01
**23.02.2023**
d.p.

**In The High Court At Calcutta**
**Constitutional Writ Jurisdiction**
**Appellate Side**

**W.P.A. 1491 of 2023**

**Hsiung Fu Tung**
**-versus**
**The Kolkata Municipal Corporation & Ors.**

**Mr. Biswajit Mukherjee,**
**Mr. Subhrangsu Panda.**
**...For the Petitioner.**

**Mr. Alak Kumar Ghosh,**
**Ms. Koyali Bhattacharya,**
**Ms. Tanusree Dasgupta.**
**...For KMC.**

Affidavit-of-service filed in Court today is taken on record.

The matter relates to a piece and parcel of land at 94, Matheswartala Road, Kolkata-700046 under jurisdiction of the Kolkata Municipal Corporation (Tolly Tax Department).

In response to a Letter of Intimation dated 6th July, 2019 under the Interest Waiver Scheme, a sum of Rs.14,37,032/- was paid.

On receipt of the aforesaid payment, the Assessment Collection Department issued a 'No Outstanding Certificate' on 16th July, 2019 by mentioning the assessee number and recording that the 'NOC' is based on the annual valuation with effect from the 3rd quarter of 2006 and the payment status is valid upto 30th September, 2019.

The petitioner submits that despite receiving the aforesaid amount, the Corporation issued further Letter of Intimation on 7th March, 2022 by indicating that a sum of Rs.13,88,399/- is due and payable on account of outstanding property tax.

The petitioner contends that the figures mentioned in the Letter of Intimation dated 7th March, 2022 were mostly paid in response to the Letter of Intimation dated 6th July, 2019.

In accordance with the note mentioned in the Letter of Intimation dated 7th March, 2022, the petitioner filed a representation before the Assessor Collector, Tolly Tax Department on 25th May, 2022 giving details of the payment made and forwarded all documents in support of the payment.

The Kolkata Municipal Corporation without considering the representation filed by the petitioner pasted the distress warrant under Section 219(1) and the warrant under Section 221A(1) of the Kolkata Municipal Corporation Act, 1980 dated 20th December, 2022 on the outer wall of the subject premises.

The distress warrant mentions that a sum of Rs.15,41,564/- is due and outstanding on account of property tax of the subject premises.

It has been submitted that the Corporation ought to have considered the representation filed on receipt of the Letter of Intimation dated 7th March, 2022 prior to taking coercive action for recovery of the alleged dues.

It has been contended that, in good faith the petitioner has indeed made double payment of certain amount mentioned in the Letter of Intimation.

Prayer has been made for setting aside the distress warrant and the warrant issued under Sections 219(1) and 221A(1) respectively.

Learned advocate appearing for the Kolkata Municipal Corporation submits that it was the duty of the petitioner to intimate the Corporation as regards the surrender of a portion of the lease land. The error occurred on account of non-submission of the proper documents before the Corporation by the petitioner in the right time.

It has been submitted that Ms. Houkin Moi has expired long back. The Corporation has, however, recorded the name of the petitioner in the records.

Learned advocate appearing for the petitioner refers to paragraph 8 of the writ petition wherein it has been mentioned that the Corporation mutated the Kolkata Municipal Corporation records and a separate assessee number has been generated in respect of the present lease holder of a portion of the land.

It appears from the submissions made on behalf of the parties and the documents annexed to the writ petition that a part of the amount which has been alleged to be due by the Corporation and reflected in the distress warrant, was incorporated in the Letter of Intimation and paid by the petitioner in the year 2019.

The Corporation has directed the petitioner to make the payment of certain amount all over again by issuing the subsequent Letter of Intimation on 7th March, 2022. The petitioner objected to the same, however, beyond the time limit specified in the Letter of Intimation.

Nevertheless, the Corporation ought to have checked their official records and updated the same after taking into consideration the representation filed by the petitioner mentioning the details of the payment made.

Prior to arriving at a conclusive finding that there has been any default on the part of the petitioner or the recorded owner in making payment and prior to taking any coercive measure to recover the dues, the distress warrant ought not to have been issued.

In view of the above, the present writ petition is disposed of by directing the respondent No.3 being the Assessor Collector (Tolly Tax Department) to take into consideration the representation filed by the petitioner on 25th May, 2022 after giving a reasonable opportunity of hearing to the petitioner or his authorized representative/legal representative to produce all documents in support of the payment made.

On verification of the documents submitted by the petitioner the aforesaid respondent shall update the official records and issue fresh Letter of Intimation disclosing the amount that is due and payable. It goes without saying that the petitioner shall be obliged to pay the property tax dues on time.

A formal order shall be passed by the aforesaid respondent and communicated to the petitioner.

Steps shall be taken in the matter at the earliest, but positively within a period of twelve weeks from the date of communication of a copy of this order.

The impugned distress warrant under Section 219(1) and the warrant under Section 221A(1) of the Kolkata Municipal Corporation Act, 1980, both dated 20th December, 2022 are accordingly, set aside and quashed.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

**( Amrita Sinha, J.)**