OD-04

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

WPO/188/2021

VISHAL BARMECHA
VS
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE RAI CHATTOPADHYAY
Date : 28th November, 2023.

Appearance:
Mr. Ankit Agarwal, Adv.
Mr. Sujit Banerjee, Adv.
Mr. Nilay Sengupta, Adv.
……. For Petitioners.

Mr. Biswajit Mukherjee, Adv.
Ms. Manisha Nath, Adv.
……. For KMC.

The Court :- The petitioner has filed the present writ petition to pray for orders directing the respondent authorities to act in accordance with law and to set aside the demand of enhanced tax as against the property of the petitioner.

The concerned property is at premises No. 12/1C/A and 12/1C/B, Monohorpukur Road, P.S: Tollygunge, Kolkata-700026. The residential unit is measured about 965 Sq ft super built up area. By dint of the deeds of conveyance dated 9th August, 2006 and 15th April, 2007 respectively, the petitioner is said to have purchased the said property, and subsequently mutated it.

By referring to the annexed documents Mr. Agarwal representing the petitioner has pointed out that so far as the "premises No. 12/1C/A", is concerned, his client used to pay taxes on demand made, to the tune of Rs. 142/- for four quarters of a year. He says that his client has been duly remitting the tax as calculated by the respondent authority. Allegedly, all on a sudden with effect from 1st quarter of the year of 2021, the respondent municipal authority have enhanced tax of the property in respect of the said premises No. 12/1C/A to the tune of Rs. 1,34,209/-. At the same time a demand of total amount of Rs. 509566/- was also made vide by the demand notice dated 23.12.2002.

The petitioner is aggrieved on the following scores:-

Firstly, the petitioner is expressing grievances as regards the maintainability, legality and propriety of the said enhanced amount of tax made applicable to him. It is stated that the respondent authority without issuing any statutory notice to the petitioner and without granting any opportunity to him in terms of the applicable statute for hearing, has unilaterally enhanced the property tax and made demand. It is submitted that unless the assessee, that is, the writ petitioner here, is heard upon duly serving him the notice, no such demand could lawfully be made by the respondent authority.

Secondly, the petitioner says that the assessment of tax as above at the enhanced rate and also the demand as raised by the municipal authorities could not stand in the eye of law in view of the fact that the municipal authority have failed to comply with the mandatory statutory provision of supplying him a copy of the order of the assessment officer, by dint of which the rate has ultimately been enhanced. Finally the petitioner says that his grievance letter, i.e, letter dated 18th January, 2001, is still to be considered by the respondent corporation and thus he has been deprived of exercise of the vital rights of *audi alteram partem*, at the instance of the respondent corporation. The petitioner seeks appropriate relief on the basis of the above facts and grounds.

Mr. Mukherjee, has appear on behalf of the corporation/respondents. Mr. Mukherjee has raised strong objections as to the grievance ventilated on behalf of the petitioner. According to Mr. Mukherjee the petitioner has changed the nature and usage of the property and purposefully has suppressed the same from the respondent corporation, with the ulterior motive to deprive the public authority to gain taxes as per law. Mr. Mukherjee has referred to the annexed documents with the affidavit-in-opposition submitted by the respondents, to show that in the year 2016 the petitioner has entered into an agreement by virtue of which the concerned property has been transferred as a commercial property from its previous nature and category of a domestic household property. Therefore the actions of the respondent corporation is justified, he says. That in such an event the corporation is empowered to assess the property at an applicable rate, in view of the change of nature of the same. So far as due service of notice of hearing upon the petitioner is concerned, Mr. Mukherjee submits with conviction by referring to certain documents annexed with the writ petition that under 'certificate of posting' the notices as well as copy of the order have been served upon the petitioner and the endorsement of the postal authorities justify the same. Hence, according to Mr. Mukherjee it is only purposeful and after thought by the petitioner to submit that no statutory notice or copies of order have been served upon him. Mr. Mukherjee submits that thus the action of the petitioner suffers from firstly, suppression of material fact, and also by non-compliance of statutory duties and willfull avoidance of the statutory obligations. On these facts and circumstances, according to Mr. Mukherjee, if the petitioner is able to secure an order from this Court as prayed for, the same would hamper the right of the respondent public authority to realise the tax as well as penalty and other charges from the petitioner which the respondent authority is obligated under law to materialise. So far as the pendency of the writ petitioner's representation dated 18th January, 2001 is concerned, Mr. Mukherjee has not offered any contradictory fact.

That the petitioner is the owner of the concerned premises, is a fact unchallenged in this case. So is not denied, the facts of enhancement of tax as regards the said premises, w.e.f 1st quarter of 2021. The petitioner says the same to be illegal and arbitrary whereas according to the respondent authority, in due exercise of its empowerment under the law, it acted. The counter allegation is of suppression by the petitioner, regarding changing the nature and usage of the property, which brings it within the perview of the enhanced tax liability, where as petitioner has denied the same by referring to the fact that his venture to enter into an agreement to allow the commercial use of the property has been halted, by termination of such an agreement, with the other party, upon refund of the advance amount of money. Hence, any change made in the nature and usage of the property, is denied by the petitioner.

Therefore whether or not the characteristic of the property and its usage has been converted from domestic purpose to a commercial purpose or not, is lying at the core of the dispute between the parties. It is necessary that the authorities reach at the core after hearing the petitioner. Admittedly the petitioner was not heard, before the order of the Hearing Officer dated 30.10.2018 was passed. The said order of the Hearing Officer is the basis for raising demands against the petitioner. The same, naturally appears to have been passed without the Hearing Officer coming to any satisfaction and decision as regards his conclusive finding, as to the alleged change in the nature of the property. The order the Hearing Officer dated 30.10.2018 is manifestly silent, in this regard.

On the premises as above, it is found proper that the petitioner be heard by the Hearing Officer, before any order could be passed for enhancement of the property valuation.

The submission made by Mr. Mukherjee appearing for the respondent authorities, that under no circumstances the assessment in question and the demand raised may be interfered into. The same is however, found not to be acceptable on the following two scores. Firstly, that the order of the Hearing Officer must contain the reasons leading to whatever decision is taken, which, as discussed earlier, is manifestly absent in this case. An unreasoned order is not sustainable. Secondly, that not only it is the petitioner's right that he be heard before an order of enhanced liability is foisted upon him but also the same would only facilitate the authorities to consider the matter in its right perspective. It would always be open for the authorities to pass an appropriate order as regards the rate of tax and the applicable tax of the house property for the period for which it is outstanding, after affording the petitioner the opportunity of hearing or otherwise the opportunity of hearing of the petitioner before the authority would only be an empty formality and futile.

On the above premises this writ petition is allowed, setting aside the impugned order of the Hearing Officer dated 30.10.2018 and impugned demand notices of the respondent authority for tax as regards premises No. “12/1C/A” and “12/1C/B”. The respondent authority is directed to consider petitioner’s representation dated 08.01.2021, after affording opportunity of hearing to the petitioner and also to consider his written objection, if any, submitted for the purpose of this hearing, to come to a reasoned decision. This exercise shall be concluded within a period of six weeks, from the date of communication of this order, to the concerned authorities.

Writ petition no. WPO 188 of 2021 is disposed of.

Urgent photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance of requisite formalities.

(RAI CHATTOPADHYAY, J.)

Tudu
p.a