ORDER SHEET

OD-1

APO/5/2022
WITH
WPO/983/2016
IA NO:GA/1/2022
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

BROADWAY CENTRE AND ANR.
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
The Hon'ble JUSTICE KAUSIK CHANDA
Date : 25th March, 2022

Appearance:
Mr.Raghunath Chakraborty, Adv.
For appellants
Mr. Biswajit Mukherjee, Adv.
Mr. Gurudas Mitra,Adv.
Mr. Debangshu Mondal, Adv.
Miss Manisha Nath, Adv.
For KMC

The Court : This is an appeal against the judgment and order dated February 25, 2021 whereby a learned single Judge dismissed the writ petition filed by the appellants with costs assessed at Rs. 1,00,000/-(one lakh) payable to the respondent Corporation.

The writ petitioner/appellant no.1 is a partnership firm and is the owner of premises nos. 14, 14/1, 14/2 and 14/3 Old China Bazar Street, Kolkata – 700001. The premises is commonly known as "Bikaramchand Market". The premises is wholly tenanted. The tenants are shopkeepers, a few hundred of them.

The writ petitioners challenged the annual valuation, inter alia, for the period beginning 2nd quarter 1990-91, 4th quarter 1992-93 and 4th quarter 1998-99 respectively. A hearing notice dated March 11, 1998 was also challenged. It was argued before the learned single Judge that the contractual rent was liable to be taken into consideration but the same was not done for fixing annual valuation of the premises in question. It was further urged that no order or notice of hearing was served by the Corporation on the writ petitioners which amounted to breach of the principles of natural justice.

The learned Judge dismissed the writ petition primarily on the ground of inordinate delay on the part of the writ petitioners in approaching the Court. The learned Judge held that by assailing the annual valuation for the period beginning 1990-91, the writ petitioners were seeking to indirectly reopen the entire issue of property taxes in respect of the premises for a period of more than two decades. The learned Judge also noticed that the writ petitioners were given due opportunity of hearing and their authorized representative participated at the hearing. It was also recorded that taxes in respect of the premises in question have been pending since 1990. Since that time, not a penny has been paid by the writ petitioners on account of property tax. The learned Judge held that it was mala fide writ petition and accordingly dismissed it.

Before us, the appellants have urged primarily three points. Firstly, the relevant Assessing Officer arbitrarily arrived at the annual valuation figure without disclosing the foundation thereof. Secondly, copy of the proposed assessment was never served on the assessee. Thirdly, the appellants' prayer for revision under section 192 of the Kolkata Municipal Corporation Act, 1980 has been kept pending by the Corporation.

We had directed the Corporation to disclose the basis on which the annual revaluation was arrived at for the relevant period. The Corporation has done so. We are satisfied that the revaluation was on the basis of actual rent that was collectable in respect of the concerned premises.

Mr. Chakraborty, learned advocate appearing for the appellants has relied on several judgments which are noted as follows:-

i) **Calcutta Municipal Corporation Vs. Motilal Naresh Kumar : 2007 (2) CHN 143**. This case was relied upon in support of the proposition that 28% deduction has to be made from the annual valuation where the entire premises is tenanted and used for commercial purpose.

ii) **State of Tripura Vs. Manoranjan Chakraborty and Others : (2001) 10 SCC 740**. This decision was relied upon to argue that the remedy of statutory appeal is an onerous remedy and hence writ petition is maintainable in spite of existence of such alternative remedy.

iii) **J. M. Baxi & Co., Gujarat Vs. Commissioner of Customs, New Kandla And Anr. : (2001) 9 SCC 275**. This case was also relied upon in support of the proposition that where the alternative remedy is onerous, the writ petition would be maintainable.

iv) **Sudhir Kumar Saha Vs. State of West Bengal & Ors. 2009 (3) CHN 617**. This decision of a Coordinate Bench was relied upon to argue that any order of a Tribunal or other adjudicating authority must be a speaking order.

v) **Turner Morrison & Co. Ltd. & Anr. Vs. State of West Bengal & Ors. And Calcutta Municipal Corporation & Ors. Vs. Anomoni Narayan & Ors. : 2006 (4) CHN 905**. This Division Bench decision of this Court has been relied upon in support of the proposition that unless the order of reassessment is communicated to the assessee, the Corporation cannot raise supplementary bill. Merely communicating that the valuation has been enhanced will not suffice.

vi) **Kolkata Municipal Corporation Vs. St. Josephs & Mary's School & Anr. : 2005 (2) CHN 132.** This decision has been relied upon to argue that unless a copy of the revaluation order is made available to the assessee, the period of limitation for preferring statutory appeal will not start running.

Some of the aforesaid propositions of law and the decisions may probably have helped the appellants, had they not been sleeping over their alleged legal right. They approached the Writ Court in 2016 assailing assessment orders dating back to the 2nd quarter of 1990-91. The appellants say that in 1994 they made an application to the Corporation for amendment and/or revision of annual valuation of the premises in question for the period commencing 2nd quarter 1990-91. However, in spite of repeated reminders, the Corporation did not consider or dispose of such application. Such application is still pending.

Learned advocate says that without disposing of such application, the Corporation cannot legitimately demand any property tax on the basis of enhanced valuation.

We are not impressed with such submission. Firstly, the appellants are not entitled to be heard at all having approached the Court after an inordinate delay of 25 years without sufficiently explaining such delay. The learned single Judge was of the opinion that by making representations before the Corporation and keeping the same pending, the writ petitioners adopted a ploy for not paying a single penny on account of property tax starting from the year 1990. We are inclined to agree with the learned single Judge. According to the Corporation, an amount in excess of Rs.9 Crores is due on account of property tax in respect of the concerned premises. Such figure, of course, includes interest and penalty. The principal amount due is in the region of Rs.2.81 Crores as on March 14, 2022. Additional interest due as on the same date, is approximately Rs.6.21 Crores. Additional penalty due as on March 14, 2022 is approximately Rs.40.54 Lakhs. The learned Judge had enquired of the writ petitioners as to how much amount they were prepared to deposit to show their bona fide, even on an interim basis. The writ petitioners declined to make any offer towards payment of any amount, at all. That was another reason for the learned Judge to hold that the writ petitioners are not entitled to any equity. We again agree with the learned single Judge.

It would indeed be unfair to a statutory authority if its actions which are over two decades old, are permitted to be challenged by a citizen after huge delay. The authorities cannot be expected to preserve all relevant documents for an indefinite period. Of course, for a reasonable period, the authorities should preserve necessary documents. However, if an act of the Corporation is called in question in a court of law by a citizen, who claims to be aggrieved by such an act, after 25 years, the Corporation cannot be faulted if it says that some of the documents are no more available and hence the grievance cannot be looked into. The Corporation has said so. In this case, we do not think that it is an unreasonable explanation.

The appellants say that their application which they made in 1994 is still pending and from time to time, they have sent reminders to the Corporation to dispose of that application and hence, it cannot be said that the appellants took no steps in the matter. We do not agree. Merely writing letters at regular intervals would not amount to taking adequate steps to ensure that their application is disposed of by the Corporation. They should have approached the Court much earlier and not as late as in 2016. Pendency of the application before the Corporation was one of the reasons for the appellants not to pay any single penny on account of property tax. It suited the appellants very well that the application was pending for a long time and still pending today.

On an overall assessment of the facts and circumstances of the case, we are of the view that the learned Judge rightly dismissed the writ application.

The conduct of the appellants has been dubious and lacking in bona fide. We had also enquired as to what amount the appellants are prepared to deposit, without prejudice, to demonstrate their bona fides. Their offer was Rs.33 lakhs, which is a pittance compared to the outstanding claim of the Corporation which is in the region of Rs. 9 crores. We see no reason to interfere with the order assailed before us. It is well known that one who seeks equity must do equity and approach the court with clean hands. We are of the view that the appellants have not done so.

The appeal and the connected application are accordingly dismissed.

(ARIJIT BANERJEE, J)

(KAUSIK CHANDA, J)

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