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APOT/237/2022
With
WPO/2873/2022

IA No.GA/1/2022

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

OM PRAKASH TANTIA
-VS-
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE APURBA SINHA RAY
Date :December 22, 2022.

Appearance:
Mr. Arnab Sardar, Adv.
Ms. Noelle Dey Banerjee, Adv.
Mr. Anirban Sarkar, Adv.
.for the appellant

Mr. Gopal Chandra Das, Adv.
Mr. Subrangshu Panda, Adv.
..for the KMC

The Court : The judgment and order dated November 22, 2022, whereby the appellant's writ petition being WPO/2873/2022 was disposed of, is under challenge in this appeal.

The appellant approached the learned Single Judge challenging a warrant issued by Kolkata Municipal Corporation through the Municipal Commissioner under Section 221A(1) of the KMC Act, 1980, on August 17, 2022, on the ground of non-payment of property tax amounting to Rs.1.11 crore approximately.

The appellant argued before the learned Single Judge that the warrant has been issued without following the provisions of law. No opportunity of hearing was given to him prior to issuance of the warrant. He had made a representation through his advocate on September 14, 2022, but the same has not been considered.

Kolkata Municipal Corporation authorities contended that hearing had been given to the representative of the owner of the property in 2010. For two decades, property tax has not been paid in respect of the premises in question.

The learned Judge observed that since a representation has been made by the writ petitioner, the same should be considered in accordance with law by the Municipal Commissioner. The learned Judge directed the Municipal Commissioner to dispose of the representation within six weeks from the date of communication of the order after giving an opportunity of hearing to the writ petitioner. Learned Judge further directed that the impugned warrant will not be given effect to by KMC provided the petitioner pays a sum of Rs.50 lakh to KMC prior to the hearing being taken by the concerned officer of the Corporation. Being aggrieved, the writ petitioner is before us by way of this appeal.

Learned advocate for the appellant/writ petitioner says that on December 12, 2022, the Deputy Assessor-Collector (North) has issued a notice of hearing to the appellant intimating that a hearing would be held on December 19, 2022 in the chamber of the Assessor-Collector (North). However, the appellant was called upon to deposit Rs.50 lakhs prior to such hearing. The appellant is aggrieved with the aforesaid. He says that the learned Judge did not make the hearing conditional upon deposit of Rs.50 lakh.

We agree with the appellant. The hearing that the learned Judge directed was not in any way dependent upon deposit of Rs.50 lakhs. The deposit of Rs.50 lakhs is relatable to keeping the warrant of attachment in abeyance. If and when Rs.50 lakh is deposited by the appellant with the KMC, the warrant of attachment will not be given effect to.

The appellant questions the legality and/or validity of the warrant. The appellant may make appropriate representation before the Municipal Commissioner and if such representation is made within a period of four weeks from date, the Commissioner shall decide the same in accordance with law by passing a reasoned order after giving an opportunity of hearing to the appellant or his authorised representative.

We make it clear that we have not interfered with the warrant of attachment. With the modification and/or clarification indicated above, the appeal and the connected application are disposed of.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)

bp.