OD 5 ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/155/2025
IA NO:GA/1/2025

TANVEER EBADULLAH
VS.
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE :

THE HON'BLE JUSTICE RAJASEKHAR MANTHA
And
THE HON'BLE JUSTICE AJAY KUMAR GUPTA
Date : 10th November, 2025

Appearance :
Mr. Raghhunath Chakraborty, Adv.
Mr. Supratick Shyamal, Adv.
Ms. Manisha Nath, Adv.
Ms. Sonali Sengupta, Adv.
...for appellant

Mr. Biswajit Mukherjee, Adv.
Mr. Anupam Das Adhikary, Adv.
...for the KMC

1. The appeal is directed against the judgment and order dated 20th May, 2025, passed by a Single Bench of this Court in WP No. 1227 of 2024 (Tanveer Ebadullah vs. The KMC & Ors.).

2. The grievance of the appellant before the Writ Court was that the Hearing Officer under Section 188 of the Kolkata Municipal Corporation Act, 1980 while reopening and assessing the appellant in respect of premises No.7/1, Topsia Road, Kolkata for unpaid dues of Municipal tax, has failed to consider the scope of Section 573 of the said Act.
3. The proviso to Section 573 of the Act of 1980 mandates that no proceeding for recovery of any sum due to the Corporation on account of charge, cost, expense, fee, rate or rent can be effected after a lapse of three years from the date on which the sum became due.
4. The Single Bench refused to entertain the question in the writ jurisdiction under Article 226 primarily on the ground that a limitation of three years prescribed under Section 573 is a mixed question of fact and law and cannot be gone into by a writ court. According to the Single Bench, the Municipal Assessment Tribunal, which has powers akin to a civil court can examine, if necessary, by trial on evidence, as to when exactly the sum became due to the Municipal Corporation.
5. This Court cannot find fault with such view. Indeed, disputed question of fact cannot be decided by a writ court under Article 226 of the Constitution of India.
6. Mr. Mukherjee, learned Counsel appearing for the Kolkata Municipal Corporation, has labored to place various facts recorded by the Single Bench and admitted by the appellant in the writ petition. Firstly, that

under the various assessment numbers relating to the said premises, several ad-hoc payments were made all the way until November, 2024. The appellant further undertook on 20th November, 2024 to clear all outstanding amounts by December, 2024. He, therefore, submits that the appellant may have waived any objection that he may have had to the lawful demands of the Kolkata Municipal Corporation. He, therefore, submits that the writ petition, even otherwise was not maintainable for the principles of waiver, acquiescence and estoppels.

7. As already stated hereinabove as to when the Municipal Corporation came to know of the outstanding dues of the appellant, is required to be ascertained after a proper trial on evidence.

8. The averments in the writ petition admitting dues can themselves be proved from evidence before the Municipal Assessment Tribunal.

9. Prima facie, it appears to this Court that the Municipality may have come to know of the outstanding dues payable by the appellant sometime, in October-November, 2024. Applying the dicta of a co-ordinate Bench laid down particularly under paragraph 30 onwards, of the decision in the case of **Sudip Kusarye & Anr. Vs. KMC**, being Judgment **dated 22.5.2024**, rendered in **APO 7 of 2023**.

10. These are, however, only prima facie views. The appellant would be better placed to move the Municipal Assessment Tribunal in terms of the liberty granted by the Single Bench.

11. Mr. Chakraborty, learned Counsel for the appellant has submitted that his client is not even being furnished with a copy of the order passed by the Hearing Officer. He further submits that no notice was given by the Hearing Officer before commencement of the proceedings under Section 184.
12. These are equally disputed questions of fact which the Corporation may place before the Municipal Assessment Tribunal. However, it is made clear that if the appellant has, in fact, not been supplied with a copy of the order of the Hearing Officer, he shall be so supplied within a period of seven days.
13. Let a copy of the order of the Hearing Officer be made available to the appellant without prejudice to the rights and contentions of the Kolkata Municipal Commissioner before the Municipal Assessment Tribunal.
14. It is made clear that all points are kept open for the Municipal Assessment Tribunal to decide independently and uninfluenced by any observation made herein or by the Learned Single Bench.
15. In so far as the requirement of pre-deposit is concerned, Mr. Chakraborty submits that his client has put in Rs.30 Lacs towards the demand found justified by the Hearing Officer. The same may be set off against any other statutory pre-deposit required to be made by the appellant.
16. With the aforesaid observation, APOT/155/2025 shall stand disposed of.

17. Needless to mention, in the event the Tribunal finds favour with the appellant, it may refund any sum so found refundable in accordance with law.

18. Subject to fulfilment of all formalities, time to file appeal is extended by a period of two weeks.

(RAJASEKHAR MANTHA, J.)

(AJAY KUMAR GUPTA , J.)

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