

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

Present :- Hon'ble Justice Amrita Sinha

WPO No. 2265 of 2022

Nirmalya Kumar Ghosal

Vs.

The Kolkata Municipal Corporation & Ors.

For the writ petitioner	:-	Mr. Rupak Ghosh, Adv. Mr. Shayak Mitra, Adv. Mr. Mehboob Rahman, Adv.
For the KMC	:-	Mr. Alok Kumar Ghosh, Adv. Mr. Amber Nath Banerjee, Adv. Ms. Piyali Sengupta, Adv. Mr. Debangshu Mondal, Adv.
For respondent nos. 5 to 7	:-	Ms. Hashnuhana Chakraborty, Adv. Ms. Shrayashee Das, Adv. Mr. Jishnujit Roy, Adv.
For respondent no. 8	:-	Mr. Ratnanko Banerji, Sr. Adv. Ms. Ashika Daga, Adv. Ms. Ananya Sinha, Adv.
Heard on	:-	03.08.2022
Judgment on	:-	12.08.2022

Amrita Sinha, J.:-

The present writ petition has been filed in connection with the premises no. 3/2, Sunny Park, Kolkata 700019.

The petitioner, a co-owner of the aforesaid property, is aggrieved by the annual valuation determined by the Kolkata Municipal Corporation with effect from the 4th quarter of 2014-15. Prayer has been made for revoking/ cancelling the annual valuation determined in respect of the said premises with effect from the 4th quarter of 2014-15.

The annual valuation of the mother premises being no. 3, Sunny Park, comprising of area in excess of 62 kathas was Rs. 59,400/- only till 2014-15.

The annual valuation determined for premises no. 3, Sunny Park, after separation of the premises no. 3/2, Sunny Park, presently comprising an area measuring more than 38 kathas along with two storied bungalow, is Rs. 75,460/- only.

The annual valuation of the apportioned premises numbered as 3/2, Sunny Park has been fixed at Rs. 53,68,670/- only with effect from the 4th quarter of 2014-15 in respect of the land measuring 24 kathas 4 chitaks and 38 sq.ft. with single storied structure including living quarters, out houses and garages.

The property in question was owned by Pranati Ghosal, since deceased, the mother of the petitioner and the respondent no. 8. The said Pranati Ghosal breathed her last on 11th September, 2016. During her lifetime the mother of the petitioner demarcated an area of 24 kathas 4 chitaks and 38 sq.ft. of the premises no. 3, Sunny Park for commercial exploitation by construction of multi storied building. The demarcated portion was thereafter separated from the mother premises and numbered as premises no. 3/2, Sunny Park to facilitate development of the said property. Out of the demarcated area of 24 kathas 4 chitaks and 38 sq.ft. the mother of the petitioner made a gift of undivided 2% share of her right, title and interest in the said premises and the petitioner mutated his name in the records of the Kolkata Municipal Corporation.

A development agreement was executed on 16th December, 2014 by the petitioner and his mother with the respondent no. 5 as developer. Along with the said development agreement a power of attorney was executed in favour of the respondent no. 6 being the Director of the respondent no. 5, and the respondent no.7, the authorised representative of the developer. The attorney holders were authorised to represent the petitioner and his mother before the Corporation for obtaining separate assessment of the property, fixation/ finalisation of the annual valuation of the property and to sign, execute and submit necessary papers and documents to the Corporation. The attorney

holders by virtue of the authority bestowed upon them represented the petitioner and his mother before the Corporation, agreed and accepted the annual valuation proposed by the Corporation.

The petitioner contends that the annual valuation of the property has been fixed at an exorbitant rate based on the proposed commercialisation and the multi storied building to be constructed thereon. As per the development agreement, the developer is obliged to pay the property tax from the date of taking over possession of the said premises till the issuance of the Completion Certificate of the building to be constructed. The development, however, did not take place as disputes cropped up after the death of Pranati Ghosal. In the meantime, however, the annual valuation of the property which was raised to a great extent was accepted by the attorney holders. Property tax of the premises has remained unpaid after upward revision of the annual valuation.

The notice issued by Kolkata Municipal Corporation on 10th February, 2022 mentions that a sum of Rs. 1,35,08,092/- is due and payable in respect of the premises no. 3/2, Sunny Park and direction has been passed to make immediate arrangement for payment of the said outstanding amount within seven days from the date of display of the notice, failing which, penal measures as per the KMC Act, 1980 shall follow.

The petitioner contends that there has been procedural lapse on the part of the Kolkata Municipal Corporation in fixing/ revising the annual valuation of the said premises. It has been contended that the provisions of Sections 184, 186, 187, 188 have not been complied with prior to revising the annual valuation of the property. It has been submitted that the mandatory provision of Section 184 of the Kolkata Municipal Corporation Act, 1980 could not have been waived. There has been violation of the principles of natural justice as no opportunity was given to the owners of the said premises to put forth their objection to the proposed valuation.

The annual valuation of the premises adjacent to the subject premises is quite low compared to the valuation of the subject premises. The petitioner did not have knowledge of revising the annual valuation prior to December, 2021 when the notice for making immediate payment was served upon the petitioner. The petitioner prays for setting aside the annual valuation which has been fixed in respect of the said premises.

Learned advocate representing the Kolkata Municipal Corporation vehemently opposes the prayer of the petitioner. It has been submitted that the remedy prayed for by the petitioner cannot be granted as the same is barred under law. The annual valuation that has been challenged by the petitioner has already been acted upon by making part payment. The same cannot be challenged at this stage. The principle of waiver will apply in the present case. The conduct of the owners of the premises implies that they waived their right to challenge the annual valuation. Acceptance of the annual valuation on behalf of the owners has been recorded in the inspection book maintained by the Corporation.

It has been denied that there has been any procedural lapse on the part of the Corporation in fixing the annual valuation, as alleged, or at all. Reasonable opportunity was given to the representative of the petitioner prior to revising the annual valuation. It is only after hearing the submission/objection made on behalf of the owners and acceptance of the same, that the annual valuation has been fixed. At this belated stage, the petitioner ought not to be permitted to reopen the issue.

Learned advocate representing the developer submits, upon instruction that, as plan has not been sanctioned as yet for making construction, accordingly, no construction work has commenced.

Learned advocate representing the respondent no. 8 submits that his client is agreeable to pay the rates and taxes as assessed by the Corporation.

I have heard the submissions made on behalf of all the parties.

The issues to be decided in the present writ petition are-

(a) Whether after agreeing and accepting the revised annual valuation and undertaking to make payment thereof by the representative of the owner, can the revised annual valuation subsequently be open to challenge by the owner?

(b) Whether acceptance of the revised annual valuation and making part payment thereof will amount to waiver of the right to raise further objection to the revised annual valuation?

From the facts of the case it appears that the valuation of the premises came to be revised at the time of apportion/ separation of the premises from 3 to 3/2, Sunny Park in the year 2014-15. The mother premises was separated for the sole purpose of causing development and commercialization. The owners of the premises i.e., Pranati Ghosal and her son, the petitioner herein, executed a power of attorney in favour of their authorised representative to represent them before the Corporation for obtaining separate assessment of the property, fixation/ finalisation of the annual valuation of the property and to sign, execute and submit necessary papers and documents to the Corporation.

By virtue of the said power, the authorized representative of the owners approached the Corporation and settled the annual valuation of the property. The fact that the owners did not raise any objection to the upward revision of the annual valuation clearly implies that they were comfortable with the raise and accordingly did not protest the same. It seems that all were well till the mother was alive. It is only after the death of the mother that things started getting complicated. Development of the property got stalled as the sister claimed a share in the property. Situation started getting murky with the entry of the sister in the scene.

The mother son duo, in all probability, did not raise any issue with regard to the steep revision because they were confident that the commercial

value of the property could be achieved and utilised to the optimum level when the annual valuation of the property is high.

The other reason for not protesting to the sharp rise must be the clause in the development agreement that the property tax of the premises will be paid by the developers from the date of taking over possession of the property till the date of issuance of Completion Certificate of the building to be constructed. The development agreement was executed in December 2014 and the developer was put in possession immediately thereafter. As payment of tax was taken to be the liability of the developer, accordingly, the owners did not care to pay any heed to the hike in the annual valuation. The Corporation, in usual course, raised tax bills in favour of the recorded owners. Series of letters between the developer and the petitioner speaks about payment of the Corporation tax. As the development of the property is under a cloud, none is eager to bear the tax liability.

The brother started crying foul but the sister disclosed her willingness to pay her share of tax. The brother is reluctant to allow his sister to pay any portion of the tax as he claims sole ownership of the property, on the basis of the Will allegedly executed in his favour by his mother, probate of which has been applied for by the brother. The sister objected to the grant of probate in favour of the brother. Probate proceeding being contentious will take more time to conclude. The developer, at this stage, is not eager to shell out the property tax dues, as immediate development of the property is questionable.

Faced with such uncertainties, the petitioner seeks to challenge the act of the Corporation in revising the annual valuation alleging procedural lapse. It has been argued that the mandatory provisions of Sections 184, 186, 187, 188 have not been complied with prior to revising the annual valuation of the property. No notice was served upon the owners inviting objection to the revision of the annual valuation. There has been no development in the property at all. Apart from a portion of the property being separated from the mother premises, there has been no change in the nature and character of

the said premises. There hasn't been any occasion on the part of the Corporation to revise the annual valuation of the said property. The Corporation acted contrary to the principles of natural justice in not affording an opportunity of hearing to the owners prior to revising the annual valuation.

The owner is not bound by the act of the authorised representative in accepting the revised annual valuation. The authorised representative did not have the right/authority to accept the revision of the annual valuation of the property. Acceptance of the revised annual valuation by the authorized representative will not amount to waiver on the part of the recorded owner to raise objection at a subsequent date.

The annual valuation of comparable premises is far low than the revised annual valuation of the subject premises. Similar plot(s) of land adjacent to the premises in question and in the vicinity are valued at a lower rate. Fixing higher valuation of the petitioner's premises amounts to discrimination.

The petitioner stresses on the fact that he did not have knowledge of the steep upward revision and as such was unable to object to the same at an earlier date. Only after notice was issued in December 2021 requiring the petitioner to pay the arrear taxes, did the petitioner get the knowledge of the payment being due.

The petitioner prays for setting aside the annual valuation determine with effect from the fourth quarter of 2014-15.

On the other hand, the Corporation is of the stand that the petitioners were never forced to accept the valuation fixed by the authority. At the time of apportionment, the authorized representative of the petitioner voluntarily agreed and accepted the valuation following which the tax bills were raised. No objection was raised within the prescribed time period. The remedy, if any, has become time barred.

Principle of waiver has been pleaded. The petitioner agreed to make payment and sought for instalments to clear the dues. At this stage, there is no scope to reopen the closed chapter.

From the facts as narrated herein above it is crystal clear that the petitioner being the one of the recorded owners of the premises never had an issue with the steep upward revision of annual valuation of the property. He claims that he does not have the immediate financial ability to pay off such huge dues. As long as the developer takes the responsibility to clear the dues, the petitioner is comfortable with it. A civil suit is pending consideration in between the petitioner and the developer in connection with the said premises.

A “power-of-attorney” is an instrument empowering a specified person to act for and in the name of the person executing it. In the present case, the owners executed the power of attorney in favour of the respondent nos. 6 & 7. The said instrument was registered before the District Sub Registrar -III, Alipore, South 24 Parganas on 16th December, 2014.

For smooth execution of the development work, the owners/ grantors nominated the attorneys to appear and represent them before the Kolkata Municipal Corporation for separate assessment of the property in question and for fixation and finalization of the annual valuation of the property and to sign, execute and submit necessary papers and documents and to do all other acts, deeds and things as deemed fit and proper.

Upon execution of the power of attorney, duly registered, the respondent nos. 6 & 7 approached the Corporation for separation of the property from the mother premises and for fixation of annual valuation of the same. Relying upon the registered document, the Corporation heard the attorneys prior to revising the annual valuation of the property. Only after the attorneys voluntarily accepted the revised annual valuation by expressing

their consent in the inspection book maintained by the Corporation, did the Corporation generate the tax bills in respect of the separated property.

As the attorneys were acting on behalf of the owners as per the registered document, accordingly the act of the attorneys have to be taken as the act of an agent on behalf of the principal. The attorney was engaged as agent to act on behalf of the principal. An agent having an authority to do an act has the authority to do every lawful thing which is necessary to do such an act. As for the purpose of separating and developing the property, fixing the annual valuation was essential. The attorneys went ahead and accepted the valuation of the property. Now after the development work has temporarily been paused, the owner sought to reopen the issue of revision of the annual valuation. Had the development proceeded as per schedule, the revision would not have been an issue at all.

If the revision is permitted to be reopened at such a belated stage, then there can never be finality in the process of assessment. Revision of valuation may be challenged by aggrieved, indolent assesseees to defer paying taxes on time. Had the owner(s) been genuinely aggrieved by the hike in annual valuation, then steps ought to have been taken in proper time to address the issue. The fact that objection was not raised within the prescribed time period implies that the owners accepted the revised valuation.

The contention of the petitioner that he was not aware about the rise in the annual valuation cannot be accepted by the Court. The petitioner, on the contrary, was confident that the tax in question was to be paid by the developer as per the development agreement and he accordingly never bothered to pay the same. Only after the developer refused to pay the tax dues, the petitioner sought to accuse the Corporation in revising the valuation, citing procedural lapses.

The petitioner relies upon the decision passed by this Court in the matter of **Anil Kumar Bhandari vs. Kolkata Municipal Corporation &**

Ors. reported in **2009 SCC Online Cal 418 : (2009) 2 CHN 56** in support of his stand that he is entitled to raise a dispute with regard to fixation of taxes only when he gets knowledge of it. The petitioner claims that no notice was served upon the recorded owners, and as such, he did not have knowledge of the enhancement of valuation.

The said contention of the petitioner cannot be accepted in view of the fact that the authorised attorney of the petitioner was dealing with the matter of fixation of valuation and he has, on behalf of the owner, accepted the revised valuation. Accordingly, the petitioner cannot be heard to say that he did not have knowledge of increase in the valuation. Moreover there are series of communication between the petitioner and developer regarding payment of Corporation taxes. A perusal of the said communications evinces the fact that the petitioner had full knowledge of the entire issue.

The petitioner also relies upon the unreported decision delivered by a co-ordinate Bench of this Court on **3rd January, 2018** in **WP No- 644 of 2017 (Yashvi Trexim Pvt. Ltd. & Ors. vs Kolkata Municipal Corporation & Ors.)** wherein the Court was of the opinion that the owner had the right to be treated equally at par with the other assesseees in the ward/locality notwithstanding the purported acceptance of revised annual valuation through authorised representative. The Court was pleased to set aside the revised annual valuation.

On perusal of the said judgment it appears that, the facts of the case at hand do not fit into the facts of Yashvi Trexim (supra). The petitioner herein has already affirmed an affidavit in his earlier petition being WPO No. 1425 of 2022 disclosing his intension and desire to pay the tax assessed on the basis of the revised annual valuation and sought for clearing the dues in instalments. The Court, at the time of disposal of the aforesaid writ petition, was pleased to grant liberty to the petitioner to approach the Chief Manager (Revenue) with prayer for further instalment/ apportionment with regard to the remaining amount along with prayer for waiver of interest and penalty.

Liberty was not granted to the petitioner to reopen the issue of revising the annual valuation of the property. Hence, the ratio of the judgment cited by the petitioner will not be applicable in the facts and circumstances of the instant case.

Petitioner has placed reliance on the unreported order dated **27th September 2016** passed by a coordinate Bench of this Court in **WP No. 25670 (w) of 2012 (Sulphotek System Pvt. Ltd. Vs Kolkata Municipal Corporation & Ors.)**. It appears therefrom that no ratio has been laid down in the said order as the same was passed relying upon the submission of the Ld. Advocate representing the Corporation that the matter of fixation of revised annual valuation should be revisited by the Corporation. As such, the said decision does not help the petitioner in any manner.

The petitioner has banked upon the judgment passed by this Court in the matter of **Concept Ventures Private Limited vs Kolkata Municipal Corporation** reported in **2014(2) CHN (CAL) 672**. In the said matter the Court took note of the provision of Section 192 of the KMC Act, 1980 that assessment of annual valuation of any premises cannot be re-opened at the instance of an assessee. The Municipal Commissioner, *suo motu*, can re-open such assessment to maintain uniformity of annual valuation with other comparable units. No limitation is prescribed for re-opening such assessment at the instance of the Municipal Commissioner. The Court opined that re-assessment cannot be made unconditionally.

In *Concept Ventures (supra)* the petitioner was a subsequent purchaser of the property. The petitioner did not have any scope to raise objection prior to the enhancement of the annual valuation. Such is not the case at hand. In the instant case, the petitioner, through his authorised attorney, agreed and accepted the revised annual valuation way back in 2015 when both the owners were alive. Payment was made without a murmur. As the liability to pay tax was supposedly upon the developer, accordingly he did not raise any objection to the revision. The petitioner seeks to reopen the case only after the

developer has backed out to pay the tax. Accordingly, the said decision also does not come to the aid of the petitioner.

The petitioner has also laid stress upon the judgment delivered by this Court in the matter of ***PS Group Reality Ltd. vs Kolkata Municipal Corporation*** reported in ***2013 (5) CHN (CAL) 101*** wherein the Court was pleased to set aside the assessment of annual valuation by holding that there cannot be any estoppel against a statute and whether or not the petitioners accepted the annual valuation, if the process of accessing was not permissible, they should not be estopped from challenging the same.

In the present case, tax assessed by the Corporation has been accepted by the petitioner through his authorised representative and payment has been made at the enhanced rate without raising any objection. The Corporation has not acted in any manner contrary to the provision of law requiring interference by the Court.

The learned advocate for the Corporation relies on the judgment delivered by the Hon'ble Supreme Court in the matter of ***Amlan Jyoti Borooah vs State of Assam & Ors.*** reported in ***(2009) 3 SCC 227*** on the point that when the party accepts the change in the selection process *sub silentio*, he cannot be permitted to turn around and contend that the procedure adopted was illegal. He is estopped and precluded from doing so. The said judgment was delivered in connection with a service matter.

The same is a very settled proposition of law, but the conspectus of the said case being so very different from the case at hand, the same does not appear to be of any help to the respondent authority.

Learned advocate for the Corporation further relies on the judgment delivered by the Hon'ble Supreme Court in the matter of ***Shish Ram vs State of Haryana*** reported in ***(2000) 6 SCC 84*** on the proposition that a person having accepted a position of law and having taken benefit from it, cannot later challenge the validity of such law.

In this case the petitioner has not challenged the validity of any law but has challenged the procedure adopted by the Corporation in revising the annual valuation of his property. The fact of Shish Ram (supra) is absolutely different and distinguishable from this case.

The Corporation has rightly taken the plea of waiver. The process of revising the valuation can never be concluded if such type of allegation is entertained by the authority at the whims of the owner. The assessment procedure will turn out to be a never ending process. No case has been made out by the petitioner that the Corporation forced the authorised representative of the petitioner to accept the valuation assessed by the Corporation. On the contrary, the petitioner accepted the valuation and made payment of the same without any protest.

The Hon'ble Supreme Court in the matter of **Graphite India Limited & Anr. Vs. Durgapur Projects Limited & Ors.** reported in **(1999) 7 SCC 645** 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.

The Hon'ble Supreme Court in the matter of **Commissioner of Customs, Mumbai vs. Virgo Steels, Bombay & Anr.** reported in **(2002) 4 SCC 316** held 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 person concerned and is for his benefit, the said person can always waive such a right.

As the authorized attorney thought it fit and accepted the escalation of the valuation and made payment of the same, the petitioner, after so many years, cannot turn around and contend that he was not aware of the same and that the fixation was made without giving him an opportunity of hearing. The mandatory provision was waived for the personal benefit of the owners.

Moreover, as the revision stood accepted by the owners there can be no question of raising any objection to the same.

The very foundation on which the principle of contract stands will be shaken if such an argument is accepted. The attorney's/agent's authority and action in pursuance of a registered instrument ought not to be open for scrutiny before the Court under its high prerogative extra ordinary jurisdiction.

The documents annexed to the writ petition makes it crystal clear that the petitioner was all along abreast of the fact of enhancement of the annual valuation and was very much aware that the developer made payment of the tax at the higher rate. There are several correspondences made between the petitioner and the developer with regard to payment of taxes. A civil suit is also pending between the petitioner and the developer over the said issue.

Moreover, in the earlier writ petition filed by the petitioner, being WPO no. 1425 Of 2022 he has categorically submitted before this Court that he is desirous of paying the property tax that is due to the Corporation but he needs more time to clear the same. The aforesaid averment is the unequivocal acceptance of the liability of the petitioner to pay the tax as per the valuation assessed by the Corporation.

The petitioner has tried to portray before this Court that he has sought for reopening the issue in terms of the liberty granted by the Court in the earlier writ petition filed by him. It appears that the petitioner has misinterpreted the order. Liberty granted by the Court was only to the extent of approaching the Corporation praying for further instalment/apportionment with regard to the balance amount and also for waiver of interest and penalty. The said liberty was granted by the Court on the expressed submission that the petitioner is willing to pay his share in instalments and prays for waiver of the interest and penalty in terms of the waiver scheme of the Corporation. To

avail the benefit of waiver, the assessee has to accept the valuation assessed by the Corporation.

The petitioner may have issue(s) with the developers, his sister or his attorneys. The said issue(s) may be taken up by the petitioner in appropriate proceeding(s) before the proper forum. Any act of omission or commission on the part of the private respondent(s) cannot be a ground to review the action of the Corporation. It does not appear that there is any manifest error or lapse on the part of the Corporation warranting judicial interference.

As the Court is of the considered opinion that in the facts and circumstances of the case there is hardly any scope for judicial interference, as such, keeping the writ petition pending by passing direction for filing affidavits will not enure to the benefit of any party. The Court has heard elaborate submissions made by the parties. All the issues raised by the petitioner has been appropriately answered by the respondents and duly considered by the Court. No useful purpose will be served by keeping the writ petition pending. Any further time spent on deciding this matter will be sheer wastage of valuable judicial hours.

The conduct of the petitioner does not appear to be bona fide. Even after accepting the revised annual valuation and making part payment thereof, he later on changes his stand and challenges the assessment procedure. The same cannot be permitted to be done.

Issue (a) is accordingly answered in the negative and issue (b) in the positive.

WPO 2265 of 2022 stands 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.)