

(2007) 12 CAL CK 0034
In the Calcutta High Court
Case No : C.O. No. 2221 of 2000

Calcutta Municipal Corporation

APPELLANT

Vs

Anita Subrewal

RESPONDENT

Date of Decision : 19-12-2007

Acts Referred:

Calcutta Municipal Corporation (Taxation) Rules, 1987 — Rule 16(6), 19
Calcutta Municipal Corporation Act, 1980 — Section 174, 188
Constitution of India, 1950 — Article 227

Citation : (2008) 3 CHN 46

Hon'ble Judges : Arunabha Basu, J

Bench : Single Bench

Advocate : A.K. Das Adhikary, Sandip De and Fazlul Haque, for the Appellant;

Final Decision : Allowed

Judgement

Arunabha Basu, J.—The revisional application under Article 227 of the Constitution of India is directed against the judgment and order dated May 23, 2000 passed by the learned Municipal Assessment Tribunal, Calcutta in M.A. Appeal No. 385/1999 whereby and whereunder the learned Tribunal reduced the annual valuation of Flat No. 112A, Block-A of premises No. 1C, Pramathes Barua Sarani, Calcutta- 19 for the period of 3/96-97.

2. It appears from the record that in spite of service of notice, none appeared for the opposite party, as such the matter is heard and decided ex parte after hearing the submission made by the learned Advocate for the petitioner.

3. Learned Advocate for the petitioner while assailing the judgment, submitted that the Tribunal being creature of the statute, must follow the procedure strictly, but in this case the learned Tribunal deviated from the procedure as prescribed under law and as such the order passed by the learned Tribunal is required to be set aside.

4. Learned Advocate for the petitioner submitted that The Calcutta Municipal

Corporation (Taxation) Rules, 1907 (hereinafter called the Rules) has specifically provided the procedure for hearing of appeals. Learned Advocate for the petitioner submitted that Rule 19 stipulates the procedure for hearing of appeals and it is the contention of learned Advocate for the petitioner that the learned Tribunal while disposing appeal violated the specific provision of the Rules. Learned Advocate for the petitioner drew attention of this Court to Sub-rule (6) to Rule 19, which is set out below:

19....

(6) The parties to an appeal shall not be entitled to produce before the Tribunal any evidence in addition to the evidence adduced at the hearing u/s 188:

Provided that if....

(a) the officer hearing the appeal u/s 188 has refused to take evidence which, in the opinion of the Chairman, ought to have been taken, or

(b) the Chairman considers the production of any evidence to be essential in order to enable the Tribunal to pronounce judgment, the Chairman may, after recording his reasons therefore, allow such evidence to be produced.

5. The abovementioned Sub-rule (6) prevents the parties from producing evidence in addition to the evidence adduced at the hearing u/s 188, save and except, on ground as provided under Clause (a) and Clause (b) under proviso to the said Sub-rule (6). On perusal of the judgment, it appears that while accepting oral evidence and other documents at the stage of appeal, learned Tribunal did not comply the provisions of Sub-rule (6). There is no mention in the judgment under challenge that learned Tribunal while deciding appeal considered the provisions of Sub-rule (6) and acted only within the ambit of Clause (a) and Clause (b) under proviso to said Sub-rule (6).

6. In addition, learned Advocate for the petitioner also submitted that while determining annual valuation as prescribed u/s 174 of the Kolkata Municipal Corporation Act, 1980 (hereinafter called the Act) was strictly followed and as such there was no scope for interference by the learned Tribunal in appeal.

7. Lastly, learned Advocate for the petitioner submitted an unreported decision of this Court in CO. No. 2219 of 2000. While deciding the said application, learned Single Judge of this Court by order dated. 9.3.2004 directed that the matter may be remitted back to learned Tribunal for deciding afresh. It is also submitted by learned Advocate for the petitioner that impugned order, as referred to above, is in respect of the same premises, however, for different period.

8. After going through the relevant provisions of the Act and rules and also after perusing the unreported decision of this Court, I find that while deciding the appeal, learned Tribunal failed to consider the relevant provisions of the rule, as highlighted above. It is rightly pointed out by the learned Advocate for the petitioner that Tribunal being a creature of statute, is required to follow the

procedures while deciding appeal strictly.

9. On careful perusal of the impugned order, I do not find any reason assigned by the learned Tribunal for consideration of evidence adduced by the opposite parties (herein). Such action on the part of learned Tribunal cannot be supported under law and as such I have no other option but to set aside the order and to remit back the matter to the learned Tribunal for fresh consideration as per law.

10. In the result, revisional application under Article 227 of the Constitution of India succeeds. The judgment and order dated May 23, 2000 passed by the learned Municipal Assessment Tribunal in M.A. Appeal No. 385/1999 is hereby set aside. The matter is remitted back to learned Tribunal with direction to decide the matter afresh in accordance with law in the light observation as recorded in the body of the order.

Urgent xeroxed certified copy of the order may be supplied as and when applied for.