IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/189/2024
WITH
WPO/304/2024
IA NO:GA/1/2024

SMT. ASHALATA JAYASWAL AND ORS.
VS.
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE PRASENJIT BISWAS
Date : May 20, 2024.

Appearance:
Mr. Rupak Ghosh, Adv.
Mr. Debmalya Ghosal, Adv.
Mr. Dilip Kumar Ghosh, Adv.
…for Appellants
Mr. Deb Nath Ghosh, Adv.
... for Respondent No.1
Mr. Biswajit Mukherjee, Adv.
Mr. Swapan Kr. Debnath, Adv.
…for KMC
Ms. Sunanda Ganguli, Adv.
..for Respondent No.6

The Court: Affidavit of service filed in Court today, be kept with the records.

By consent of the parties, the appeal and the application are taken up together for hearing.

An order dated April 18, 2024, passed by a learned Judge of this Court on a writ application filed by the appellants herein, being

WPO/304/2024, is under challenge in this appeal at the instance of the writ petitioners.

The appellants approached the learned Single Judge challenging a distress warrant issued by Kolkata Municipal Corporation (in short, "KMC"), under Sections 219 and 220 of the Kolkata Municipal Corporation Act, 1980 (in short, "1980 Act"), and the action of KMC in putting padlock on the premises of the appellants.

It was submitted before the learned Single Judge that KMC does not have the power or authority to put padlock on the premises in question. Section 220 of the 1980 Act only authorises KMC to proceed against movables of the person in default. The immovable properties of the writ petitioners could not have been locked up by KMC.

The learned Judge noted that admittedly, there are arrear property taxes payable by the writ petitioners to KMC. The learned Judge refused to pass any interim order but adjourned the matter with the following observations and directions:

> " *The amount that is due and payable is mentioned in the Letter of Intimation dated 09.02.2024. Not a single paisa has been paid on account of arrears of property tax that is due and payable by the person responsible to pay.*
>
> *It has been submitted that as per the order dated 9th June, 2022 passed by the Court in WPO 2165 of 2022 the Corporation was supposed to raise fresh bills upon which the payment could have been made. As fresh bills were not raised by the Corporation, accordingly, tax could not be paid.*
>
> *Learned advocate representing the Corporation submits, upon instruction that, in compliance of the direction passed by the Court an opportunity of hearing was given to the parties. A reasoned order was passed by the Chief Manager, Revenue (South) on 22nd August, 2022. On 24th August, 2022, reasoned*

> *order along with the amount payable was duly communicated to the parties. After communication, bills were raised but none has been paid.*
>
> *The Corporation is directed to file a short report by way of affidavit disclosing the steps taken after the reasoned order was passed by the Chief Manager, Revenue (South).*
>
> *Let report be prepared and circulated by 03.05.2024. Exception, if any, may be filed by 10.05.2024. List the matter on 14.05.2024."*

Being aggrieved, the writ petitioners are before us by way of this appeal.

Mr. Ghosh, learned advocate for the appellants, says that the action of KMC is without jurisdiction. Section 220 does not empower them to seal immovable properties of the appellants. KMC has enhanced the annual valuation and consequently the property tax in respect of the concerned property many-fold upon finding that the property had been purchased by one Bhutoria Dealers Pvt. Ltd. in a Court sale. However, that sale has been set aside by the Hon'ble Supreme Court and the property has reverted to back to the writ petitioners and the private respondent who are 50% owners each of the property. KMC should revise the annual valuation and bring it down since the property is not being commercially exploited or being used by for any commercial purpose. The claim of Rs.85 lakh approximately on account of arrear property tax is based on the enhanced valuation of the property. This should be reconsidered. The appellants are ready, willing and prepared to put in any reasonable amount to show their bona fides. KMC should be directed to remove its padlock from the premises in question forthwith.

We have not called upon KMC to make any submission.

We are not inclined to interfere at this stage since the learned Judge is yet to decide the writ petition. KMC has already filed its report in the form of affidavit before the learned Judge. The writ petitioners have been granted opportunity to file an exception to such report by June 20, 2024. However, the appellants say that they will file such exception by May 24, 2024, with copy to learned advocate for KMC. Let that be done. The parties will be at liberty to mention the matter before the learned Single Judge immediately upon reopening of the Court after summer vacation.

We do not make any observation on the merits of the matter. Solely because the matter is pending before the learned Single Judge, we have declined to interfere.

The appellants will be at liberty to renew their prayer for interim order before the learned Single Judge.

The appeal and the connected application are disposed of accordingly.

Since we have not called for affidavits, the allegations made in the application are deemed not to have been admitted by the respondents.

(ARIJIT BANERJEE, J)

(PRASENJIT BISWAS, J.)

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