OD-4

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/66/2017
SHYAM KUMAR JAISWAL
VS
THE STATE OF WEST BENGAL & ORS.

BEFORE:
The Hon'ble JUSTICE SAUGATA BHATTACHARYYA
Date : 6th September, 2023.

Appearance :
Mr. A.K. Das, Adv.; Mr. A. Salam, Adv.
... for the petitioner.
Mr. B. Mukherjee, Adv.; Mr. F. Haque, Adv.
... for the KMC.

The Court: The writ petition is taken up for consideration in presence of the learned Advocates representing the petitioner and the Kolkata Municipal Corporation, being the principal respondents, wherein the demand notice dated 20th December, 2016, which is Annexure P-12 to the writ petition, has been questioned whereby the petitioner was asked to pay Rs.2,07,540/- based on revised annual valuation towards the property tax for the period from 2nd quarter 2006 to 4th quarter 2011.

The learned Advocate representing the petitioner submits that the property in question had been purchased by him in the year 2008 and he applied for mutation with the Kolkata Municipal Corporation in 2012. The writ petition which was filed by the petitioner being WPO/34/2014 was disposed of vide order dated 6th Septmeber, 2016 by a co-ordinate Bench thereby directing the concerned authority of Kolkata Municipal Corporation to mutate the name of the petitioner on initial payment of 30% of the outstanding arrear tax as calculated by the KMC and the due amount would be paid by 31st December, 2017.

It has been submitted that subsequently on calculation towards arrear property tax in view of revision of annual valuation, the impugned demand notice dated 20th December, 2016 was issued for recovery of the amount from the petitioner which the KMC is not authorised to recover. In order to question such demand notice dated 20th December, 2016, it has been submitted that the Hearing Officer of the KMC considered the matter on 15th March 2011, 25th October 2011 and 31st January 2012 and subsequently the aforesaid impugned demand notice was generated for payment of inflated property tax as alleged.

It is also contended that after purchase of the property in 2008, while the Hearing Officer heard the issue, no notice was given to the petitioner and behind his back the issue was heard and decided accordingly. Therefore, the demand notice dated 20th December, 2016 ought not to be allowed to be retained on record since the same is generated based on the decision of the Hearing Officer, taken on 31st January, 2012.

The learned Advocate representing the KMC has defended the impugned notice dated 20th December, 2016 by which the petitioner is required to pay the amount as shown arrear outstanding tax on the score that opportunity of hearing was granted to the petitioner on 15th March, 2011 as well as on 31st January, 2012 and based on fresh enquiry conducted by the KMC, the annual valuation was fixed at Rs.99,410/- including non-residential annual valuation, i.e. Rs.39,470/-. Therefore, it has been contended that the petitioner is required to pay outstanding arrear dues towards property tax which has been calculcated based on annual valuation from 2nd quarter 2006 till 4th quarter 2011.

Having considered the submissions made on behalf of the parties and on perusal of the relevant materials including the pleadings used by the respective parties, it appears that the principal point which has been agitated before this Court in order to question the demand notice dated 20th December, 2016 is failure on the part of the KMC to provide opportunity of hearing to the petitioner when it was decided by the Hearing Officer on 31st January, 2012. It appears that the petitioner filed another writ petition being WPO/34/2014 which was disposed of by a co-ordinate Bench on 6th September, 2016 permitting the petitioner to pay 30% of the outstanding dues prior to mutation of the property in question and the rest of amount was permitted to be paid by 31st December, 2017.

The said order dated 6th September, 2016 travelled before the Hon'ble Division Bench since the KMC had preferred an intra-court appeal which was disposed of vide order dated 22nd December, 2016. Vide said order dated 22nd December, 2016, the appeal of KMC was disposed of with a direction that the respondent no.1/writ petitioner would pay in terms of the impugned order of the learned Single Judge. However, it was made clear that until and unless the entire outstanidng amount is paid, the mutation in favour of the respondent no.1/writ petitioner need not be made by the Corporation.

On perusal of the order passed by the co-ordinate Bench on 6th September, 2016, it appears that the petitioner did not dispute fixation of annual valuation on 31st January, 2012 based on which payable arrear tax was determined and it further appears that the petitioner prayed for mutation and the co-ordinate Bench directed the authority of the KMC to allow the mutation on payment of 30% of the arrear dues which was modified by the Hon'ble Division Bench.

On aforesaid chronology of facts, it transpires that the decision was taken by the Hearing Officer on 31st January, 2012 and the previous writ petition was filed in 2014 and the said order passed on that writ petition also goes to show that no dispute was raised by the petitioner with regard to the alleged failure of the KMC to provide opportunity of hearing to the petitioner before assessment of annual valuation made on 31st January, 2012. Therefore, it appears that the point which is being agitated before this Court on the ground of violation of the principles of natural justice since the petitioner was not permitted to deliberate before the Hearing Officer is afterthought. In the present writ petition also it does not appear that any specific pleading has been made in support of such contention.

In view of the aforesaid scenerio, this Court is not inclined to interfere with the demand notice of the KMC dated 20th December, 2016 and accordingly the writ petition stands dismissed. However, there will be no order as to costs.

Let urgent photostand certified copy of this order be supplied to the parties subject to their compliance with all the requisite formalities.

(SAUGATA BHATTACHARYYA, J.)

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