OD-3

ORDER SHEET

WPO/2165/2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SMT. ASHALATA JAYASWAL AND ORS.
Versus
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date : 9th June, 2022

Appearance:

Mr. Rupak Ghosh, Adv.
Mr. Debmalya Ghosal, Adv.
Mr. Dilip Kr. Ghosh, Adv.
For petitioners
Mr. Sankarsan Sarkar, Adv.
Mr. Anjan Bhattacharya, Adv.
For respondent nos.5 to 7
Mr. Jayabrata Basu Ray, Adv.
For respondent no.12
Ms. Sananda Ganguli, Adv.
Mr. Shubradip Roy, Adv.
For respondent no. 13
Mr. Biswajit Mukherjee, Adv.
Mr. Arijit Dey, Adv.
For Kolkata Municipal Corporation

The Court: The issue relates to the property at premises no.18/1, Abanindra Nath Thakur Sarani, (formerly known as Camac Street) Kolkata – 700 017.

A portion of the property in question was at one point of time sold in favour of one Bhutoria Dealers Private Limited being the respondent no.12 in the present writ petition. The name of Bhutoria Dealers Private Limited was incorporated in the records maintained by the Kolkata Municipal Corporation.

The said sale was set aside by orders of Court which was ultimately affirmed by the Hon'ble Supreme Court.

There are several co-owners of the property. There is a partition suit pending between the co-owners. A Receiver has been appointed and the Receiver has been impleaded as the respondent no.4 in the instant writ petition.

The immediate cause of action for filing the writ petition is the act of the Kolkata Municipal Corporation invoking provision of Section 220(2) of the Kolkata Municipal Corporation Act, 1980. The men and agents of the Corporation put padlock in the main gate of the said premises and seized certain movable properties which were lying in the said premises as specified in the inventory set out in Form "C" on 2nd April, 2022.

The petitioners are aggrieved by the same.

It has been submitted that as per provision of Section 220(2) of the Kolkata Municipal Corporation Act, 1980, the Corporation is not entitled to seize moveable properties. In this connection the petitioners rely upon the judgment delivered by this Court in the matter of Calcutta Municipal Corporation & Ors. Vs. Abdul Halim Gaznavi Molla & Ors. reported in AIR 1998 Calcutta 345.

It has further been submitted that as the Letter of Intimation has been raised in favour of Bhutoria Dealers Private Limited, the petitioners were not the persons liable to pay the tax in respect of the said property. It has been submitted that tax bills were never raised in favour of the petitioners.

Prayer has been made for removing the padlock and to release the moveable goods that have been illegally seized by the Corporation.

The petitioners have relied upon a letter which was written by their learned advocate to the Assistant Assessor/Collector, Kolkata Municipal Corporation on 10th January, 2005 wherein the fact of setting aside the sale has been intimated to the Corporation. A prayer was made for reverting records back to the earlier position.

The petitioners have filed a supplementary affidavit wherein a copy of the Inspection Book of the Assessment Department in respect of the said property has been annexed. It appears therefrom that the land in question is used as car shed and garage. The person liable to pay tax has been mentioned as "Bhutoria Dealers Private Limited". The name of Bhutoria Dealers Private Limited has been incorporated by deleting the name of Sri Mangal Prosad Jayaswal and Sri Rukmini Sevak Jayaswal. The said mutation was done on 12th June, 2002.

Learned advocate representing the respondent nos. 5, 6 and 7 submits that they are the co-owners of the said property. Submission has been made with regard to the pendency of the partition suit in between the parties.

Learned advocate representing the respondent no.13 submits that the respondent no.13 has purchased the shares of the respondent nos. 8 to 11.

Learned advocate representing Bhutoria Dealers Private Limited, respondent no. 12 submits that the respondent no. 12 is not liable to pay tax as by virtue of the order passed by the Hon'ble Supreme Court the Company is no longer the owner of the said property and in view of the order passed on 16th December, 2003 in CO No.445 of 2003 with CAN 5129 of 2003 (Bhutoria Dealers Private Ltd. vs. Debts Recovery Tribunal), all the consequential steps taken pursuant to the sale have been set aside and the possession of the property has been restored to the Joint Special Officers.

According to the Letter of Intimation which was issued in the name of Bhutoria Dealers Private Limited, it appears that a total sum of Rs.74,91,660/- is the amount that is due and payable on account of property tax in respect of the said property. The Letter of Intimation was issued on 2nd April, 2022 and fifteen days' time was granted for making payment of outstanding dues. As the outstanding dues were not paid, a distress warrant under Section 219(1) of Kolkata Municipal Corporation Act, 1980 was issued in the name of Bhutoria Dealers Private Limited. Thereafter the padlock has been put on the main gate of the said premises along with the moveable properties standing in the said land.

Learned advocate representing the Kolkata Municipal Corporation submits that the parties who are liable to pay tax did not make any formal application under Section 183 of the Kolkata Municipal Corporation Act in the prescribed format. In the absence of such application being made, it was not possible for the Kolkata Municipal Corporation to make necessary correction in their records.

It has further been submitted that assuming that a communication was made by the learned advocate for the petitioner in January, 2005 and relying on which if the records are to be reverted back, then the persons liable to pay tax will be Sri Mangal Prosad Jayaswal and Sri Rukmini Sevak

Jayaswal. Both the aforesaid persons are no longer alive and the Corporation cannot proceed against dead persons.

From the submissions made on behalf of all the parties and upon perusal of the documents annexed to the writ petition it appears that more than Rs.74 lakh and odd is due and payable on account of property tax in respect of the said premises. The Letter of Intimation has been raised in the name of Bhutoria Dealers Private Limited. By virtue of the order passed by the Court affirmed by the Hon'ble Supreme Court, Bhutoria Dealers Private Limited cannot be considered as a person liable to pay tax.

Accordingly, the Corporation is required to raise the tax bill in respect of the persons who are actually liable to pay tax in respect of the said premises.

The petitioners as well as some of the respondents have claimed ownership of the property in question. The persons who claim themselves to be the owners of the property are directed to make appropriate application(s) in the prescribed format before the Kolkata Municipal Corporation along with all supporting documents within seven days from date. On receipt of the said application(s), the Kolkata Municipal Corporation shall consider the same upon giving opportunity of hearing to the parties or their authorised representatives within a period of three weeks from the date of receipt of the application(s).

After a decision is taken with regard to the application(s) filed by the parties, the Kolkata Municipal Corporation shall raise proper tax bills/Letter of Intimation in favour of the person(s) liable to pay tax. The tax assessed by the Kolkata Municipal Corporation has to be paid by the persons liable to pay tax within a period of fifteen days from the date of raising the bills.

In the event payment of the assessed amount is not made within the time stipulated herein above, it will be open for the Kolkata Municipal Corporation to take steps, strictly in accordance with law, for realisation of the dues in respect of the said property upon giving proper notice to the parties.

If appropriate application(s) is not made by all the persons claiming themselves to be the owners of the property liable to pay tax, it will be open for the Corporation to incorporate the name(s) of the persons willing to pay tax and collect tax from them.

It is only upon payment of the arrear tax assessed by the Corporation that mutation will be effected in the records by incorporating the name(s) of the person(s) who clears the dues.

The notice issued under Section 220(2) of the Kolkata Municipal Corporation Act, 1980 as well as the distress warrant issued under Section 219(1) of the Kolkata Municipal Corporation Act, 1980 are accordingly set aside. The Kolkata Municipal Corporation is directed to remove the padlock immediately.

As the writ petition is being disposed of without calling for any affidavits, allegations made therein are not admitted by the parties.

Supplementary affidavit filed in Court be taken on record.

The writ petition stands disposed of.

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

(AMRITA SINHA, J.)

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