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W.P.A. 19160 of 2014

Jaydip Ganguly
-vs-
Kolkata Municipal Corporation & Ors.

Mr. R. N. Chakraborty,
Mr. M. Ahmed
....for the petitioner.

Mr. Alak Kumar Ghosh,
Mr. Gopal Chandra Das
....for the KMC.

The writ petition is presented, *inter alia*, challenging two notices dated 17th April, 2013 and 13th May, 2013 issued by the Chief Manager (Revenue), Kolkata Municipal Corporation whereby dates of hearing were fixed on 11th May, 2013 and 15th May, 2013 respectively. Annual valuation was fixed by notice dated 17th April, 2013 was Rs.35,920/- and vide subsequent notice dated 13th May, 2013 annual valuation was fixed at Rs.21790/-.

Mr. Chakraborty, learned advocate representing the petitioner submits that after the will which was probated petitioner being one of the beneficiaries to the said will approached the concerned authority of KMC for separation and apportionment by submitting an application and the acknowledgement was made on behalf of the KMC on 31st October, 2012 which is at page 36 of the writ petition.

It has been argued on behalf of the petitioner that while considering the application for separation and apportionment annual valuation of the property has been enhanced by 300% and it was fixed at Rs.35,920/-. It is the contention of the petitioner that while considering the application for separation and apportionment in connection with the portion of the property which was devolved upon the petitioner after the will was probated the annual valuation of the property cannot be enhanced substantially and there is no such provision which authorises the concerned authority of KMC to enhance the annual valuation at such high rate.

In addition thereto it has also been submitted on behalf of the petitioner that the notice dated 17th April, 2013 was issued against one Smt. Usha Rani Ganguly being the mother of the petitioner and on the date of issuance of this notice the mother of the petitioner was not alive therefore such notice is not tenable. Lastly it has been urged before this Court that in terms of Section 184 of the Kolkata Municipal Corporation Act, 1980 by issuing notice for fixing annual valuation and property tax thereto the concerned authority of KMC is required to maintain a gap of one month in between the date of notice and the date of hearing which is being fixed by such notice. Therefore, according to the petitioner this notice cannot survive in view of the provision as contained in Section 184 of the Kolkata Municipal Corporation Act, 1980.

Mr. Ghosh, learned advocate represents Kolkata Municipal Corporation who has strenuously argued in order to defend the impugned two notices one dated 17th April, 2013 and another dated 13th May, 2013 and to refute the contentions of the petitioner it has been submitted that KMC was not aware of the death of the assessee being the mother of the petitioner since the name of the mother of the petitioner was on record and accordingly notice was issued in the name of the mother of the petitioner.

It has also been submitted that though petitioner has made an application for separation and apportionment but as per norms the portion of the property which devolved upon the petitioner needs to be mutated and thereafter steps are required to be taken for apportionment and separation of the said property. Therefore, according to the KMC there is no flaw with regard to the notices dated 17th April, 2013 and 13th May, 2013.

Having considered the submissions made

on behalf of the parties and on perusal of the relevant materials available on record it appears that while processing the application of the petitioner for separation and apportionment the annual valuation of the property which devolved upon the petitioner has been assessed at Rs.35,920/- with effect from 2nd quarter of 2012-2013 and subsequently vide notice dated 13th May, 2013 the said annual valuation was assessed at Rs.21,790/-. There is nothing on record from which it can be ascertained that what is the basis of substantial enhancement made by the concerned authority of KMC while fixing the annual valuation with effect from 2nd quarter of 2012-2013.

In addition thereto on the face of notice dated 17th April, 2013 it appears that the same was issued against a dead person namely, Smt. Usha Rani Ganguly, mother of the petitioner. The notice period as provided under Section 184 of the Kolkata Municipal Corporation Act, 1980 has not been maintained while issuing two notices dated 17th April, 2013 and 13th May, 2013.

In view of aforesaid consideration both the notices dated 17th April, 2013 and 13th May, 2013 stand quashed.

The concerned authority of KMC is directed to issue a fresh notice in consideration of the application made by the petitioner seeking apportionment and separation and while taking decision on the application of the petitioner for apportionment and separation the concerned authority of KMC shall also be at liberty to take decision on the mutation of the portion of the property which devolved upon the petitioner.

Let such notice by issued by the concerned authority of KMC by 30 days from the date of receipt of this order and fix a date of hearing maintaining the notice period as provided under Section 184 of the Kolkata Municipal Corporation Act, 1980.

However, the concerned authority of KMC shall be at liberty to hear the matter on the date to be fixed by issuing notice to the petitioner without granting any unnecessary adjournment excepting the reasons which is beyond control of the petitioner.

With the aforesaid direction, the writ petition stands disposed of.

In view of the order passed today finally on this writ petition interim order passed by a coordinate Bench stands vacated and the petitioner is directed to pay the property tax in terms of the previous valuation till the decision to be taken by the concerned authority of KMC pursuant to the order passed by this Court today.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)