Item No. 157(ML)

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

20.07.2022
Ct-24

WPA 9198 of 2021
Amitava De Bhowmick & Anr.
v.
The Kolkata Municipal Corporation & Ors.

Mr. Arnab Saha
... for the petitioners.

Mr. Ranajit Chatterjee
Ms. Tanusree Das Gupta
... for KMC.

None appears on behalf of the respondent no. 8 despite service.

The petitioner is aggrieved by the act of the Kolkata Municipal Corporation in generating separate Assessee number in respect of the premises no. 53/2A, Surendra Nath Banerjee Road, Ward No.-53, P.S.-Taltala, Kolkata-700014 within the jurisdiction of the Kolkata Municipal Corporation.

The petitioner contends that the Kolkata Municipal Corporation has incorporated the name of the respondent no. 8 in respect of the said premises and is collecting property tax from him.

According to the petitioner, the private respondent is a trespasser and no way connected with the aforesaid property.

The petitioner immediately raised objection before the respondent authorities including the Assessor Collector (Rev-South) and the Executive Engineer, Borough-VI of the Kolkata Municipal Corporation in December 2020 and alleges that the same has not been taken up for consideration till date.

Learned advocate appearing for the Kolkata Municipal Corporation submits that as per the amended provision of Section 193(3) of the Kolkata Municipal Corporation Act, 1980, the Municipal Commissioner, for reasons to be recorded in writing, is satisfied that the owner has failed or neglected to make payment of property tax for four consecutive quarters or if occupier of such land or building accept the liability of making payment of property tax in writing, the occupier of such land or building for the time being may be made liable for payment of property tax.

It has been submitted that separate Assessee number has been generated only for the purpose of facilitating payment of property tax and to identify the person liable to pay property tax.

There is nothing on record to show that there has been any default on the part of the petitioner who claims himself to be the owner of the property in question and primarily liable to pay property tax has actually defaulted in clearing the tax dues.

In the absence of the satisfaction to be recorded in writing by the Municipal Commissioner, the Kolkata Municipal Corporation ought not to create separate Assessee number in favour of any person who may be voluntarily willing to clear property tax in respect of a property.

Moreover, prior to generating fresh Assessee number, the Corporation ought to have given an opportunity of hearing to the owner that is the person primarily liable to pay tax for arriving at a subjective satisfaction and thereafter conclude as to whether there has been any default on his part to clear the property tax dues.

The petitioner has alleged that no opportunity of hearing was afforded to the petitioner prior to generating fresh Assessee number and recording the name of the private respondent as person primarily liable to pay tax in respect of the said property.

Accordingly, the instant writ petition is disposed of by directing the Assessor Collector (Rev-South), Kolkata Municipal Corporation being the respondent No. 7 herein to take into consideration the representation filed on behalf of the petitioner on February 8, 2021, strictly in accordance with law, at the earliest after giving reasonable opportunity of hearing to all the necessary parties and pass a reasoned order within a period of twelve weeks from the date of communication of a copy of this order and communicate the same to all the parties immediately thereafter.

The learned advocate for the petitioner is directed to forward a copy of the legal representation dated February 8, 2021 to the aforesaid respondent at the time of communicating of the order of this Court.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

Sh **(Amrita Sinha, J.)**