

(2004) 10 CAL CK 0029
In the Calcutta High Court
Case No : C.O. No's. 23 and 24 of 2004

Adarsh Mahila Shiksha Pratisthan and Another	APPELLANT
Vs	
Municipal Assessment Tribunal and Others	RESPONDENT

Date of Decision : 14-10-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114
Constitution of India, 1950 — Article 227

Citation : (2005) 1 CHN 165

Hon'ble Judges : S.P. Talukdar, J

Bench : Single Bench

Advocate : Soumen Sen, S.N. Mallick and Pooja Das Chowdhury, for the Appellant; A.K. Das Adhikari and Sandip Kumar De, for the Respondent

Judgement

S.P. Talukdar, J.—Both the cases relate to identical points of law and facts. Those were heard together and being disposed of by the common judgment.

2. Subject-matter of the present controversy is annual valuation in respect of premises No. 10C, Sir William Jones Sarani (formerly known as Middleton Row). Petitioner No. 1, Adarsh Mahila Shiksha Pratisthan, which is a registered charitable organization, is its owner. The preceding annual valuation of the said premises was Rs. 2,67,730/- with effect from 4th quarter 1978-79. But the Hearing Officer by the impugned order dated 26.05.1992 fixed the annual valuation at Rs. 13,71,600/- with effect from 4th quarter 1984-85. Petition was filed before the Municipal Commissioner on 15.07.1992 for reconsideration, which is still pending. Petitioner then filed a writ petition which was dismissed by judgment and order dated 30.06.2000 on the ground that alternative remedy was available. An appeal was preferred and the learned Division Bench of the Hon'ble High Court by judgment and order dated 14.09.2000 directed the petitioner to approach the Appellate Tribunal,

3. The said Tribunal was approached by the petitioner by way of filing two appeals of which the other one was in respect of the assessment year i.e., for the

period 4th quarter 1990-91. Both the appeals., i.e., M. A. A. No. 3822 of 2000 was allowed in part and annual valuation was assessed at Rs. 12,64,700/- with effect from 4th quarter of 1984-85 and M. A. A. No. 3823 of 2000 was dismissed and the annual valuation was assessed at Rs. 16,84,800/- with effect from 4th quarter 1990-91.

4. Review application was filed and the same was dismissed as well.

5. Being aggrieved by, and dissatisfied with, the impugned judgment and order dated 12.12.2000 and 23.10.03, petitioners by filing two separate applications under Article 227 of the Constitution prayed for setting aside of the same.

6. After hearing learned Counsel for both the parties and taking into consideration the relevant facts and materials it seems the following points require adjudication by this Court:

(i) Is an application under Article 227 of the Constitution maintainable in the facts and circumstances of the case?

(ii) Did the Hearing Officer and the Appellate Tribunal deal with the grievances of the petitioner in proper perspective?

(iii) Is the petitioner entitled to get any relief? If so, to what extent?

7. Point No. (i): On behalf of the petitioner it was submitted that the High Court in its exercise of power under Article 227 can always intervene when it finds that the order under challenge of the Court or the Tribunal, as the case may be, was passed without jurisdiction. Learned Counsel for the petitioner apart from referring to the decision in the case of Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, drew attention of the Court to the decision in the case of Shama Prashant Raje Vs. Ganpatrao and Others, . The Supreme Court in the said reported case observed that notwithstanding the fact that jurisdiction of High Court acting in proceedings under Articles 226 and 227 is supervisory, not appellate, if perusal of the order of an inferior Tribunal leads the High Court to the conclusion that (i) such Tribunal has committed a manifest error by misconstruing a document; or (ii) that on the materials on record a reasonable man could not have come to the conclusions reached by the Tribunal; or (iii) the Tribunal has ignored relevant material; or (iv) taken into consideration inadmissible material, the High Court would be fully justified in interfering with the findings of the inferior Tribunal.

8. On the other hand, learned Counsel for the opposite party submitted that the scope of an "application under Article 227 of the Constitution is narrow and limited. Referring to the decision in the case of Sadhana Lodh Vs. National Insurance Company Ltd. and Another, , it was contended that a mere wrong decision is not enough to attract jurisdiction of the High Court under Article 226 and the supervisory jurisdiction under Article 227 is confined only to see whether an inferior Court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law.

9. Mere fact that there is an alternative remedy does not in all situations take away the High Court's power under Article 227 of the Constitution. This Court is rather under Constitutional obligation to ensure that an inferior Court or Tribunal does not act beyond its jurisdiction.

10. Point No. 1 is, thus, decided in favour of the petitioners.

11. Points No. (ii) & (iii): These two points being indistinguishably interlinked are taken up at a time for consideration.

12. Learned Counsel for the petitioner assailed the order passed by the Hearing Officer and the Appellate Tribunal on the ground that the said authorities failed to appreciate the matter in proper perspective.

13. Referring to the decision in the case of *Motilal Naresh Kumar v. Calcutta Municipal Corporation and Ors.*, reported in 2000(2) CHN 349, it was submitted that for the purpose of Municipal Tax, "rent" must have a connotation in keeping with the meaning of the word different from its meaning in the context of the West Bengal Premises Tenancy Act. It was submitted that in the backdrop of the present cases, rent must be paid only for the purpose of use and occupation of the land and building and nothing else. In the case, as referred to, the learned Single Bench of this Court held that "otherwise the base of the tax will be widened. That will make the tax unconstitutional, in view of the constitutional constraint over legislative power of the State Legislature".

14. In response to this, learned Counsel for the opposite party/respondent submitted that the said judgment was challenged by the Calcutta Municipal Corporation before the Supreme Court and operation of the same was stayed by an interim order passed therein.

15. Learned Counsel for the O. P./respondent relying upon the decision in the case of *Surat Textile Market Cooperative Shops and Warehouses Society Ltd., Surat Vs. Municipal Corporation of the City of Surat*, , submitted that an amenity of service which may be considered to be for the beneficial use of the residents of the building is an essential and an integral part in so far as that building is concerned. In that said case, it was held that lift exclusively for use constituted an integral part of the building. Deriving support and strength from the decision in the case of *Lt. Col, G. L. Ganguly v. Arun Kumar Mukherjee*, reported in 1995(1) CLJ 292, it was submitted on behalf of the O. P./respondent that the "rent" is considered to be a generic term which includes within its ambit all the charges brought on account of occupation under whatever label. It was submitted that the inclusive definition of the expression "premises" does not leave out furniture, fittings and fixed appliances from the orbit of the definition of premises.

16. Reference was made to the decision in the case of *Hindustan Lever Ltd. Vs. Municipal Corporation of Greater Bombay and Others*, , wherein it was held that the value of wooden partitions dividing the floor spaces coupled with designing of

ceiling columns with partition in mind is also included while considering the property tax and rateable value of the building. The observation of the Apex Court in the said case may for the sake of convenience be reproduced as follows :

"The wooden partitions in question do not apparently attract the provision of Section 154(2) of the Act. They having been used to divide each of the floors into parts and even ceiling columns having been designed with such partition in mind, we entertain no doubt that the value of these partitions did constitute and were rightly regarded as part of construction cost. The fact that the partitions are fixed on sockets and are easily removable does not make any difference as the building was from the inception conceived as an office building and it being spacious, division into separate blocks and cabins was conceived from the beginning for which purpose the partitions were used. We, therefore, hold that the value of wooden partitions was rightly included in calculating rateable value".

17. Before proceeding further it may be necessary to refer to the basis of calculation made by the Hearing Officer and the Appellate Tribunal in the two cases which is as follows :

"Wef. 4/1984-85

Hearing Officer assessed reasonable rent at Rs. 1,47,000.00 per month, Tribunal assessed reasonable rent at Rs. 1,37,000/- per month, therefore, Tribunal gave benefit of Rs. 10,000/- per month which comes to $(Rs. 10,000/- \times 12) = Rs. 1,20,000/-$ per year. Tribunal further gave benefit under the heading "indispensable expenditures" at Rs. 20,000/- per month which comes to a total benefit of $(Rs. 20,000/- \times 12) = Rs. 2,40,000/-$ per year. Tribunal further gave benefit of 10% statutory reduction which comes to Rs. 1,40,000/0 per year. Therefore total benefit given by the Tribunal per year comes to $(Rs. 1,20,000/- + Rs. 2,40,000/- + Rs. 1,40,000/-) = Rs. 5,00,000/-$. But the petitioner claim for the benefit of Rs. 8,177/- per month (8177 Sq. Ft. x Re. 1) which comes to $(Rs. 8,177/- \times 12) = Rs. 98,124/-$ per year. Furthermore the Tribunal fixed the annual valuation on the basis of admitted rent + rent paid by the sub-tenant $(Rs. 55,331 + Rs. 81,771/-) = Rs. 1,37,102/-$.

wef. 4/1990-91

Hearing Officer after taking note of total rent of Rs. 1,94,517/- per month as per I. B. and considering "indispensable expenditure" assessed reasonable rent at Rs. 1,56,000/- per month. Tribunal after taking the statement of the instant petitioner admitting rent assessed reasonable rent at Rs. 1,66,385/- per month., which comes to $(Rs. 1,66,385/- \times 12 - 10\%) = Rs. 17,96,960/-$ as annual valuation. But the Tribunal retained the annual valuation fixed by the Hearing Officer at $(Rs. 1,56,000/- \times 12 - 10\%) = Rs. 16,84,800/-$. So, Tribunal gave benefit of $(Rs. 17,96,960/- - Rs. 16,84,800/-) = Rs. 1,12,160/-$ per year. Further the Tribunal granted benefit of $(Rs. 1,94,517/- - Rs. 1,66,385/-) = Rs. 28,132/-$ per month which comes to $(Rs. 28,132/- \times 12) = Rs. 3,37,584/-$ per year. Furthermore, Tribunal granted benefit of 10% statutory reduction which comes to

Rs. 1,99,660/- per year. So the total benefit given by the Tribunal per year comes to (Rs. 1,12,160/- + Rs. 3,37,584/- + Rs. 1,99,660/-) + 6,49,404/- per year. But the petitioner claimed for the benefit of Rs. 98,124/- (8177 Sq. Ft. x Re. 1 x 12) per year".

18. On perusal of all the relevant materials it appears that the premises under consideration is an eight-storied building used fully for commercial purpose. Learned Tribunal held that in each floor, there are more than one commercial establishments.

19. After analysing all relevant aspects the Tribunal while calculating annual valuation held as follows :

"Therefore, during 4/84-85, the appellant was getting Rs. 1,37,102.40/- as rent from the sub-lessee and sub-tenant (i.e. Rs. 81,771.40/- + Rs. 55,331.00/-). This later amount has been admitted by the appellant.

Not only that, from the record, we find that the H. O. allowed relief of Rs. 20,000.00 to the appellant for indispensable expenditure and the A. V. was calculated after deducting the said amount. For the ends of justice, that principle is also followed by us. Obviously, we also give relief to the appellant of Rs. 20,000.00. After deducting the said amount, it comes to Rs. 1,17,102.00.

Therefore, the Annual Valuation of the Premises in dispute for 4/84-85 will be Rs. 1,17,102.00 x 12 - 10% = Rs. 12,64,701.60 or say Rs. 12,64,700.00.

As a result, the Appeal No. 3822 of 2000 succeeds in part.

As regards the annual valuation of the premises in dispute for 4/90-91, we have already observed that the committee members of Adarsh Mahila Shiksha Pratisthan have themselves admitted that in total they are getting Rs. 1,66,385.00 per month as rent admitting the existence of United Commercial Bank. Therefore, the annual valuation for the said quarter i.e. 4/90-91 of the present premises will be Rs. 1,66,385.00 x 12 - 10% = Rs. 17,96,958.00 or say Rs. 17,96,960.00.

From the record, we find that the H. O. assessed the annual valuation for the said quarter at Rs. 16,84,800.00.

That being the position, the 2nd Appeal M. A. A. No. 3823 of 2000 has got no merit at all and the same is liable to be dismissed".

20. Much was submitted on behalf of the petitioner in regard to the scope of the expression "rent" in the context of the Municipal Act.

21. Determination of annual valuation is provided for in Section 174 of the Act. Sub-section {1} of Section 174 reads thus :

"174(1) Notwithstanding anything contained in the West Bengal Premises Tenancy Act, 1956 (West Bengal Act XII of 1956) or in any other law for the time being in force, for the purpose of assessment to the consolidated rate, the

annual value of any land or building shall be deemed to be the gross annual rent including service charges, if any, at which such land or building might at the time of assessment by reasonably expected to let from year to year, less an allowance often per cent for the cost of repairs and other expenses necessary to maintain such land or building in a state to command such gross rent."

22. It was submitted that the criteria for the assessment of the annual value is based on the rent reasonably received by the landlord and not the value of the holding in the hands of the tenant. According to learned Counsel for the petitioner, the Tribunal failed to take into consideration the relevant factors namely, the inclusion of component of furniture hire charges at the rate of Rs. 1.15/- and the quantum of municipal rates and taxes in the rent payable by United Commercial Bank as referred to in the agreement dated 23rd December, 1981.

23. But, having regard to the order passed by the Tribunal which is under challenge before this Court I find that there has been no such failure on the part of the Tribunal in appreciation of the relevant aspects.

24. On the other hand, it may be emphatically pointed out that while calculating the annual valuation and dealing with the grievances of the petitioner, learned Tribunal has proceeded on the basis of the settled position of law.

25. There was hardly any scope for review of the said order and there was no such mistake apparent on the face of the record which could justify any review of the order in the manner as sought for.

26. There is neither any scope nor any rational justification for examining the aforesaid finding of the Tribunal. No such material could be placed before this Court in justification of assailing the impugned orders on the ground that the same were passed without jurisdiction.

27. In the result, I find no merit in the grievances as ventilated in the two cases being C. O. No. 23 of 2004 and C. O. No. 24 of 2004. The impugned order dated 12th December, 2002 and 23rd October, 2003 passed by the Municipal Assessment Tribunal in M. A. A. No. 3822 of 2000 and M. A. A, No. 3823 of 2000 stand affirmed.

28. There is, however, no order as to costs.

29. Urgent xerox certified copy of this order, if applied for, be supplied to the parties after due compliance with the legal formalities. Later:

30. Immediately after passing of the aforesaid order, prayer is made on behalf of the petitioner for staying of operation of the order. After hearing learned Counsel for both sides, such prayer is rejected.