36
13.06.2023
d.p.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

W.P.A 8844 of 2022

Chandan Ghosh & Ors.
-versus
The Kolkata Municipal Corporation & Ors.

Ms. Reshmi Ghosh.
...For the Petitioners.

Ms. Manisha Nath.
...For KMC.

The petitioners are aggrieved by the order dated 27th April, 2022 passed by the Assessor Collector, Tolly Tax Department, Kolkata Municipal Corporation wherein the said respondent was of the opinion that the changes in the name of the recorded owner of the premises at 40, Russa Road East 1st Lane was made in conformity with the inventory of immovable properties of the Kolkata Municipal Corporation.

The petitioners rely upon the property tax bills issued by the Kolkata Municipal Corporation. It appears therefrom that the property in question was recorded in the name of Sri Thakurdas Ghosh.

The property tax bills issued by the Corporation for the year 2018-19 changed the name of the recorded owner and incorporated the name of the Kolkata Municipal Corporation and recorded the name of Thakurdas Ghosh as the occupier of the subject property.

The petitioners submit that the property in question was purchased by the said Thakurdas Ghosh and all along the property was enjoyed by Thakurdas Ghosh and his family members upon payment of taxes to the Kolkata Municipal Corporation.

It appears that till 2015-16 the Kolkata Municipal Corporation raised property tax bills in the name of Thakurdas Ghosh but all on a sudden in 2018-19 the name of the recorded owner changed from Thakurdas Ghosh to the Kolkata Municipal Corporation and the erstwhile recorded owner was shown as the occupier of the subject property.

A report has been filed by way of affidavit by the Assessor Collector, Tolly Tax Department wherein it has been mentioned that as per the direction of the Court it was enquired from the Chief Valuer and Surveyor as to whether change in the records was made upon giving prior notice to the erstwhile recorded owner or his predecessor-in-interest.

It was informed by the Chief Valuer and Surveyor that at present no such information is available in the office of the Chief Valuer and Surveyor.

The Court fails to understand as to how a property which is incorporated in the list of immovable properties maintained by the Kolkata Municipal Corporation could have been assessed in the name of a private party and tax collected from the said private party prior to the year 2017-18.

It is only after 2018-19 that the property tax bill was raised in the name of the Kolkata Municipal

Corporation showing the erstwhile recorded owner as the occupier.

According to the Kolkata Municipal Corporation Act, 1980, prior to mutation of a property, an opportunity of hearing ought to have been given to the recorded owner.

The Chief Valuer and Surveyor of the Assessment Department has failed to produce any document to show that opportunity of hearing was granted to the recorded owner or his successors in interest.

It appears that the Corporation, for reasons best known to them, changed the recording in the municipal books without affording any opportunity of hearing to the recorded owner or his successors in interest. The same is impermissible in law.

The petitioners have annexed document to show that the property in question was purchased by the recorded owner and the deed of sale is annexed to the writ petition.

In view of the above, the impugned order passed by the Assessor Collector, Tolly Tax Department issued on 26th April, 2022 is liable to be set aside and is, accordingly, set aside.

The Municipal Commissioner or his delegate is directed to grant fresh opportunity of hearing to the petitioners who claim to be the successors in interest of the recorded owner to produce document(s) in support of the claim of ownership of the subject property.

The concerned respondent, shall after perusal of all documents, both obtained from the petitioners and the records maintained in the department, shall pass a reasoned order and communicate the same to the petitioners.

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

It goes without saying that the mutation is only for the purpose of ascertaining the person primarily liable to pay tax and Kolkata Municipal Corporation does not have the authority to declare ownership of any property. The ownership of the property flows from the title deeds.

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.)