

Form No.J(2)

**OD-10**

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
ORIGINAL SIDE**

**CORAM:  
THE HON'BLE JUSTICE RAI CHATTOPADHYAY**

**WPO/973/2022**

**DIPAK KUMAR GUPTA AND ORS.**

**-Versus-**

**THE KOLKATA MUNICIPAL CORPORATION AND ORS.**

**Appearance:**

**Mr. Sakya Sen, Sr. Advocate.  
Mr. Arindam Paul, Advocate**

***...for the petitioner.***

**Mr. Biswajit Mukherjee Advocate  
Ms. Manisha Nath, Advocate..**

***...for the respondent/KMC.***

HEARD ON : 05.03.2024 & 14.03.2024  
DELIVERED ON : 14.03.2024

1. The writ petitioners in the present case have challenged an order passed by the Assessor-Collector (North), Kolkata Municipal Corporation, dated 16.11.2021. He has prayed for the relief, inter alia, that the said order may be directed to be set aside, that the Court may direct for setting aside the impugned Letter of Intimation (LoI) dated 5.4.2021. His further

prayer is for directing the respondent-Corporation to refund excess payment of Rs.28,134.50 to the writ petitioner and other ancillary orders.

2. This case has a long standing history. The premises with regard to which the disputed tax liability has arisen is no.1/1, Hem Kar Lane, Kolkata- 700 005. The petitioner is a purchaser of the portion of the property from one of the co-sharers, by dint of duly executed registered deed of conveyance dated 18.9.1996. Since after purchase the writ petitioners have duly mutated their names with respect to the proportionate share of purchased property, have been allotted assessee number and have been regularly remitting municipal taxes, without default.

3. They have, however, become aggrieved upon receipt of Letter of Intimation (LoI) dated 5.4.2021 sent by the respondent Corporation allegedly raising arbitrary and whimsical claim of property tax due, to the tune of Rs.2,67,073/- including interests and penalty.

4. The grievance of the writ petitioners was culminated into filing by them a writ petition being WPO/591/2021. An order dated 10.9.2021 of the Court was passed to dispose of the said writ petition of the present petitioners. The Court has recorded that *“However, the Court finds that there are periods and bills which are overlapping and which have also been paid, as prima facie appears from the records, before the mutation was completed.”* The court has finally directed the Assessor-Collector (North) to give the writ petitioners an opportunity of hearing regarding their

objections/ representation submitted earlier and dispose of the prayer in the said representation.

5. The resultant order is that dated 16.11.2021 passed by the Assessor-Collector (North) which is impugned in the present case.

6. The other facts relevant for proper adjudication of this case is that the said premises no.1/1, Hem Kar Lane, Kolkata was previously recorded in the name of Sri Bhupendra Chandra Kar and others. Sri Shyamal Kishore Ghosh has been a purchaser of the Southern portion of the said property by dint of a conveyance deed dated 13.5.2005. As stated earlier, the writ petitioners have purchased the Northern portion of the said property previous to the same i.e., on 18.9.1996.

7. On the prayer made by said Sri Shyamal Kishore Ghosh, the respondent Corporation, while in the process of separation of the property, accepted deposit of Rs.65,000/- from said Sri Shyamal Kishore Ghosh on account of unpaid tax, in the suspense account, against the original assessee number (mother). The concerned authority in the said impugned order dated 16.11.2021 has mentioned the same amount of Rs.65,000/- which has been deposited by said Sri Shyamal Kishore Ghosh, to have been made towards *pro rata* liability of mother's outstanding dues. This is an important observation of the said concerned authority in the impugned order, the relevance of which shall be discussed later in this judgment.

8. Name of Sri Shyamal Kishore Ghosh was mutated and the portion of the property purchased by him was allotted a new premises No.1/1A, Hem Kar Lane, Kolkata with a separate assessee number (Child) to him.

9. In the said order impugned in this writ petition, the concerned authority has further stated that at the time of generating child assessee number on separation, mother's outstanding dues of the entire premises was proportionately divided and vested upon the child assessee in accordance with its *pro rata* share of tax.

10. The writ petitioners have applied for mutation of their part of property on the Northern side of the premises on 20.03.2017. The petitioners were invited to pay the outstanding dues of property tax before mutation of their share of the property and, according to the demand, the petitioners have remitted a total amount of Rs.95,000/- on two different dates i.e., 6.1.2017 and 16.3.2017 respectively, towards the respondent KMC.

11. Thus, according to the writ petitioners, the total demand, after adjustment as per waiver scheme as made by the respondent Corporation by dint of the Letter of Intimation dated 2.3.2017, was remitted to it in full after payment by the writ petitioners as well as the owner of the other portion of the said property.

12. Under such circumstances, the writ petitioners are aggrieved with the impugned order that the same has been passed without considering the attending facts and circumstances as well as arbitrarily and by exercise of colourable power by the respondent authority. The decision taken by the

respondent authority by dint of the impugned order dated 16.11.2021 has been termed by the writ petitioners to be unreasonable and illegal. Thus, they pray that the same may be set aside.

13. Mr. Sen, learned counsel appearing on behalf of the writ petitioners, has taken this Court through the entire documents annexed with the writ petition to say that the writ petitioners are bona fide purchasers as well as the tax payers with respect to the part of share owned and held by them in the concerned premises. Mr. Sen, accepts that his clients have been served with the Letter of Intimation dated 2.3.2017 and being the proportionate owner of the said property, his clients have remitted the total sum of Rs.95,000/- as mentioned above. Mr. Sen has further pointed out to the fact that for the rest portion, his clients do not have any liability in so far as the property has been duly partitioned earlier and purchased from the respective share-holders. However, he submits that the impugned order is absolutely in contravention and derogation of the actual state of affairs and ignores the *pro rata* apportionment of the liability of tax as claimed to have been bestowed upon the respective purchasers of the said property, in the above stated impugned order. He further emphasises that till the time the property is partitioned, the same should be considered as a whole and as a singular unit, so far as the tax liability is concerned. Therefore, the demand of tax as made through the LoI dated 2.3.2017 is with respect to the singular unit of the premises subsequently owned by the two separate owners with respect to their individual purchased share.

14. To support his contentions that the writ petitioners have duly discharged their liability to pay tax, Mr. Sen has referred to several “No Objection Certificates” issued by the respondent, in favour of the writ petitioners, as annexed with the writ petition.

15. He further pointed out to the fact that the calculation of outstanding liability of the writ petitioners as done in the impugned order is unreasonable in so far as the respondent authority cannot levy tax for the same property and the same period, twice. The total amount as demanded through the LoI dated 2.3.2017 having been remitted by both the owners of the property as per their proportionate shareholding, the respondent has already received the entire tax amount, with respect to the whole of the property, for that particular period of time. Charging the same again as against the writ petitioners, would amount to make the property liable doubly for tax for same period, he says.

16. On the ground as above, Mr. Sen stated that the impugned order is only a nullity in view of its illegality, unreasonableness and arbitrariness and may be set aside by an order of this Court.

17. Mr. Mukherjee has, however, raised serious objection as regards the submissions and prayers of the writ petitioners. He is representing the respondent Kolkata Municipal Corporation, and says that there would not be any flaw as regards the decision making process of the authority while passing the order impugned. He emphasises that the writ Court may not go into the decision of the authority but only to the process of making the

decision while sitting in a judicial review of an administrative order. He submits that the writ petitioners have been given liberty of hearing, all the relevant documents and the contentions of the writ petitioners have been considered by the concerned respondent while passing the order impugned and thus, according to Mr. Mukherjee there would not be any cogent ground for this Court to interfere with the impugned order as above.

18. Mr. Mukherjee is not hesitant to mention the statement made on affidavit by the Corporation that, issuance of 'No Objection' has been a mistake on its part. The respondent states in affidavit and Mr. Mukherjee has relied on that *"On 16.03.2017 at the time of waiver adjustment of suspense deposits against the pro-rata liability of the petitioners, the amount of Rs.65,000/- deposited by respondent no.5 in the suspense account of assessee no.11-008-22-0002-2 as his pro rata liability of the child assessee, was inadvertently adjusted against the pro-rata liability of the petitioners, the mother assessee and upon such adjustment, 'no outstanding certificate' was issued to the petitioners for mutation. When the mistake was detected in 2018, it was necessary to cancel the waiver adjustment against the said assessee no.11-008-22-0002-2 and thus several letters were issued to the petitioners for their intimation and observations regarding the transfer of the suspense account deposit dated 25.11.2014 of Rs.65,000/- to the assessee no.11-008-22-0036-8 which has been allotted to respondent no.5."*

19. According to the Corporation, the same is required to be adjusted against the 'child' assessee number, which has been mistakenly adjusted with the mother assessee number and NOC was issued.

20. Let us first understand what is meant to be a *pro rata* apportionment. The term "*pro rata*", is a Latin term to mean "per the rate" or "proportionally". It is most commonly used in situations where someone pays or charges a certain amount proportional to their involvement or stake in a given venture or service. It essentially translates to "in proportion", which means a process where, whatever is being allocated, will be distributed in equal portions. It would describe a value's proportional allocation or assignment.

21. Admittedly, the Letter of Intimation (LoI) dated 2.3.2017 was issued with respect to the mother assessee number. The amount demanded was Rs.1,59,164/-. The premises, as a matter of fact, was owned by two different owners according to their purchased proportion thereof, at the time of issuance of such demand, though the demand was raised for a period, when the partition of the property, was not effected. Therefore, the other owner namely, Sri Shyamal Kishore Ghosh while proceeding to mutate his own name with respect to the proportionate property, submitted a part of the said demand i.e., Rs.65,000/- with the respondent authority, in accordance with the portion of property, under his occupation.

22. It is not denied by the respondent that at the said point of time before mutation of the parties' name with respect to their individual proportion in

the property, a demand for tax was raised by it only against the mother assessee number and not separately to the individual property owners, in accordance to their respective ownership. Hence, after submission of proportionate tax by said Sri Shyamal Kishore Ghosh, the writ petitioners while responding to the demand of the respondent Corporation submitted the rest of the amount, as demanded.

23. The waiver adjustments and reverting of the outstanding liabilities and adjustment of suspense account deposit back to the child assessee should be considered to be in derogation of the statutory provision, thus illegal and arbitrary as well, the demand against the mother assessee number being duly submitted. To these facts there is no objection raised by the respondent Corporation in this Case. On the contrary, this Court notices that in the impugned order the concerned respondent has recorded that the amount of Rs.65,000/- was towards *pro rata* liability of mother outstanding dues. Having said so, now the respondent Corporation cannot be allowed to retract from its stand that the amount of Rs.65,000/- submitted by Sri Shyamal Kishore Ghosh towards *pro rata* liability of mother outstanding dues. The respondent Corporation could not have raised any further demand for the said portion of property tax again, against the writ petitioners over and above the balance portion of property tax already paid by them in response to the Letter of Intimation dated 2.3.2017.

24. Thus it appears that a piece of property is being doubly taxed – firstly in the hands of the original owners and subsequently in the hands of the writ petitioners. Illegality of action and unjust enrichment of the respondent, is manifest.

25. More so, the writ petitioners, being never the owners with respect to the Southern portion of the said property, could not have been demanded for the property tax thereof.

26. Regarding what has been termed as the error committed by the respondent, this Court cannot take that into reckoning, in as much as the respondent authority, has not come up to show with sufficient document, that any rectification measure at all has been yet undertaken.

27. This prompts the Court to find that the decision of the respondent authority and the reasons thereof in the impugned order dated 16.12.2021 are not just, legal or proper. Instead, the same appears to be arbitrary and whimsical after the respondent authority having accepted the fact of *pro rata* division of tax liability of the mother unit between the petitioners and the other owner of the portion of the said property.

28. This would prompt the Court to pass an order setting aside the impugned order dated 16.12.2021. Hence, the instant writ petition being WPO/973/2022 is allowed. The impugned order dated 16.12.2021 is set aside. Let the respondent Corporation immediately refund to the writ petitioners, the excess payment amount, i.e., to the tune of Rs.28,134.50.

29. The writ petition (WPO/\*973/2022) is disposed of along with pending applications, if any.

**(RAI CHATTOPADHYAY, J.)**

A/s.