

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

Present:

The Hon'ble Justice Rai Chattopadhyay

WPO 1149 of 2021

Samsul Huda Laskar

Vs.

Kolkata Municipal Corporation & Ors.

For the Petitioner

: Mr. Sakya Sen, Ld. Senior Adv.

: Mr. Arindam Paul

: Ms. Debarati Das

For the KMC

: Mr. Alak Kumar Ghosh

: Mr. Dwijadas Chakraborty

For the Official Liquidator

: Mr. Sourav Kr. Mukherjee

: Ms. Sahana Pal

: Mr. Souhardya Mitra

Judgment on

: 07/07/2025

Rai Chattopadhyay, J. :-

- (1)** A Letter of Intimation dated April 8, 2021 under cover of a letter dated April 21, 2021 of the Assessor-Collector (North), the Kolkata Municipal Corporation/Respondent No. 1, Assessment-Collection (North) Department are under challenge in the instant writ petition.
- (2)** By dint of the same, the Assessor-Collector (North)/Respondent No. 1 has demanded from the petitioner a sum of Rs. 63,48,265/- with S/A balance of Rs. 11,191/- on account of tax, interest and penalty payable by him for the period from second quarter of 2003 to the

period till end of fourth quarter of 2011, incorporating therein 99 per cent penalty waiver.

- (3)** The petitioner being aggrieved with the same, has filed the instant writ petition to pray for the relief inter alia that the Assessor-Collector (North)/Respondent No. 3 be directed to withdraw/cancel her letter dated April 21, 2021 and raise separate bills for the period after purchase of property by the petitioner, that the respondent no. 2 be directed to allow mutation of the property in the name of the petitioner, the respondent no. 3 be directed to withdraw of claims of arrear for the period which has been adjudicated by the Official Liquidator, that for the period from April, 1989 to the date of winding up of the company in liquidation that is August 10, 1999, with regard to the demarcated portion of the unit space and open terrace on the 3rd floor of 35, Acharya Prafulla Chandra Road, Post Office- Amherst Street, Police Station – Muchipara, Kolkata- 700009, measuring 2232 square feet as per built up area, that the respondent no. 4/the Official Liquidator, High Court at Calcutta be directed to pay the respondent no. 3 the demanded amount of arrear of municipal taxes and interest including penalty for the period from August 10, 1999 till March 15, 2019 in respect of the said premises, as mentioned above.
- (4)** The necessary facts to be dealt with in this writ petition may be narrated in a nutshell in the following manner;
- (5)** The owner of the premise No. 35 Acharya Prafulla Chandra Road, Post Office- Amherst Street, Police Station – Muchi Para, Kolkata- 700009, has been a company namely the Memorial Finance and Investment (I) Limited. This Court vide order dated August 10, 1999 in C.P. No. 70 of 1990 has directed for winding up of the said company. Thereafter, vide order dated February 24, 2017, this Court directed the Official Liquidator, High Court at Calcutta/respondent no. 4, to make publication of advertisement of sale of assets of the company in liquidation as above, which included the immovable property in

question. A sale notice was issued by the respondent no. 4 on March 9, 2017, in respect of the assets of the company in liquidation including the immovable property in question. Sale of the subject property was confirmed in favour of the writ petitioner in auction vide order dated May 5, 2017 passed by this Court in C.P. No. 70 of 1999. On March 15, 2019, a deed of conveyance was executed by the respondent no. 4/Official Liquidator, High Court at Calcutta in favour of the present writ petitioner.

- (6) After purchase of property through Court auction and execution of the deed of conveyance on March 15, 2019, the petitioner sought for mutation of the property in his name before the respondent no. 3/Assessor-Collector (North), KMC vide his letter dated September 25, 2020.
- (7) The petitioner has stated that his prayer for mutation of the property has not been considered by the respondent no. 3 for the reason that the property tax for the concerned premises has still remained unpaid. Eventually, this fact was informed by the petitioner to the respondent no. 4/the Official Liquidator by dint of a letter dated October 16, 2020. By dint of the other letter dated February 12, 2021, the petitioner has requested the respondent no. 3/the Assessor-Collector (North) to apportion the municipal dues separately to the respondent no. 4 and to him, making the same payable by him from the date of his purchasing the property on auction. However, later on the impugned letter of intimation dated April 8, 2021 with the letter of the respondent no. 3 dated April 21, 2021 were sent to the petitioner demanding an amount of Rs. 59,34,806/- with S/A balance of Rs. 11191/-. Also that, by dint of a letter dated June 25, 2019, the respondent no. 4/the Official Liquidator has informed the petitioner that an amount of Rs. 19,13,000/- has been paid to the respondent no. 1 by the respondent no. 4. The petitioner says that the amount so

demand has been arrived at after adjustment of Rs. 19,12,000/- paid by the respondent no. 4 earlier.

- (8)** On this factual backdrop, the petitioner has come up in this writ petition before this Court to plea that the demand raised by the respondent no. 3 is unsustainable in the eye of law and the petitioner is not liable for payment of the said sum of alleged arrear dues on account of property tax including interests and penalty.
- (9)** Mr. Sakya Sen, learned Senior Advocate, has represented the writ petitioner in the instant case. He has submitted that the respondent no. 3 has transgressed its jurisdiction while raising arrear property tax bill with interest and penalty against the petitioner and, therefore, acted illegally and by exercising power which is not vested in it by law. He would say that the petitioner is in occupation of the premises only with effect from the date on which it has been handed over to him after he purchased the same. He indicates from the writ petition that the sale of the subject property was confirmed only on May 5, 2017. He has further stated that a deed of conveyance was executed in favour of the petitioner as regards his ownership of auction purchase of the concerned property, by executing the same only on March 15, 2019.
- (10)** Therefore, according to the petitioner, he would not be liable for payment of any arrear tax including interest and penalty for the concerned premises, before his purchase and occupation therein and during the period when the property was under management by the Official Liquidator, High Court, Calcutta being the owner thereof that is, the company in liquidation.
- (11)** It is further been argued that the respondent no. 4/Official Liquidator, High Court at Calcutta has called upon the respondent authority to lodge its claim on affidavit in the statutory Form No. 68 under Rule 159 of the Company's (Court) Rules, 1959. It is submitted that the respondent Corporation has duly submitted the affidavit

before the High Court with the claim as regards the outstanding amount of tax of the concerned premises, to the tune of Rs.19,13,000/-. It is submitted further that admittedly, the said amount of claim has been duly adjudicated by the Official Liquidator and remitted by respondent No.4 to respondent No.1. A cheque no. 932151 dated May 6, 2019 was drawn by the Official Liquidator and issued to the KMC, which the KMC have accepted without any objection.

(12) Mr. Sakya Sen has further submitted that the respondent no.1/KMC has not only accepted the amount of claim to the tune of Rs.19,13,000/- as adjudicated upon by the Official Liquidator, without raising any objection but also has chosen not to prefer any appeal under Rule 164 of the Company's (Court) Rules , 1959 within the stipulated period of time. This way, according to the petitioner, the respondent Authority has waived its right to raise any further claim on account of arrear unpaid tax, interest and penalty for the premises in concern.

(13) The petitioner's further case is that, vide clause (f) at page 13 of the registered deed of conveyance dated March 15, 2019, the Official Liquidator/respondent No.4, as the vendor, shall be liable and duty bound to pay all outstanding municipal taxes due and payable to the said property, as admissible in accordance with law. Therefore, Mr. Sen has submitted that arrear payment if at all, stands due and outstanding should be paid by the Official Liquidator. He says that the petitioner would only be liable for payment of property tax and other ancillary rate if any, since from the date of his purchase and occupation of the said property and for this purpose, the respondent no.3 should raise separate bill to enable the petitioner to make immediate payment. Otherwise, it is submitted that the petitioner's property is not being mutated on some unsustainable and frivolous grounds allegedly of his non-payment of the arrear tax amount, which

does not stand due as against him and on this plea, mutation of his property is being delayed, hampered and jeopardized.

(14) Therefore, Mr. Sakya Sen, learned Senior Advocate insists that the writ petition may be allowed directing the respondent no.3 to raise outstanding property tax bill if any, against the petitioner which may have stood due and outstanding only from the date of his purchasing and owning the property and not beyond. He submits further that there may be directions upon the respondent no.3 for immediate steps to be taken by the same for mutation of the petitioner's property, upon the petitioner completing all formalities by paying outstanding taxes if any from the date of his purchasing and owning the property.

(15) The respondent Kolkata Municipal Corporation and its officials being respondent nos. 1 to 3 had contested by raising objections as to the contentions and prayer of the petitioner as discussed above. So far as the facts that the company which owned the premises was in liquidation pursuant to the order dated August 10, 1999 of this Court in a proceeding in C.P. No. 70 of 1999, has not, however, being disputed. The petitioner being an auction purchaser of the property is a fact which also remains admitted in the instant writ petition. It has also been admitted that the respondent no.4 has already remitted a sum of Rs.19,13,000/- to the respondent no.1 on the date of winding up of the company (In Liquidation) treating the said respondent as a creditor of the said company.

(16) The respondents No. 1 to 3 have pleaded about certain errors having cropped up in their "affidavit of proof of claim" affirmed on January 28, 2017, as filed before the Official Liquidator. It is submitted that in spite of the respondent being entitled to get a sum of Rs. 42,07,098/- till that date, a demand of only Rs.19,13,000/- was made before the respondent no.4 as a due amount as property tax, with respect to the said premises.

- (17) The respondent being represented by Mr. Alak Kumar Ghosh has largely depended among the stipulation made in the deed of conveyance as executed in favour of the writ petitioner that “the vendor shall pay all outstanding municipal taxes due and payable to the said property as admissible in accordance with law”. Further that “the purchaser has got every right to get his name mutated in place of name of the previous owner in respect of the said properties and the purchaser will go on paying tax to the proper and competent authority”.
- (18) The respondents have stated that the sum of Rs.19,13,000/- has been only towards outstanding property tax for the period from April, 1989 to the date of winding up of the company, that is, August 10 1999. According to the same, a huge outstanding amount payable on account of property tax beyond August 10, 1989 was not paid in favour of KMC.
- (19) Also that the respondents have mentioned about the period from the date of August 10,1999 till the date of execution of the sale-deed in favour of the petitioner that is June 13, 2017. It is submitted that even an amount of Rs.1913000/- was paid by the Official Liquidator to the respondent KMC, as the full and final settlement of the tax with interest and penalty due and outstanding till August 10, 1999, that is the date of winding up of the company and the sale-deed was executed in favour of the petitioner on June 13, 2017, there is no one to take responsibility for payment of property tax due for the intermittent period from August 10, 1999 to June 13, 2017. In this regard the respondents have relied on the judgment of the Supreme Court reported in **1996 3 SCC 630 (Municipal Corporation of Delhi Vs. Trigon Investment and Trading Private Limited and Another)**. Let the refer portion be quoted as herein:

“19. The Act does not contemplate a situation — it is necessary to emphasise — nor should the courts create a situation by a process of interpretation, where both the transferor and transferee escape the tax which has been duly assessed.”

(20) The respondents have further argued that the power of the Official Liquidator is not restricted by any statutory provision or other, to pay the property tax, when the company was declared in liquidation. In this regard, a judgment in ***Official Liquidator, High Court, Calcutta Vs. Ujjain Nagar Palika Nigam and Others*** reported in ***2009 2 CLJ 360***, has been referred to.

(21) The respondent has also relied on Section 183(5) of the Kolkata Municipal Corporation Act, 1980 to submit that on transfer or devolution of title, such transfer or devolution would be recorded in the municipal assessment book upon payment of fees and the arrear of any dues as stands towards the Corporation, on account of the transferor or the predecessor in interest of the applicant. That, otherwise according to the statutory provisions the respondent shall have right to refuse mutation of the property. In this regard, a judgement of this Court in ***Rashmoy Das Vs. Kolkata Municipal Corporation*** reported in ***2012 (2) CHN (CAL) 765*** has been referred to in which the Court has held that in view of Section 183 (5) of the Kolkata Municipal Corporation Act, it is not possible for any Court to direct the Corporation to mutate the property without payment of its dues because that would amount to issuing a Writ of Mandamus to act illegally which no Court can do.

(22) For the reasons as stated above, the respondents have argued that neither there is any infirmity and illegality with regard to raising claim of outstanding tax including interest and penalty from the petitioner who is now admittedly the owner of the concerned premises, nor there is any illegality as regards the decision of the respondent refusing mutation of the property in favour of the petitioner without payment of the said outstanding tax in respect of the concerned premises by the petitioner. According to the respondents the writ petition should be dismissed.

- (23) The company namely, the Memorial Finance and Investment (I) Limited, which was the owner of the concerned premises, has gone into liquidation. The property thereof including the property which is involved in this case, were sold on auction and the 'sale notice' mentions amongst all the clauses, as quoted below:-

"1. The sale will be held as per inventory of Valuation Report on "As Is Where Is And Whatever There Is" basis and subject to confirmation by the Hon'ble High Court at Calcutta. The Official Liquidator shall not provide any guarantee and/or warranty as to the quality, quantity or specification of the assets sold. The Officers are to satisfy themselves in this regard after physical inspection of the assets/properties as to the title, encumbrance area, boundary, measurement, description etc. of the Company (In Liquidation) and the purchasers will be deemed to offer with full knowledge as to the defects, if any in the descriptions, quality or quantity of the assets sold. The Official Liquidator shall not entertain any complaint in this regard after the sale is over. Any mistake in the notice inviting tender shall not vitiate the sale."

- (24) The respondent has placed much emphasis on the terms as above, mentioned in the 'sale notice', as well as, to the similar terms mentioned in the agreement for sale entered into between the Official Liquidator and the writ petitioner. Suffice is to say that the respondents have put forth a case that the petitioner had notice and knowledge of the encumbrances in the property, from a date prior to the sale, and has purchased the same along with such encumbrances. That, now the same petitioner cannot evade liability of one of such encumbrances in the property, that is, previous municipal tax, due and outstanding.

- (25) In the factual backdrop of this case, whether the petitioner may be held to have notice, constructive or otherwise, of the charge held by the respondents with respect to the property concerned, regarding arrears of taxes, is no further res integra. As to what would constitute a notice of a charge in respect of arrears of taxes, for a bona fide auction purchaser of a property, is now settled to be that he is said to have constructive notice when ordinary prudence and care would have

impelled him to undertake an enquiry which would have disclosed the charge.

(26) Admittedly in this case it did not appear that the respondent/Corporation either published or maintained for public inspection any disclosure or list of such charges or supplied any information on demand about the same. In that case, in accordance with the settled law, the purchaser, here the writ petitioner, should be considered to have no notice of the existence of the charge or to have been affected with the constructive notice thereof. A purchaser for value, whether he takes by private purchase or by auction purchase, takes the property free of all charges of which he has no notice, actual or constructive.

(27) In this regard, the judgment of ***Municipal Board, Cawnpore (Plaintiff) Vs. Roop Chand Jain & Anr. (Defendant)*** reported in ***1940 SCC OnLine All 81*** may be mentioned. Though in the same, the Court was dealing with the question of applicability of Section 100 of the Transfer of Property Act (as amended) to auction purchasers, in execution of decrees, the principle as enunciated therein, may be relied on, in the instant case, which is as follows:-

“The law in our judgment, is plain. A bona fide purchaser takes property he buys free of all charges of which he has no notice actual or constructive. He is said to have constructive notice when ordinary prudence and care would have impelled him to undertake an inquiry which would have disclosed the charge if for instance the charge is created by a registered document then the purchaser would be held to have constructive notice of that charge inasmuch as a prudent purchaser would in ordinary course search the registers before effecting the purchase.”

(28) In the instant case, the Court finds similarly that the petitioner, being the intending purchaser of the property, was not bound to presume that the taxes upon the property which he contemplates purchasing, have not been paid in ordinary course, in the absence of any special intimation by the respondent/Corporation. The Corporation has only intimated the purported tax liability of the

petitioner, not before his purchase on auction, but only when the petitioner desired to mutate his name in the property, after execution of the deed of sale, bestowing ownership of the property to him.

(29) Similarly, in the case of ***The Ahmedabad Municipal Corporation Vs. Haji Abdulgafur Haji Hussenhbai*** reported in (1971) 1 SCC 757, the Supreme Court has held as follows:-

“3. To begin with it was contended that there is no warranty of title in an auction sale. This general contention seems to us to be well-founded because it is axiomatic that the purchaser at auction sale takes the property subject to all the defects of title and the doctrine caveat emptor (let the purchaser beware) applies to such purchaser. The case of the judgment-debtor having no saleable interest at all in the property sold such as is contemplated by Order 21 Rule 91 CPC is, however, different and is not covered by this doctrine. The second point canvassed was that there is an express provision in Section 141(1) of the Bombay Provincial Municipal Corporation Act, 1949 (hereinafter called “the Bombay Municipal Act”) for holding the present property to be liable for the recovery of municipal taxes and, therefore, though the property was subject only to charge not amounting to mortgage and, therefore, involving no transfer of interest in the property, the same could nevertheless be sold for realising the amount charged, even in the hands of a transferee for consideration without notice. Section 141 of the Bombay Municipal Act is an express saving provision as contemplated by Section 100 of Transfer of Property Act, contended Shri Desai. This submission has no merit as would be clear from a plain reading of Section 100 of the Transfer of Property Act, 1882 and Section 141 of the Bombay Municipal Act, the only relevant statutory provisions. Section 100 of the Transfer of Property Act dealing with “charges” provides:

“100. Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have charge on the property; and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge.

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust, and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of the person to whom such property has been transferred for consideration and without notice of the charge.”

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6. The Court then proceeded to deal with the position of the vendor from whom the appellants had purchased the property in order to see if he could raise the defence of being a purchaser for value without notice. The appellant's vendor was a mortgagee who had acquired title by foreclosure — an involuntary alienation by his mortgager — and it was held that to him constructive notice could not be imputed to the same

9. The Court then noticed the fact that the Kanpur Corporation had allowed 11 years arrears of taxes to accumulate and it was observed that no intending purchaser was bound to presume that taxes upon the property, he contemplates purchasing had not been paid in the ordinary course, in the absence of special intimation by the municipality. On this reasoning the suggestion of constructive notice was negatived.

11. Now the circumstances which by a deeming fiction impute notice to a party are based, on his wilful abstention to enquire or search which a person ought to make or, on his gross negligence. This presumption of notice is commonly known as constructive notice. Though originating in equity this presumption of notice is now a part of our statute and we have to interpret it as such. Wilful abstention suggests conscious or deliberate abstention and gross negligence is indicative of a higher degree of neglect. Negligence is ordinarily understood as an omission to take such reasonable care as under the circumstances is the duty of a person of ordinary prudence to take. In other words it is an omission to do something which a reasonable man guided by considerations which normally regulate the conduct of human affairs would do or doing something which normally a prudent and reasonable man would not do. The question of wilful abstention or gross negligence and, therefore, of constructive notice considered from this point of view is generally a question of fact or at best mixed question of fact and law depending primarily on the facts and circumstances of each case and except for cases directly falling within the three explanations, no inflexible rule can be laid down to serve as a straight-jacket covering all possible contingencies. The question one has to answer in circumstances like the present is not whether the purchaser had the means of obtaining and might with prudent caution have obtained knowledge of the charge but whether in not doing so he acted with wilful abstention or gross negligence. Being a question depending on the behaviour of a reasonably prudent man, the Courts have to consider it in the background of Indian conditions. Courts in India should, therefore, be careful and cautious in seeking assistance from English precedents which should not be blindly or too readily followed."

(30) In the case of ***A.I. Champdany Industries Ltd. Vs. Official Liquidator*** reported in **(2009) 4 SCC 486**, the Supreme Court has

held that if advertisement for auction made no specific stipulation that public dues were to be paid by purchasers, seller himself were required to pay pre-sale dues. That, the terms and conditions of the sale must be read as a whole and given a purposive meaning. That the word 'encumbrance' in relation to the word 'immovable property' carries a distinct meaning and ordinarily cannot be assigned a general or dictionary meaning. It must be capable of being found out either on inspection or in the office of the Statutory Authority. The Court held as regards dues in relation to the Municipal tax in terms the Company's Act, 1956, in the following words. -

“9. Indisputably the manner in which the claim of a creditor in respect of the dues of the company in liquidation is to be realised has been laid down in Sections 529 and 529-A of the Companies Act, 1956.

10. Dues in relation to the municipal tax in terms of the provisions of the said Act do not create any encumbrance on the property. It does not create any charge. It is considered to be a personal liability. On the aforementioned premise, we have to construe the terms and conditions of the sale. It reads as under:

“1. The sale will be held as per the inventory made by the valuer on ‘as-is-where-is and whatever-there-is’ basis and subject to confirmation by the Hon'ble High Court at Calcutta. The Official Liquidator shall not provide any guarantee and/or warranty as to the quality, quantity or specification of the assets sold. The offerers/bidders are to satisfy themselves in this regard after physical inspection of the assets/properties as to the title, encumbrance, area, boundary, measurement, description, etc. of the Company (in liquidation) and the purchasers will be deemed to offer with full knowledge as to the defects, if any in the descriptions, quality or quantity of the assets sold. The Official Liquidator shall not entertain any complaint in this regard after the sale is over. Any mistake in the notice inviting tender shall not vitiate the sale.”

(31) The law is thus well settled that the terms and conditions of a sale has to be given a purposive meaning and read as a whole. An ‘encumbrance’ is a charge which diminishes the value of the property, a burden, which is capable of being found out on inspection of related records and runs with the property. Also, that the Companies Act 1956 does not create any encumbrances over the property for municipal tax dues. Hence, the Court finds that the impugned Letter of Intimation dated April 8, 2021 and the letter of the respondent No.3 dated April

21, 2021, are not in consonance with the settled provisions of law as discussed above. Admittedly, the respondent has raised bills for property tax for a pre-sale period, for the first time as against the present petitioner vide the impugned letter. The bills have never been earlier raised and it is also not a fact that any bill raised by the respondent at any earlier point of time, has remained unpaid by the erstwhile owner of the property. In such circumstances, the petitioner cannot be said to have constructive notice of the said purported dues at the time of purchase of the property on auction or that the property might have been encumbered with any charge as regards the unpaid municipal taxes. The Court finds the impugned letter along with the said Letter of Intimation not to be sustainable in the eye of law.

(32) The petitioner has argued that the respondent was allowed the opportunity to place its demand/claim before the Official Liquidator, in terms of the statutory provision. According to the averments made by the Official Liquidator in the affidavit filed by him, the respondents raised a demand of Rs. 61,20,098/- . Finally, after adjudication, the Official Liquidator has allowed a sum of Rs. 19,13,000/-, which has been paid to the respondent by the Official Liquidator and accepted by them, unconditionally, fully and finally. In the affidavit submitted by the respondents, however, one cannot find the actual amount claimed by the said respondent, as stated by the Official Liquidator, in his own affidavit. It appears from the affidavit submitted by the respondents that upon being invited by the Official Liquidator to place its claim as against the company (In Liquidation), the respondents have placed the demand of the amount, which has been paid to them by the Official Liquidator upon adjudication. Record has revealed that such acceptance of the adjudicated amount paid to the respondents, as mentioned above, has been only unconditionally, without any protest lodged by the respondents. It is also an admitted position that the respondents have not preferred any statutory appeal as against such

order of the Official Liquidator. Hence, it can be well construed that the amount of claim of the respondents as adjudicated by the Official Liquidator to the tune of Rs. 19,13,000/- has reached finality in view of acceptance of the same by the respondents with regard to the pending property tax due and payable by the Company (In Liquidation) to the said respondents. Therefore, in view of the settle provision of law, as discussed above, there should be no scope available for the respondents to issue the impugned letters as against the petitioner, claiming purported outstanding property tax of the concerned property.

(33) The respondent is worried about the period from the date of winding up of the company that is August 10, 1999 to the date of possession of the petitioner of the property in question. According to the respondent, there is no one to take responsibility for the property tax of the said property during the period as above. Undoubtedly, the period of demand by the respondents is previous to the petitioner owning the property by auction purchase vide the Court's order. It is now well understood that for the same period the petitioner, who has purchased the property on auction at a later date, would not be liable to pay the property tax, if stands due and outstanding.

(34) Not only the non-maintainability of the demand vide the impugned letter by the respondent/Corporation as mentioned above, has been challenged by the writ petitioner, its authority under the law to raise such demand as against the petitioner is also disputed in the instant case. The petitioner has stated that after the company having gone into liquidation and the respondent Authority having raised its claim before the Official Liquidator, in the statutory form and under the provisions of the statute, upon being invited by the Official Liquidator to do so and such claim made by the respondents having being adjudicated and the amount of property tax due as against the

property in liquidation being paid by the Official Liquidator to the said respondent, there can be no further question of raising demand for any previous period from the date of purchase of the property by the petitioner, in accordance with law. The facts as urged by the petitioner and mentioned above are corroborated by the records. It has been found and has remained undisputed that upon being invited by the Official Liquidator, the respondent filed their demand for property tax as against the outstanding thereof with respect to the property of the company (In Liquidation), in statutory Form 68 as per the relevant Rules under the Company's (Courts) Rules, 1959. Not only that the Official Liquidator after having adjudicated upon the admissible claim of the respondent has paid through cheque an amount of Rs. 19,13,000/- to the respondent/Corporation, which has been received by the same without any protest. Hence, the adjudication of the admissible amount as the creditor (unsecured) of the Company (In Liquidation) for the outstanding property tax of the property of the Company has reached its finality being accepted by the respondent and not challenged ever since thereafter. Does this really affect the rights of the respondent/Corporation to realise any property tax which is said to be outstanding, though unclaimed and undeclared till the relevant date? That is, however not a question relevant in this writ petition. What this case is concerned with is whether any other dues are also payable by the Company (In Liquidation) to the respondent/Corporation on account of unclaimed and unpaid property tax of the property of the Company (In Liquidation) for a period prior to the date of purchase by the petitioner, the petitioner would be liable for payment of the same.

- (35)** The entire discussion as made above, which has dealt with the settled legal provisions with regard to the particular question and issue involved in this writ petition as mentioned above, the Court is constrained to find that there would not be any scope before

respondent authority to raise any so-called outstanding property tax bill against the petitioner for a period before his purchase of the said property, more so for the reason that the same has so far remained not declared and claimed by the respondent before anyone in the world, till the date the impugned letters were issued by the respondent authority.

(36) After careful consideration of the judgment cited by the respondent as mentioned below, the Court finds that all of those would be factually distinguishable and not applicable in the instant case:-

- i. ***Municipal Corporation of Delhi Vs. Trigon Investment and Trading Private Limited and Another*** reported in **1996 3 SCC 630**
- ii. ***Rashmoy Das Vs. Kolkata Municipal Corporation*** reported in **2012 (2) CHN (CAL) 765**
- iii. ***Official Liquidator, High Court, Calcutta Vs. Ujjain Nagar Palika Nigam and Others*** reported in **2009 2 CLJ 360.**

(37) In the case of ***Municipal Corporation of Delhi (supra)***, the specific provisions of the Delhi Municipal Corporation Act, 1957 were in consideration of the Court whereas reliance placed by the respondent as regards the case of ***Ujjain Nagar Palika Nigam (supra)*** is a misplaced reliance in so far as the liability as Official Liquidator is not an issue agitated or determinable in the instant writ petition. In ***Rashmay Das's case (supra)***, the Court has held that execution of charge is not the extinction of the liability and only reduced the Municipal Corporation to the possession of an unsecured creditor. However, from the discussion in this case it has already been found that the demand of the Kolkata Municipal Corporation as an unsecured creditor of the Company (In Liquidation) has never been

written of, but satisfied by the Official Liquidator as per demand made by the respondent itself.

(38) For the reasons as discussed above, the Court finds merit in the instant writ petition. Hence, writ petition no. **WPO 1149 of 2021** is allowed with the following directions:

- i) The impugned letter dated April 21, 2021 as well as letter of intimation dated April 8, 2021 issued by the respondents/respondent no. 3 claiming due property tax as against the petitioner for the period from the second quarter of 2003 to the fourth quarter of 2011 stand set aside.
- ii) The respondents/respondent no. 1 is/are directed to immediately effect mutation of the property at premises no. 35, A.P.C. Road, (Assessee No. 11-049-01-0042-8) immediately, maximum within a period of four (04) weeks from the date of communication of copy of this judgment, subject to the petitioner having fulfilled the statutory requirements particularly, regarding payment of property tax with respect to the said property purchased by him through Court auction, with effect from the date of his purchase thereof.
- iii) The writ petitioner is directed to extend all sorts of co-operation with the respondent authorities in this regard.

(39) Writ petition no. **WPO 1149 of 2021** is disposed of along with applications, if any.

(Rai Chattopadhyay, J.)