OD-3

ORDER SHEET

WPO/1425/2022

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

NIRMALYA KUMAR GHOSAL
Versus
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 24th March, 2022.

Appearance:
Mr. Ranajit Chatterjee, Adv.
Mr. Arijit De, Adv.
Mr. Aniruddha Mitra, Adv.
... for the petitioner

Mr. Alak Kr. Ghosh, Adv.
Mr. Gopal Ch. Das, Adv.
Mr. Debangshu Mondal, Adv.
... for the KMC

Mr. Suman Dutt, Adv.
Ms. Hashnuhana Chakraborty, Adv.
Mr. Paritosh Sinha, Adv.
Ms. Shrayashee Das, Adv.
Mr. Jishnujit Roy, Adv.
... for the respondent nos. 5, 6 & 7

Mr. Deepan Kr. Sarkar, Adv.
Mr. Arunabha Deb, Adv.
Ms. Ashika Daga, Adv.
Ms. Ananya Sinha, Adv.
...for the respondent no.8

The Court :- Mr. Chatterjee, learned advocate appearing for the petitioner is aggrieved by the demands sent by the Kolkata Municipal Corporation, towards the outstanding property tax.

The dispute is in respect of premises no.3/2, Sunny Park, bearing assessee no.110694402318. It is the contention of the petitioner that the other heir in respect of the property in question, is the respondent no.8, who is contesting the probate proceeding. The petitioner claims to be the beneficiary of the Will in respect of the property in question as also the executor thereof. The petitioner applied for probate. The respondent no.8 contested the same. Hence, the proceedings have become contentious and have been converted to a testamentary suit. The other contention of the petitioner is that the property tax has gone up to Rs.2 crores in view of the failure of the developer to pay the taxes as per the development agreement.

Mr. Dutt, learned advocate appearing on behalf of the respondent nos.5, 6 and 7 submits that the Civil Court has passed an injunction upon the property and as such, the developer has not been able to proceed further with the construction work. He submits that as the property has not been handed over to the developer, the developer cannot be saddled with the property tax. He further submits that Rs.3 crore has already been invested in the property and some amount has been paid to the petitioner.

Mr. Sarkar, learned advocate appearing on behalf of the respondent no.8 submits that the petitioner is the executor of the property in question and as such is liable to pay the dues during the pendency of the suit which may be recoverable at the appropriate stage from the respondent no.8, if at all.

The petitioner is willing to pay his share in installments and also submits that 50% of the interest and 99% of the penalty be waived, as per the scheme followed by the Corporation.

Mr. Ghosh, learned advocate appearing for the Corporation submits that the property tax due to the corporation is a charge on the property and as such it should be paid immediately. Whether the parties are contesting against each other and have failed to come to a decision with regard to the mode of payment of the property tax, is not an issue to be looked into by the authority, which is entitled to the property tax.

Under such circumstances, as Mr. Chatterjee's client is willing to pay his share of the property tax due, the petitioner is directed to pay a sum of Rs.20 lakhs within April 30, 2022 and Rs.20 lakhs within June 30, 2022.

The petitioner in the meantime shall be at liberty to approach the Chief Manager (Revenue), South, Kolkata Municipal Corporation, who shall consider the prayer for further installment/apportionment with regard to the remaining amount along with the prayer for waiver of interest and penalty. Such consideration shall be in accordance with law.

A reasoned order be passed upon hearing the petitioner, developer as also the representative of the respondent no.8 and the entire issue shall be resolved. A reasoned order shall be passed and communicated to the petitioner.

On the failure of the petitioner to pay any of the installments, the Corporation may act and proceed in accordance with law. Other issues with regard to the valuation, liability of the developer etc, are not decided in this proceedings and all observations in this order are tentative and the same shall not have any effect in the probate proceeding.

WPO/1425/2022 is disposed of accordingly.

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

(SHAMPA SARKAR, J)

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