02. 10.08.2023
bd. Ct.15

W.P.A. 26883 of 2014

Sri Tridib Narayan Chowdhury
-vs-
The Kolkata Municipal Corporation & Ors.

Mr. Alak Kumar Ghosh
Mr. Nilanjan Chatterjee ... for the petitioner.

Mr. Biswajit Mukherjee
Mr. Swapan Kumar Debnath ... for the KMC

The question which has been raised in this writ petition is the mutation of a shop room situates at 108, Diamond Harbour Road, Kolkata. The petitioner is the successor-in-interest of one Sushil Chandra Chowdhury whose name according to the petitioner was recorded in the records maintained in the assessment department of Kolkata Municipal Corporation for payment of taxes and other charges. Petitioner being the successor-in-interest is claiming recording of his name as the assessee in respect of the aforesaid shop room in question upon cancellation of the order dated 22nd March, 2014 issued by the Joint Municipal Commissioner (Revenue), KMC.

Mr. Ghosh, learned counsel representing the petitioner submits that previously a writ petition was filed being WPA 1153 of 2011 questioning the order dated 1st October, 2010 whereby the contention of the petitioner relating to recording his submission as an assessee was negated by the concerned authority of KMC. The Hon'ble Single Bench vide order dated 12th September, 2013 disposed of the writ petition directing the

Commissioner, Kolkata Municipal Corporation or any senior officer designated by him to adjudicate this question of mutation by hearing the writ petitioner and all other interested parties and to pass a reasoned order within particular period. The said order of the Hon'ble Single Bench was assailed by filing an intra court appeal by the petitioner along with his mother being MAT 1746 of 2013 and the said appeal was disposed of vide order dated 28th November, 2013 whereby the order of the Hon'ble Single Bench dated 12th September, 2013 was modified only to the extent of extending the time schedule of taking decision of concerned authority of KMC as directed by the Hon'ble Single Bench, within 31st March, 2014 restoring the previous entry of the assessment register of the Municipal Corporation in respect of the premises in question.

It has been contended on behalf of the petitioner that in terms of the order of the Hon'ble Division Bench the previous entry in the assessment register as maintained by the KMC was not restored prior to taking decision pursuant to the order of the Hon'ble Division Bench on 22nd March, 2014.

It has also been submitted on behalf of the petitioner that time to time the occupier of the aforesaid shop room may be changed without the nod of the petitioner being the owner of the said shop room but that should not affect the claim of the petitioner to be considered as recorded owner in connection with the said shop room. It has also been submitted that it is absurd to treat the KMC as owner of the premises on and from 1st October, 2010 based on deed of sale/transfer of possession dated 20th September, 2010. Petitioner has questioned the register deed of sale/transfer of possession being number 08727 dated 20th September, 2010 as referred to in the impugned order dated 22nd March, 2014.

According to the petitioner in terms of the order of the Hon'ble Division Bench previous position needs to be immediately restored and petitioner should be treated as bona fide assessee in connection with the aforesaid shop room.

Mr. Mukherjee, learned counsel representing the KMC has defended the order passed by the Joint Municipal Commissioner dated 22nd March, 2014 on the finding recorded in the said order itself. Notice of this Court has also been drawn to paragraph 4(e) of the affidavit-in-opposition wherein it has been specifically averred the assessment books reveal that mutation was done in the name of one Mr. Sourendra Das as occupier keeping the KMC as owner of the aforesaid shop room on the basis of registered deed being no. 08727 of 2010 dated 20th September, 2010 registered in the office of Additional District Sub-Register of Behala executed by one Mr. Niranjan Poddar Proprietor of M/s. Soma Lottery (erstwhile Radha Chandra Bastralaya) which was filed along with mutation application of Mr. Sourendra Das. It has been submitted that such registered deed dated 20th September, 2010 was considered by the Joint

Municipal Commissioner, the claim of the petitioner to be treated as an assessee in respect of the aforesaid shop room could not be accepted and accordingly the order was passed. However, at the same time it has been submitted that recording of name in the assessment register of corporation being the assessee does not vindicate the title of the assessee over the premises in question. If in the present case petitioner had got his right being the successor-in-interest of the erstwhile owner of the aforesaid shop room it is open to him to question the registered deed dated 20th September, 2010 before the appropriate forum for obtaining necessary declaration in this regard which can fortify the claim of the petitioner to be treated as bonafide assessee.

Having considered the submissions made on behalf of parties and on perusal of the relevant materials available on record it appears that pursuant to the order passed by the Hon'ble Division Bench dated 28th November, 2013 a decision has been taken by the Joint Municipal Commissioner by 22nd March, 2014.

It has been recorded in the said order by the Joint Municipal Commissioner that name of one Radha Chandra Bastralaya as occupier was recorded pursuant to the direction of the Hon'ble Division Bench since corporation was directed to restore the previous position with regard to recording of name since said Radha Chandra Bastralaya was found to be in the record just prior to granting mutation on 1st October, 2010. However, it has also been stated in the impugned order that at the time of passing the said impugned order it was found that there was no existence of Radha Chandra Bastralaya and in stead of the same Sadhana Aushadhalaya was found to be in occupation of the premises in question. But one of the salient issue which was considered by the Joint Municipal Commissioner while taking decision was one registered deed of sale/transfer of possession being No. 08727 for the year 2010 dated 20th September, 2010 as registered at the office of Additional District Sub-Register of Behala, wherefrom it was found that one Mr. Niranjan Poddar Proprietor of M/s. Soma Lottery (erstwhile Radha Chandra Bastralaya) transferred the aforesaid shop room to one Sourendra Das and the corporation on the basis of such deed of sale/transfer of possession did mutation in favour of Mr. Sourendra Das as person liable to pay the tax keeping the KMC as owner of the premises on 1st October, 2010.

This Court recollects the submission made on behalf of the petitioner that how KMC was kept as owner of the aforesaid shop room based on the deed dated 20th September, 2010. But the basis of recording these facts by the Joint Municipal Commissioner and the conclusion made therein in the impugned order dated 22nd March, 2014 is factual issue which cannot be gone into in the present writ petition. This Court has scrutinized the affidavit-in-reply used on behalf of the petitioner and in paragraph 6 of the said affidavit-in-reply submission made in paragraph 4(e) on behalf of

KMC dealt with but in stead of general denial being made in the said affidavit-in-reply no specific submissions have been made to the said deed dated 20th September, 2010.

If the petitioner claims to be the owner of the aforesaid shop room being successor-in-interest of the previous owner then the appropriate course which is left open to the petitioner is to approach a civil court for obtaining necessary declaration with regard to the ownership of the aforesaid shop room, in the backdrop of the facts narrated in the order of the Joint Municipal Commissioner including execution of a deed dated 20th September, 2010.

In view of aforesaid situation, this Court is not inclined to interfere with the order passed by the Joint Municipal Commissioner dated 22nd March, 2014 and accordingly the writ petition stands dismissed.

However, the observation made with regard to registered deed dated 20th September, 2010 as referred to in the order dated 22nd March, 2014 and the other observation made by this Court relating to the petitioner's right over the shop room in question are only confined to the issue centers around the validity and legality of the order of the Joint Municipal Commissioner dated 22nd March, 2014 and that ought not to be construed as a general observation with regard to the ownership of the petitioner over the shop room in question since this Court is considering the mutation in respect of the aforesaid shop room.

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.)