11.05.2022
Sl. No.1
srm

W.P.A. No. 7877 of 2021

Samar Kumar Dalal

Versus

The Kolkata Municipal Corporation & Ors.

Mr. Samiran Giri
…for the Petitioner.

Mr. Gopal Chandra Das,
Mr. Subhrangshu Panda
…for the Kolkata Municipal Corporation.

The petitioner, who claims to be the owner in occupation of Premises No.2, Nakuleswar Bhattacharjee Lane, Kolkata-700026 having Assessee No.110841300087, has challenged the order dated February 9, 2018 passed by the Assessor Collector (South). According to the petitioner, the demand raised on February 25, 2015 amounting to Rs.8,48,387.70p. was sent in respect of Premises No.A2/A, Nakuleswar Bhattacharjee Lane, although, the petitioner had been continuously paying property tax in respect of Premises No.2, Nakuleswar Bhattacharjee Lane as raised by the Kolkata Municipal Corporation from time to time. The directions/opinion in the order impugned was not in accordance with law and have been issued without ascertaining the factum of occupation and apportionment of the property tax.

The petitioner's contention is that the property tax with regard to the Premises No.2A/A, Nakuleswar Bhattacharjee Lane could not be imposed upon the petitioner. The petitioner claims to be exclusively in occupation of Premises No.2, Nakuleswar Bhattacharjee Lane and submits that, if at all there is an existence of Premises No.A2/A, Nakuleswar Bhattacharjee Lane, the property tax in relation to the said premises should be paid by those who claim to be owners or occupiers of the premises in question.

The Assessor Collector (South) by the order impugned held as follows:

> "(1) Paid up bill amount against premises no. 2, Nakuleswar Bhattacharjee Lane (A/N-110841300087) be transferred to premises no.A2/A, Nakuleswar Bhattacharjee Lane (A/N-140841300014) w.e.f. 1/94-95 to 4/17-18 for adjustment.
> (2) Premises no.2, Nakuleswar Bhattacharjee Lane (A/N-110841300087) is required to be deleted from book of records of KMC.
> (3) Fresh bills are to be issued on cancellation of wrong bills as stated above w.e.f. 1/94-95 to 4/07-08."

By the order impugned, it was held that in the Inspection Book of the Kolkata Municipal Corporation, there is no existence of Premises No.2, Nakuleswar Bhattacharjee Lane and the entire premises which was originally owned by the petitioner has been re-numbered as Premises No.A2/A, Nakuleswar Bhattacharjee Lane.

Accordingly, as no property tax bills had been claimed in respect of Premises No.A2/A, Nakuleswar Bhattacharjee Lane, the petitioner was liable to pay property tax with effect from 1/94-95 to 4/98-99 in respect of the newly re-numbered Premises No.A2/A, Nakuleswar Bhattacharjee Lane and all the property tax, thereafter. The property tax which was paid in respect of Premises No.2, Nakuleswar Bhattacharjee Lane shall also be adjusted.

Directions for issuance of the fresh bills upon cancellation of the earlier bills, which were raised by the Corporation wrongly, has been passed and deletion of Premises No. 2 from the books and records of the corporation has been directed. The order impugned should have reflected the factual aspects which the petitioner has urged before this Court with regard to the arrangement between the landlord and the promoter for construction of a separate building within the said premises in question upon, creating a boundary amongst themselves and the consequent sale of the property by the promoter to third parties. According to the petitioner, those persons are liable to pay the taxes in question, upon apportionment.

Mr. Das, learned Advocate appearing on behalf of the Corporation, submits that although Premises No.2, Nakuleswar Bhattacharjee Lane was deleted from the records of the Corporation and the entire premises was re-numbered as Premises No.A2/A, Nakuleswar Bhattacharjee Lane, the Corporation by mistake continued to raise the property tax in respect of the premises which did not exist. He further submits that the petitioner has been given the credit for the amounts already deposited and as such the petitioner has not suffered serious prejudice. Mr. Das further contends that from 1998, the premises has been re-numbered as Premises No.A2/A, Nakuleswar Bhattacharjee Lane as per the inspection book and as such the contention of the petitioner that the liability of third parties/purchasers have been imposed upon the petitioner is not correct. He further submits that the subsequent sale of the multi-storeyed building developed by the petitioner through a promoter in the said premises would not absolve the petitioner from paying the dues against the premises in question, which was re-numbered long time ago.

Having heard the learned Advocates for the respective parties, it appears to the Court that the petitioner had developed the entire area, which was originally numbered as Premises No.2, Nakuleswar Bhattacharjee Lane but subsequently renumbered. Two separate units exist on the land. The petitioner occupies one such unit and the other (developed) unit, which is a multi-storeyed building, is being occupied by persons who have purchased the property from the promoter. The petitioner's case is that the petitioner should not be made liable to pay tax in respect of the unit which was transferred to outsiders by the promoter, from the promoter's allocation as per the development agreement. The petitioner submits that the two units were demarcated by a boundary wall and have separate existence.

The petitioner has already approached the Assessor Collection (South), Ward No.083, Kolkata Municipal Corporation with a prayer for inspection of the premises in question and proper adjudication of the property tax. Such representation of the petitioner made through his learned Advocate shall be disposed of.

Prima facie¸ the Court finds merit in the submission of the petitioner. However, it is the authority who should decide how such apportionment would be determined upon holding physical inspection of Premises No.A2/A, Nakuleswar Bhattacharjee Lane and upon consideration of the development agreement, the sale deed/deed of conveyance entered into between the allottees, promoter and the petitioner and other records. An inspection in this regard is mandatory in order to ascertain the actual state of affairs and the nature and extent of occupation by third parties. Such inspection shall be made in the presence of all the parties including the petitioner, promoter/developer and occupants of the multi-storeyed building. Thereafter a reasoned order shall be passed upon consideration of the issues raised and also upon determining the apportionment with regard to the property tax payable. The claim of Rs.8,48,837.70p. shall abide by the decision of the Assessor Collector (South). If the petitioner is liable to pay any amount in respect of the developed portion of the premises prior to the development and construction thereon, such facts and supporting reasons shall be indicated in the reasoned order.

The entire exercise shall be completed within a period of three months from the date of communication of this order.

As the petitioner has paid the property tax raised in respect of the Premises No.2, Nakuleswar Bhattacharjee Lane, the order impugned is set aside and cancelled.

The writ petition is, thus, disposed of.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)