OD-10 & 11

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/1050/2024
Berger Paints India Ltd.&Anr.
Versus
The Kolkata Municipal Corporation&Ors.

And

WPO/789/2024
Deoghar Properties And Finance Ltd. &Ors.
Versus
The Kolkata Municipal Corporation &Ors.

Before:
The Hon'ble Justice KAUSIK CHANDA
Date: 5th March 2025

Appearance:
Mr. Jishnu Chowdhury, Sr. Advocate
Mr. Deepan Kr. Sarkar, Advocate
Mr. AnunoyBasu, Advocate
Ms. Deepti Priya, Advocate
for the petitioner in WPO/1050/2024

Mr. Arindam Banerjee, Sr. Advocate
Mr. Chayan Gupta, Advocate
Mr. Shoham Sanyal, Advocate
Mr. S. Nandy, Advocate
Mr. Deepankar Thakur, Advocate
for the petitioner in WPO/789/2024

Mr. Biswajit Mukherjee, Advocate
Ms. Piyali Sengupta, Advocate
for the KMC

Mr. Abhijit Ray, Advocate
Mr. Shubham Gupta, Adovcate
for Vilol Fineries

The Court: The relevant portion of the order challenged in this matter, issued by the Deputy Assessor-Collector (South) of the Kolkata Municipal Corporation, reads as follows:

"From the available KMC Records w.e.f. 1/2017-18, it is reflected that one car parking space admeasuring about 120 Sq.ft. allotted with office space on the third floor admeasuring 1550 Sq.ft. against an assessee no, 110611805962, another car parting space admeasuring about 120 Sq.ft. allotted with office space on the second floor admeasuring 1550 Sq.ft. against an assessee no, 110611805950 and another one car parking space admeasuring about 120 Sq.ft. allotted with office space on the first floor admeasuring 1550 Sq.ft. (HDFC Bank & ATM) against an assessee no, 110611805949 all are in the name of M/s. Vilol Fineries Private Ltd.

From the above scenario, it can be concluded that that three car parking pace out of six car parking space were regularized by an order of Dy. Ch. Engineer (Bldg.)/South, dated 10/04/2014 and it is reflected in the I.B Copy w.e.f. 1/2017-18 that said three car parking space entry in the name of M/s. Vilol Fineries Private Limited against three separate assessee numbers. The remaining three car parking space are in existence on ground floor of the said building which are presently locked and key made by K.M.C., so how the claim of other parties (viz. Berger Paints India Ltd., M/s. Alwaye Properties & finance Ltd and M/s. Deoghar Properties & Finance Ltd.) against more than three car parking space to be considered.

Hence, it is hereby ordered that the name of "M/s. Vilol Fineries Private Limited" may be mutated as "Person Liable To Pay Tax" against Assessee No. 110611800319 for a period of 6 (six) months. If there is no claim for ownership by any party over the existing three car parking spaces within that interim period of 6 (six) months, then we may mutate the name of "M/s.

> VilolFineries Private Limited" as Recorded Owner in KMC books of records after 6 (six) months against Assessee No. 110611800319 on the basis of the three registered deed of conveyance(s) dated 11/11/2008, the registered boundary declaration deed dated 18/08/2023 and the No-Objection-cum-Declaration dated 10/02/2000.
>
> Assistant Assessor-Collector (South) shall take necessary action in this regard.
>
> The hearing is thus disposed of.
>
> Let authenticated true copies of this order be served to all concerned."

I am not inclined to uphold the challenged order. It appears that the Corporation has granted an interim mutation although the Corporation Act does not provide for any interim mutation, as was done by the Deputy Assessor-Collector in favour of Respondent No. 5 in WPO/1050/2024, Vilol Fineries Private Limited (hereinafter referred to as 'Vilol Fineries'), based on a registered boundary declaration deed dated August 18, 2023.

The facts that are undisputed are as follows: the relevant premises located at 129 & 131, Park Street, Kolkata-700017, contain six car parking spaces on the ground floor. The petitioners in WPO/1050/2024 and WPO/789/2024 do not dispute that three of these six car parking spaces were allotted to Vilol Fineries, which were later converted into commercial spaces and regularized by an order of the Corporation dated April 10, 2014.

Both petitioners assert their right, and interest over the remaining three car parking spaces. The petitioner in WPO/789/2024 relies upon the documents at pages 44 to 54 of the writ petition, while the petitioner in WPO/1050/2024 asserts that their right to use the relevant car parking spaces is based on the document found on page 187 of the writ petition. Vilol Fineries similarly claims its right, and interest over these same remaining spaces by virtue of the aforementioned declaration.

While this Court is not in a position to adjudicate the right, title, and interest of the parties concerning the three disputed car parking spaces, prima facie, it appears to the Court that the purported self-declaration omits the fact that the three car parking spaces have already been allotted to Vilol Fineries and they were converted into commercial spaces.

However, the learned advocate for Vilol Fineries contends that these three car parking spaces were allotted to Vilol Fineries in addition to the three previously allotted spaces.

It is an acknowledged fact that the dispute over the three car parking spaces is the subject matter of Title Suit No. 1083/2024, pending before Judge, Bench-V, City Civil Court, Calcutta, and no definitive order has yet been issued by the Civil Court declaring the right, title, and interest of any of the parties concerning these car parking spaces.

In light of the above, it is perplexing how the Corporation has acted upon the self-declaration deeds produced by Vilol Fineries and granted interim mutation, as mentioned above.

Accordingly, the order of the Deputy Assessor-Collector dated June 26, 2024, is hereby set aside.

The relevant assessment record shall remain in the name of earlier recorded owner, Tirupati Commercial Company Limited.

The parties are at liberty to file application in the pending civil suit, asserting their right, title, and interest, and seeking any other appropriate relief.

The Corporation shall effectuate the mutation of the parties' names based on the decree/order that may be issued by the competent Civil Court.

It has been submitted before this Court that the three disputed car parking spaces are currently under the possession of the Corporation for the purpose of collecting unpaid taxes.

Both petitioners have agreed to settle the taxes, including arrears, in respect of the three car parking spaces without prejudice to the rights and contentions of the parties.

Accordingly, both petitioners shall pay the current taxes, along with any arrears, in equal shares, and the Corporation shall hold these amounts in a suspense account.

The Corporation shall undertake the calculation of the arrear taxes after providing an opportunity for the petitioners to be heard.

It is clarified that this Court has not addressed the merits of the case concerning the right, title, and interest of the parties with regard to the said three car parking spaces. The Civil Court shall adjudicate the matter without being influenced by any observations made in this order.

In view of the aforesaid, I hereby appoint to Mr. Subit Majumdar, Advocate, (Mobile No.9831759754) as Special Officer, who will take symbolic possession of the three disputed car parking spaces on March 15, 2025, giving due notice to the parties. The Special Officer shall be remunerated with Rs. 50,000 (Fifty Thousand) which will be shared equally by both petitioners.

The Civil Court shall also be at liberty to modify/recall the appointment of the Special Officer and issue any appropriate interim orders regarding the possession of the disputed car parking spaces.

Accordingly, WPO/1050/2024 and WPO/789/2024 are disposed of.

Since both petitions have been disposed of without requiring affidavits from the parties, all allegations made therein are deemed to have been denied by the respondents.

(KAUSIK CHANDA, J.)

R. Bose