IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :
The Hon'ble Justice Aniruddha Roy

WPA 22768 OF 2018

Lansdown Narayani Flat Owner's
Welfare Association & Ors.

Vs.

Kolkata Municipal Corporation & Ors.

For the Petitioners : Mr. Ranajit Chatterjee
Mr. Partha Sarathi Mullick
Mr. Aniruddha Mitra.

For the Respondent : Mr. Biswajit Mukherjee
KMC Mr. Gopal Ch. Das.

Heard on : 19.6.2024

Judgment on : 19.6.2024

Aniruddha Roy, J. :

This is a hearing matter upon affidavits.

Mr. Ranajit Chatterjee, learned counsel appears for the petitioner on virtual mode.

Mr. Biswajit Mukherjee, learned counsel appears for the Kolkata Municipal Corporation.

<u>Facts</u> :

1. This writ petition has been filed by the Flat Owners' Welfare Association of premises no. 2A, Sarat Bose Road, Kolkata. The building is named as "***Narayani***". The building comprises of both commercial and residential portions. The respective owners own their respective portions.

2. The grievance of the petitioner association is that, though by virtue of a decision/communication dated ***May 26, 2015, Annexure P7 at page 29*** to the writ petition, the Kolkata Municipal Corporation (for short the Corporation) held that, the association is not liable to pay any building tax and, accordingly, the association being an alleged assesse was deleted from the list of assesses in respect of the building, the Corporation had been raising its assessment bills and demanding building tax from the said association year after year. Challenging the said action of the Corporation raising demands on the association, this writ petition has been filed by the association.

<u>Submissions</u> :

3. Mr. Ranajit Chatterjee, learned counsel appearing for the petitioners referring to the said communication dated ***May 26, 2015***, as referred to above, submits that, after careful scrutiny of its records and the usage of the building the added respondent no.3, the Assistant Assessor-Collector (S) of the Corporation came to a specific finding on the basis of an order of the Chief Manager (R-5) dated ***May 20, 2015*** that, the petitioner association was no

more to be assessed as an assesse to pay building tax in respect of the said building. The assesse number of the petitioners association was ***11-069-43-0732-2***, which was deleted from the record of assessment of the Corporation.

4. Learned counsel for the petitioners then drew attention of this Court to the communications dated ***April 20, 2016*** and ***August 3, 2017, Annexure-P8 at pages 30 to 32*** to the writ petition. He further drew attention of this Court to the communications dated ***April 9, 2015*** and ***January 20, 2014***, ***Annexures-P5 and P6 at pages 23 and 27*** respectively to the writ petition. Referring to the above documents learned counsel submits that, the decision of the Corporation, as would be evident from the said communication dated ***May 26, 2015,*** was duly brought to the notice of the various relevant authorities of the Corporation contemporaneously requesting to delete the association from the list of assessment. None of these correspondences were replied to by the Corporation authority and no contemporaneous objection was whatsoever raised on behalf of the Corporation authority.

5. On the contrary, the Corporation went on assessing the petitioner association and raising its assessment bills and demands upon the petitioner association. The last of such demand annexed to the writ petition for few quarters mentioned therein for a sum of ***Rs.9410/-*** is ***Annexure-P9 at page 33*** to the writ petition.

6. From the supplementary affidavit filed by the petitioners the subsequent assessment bills and demands raised by the Corporation against the petitioners association, are available.

7. Learned counsel for the petitioners further submits that, so long the said communication dated ***May 26, 2015, Annexure-P7 at page 29*** to the writ petition exists and as the same is still in existence, any assessment caused by the Corporation against the petitioner association or any demand raised on that account against the petitioner association is wholly illegal, wrongful and arbitrary and is liable to be set aside.

8. Though not on record, Mr. Chatterjee learned counsel for the petitioners submits that, with all *bona fide* the association has continued to pay the assessed building tax without prejudice to its rights and contentions and the last ***No Due Certificate*** issued by the Corporation in this regard is dated ***November 20, 2023***.

9. He further submits that, pursuant to the direction made by a coordinate Bench in this writ petition in its order dated ***December 5, 2018,*** the petitioner association has made the payment. However, in the said order a right has been reserved in favour of the petitioners that all the payments made or to be made by the petitioner association shall abide by the result of the writ petition.

10. Mr. Biswajit Mukherjee, learned counsel appearing for the Corporation refers to the affidavit-in-opposition filed by the respondent nos. 1 and 2 affirmed on September 4, 2023. The relevant averment from the said opposition relied upon by Mr. Mukherjee is quoted below :

> *"v) As per the claim for cancellation of wrong assessment in the name of the writ petitioners by letter dated 26.05.2015 issued by the then Assistant Assessor Collector (S) wherein it was stated that by order of the Chief Manager (S) vide order dated 20.05.2015 was never been issued by the respondents and the said AAC(S) have*

> *had no authority to issue the said letter and the respondent herein after thorough searching could not find any of the order dated 20.05.2015 by the Chief Manager (R-5_. The said factual aspect will be evident from a copy of the Register of Letters is annexed herewith and marked by letter 'E'."*

11. The relevant extract from the relevant register is also appearing at ***Annexure-E at page 19*** to the affidavit-in-opposition which shows *sue motu* approval for mutation.

12. Referring to the defence taken by the Corporation Mr. Mukherjee emphasizes his submission that, the alleged order of the Chief Manager (S) dated ***May 20, 2015*** was never issued and the author of the said document dated ***May 26, 2015*** at ***page 29*** to the writ petition had no authority to issue the same. From search of records the Corporation did not find any existence of the said order dated ***May 20, 2015*** alleged to have been issued by the Chief Manager (S).

13. Mr. Biswajit Mukherjee, learned counsel for the Corporation submits that, to adjudicate upon the defence taken by the Corporation a detailed fact finding inquiry is required to be made, as the situation stands on affidavit on record. He submits that, these disputed questions of facts which are triable in nature, cannot be gone into by a Writ Court.

14. Mr. Mukherjee further submits that, the statute specifically contains provision that, if an assessment is made against an assesse by the Corporation unless it is set aside or modified by the appropriate statutory authority being the Municipal Assessment Tribunal, such assessment remains and it is the statutory duty of the assesse to pay the amount in terms of the assessment.

Similarly, the statute also provides for refund to the assesse if it is finally adjudicated that, on the basis of a wrong assessment the assesse has made payment. Therefore, the petitioner association should go on paying but it may exhaust its remedy in accordance with law. He further drew attention to ***Annexure-F at page 20*** to the affidavit-in-opposition and submits that, one Shyamal Dutta the then representative of the association was present in a hearing and has admitted the valuation of the property.

15. In light of the above, the respondents pray for dismissal of the writ petition.

Decision :

16. After considering the rival contentions of the parties and upon considering the materials on record, it appears to this Court at the outset that, the existence of the said document dated ***May 26, 2015, Annexure-P7 at page 29*** to the writ petition by which the petitioner association was directed to be deleted from the list of assesse was not challenged by the Corporation, though the Corporation was aware of the existence of the said document contemporaneously. The Corporation has not raised any objection or demand with regard to the said document in reply to the contemporaneous representations made by the association repeatedly. The said document dated ***May 26, 2015*** admittedly was issued by a responsible authority of the Corporation mentioning an order dated ***May 20, 2015*** passed by the Chief Manager (R-5). It is not that, the said communication dated ***May 26, 2015*** was issued by the added respondent no.3 on its own motion. The added

respondent no.3 being an authority of the Corporation has a statutory obligation to discharge his duties and when he issues a communication to an independent assesse, the assesse has to follow it. If an assessment order passed by the Corporation authority is binding upon and to be followed by all concerned, then with a similar force the said document dated ***May 26, 2015*** was also binding upon and to be followed by all concerned, unless the said communication is set aside upon proper adjudication or withdrawn or cancelled by the appropriate authority of the Corporation.

17. The plea taken in the affidavit-in-opposition as referred to above, shows that, the said communication dated ***May 26, 2015*** was illegally issued by the author of the communication, the added respondent no.3 as alleged by the Corporation though there was no contemporaneous action taken by the Corporation against the author of the said document at any point of time, despite having contemporaneous knowledge of the document.

18. When a document or communication is issued by a public and statutory authority in exercise of its statutory power deciding any rights and liability of an entity, unless the said document is set aside by a jurisdictional forum or the same is withdrawn or cancelled by an appropriate statutory authority, no steps can be taken contrary to the same by any statutory authority.

19. In view of the foregoing reasons and discussions, considering the plea taken by the Corporation and further considering the statutory revenue being involved, this Court directs that, on the basis of the existing records in this writ petition, the Municipal Commissioner and/or an appropriate and responsible

authority of the Corporation to be delegated by him shall revisit the issue afresh.

20. The petitioner shall serve a copy of this writ petition with all the affidavits filed and exchanged therein along with a copy of today's order upon the Municipal Commissioner within two weeks.

21. Upon receiving the same, the Municipal Commissioner shall decide the issue either by himself or through his appropriate delegatee, as indicated above, upon issuing a prior hearing notice of at least seven days to the petitioners and after granting the association an opportunity of hearing shall decide the issue by passing a reasoned order in accordance with law. The association shall participate in the hearing through its authorized representative.

22. The entire exercise, as directed herein, shall be carried out and completed by the Municipal Commissioner and/or its delegatee positively within a period of ***eights weeks*** from the date of communication of this order. The Municipal Commissioner then under his communication shall communicate the reasoned order to the petitioners positively within a further period of ***two weeks*** from the date of the said reasoned order to be passed.

23. It is made clear that, this Court has not gone into the merits of the claim and rival claims of the parties as recorded above with regard to the assessability of the petitioner association in respect of the said building and the petitioner association shall be free to urge whatever points they wish to

urge on the basis of the claims made in its writ petition and on the basis of the records in the writ petition and ***not beyond that***.

24. It is made clear that, if the reasoned order goes in favour of the petitioner association, following the direction of the coordinate Bench dated ***December 5, 2018*** as referred to above, whatever amount paid, if any, by the petitioner association on account of property tax from ***First Quarter 2015-16 (01/15-16)*** shall be refunded back to the petitioner association along with ***interest @ 6% per annum*** on and from the relevant date of payment of the property tax for the quarter indicated above till the date of actual tendering of the amount to the petitioner association. Such payment shall be released and paid to the petitioner association positively within a period of ***four weeks*** from the date of communication of the reasoned order to the petitioners.

25. In the event, it is found that, property tax is payble by the petitioner association under the said reasoned order then the necessary amount with arrear, if any, shall be paid by the petitioner association positively within a period of ***six weeks*** from the date of communication of the said reasoned order in accordance with law and ***in default*** thereof, the Corporation shall be free to proceed to recover the same strictly in accordance with law.

26. It is further made clear that, this order shall not create any right or equity in favour of the petitioner association, if the petitioner association is not eligible to receive its claim to be decided by the municipal Commissioner or its delegatee strictly in accordance with law.

27. In the event the reasoned decision goes against the petitioner association holding that, the petitioner association, is an assesse and shall have to pay the building tax in accordance with law then automatically the said communication dated ***May 26, 2015***, ***Annexure-P7 at page 29*** to the writ petition ***will lose its all force and effect*** and shall be treated as ***non est*** with an immediate effect, without reference to this Court any further.

28. With the above observations and directions this writ petition, ***WPA 22768 of 2018*** stands disposed of, without any order as to costs.

29. Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)