Sl. Nos.10 & 11
29.08.2022
Court No.24
B.M.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 19599 of 2022
+
WPA 14523 of 2022

Debasis Ghosh
Versus
The Kolkata Municipal Corporation & Ors.

Mr. Sirsanya Bandopadhyay
Mr. Arkadipta Sengupta
Mr. Arka Kumar Nag
Mr. Tirthankar Dey
… for the petitioner
Mr. Alok Ghosh
Mr. Biswajit Mukherjee
Mr. Dwijadas Chakraborty
Ms. T. Dasgupta
… for the Kolkata Municipal Corporation

The writ petition being WPA 14523 of 2022 was filed by the petitioner *inter alia* praying for issuance of a writ of Mandamus commanding the respondents to intimate the petitioner the actual assessee number of the premises No.41A, Dharmatala Road, Kolkata-700 042 and prohibiting the respondent Kolkata Municipal Corporation from taking any coercive steps in respect of the said premises pursuant to the Letter of Intimation dated 2nd June, 2022.

The case made out by the petitioner in the said writ petition is that the property in question being 12 Kathas 11 Chittacks was purchased by the petitioner by virtue of three registered deeds of conveyance in the year 2001, 2005 and 2007.

According to the petitioner, there were three assessee numbers in respect of the said premises and the petitioner was not sure as to which assessee number was allotted to him and accordingly he was not in a position to clear the property tax dues.

The petitioner has mentioned that he applied for mutation and was served with a Letter of Intimation bearing assessee No. ……5230 (last four digits). He made an application under the Right to Information Act, 2005 to ascertain the assessee number.

He has relied upon an intimation given by the Kolkata Municipal Corporation in favour of one Suresh Das and Sukantala Das in respect of same premises bearing assessee No. ….2520 (last four digits) mentioning that there is no outstanding amount due in respect of the said premises.

The petitioner contends that there cannot be multiple assessee numbers in respect of the same premises. It has been submitted that till the property in question is mutated in favour of the petitioner he cannot be held liable to pay tax.

In the said writ petition the petitioner annexed a copy of the letter written by him on 6th June, 2022 on receipt of the Letter of Intimation dated 2nd June, 2022 requiring the person responsible to pay a sum of

Rs.2,23,00,128/- on account of property tax. In the said letter the petitioner mentioned that he, being a law abiding and peace loving citizen, will pay lawful dues but as he was suffering from health ailments and not in a position to resolve the issue requested a month's time to clear the dues.

During pendency of the said writ petition the Kolkata Municipal Corporation issued notice under Section 221A(1) of the Kolkata Municipal Corporation Act, 1980 on 25th August, 2022 at 15:55 hours mentioning that as the petitioner failed to clear property tax dues within the stipulated time period the property in question would be sold on auction after issuance of an order of proclamation of sale.

A further notice was issued under Section 219(1) of the Kolkata Municipal Corporation Act, 1980 on 25th August, 2022 at 16:15 hours being the distress warrant.

The petitioner, being aggrieved by the same, filed the subsequent writ petition being WPA 19599 of 2022.

According to the petitioner, the provision of the Kolkata Municipal Corporation Act, 1980 has not been followed at the time of issuance of the aforesaid two notices.

It has been argued that notice under Section 219 ought to have preceded the notice issued under Section 221 of the Act. No notice under Section 217 was issued.

The petitioner submits that he is not in a position to approach the Kolkata Municipal Building Tribunal for settling the assessee number and accordingly he has approached this Court for relief.

Reliance has been placed on the judgment delivered by this Court in the matter of Ratanlal Agarwala vs. Kolkata Municipal Corporation & Ors. reported in (1996) 2 Cal LJ 518.

From the documents annexed to the petition it appears that the Corporation invoked the provision for issuance of the distress warrant. Admittedly, notice under Section 221A(1) ought to have been issued after notice under Section 219. Time as mentioned in the two notices imply that 221 notice was issued prior to the issuance of notice under Section 219.

As the petitioner has defaulted in paying property tax for a considerable period of time, accordingly, the petitioner is directed to deposit an ad hoc sum of Rs.75,00,000/- (Rupees Seventy Five Lac) only with the Kolkata Municipal Corporation on account of property tax dues against assessee number ……5230.

The said amount may be paid by way of two instalments. The first of such instalment of Rs.50,00,000/- (Rupees Fifty Lac) only to be paid within 18th October, 2022 and the next instalment of Rs.25,00,000/- (Rupees Twenty Five Lac) only be paid within 16th December, 2022.

The amount deposited by the petitioner shall be accepted by the Corporation and be kept in a separate suspense account of the Kolkata Municipal Corporation. The payment shall be made without prejudice to the rights and contentions of either party.

In the event, the first instalment is not paid within the time as specified hereinabove, it will be open for the Kolkata Municipal Corporation to proceed in accordance with provisions of the Kolkata Municipal Corporation Act, 1980 for recovery of the property tax dues.

On deposit of the aforesaid amount, it will be open for the petitioner to challenge the assessment of the property tax before the appropriate forum in accordance with law.

In the event, the petitioner approaches the appropriate forum within a period of fifteen days after clearing the aforesaid amount of Rs.75,00,000/- (rupees seventy five lac) only the said forum shall decide the issue of assessment on merits, in accordance with law.

The impugned notices dated 25th August, 2022 issued under Sections 221A(1) and 219(1) of the Kolkata Municipal Corporation Act are set aside.

Both the writ petitions stand disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)