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ORDER SHEET
WPO/2709/2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

M/S. D. DRUKKER & CO. (I) PVT. LTD. & ANR.
VS
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date : 7th November, 2022.

Appearance:
Mr. Arindam Banerjee, Adv.
Mr. Priyanko Banerjee, Adv.
...For the Petitioners

Mr. Biswajit Mukherjee, Adv.
Mr. Debangshu Mondal, Adv.
...For KMC

Mr. Chayan Gupta, Adv.
Mr. Sourav Bhagat, Adv.
...For Respondent no. 6

The Court: Petitioners are aggrieved by the order passed by the Hearing Officer, Tolly Tax Department allegedly on 25th July, 2022 in respect of premises No. 1, Netaji Subhas Chandra Bose Road, Kolkata – 700040.

The petitioners are also aggrieved by the assessment made by the Corporation annexed at pages 85 and 86 of the writ petition where the date of alternation of annual valuation is from 25th July, 2022 and 13th August, 2022.

The petitioners claim to be the lessor of the premises in question and the respondent no. 6 is the lessee. The order impugned suggests that the Corporation is aware of the presence of the lessee and the lease agreement subsisting between the parties.

The petitioners as well as the private respondent submit that the lessee was not given an opportunity of hearing at the time of passing the impugned order and at the time of assessing the premises in question.

The parties submit that there has been violation of principles of natural justice as the party liable to pay tax has not been afforded opportunity of hearing.

Prayer has been made for relegating the matter to the Corporation for deciding the issue afresh.

The prayer of the petitioners as well as the private respondent is vehemently opposed by the learned counsel representing the Kolkata Municipal Corporation.

It has been submitted that the person primarily liable to pay tax, i.e. the lessor was duly heard and the authorised representative of the lessor submitted written undertaking to clear the outstanding dues. Thereafter the lessor changed their stand and filed the present writ petition.

It has been submitted there is nothing on record to show that document was submitted before the Corporation disclosing that the respondent no. 6 will be the person liable to pay tax. In the absence of proper documents the Corporation is not obliged to afford any opportunity of hearing to the respondent no. 6.

The impugned order of the Hearing Officer records that a portion of the land in question was leased out to the respondent no. 6 in accordance with the lease agreement dated 19th May, 2008. The valuation of the premises has been sought to be revised from the first quarter of 2007-08.

According to the provisions of law, the lessee will also be a person liable to pay tax.

In view of the above, the entire issue is remanded back to the respondent nos. 3 and 5, Assessor Collector and Hearing Officer respectively to decide the issue afresh after giving a reasonable opportunity of hearing to the petitioners and the respondent no. 6. A decision shall be taken in the matter at the earliest, but positively within a period of eight weeks from the date of communication of this order. The respondents shall pass a reasoned order and communicate the same to the parties immediately thereafter.

All points are left open to be decided by the respondents and all parties will be at liberty to rely upon documents in their support before the respondent authorities at the time of hearing.

The impugned order of the Hearing Officer and the assessment at pages 85 and 86 of the writ petition stand set aside.

Leave is granted to file affidavit of service in course of the day.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(AMRITA SINHA, J.)

TR/