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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO 346 of 2019

SUSHIL KUMAR BAGARIA
VERSUS
KOLKATA MUNICIPAL CORPORATION & ORS.

WITH

WPO 455 of 2019
IA GA 2 of 2022

SMT. BINA DEBI BAGARIA
VERSUS
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble Justice SAUGATA BHATTACHARYYA
Date : 10th August, 2022.

APPEARANCE:
Ajay Kr. Bagaria, Smt.
Aradhana Bajaj and
Smt. Bina Debi Bagaria
appear in person

Mr. Ranajit Chatterjee,Adv.
Ms. Manisha Nath,Adv.
...for KMC

The Court:- Petitioners in view of issuance of demand notice which was received by the original owner of the property situates at 135A, Chittaranjan Avenue, Kolkata has approached before this Court by filing two separate writ petitions – one in connection with the shop room and another in connection with cinema hall. According to the petitioners, they are the occupiers of the said shop room as well as cinema hall situated at the aforesaid premises.

Today out of four petitioners, being substituted on death of the sole writ petitioner, namely Sushil Kumar Bagaria, three are personally present before this Court and have made their submissions in person. Kolkata Municipal Corporation being the principal respondent is represented by Mr. Ranajit Chatterjee, learned Counsel. In both the writ petitions petitioners are aggrieved by the demand notice dated 15th November, 2018 whereby the concerned authority of the Kolkata Municipal Corporation (in short "KMC") demanded payment of Rs. 5,41,05,396/- towards property tax, interest and penalty. It has been argued by the petitioners that the sum which has been demanded vide said demand notice dated 15th November, 2018 is not entirely required to be paid by them since they are occupiers of part of the premises in question and necessary order is needed to be passed for apportionment of the said sum as demanded by the KMC authority in accordance with the relevant provisions of the Kolkata Municipal Corporation Act, 1980. During the course of submission, the petitioners have relied upon Section 174(4) (pre amendment) of the said Act of 1980 in order to impress upon this Court that the owner of the property vis-à-vis occupier is required to pay the property tax based on the annual valuation to be calculated following the procedure as contemplated under the said Section 174(4). It has been submitted that there is procedural defect and non-consideration of ground reality in the matter of calculating the amount towards property tax, as a result whereof the petitioners are unnecessarily being penalised and an exorbitant amount has been claimed by the KMC authorities. It has also been submitted that the cinema hall as well as the shop in question are sealed by the concerned authority of KMC, as a result whereof petitioners are not in a position to run their business affecting their livelihood.

Mr. Ranajit Chatterjee, learned Counsel representing the Kolkata Municipal Corporatioin has defended the said demand notice dated 15th November, 2018 and it has also been submitted that in the event petitioners are aggrieved by such demand notice, the course which is left open is to prefer an appeal before the Municipal Assessment Tribunal.

This Court has heard three writ petitioners out of four in person and also learned counsel representing the KMC. On hearing both sides and also on perusal of the prayer couched in the writ petition, it appears that petitioners are chiefly aggrieved by demand notice dated 15th November, 2018. According to the petitioners, for running cinema hall as well as the said shop, the entire amount as demanded vide said demand notice dated 15th November, 2018 is required to be paid which is exorbitant amount and ought not to be payable by the petitioners. It has been pointed out by the petitioners based on prayers in the writ petitions that necessary order is required to be passed by the concerned authority of the KMC for apportionment of property tax which would enable the petitioners to pay the amount for running their business of cinema hall and shop. During course of hearing, Section 178(6) of Kolkata Municipal Corporation Act, 1980 has been brought to the notice of this Court and the same is quoted below:

"The Municipal Commissioner shall, upon an application made in this behalf by an owner, lessee or sub-lessee or occupier of any land or building and upon payment of such fees as may be determined by the Corporation by regulations, furnish information to such person regarding the apportionment of the property tax of such land or building among the several occupiers within such land or building for the current period or the period immediately preceding:

Provided that nothing in this sub-section shall prevent the Corporation from recovering the dues from any such person."

Such provision as contained in Section 178(6) grants opportunity to the petitioners to approach the appropriate authority of KMC for apportionment of property tax of the aforesaid premises.

Considering the said provisions contained under Section 178(6), this Court grants leave to the petitioners to make an application for apportionment of property tax of the aforesaid premises within a period of thirty days from this date on compliance of necessary formalities. If such application is made for apportionment within the aforesaid period, the Chief Manager, Revenue (North) of KMC, being the appropriate authority as submitted on behalf of KMC, shall take a decision on such application within a period of eight weeks from the date of receipt of such application after granting an opportunity of hearing to the petitioners and other interested parties.

Petitioners shall also be at liberty to pray for waiver of interest and penalty before the appropriate authority of KMC in addition to making an application for apportionment as directed by this Court. If such application for waiver of interest and penalty is made by the petitioners within a period of thirty days from this date, the appropriate authority of the KMC in its turn shall take a decision within a period of eight weeks thereafter from the date of receipt of such application for waiver. The decision to be taken by the appropriate authority of KMC on waiver shall be communicated to the petitioners within a period of one week thereafter.

With the aforesaid direction, both the writ petitions stand disposed of. Application, if pending, also stands disposed of.

However, there shall be no order as to costs.

Urgent xerox certified copies of this order, if applied for, be made available to the parties subject to compliance with all requisite formalities.

(SAUGATA BHATTACHARYYA, J.)

s.chandra