

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

Present :- Hon'ble Justice Amrita Sinha

WPO No. 300 of 2019
GA No. 1 of 2022

Damodar Ropeways and Infra Limited & Anr.

Vs.

The Kolkata Municipal Corporation & Ors.

For the writ petitioners	:-	Mr. Biswaroop Bhattacharya, Adv. Mr. Jeeshan Haque, Adv. Mr. Tanay Agarwal, Adv. Mr. Tirthankar Nandi, Adv.
For the respondents	:-	Mr. Biswajit Mukherjee, Adv. Ms. Manisha Nath, Adv. Mr. Debangshu Mandal, Adv.
Heard on	:-	06.07.2022 & 08.07.2022
Judgment on	:-	04.08.2022

Amrita Sinha, J.:-

The petitioners are aggrieved by the assessment of annual valuation with effect from first quarter 2010-11, second quarter 2012-13 and first quarter 2015-16 in respect of the apportioned share of the eighth floor of the premises no. 11, Dr. U.N. Brahmachari Street, Kolkata, Ward No. 63 under the jurisdiction of the Kolkata Municipal Corporation.

According to the petitioners, there are serious procedural lapses on the part of the Kolkata Municipal Corporation ('KMC', for short) at the time of revising and re-fixing the annual valuation.

The petitioners refer to the communication dated 26th February, 2019 made by the Assistant Assessor Collector(s) mentioning the proposed annual valuation and intimating the petitioners that its prayer for allowing 28% rebate has been approved by the authority.

The petitioners refer to the property tax bills dated 28th February, 2019 mentioning the date of hearing and the date of presentation both as 28th February, 2019. It has been submitted that, under no circumstances, the date of presentation, the date of hearing as well as the date of the bill can be the same.

The petitioners refer to Sections 184(3), 184(4), 186, 187(1) & 188 of the Kolkata Municipal Corporation Act, 1980.

It has been submitted that, according to the aforesaid provisions the Municipal Commissioner ought to have given one months' notice to the petitioners specifying the proposed annual valuation within which the petitioners could have filed the objection and only after hearing and determining the objections, annual valuation could have been revised or re-fixed.

It is the specific contention of the petitioners that prior opportunity of hearing was not given to them and the prescribed procedure for hearing and disposal of the objections was not followed at the time of revising the annual valuation of the property in question.

The petitioners submit that, KMC in the affidavit-in-opposition, have relied upon an authorization letter of one Mr. Ashok Kumar Agarwal and erroneously accepted his admission of the annual valuation by giving a complete go-by to the statutory provisions. It has been argued that irrespective of the fact whether there is an authorization or not and whether or not there is an acceptance of the proposed valuation, the authority ought to have acted within the four corners of the Statute and ought to have given opportunity of hearing to the petitioners to raise objection to the proposed annual valuation.

It has been contended that the aforesaid provisions are mandatory in nature and are meant to be complied with prior to revising or re-fixing the annual valuation of any property.

In support of the aforesaid contention, the petitioners rely upon the judgment delivered by the Hon'ble Supreme Court in the matter of ***Kusheshwar Prasad Singh vs. State of Bihar & Ors.*** reported in **(2007) 11 SCC 447** paragraphs 15 and 16 on the proposition that a wrong doer ought not to be permitted to make a profit out of his own wrong.

The petitioners further rely upon the judgment delivered by the Hon'ble Supreme Court in the matter of ***Motilal Padampat Sugar Mills Company Limited vs. State of Uttar Pradesh & Ors.*** reported in **(1979) 2 SCC 409** paragraph 5 wherein the Court held that no plea of waiver can be allowed to be raised unless it is pleaded and the factual foundation for it is laid down in the pleadings.

In the present case the plea of waiver has neither been averred nor pleaded in the affidavit filed on behalf of KMC.

The petitioners pray for setting aside the annual valuation fixed by KMC and the property tax bills raised in terms of the said annual valuation.

Learned advocate representing the respondents opposes the prayer of the petitioners. It has been submitted that the petitioners all along had knowledge of the entire process of revision of the annual valuation of the aforesaid premises. The petitioners, on one hand, sought for the 28% rebate in terms of the order dated 30th November, 2006 passed by the Hon'ble Supreme Court in the matter of ***Calcutta Municipal Corporation vs. Motilal Naresh Kumar*** in Civil Appeal No. 3950 of 2001, and on the other hand, contend that opportunity of hearing was not given to them. The benefit of the order of the Supreme Court was granted to the petitioners by the Hearing Officer after hearing the authorized representative of the petitioners while revising the annual valuation with effect from second quarter 2006-2007.

It has been submitted that vide memo dated 1st February, 2019 the petitioners were asked to submit a copy of the agreements with the occupiers for the relevant period and to deposit rupees fifty lakh in the suspense account for availing the benefit of the judgment in Motilal Naresh Kumar (supra). The petitioners accordingly put in the cheque dated 8th February, 2019 of rupees fifty lakh.

Vide communication dated 26th February, 2019 the petitioners were informed that their prayer for revision of annual valuation has been approved allowing the rebate. One Ashok Kumar Agarwal appeared before the concerned department of KMC with an authorization letter wherein it was clearly mentioned that the representative was duly authorized to accept the proposal of the valuation intimated vide the aforesaid communication letter dated 26th February, 2019 and to sign and to do all work on behalf of the petitioners. The signature of the authorized person was duly attested by the petitioner no. 2, being the General Manager of the petitioner no. 1.

The aforesaid authorized representative of the petitioner accepted the annual valuation for the disputed period by endorsing that the annual valuation was accepted without any objection and put his signature in the inspection book on 27th February, 2019. It is thereafter that the property tax bills were generated by KMC on 28th February, 2019.

The subsequent communication of the petitioners dated 4th March, 2019 received in the office of the KMC on 7th March, 2019 clearly mentions that the property tax bills could not be cleared due to acute financial problem. Prayer was made to give benefit of the waiver so that the petitioners could clear the dues indicated in the property tax bills dated 28th February, 2019.

It has been contended that in the letter dated 4th March, 2019 there is no indication made by the petitioners that the authorized representative did not have the authority to accept the annual valuation assessed by KMC. The said representation also does not mention that the representative was not authorized by the petitioners to deal with the matter and settle the same with KMC. The petitioners with mala fide intention deliberately suppressed the aforesaid letter dated 4th March, 2019.

It has been argued that the rent that is received by the petitioners is inclusive of the municipal tax. The petitioners have not challenged the annual valuation prior to the first quarter of 2010-11. The conduct of the petitioners implies that they have waived their statutory right to raise objection by admitting the annual valuation assessed by KMC for the period prior to 2010-11. The petitioner no. 2 has given a declaration clearly mentioning that they accept the annual valuation with effect from 3/06-07, 1/10-11, 2/12-13 and 1/15-16.

In this context the respondents rely on the decision delivered by the Hon'ble Supreme Court in the matter of ***Commissioner of Customs, Mumbai vs. Virgo Steels, Bombay & Anr.*** reported in ***(2002) 4 SCC 316*** paragraphs 6, 7, 8, 14 and 15 on the proposition that even though a provision of law is mandatory in its operation, if such provision is one which deals with the individual rights of the persons concerned and is for his benefit, the said person can always waive such a right.

Reliance has also been placed on the judgment delivered by the Hon'ble Supreme Court in the matter of ***Graphite India Limited & Anr. Vs. Durgapur Projects Limited & Ors.*** reported in ***(1999) 7 SCC 645*** paragraphs 23 and 24 wherein the Court relied upon an earlier decision of the Supreme Court on the principle that even a mandatory requirement can be waived by the person concerned if such requirement is in his interest and not in public interest.

Prayer has been made for dismissal of the writ petition.

I have heard and considered the rival submissions made on behalf of both the parties.

The contention of the petitioners that the statutory rules have not been followed at the time of reassessment of the annual valuation of the property does not appear to be well founded. From the documents that are available on record, it is abundantly clear that the petitioners, through their authorized representative, accepted the annual valuation of the property. The acceptance is clearly recorded in the inspection book.

Though the petitioners have contended that there was no other alternative but to sign on the dotted line, but the same also does not appear to be correct. It appears that there are signatures of both the petitioner no. 2 and the authorized representative of the petitioners accepting the annual valuation. The petitioners even went to the extent of applying before the Corporation praying for further waiver of interest citing acute financial crisis.

It appears that after negotiating the matter with the KMC and settling the annual valuation, the petitioners have approached this Court citing procedural lapses on the part of KMC. Had the petitioners been genuinely aggrieved by any omission on the part of KMC to abide by the statutory rules, then the petitioners ought to have approached the KMC highlighting the lapses. The same has not been done.

The petitioners presently are trying to make their authorized representative the scapegoat and trying to disapprove the settlement and the acceptance recorded in the inspection book by their said authorized representative. The petitioners lost site of the fact that apart from the acceptance by the authorized representative there is also a declaration by the petitioner no. 2 plainly accepting the annual valuation determined by

KMC. It cannot be accepted that on each and every occasion the petitioners were compelled to sign on the dotted line.

The sequence of events makes it evidently clear that only after the proposed annual valuation was accepted by the petitioners and the same was recorded in the inspection book, the property tax bills were generated by KMC. The requirement of Sections 184, 186, 187 and 188 is primarily for the purpose of granting an opportunity of hearing to the assessee in case there is an objection to the proposed annual valuation. The aforesaid provision appears to have been duly complied with as the representative of the petitioners was duly heard and it is only after the acceptance of the proposed annual valuation that the property tax bills were generated.

Though the petitioners argue that the authorized representative did not have the authority to accept the proposed annual valuation, but the petitioners cannot be heard to contend that opportunity of hearing objection was not given to the petitioners. The proposed annual valuation was finalised only after hearing the objection of the petitioners. The same is enough compliance of the aforesaid provisions relied upon by the petitioners.

The Hon'ble Supreme Court in Graphite India (supra) and Virgo Steels (supra) reiterated the settled principle that even though a provision of law is mandatory in its operation if such provision is one which deals with the individual right of the person concerned and is for his benefit, the said person can always waive such a right. The right of notice being personal in nature can always be waived by that person.

The petitioners in reply have tried to contend that the authorized representative's concession or admission would not bind the petitioners, but the same cannot be accepted by the Court, primarily because it is not only the authorized representative who accepted the annual

valuation but also the petitioner no. 2 who filed a declaration accepting such valuation.

The petitioners, as a last resort, have relied upon the principle that no man shall be permitted to take advantage of his own wrong. According to the petitioners, KMC was under statutory obligation to issue the hearing notice and thereafter finalise the annual valuation. By not doing so, KMC is right now trying to take advantage of the situation by shifting the burden on the authorized representative of the petitioners.

The aforesaid contention of the petitioners also cannot be accepted by the Court as it appears that the petitioner no. 2 and the authorized representative of the petitioners both accepted the annual valuation in writing and never raised any objection to the proposed valuation, as such, the aforesaid principle cannot be made applicable in the facts and circumstances of the present case. There is hardly any error on the part of KMC which the authority is taking advantage of. On the contrary, it can be said that the petitioners themselves took advantage of the opportunity of hearing given to them prior to generating the bills and now trying to turn around alleging statutory lapses on the part of KMC.

The petitioners have relied upon Articles 14 and 265 of the Constitution of India. Law empowers the Corporation to levy property tax and KMC has acted in accordance with the same. In the facts of the case it does not appear that the petitioners have been discriminated in any manner in the matter of imposition of tax. Moreover, the petitioners have not challenged the proposed annual valuation for the period preceding the first quarter of 2010-11 and have accepted the same.

In *Kusheshwar Prasad Singh* (supra) the Hon'ble Supreme Court reiterated the well-recognized and established legal maxim that no man shall take advantage of his own wrong. In the present case, though the petitioners intend to portray that KMC erred in law in not following the

procedure laid down in the Act by affording an opportunity of hearing for consideration of the objection to the proposed annual valuation, but fact remains that the petitioners through their authorised representative accepted the proposed annual valuation after negotiation with the officers of KMC. The mutual conduct of the parties makes it very clear that the petitioners were comfortable with the proposed annual valuation of the property and after acceptance of the same by the petitioners, property tax bills were raised by KMC. The same cannot be taken as any wrong committed by KMC which they are taking advantage of at this stage.

In *Motilal Padampat (supra)* the petitioners were relying on the principle of waiver to be pleaded in the affidavit. The KMC in the affidavit in opposition averred that at no point of time did the KMC force the petitioners to accept the proposed annual valuation. The petitioners being satisfied with the proposed annual valuation accepted the proposal and endorsed the acceptance without objection in the inspection book. After accepting the proposed annual valuation, the petitioners prayed for availing the 50% interest waiver facility. It is only when the annual valuation is accepted that there can be a chance to pray for further waiver. Making a prayer for waiver of interest implies that the petitioners accepted the proposed annual valuation and were satisfied with the same. The conduct of the petitioners is enough indication that they waived their right to raise any further objection to the proposed annual valuation.

In *Motilal Naresh Kumar (supra)* the Hon'ble Supreme Court laid down the formula for determining the share of the occupier's tax and the share of the tax payable by the owner. Applying the formula fixed by the Hon'ble Supreme Court, KMC already granted the 28% waiver of the occupier's share of taxes and thereafter fixed the annual valuation of the property after due consultation with the representative of the petitioners.

The petitioners never disapproved the said stand taken by their authorised representative before KMC.

The act of the representative cannot be treated as a concession given by the representative on behalf of the petitioners. The petitioners take benefit of the act of the representative which are advantageous to them and disown the portion where the proposed annual valuation has been accepted. After the proposed annual valuation was finalised and property tax bills raised by KMC, the petitioners resorted to the blame game and are presently trying to nullify the permission and authority granted by the petitioners to their authorised representative to settle the issue of taxes with the concerned officer of KMC.

On one hand the petitioners accept the rebate granted by KMC and on the other dispute the annual valuation, both of which were fixed after hearing. Such contrary stand cannot be permitted to be adopted by the petitioners.

No interference is warranted in the facts and circumstances of the present case.

The writ petition along with connected application fails and is hereby dismissed.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)