the K.M.C. However, it is contended that in view of the petitioners having expressed their bona fides in respect of seeking mutation and payment of taxes as long back as in the year 2015, it was beyond the authority of the K.M.C. to take penal action against the petitioners by attaching the entire property. Due to such action, it is contended, the petitioners, who are maintaining different office spaces in the said building, are suffering huge loss of business as they have been virtually ousted from the building without due process of law.

Learned counsel appearing for the K.M.C. contends that the KMC authority, in accordance with due process of law, took recourse to Section 217 of the 1980 Act and, only after exhausting the scope of the said Section, resorted to Section 219 and, thereafter, Section 220 of the Act of 1980 was invoked.

It is submitted that the present petitioners purchased the property as long back as in the year 1990 and 1992, but, before December 22, 2015, no steps were taken at all by the petitioners seeking mutation and payment of taxes, which, under the law, is the incumbent duty of the purchasers to do.

Even the so-called request annexed at page 55 of the writ petition, made on behalf of the petitioners, it is submitted, was not in proper form. As such, in the absence of any proper application in Form A-42, as mandated by law, the K.M.C. had no other option but to take recourse to Section 220 and, thereafter, since the movable property lying in the said building was found under lock and key, the K.M.C. had to take action under Section 221(A) of the 1980 Act by sealing the building. That apart, it is contended further that the petitioners have not paid a single paisa in lieu of taxes and/or sought mutation in any form since the date of their purchase till the present date. The only semblance of request made by them was only in the year 2015. However, till date, the municipal taxes have not been cleared by the petitioners.

Learned counsel for the petitioners, in reply, controverts the contention of the K.M.C. that the steps taken by the K.M.C., impugned in the present writ petition, were taken in accordance with law. It is submitted that the impugned notice specifically mentions Sections 219 and 220(2), but there was no action, which is mandatorily to precede Section 221(A), taken on the part of the K.M.C.

Upon hearing learned counsel for the parties, it is evident that, under Section 183 of the 1980 Act, it is the incumbent duty of the person to whom the title is transferred and the person who is transferring such title, in case of a transfer of a property/building, to give notice of such transfer to the Kolkata Municipal Corporation.

Section 183(4) stipulates that, if any person, who transfers his title, fails to give any notice under this Section to the Municipal Commissioner, he shall, in addition to any penalty to which he may be subject under this Act, continue to be liable for payment of property tax on such land or building until he gives such notice but nothing in this section shall be deemed to affect the liability of the transferee for payment of the property tax on such land or building.

In the present case, the petitioners admittedly purchased the property in the years 1990 and 1992 by separate purchase deeds. However, prior to the representation dated December 22, 2015, no steps were taken by the petitioners with regard to mutation and payment of municipal taxes, apportionment or otherwise.

The petitioners also did not take any previous steps for apportionment of their respective shares of the taxes.

That apart, as rightly submitted on behalf of the K.M.C., the specific modality for filing of application for mutation and/or apportionment of taxes, has not been resorted to by the petitioners inasmuch as the request made by the petitioners on December 22, 2015 was not in proper form.

The scheme of the 1980 Act contemplates that upon exhaustion of the remedy as provided under Section 217 of the 1980 Act regarding notice of demand, notice fee, interest and penalty, the Corporation can take recourse to Section 219 for recovery of taxes.

Sections 219 and 220, read together, envisage a distress warrant being issued in such regard, upon failure of payment of taxes, to attach the immovable property subject to the exceptions as stipulated under Section 220(1)(a) and (b).

The next logical step after exhaustion of Section 220, which in the present case occurred at least in the perception of the K.M.C. in view of the specific mention in the impugned notice under Sections 220(2) and 219 of the 1980 Act that the property was found under lock and key, was taking steps under Sections 221 and 221A and, as such, the K.M.C. was authorised to put up the padlock in presence of the witnesses.

Sections 221 and 221A of 1980 Act, read in conjunction, empower the K.M.C. to seize a property and dispose of a distrained property and, in the event of failure to do so, to take recourse to attachment and sale of immovable property.

In the present case, as such, there was no irregularity committed on the part of the K.M.C. in attaching the immovable property within the contemplation of Section 221A of the 1980 Act.

However, since the petitioners have expressed their bona fides by making a request for getting apportionment of their portion of the K.M.C. taxes, it would be proper to give the petitioners liberty to approach the K.M.C. in proper form seeking same relief.

Accordingly, W.P.A. No. 5926 of 2022 is disposed of by granting the petitioners liberty to file a proper application in appropriate format before the Kolkata Municipal Corporation seeking mutation and apportionment of taxes regarding the portion of the premises-in-question which has been transferred to the petitioners. If so applied within April 30, 2022, the Kolkata Municipal Corporation shall take appropriate steps by processing the same as expeditiously as possible, positively within one month from the date of making such application, and, immediately thereafter, in the event of compliance of all due formalities by the petitioners, mutating the said property and apportion the taxes payable by the petitioners. The petitioners will be at liberty to clear their outstanding dues and current dues. Upon clearing such outstanding dues, which are apportioned to the share of the petitioners, the petitioners will be at liberty to approach the Kolkata Municipal Corporation for permitting the petitioners to have physical access to their portions of the premises. If so approached, the Kolkata Municipal Corporation shall immediately take steps in pursuance of such request.

The Kolkata Municipal Corporation shall not, prior to processing the application of the petitioners for mutation and apportionment of their share of taxes, if made in proper form and within the time as specified in this order, take any coercive steps with regard to non-payment of the petitioners' share of taxes.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)