(2010) 04 CAL CK 0023

In the Calcutta High Court

Case No : A.P.O. No. 230 of 2009 and W.P. No. 524 of 1999

Kolkata Municipal Corporation and Others APPELLANT

Vs

Arun Kumar Chatterjee and Another RESPONDENT

Date of Decision : 30-04-2010

Acts Referred:

Citation : (2010) 04 CAL CK 0023

Hon'ble Judges : Prasenjit Mandal, J;Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : A.K. Dasadhikari and Fazhul Haque, for the Appellant;Aloke Ghose, Subrata Datta and Kuheli Sinha, for the Respondent

Judgement

Bhaskar Bhattacharya, J.—This mandamus appeal is at the instance of the Calcutta Municipal Corporation and is directed against order dated 30th June, 2009 passed by a learned Single Judge of this Court by which His Lordship allowed a writ application filed by the respondent before us thereby challenging the assessment of annual valuation of Premises No.76 Sarat Bose Road, Calcutta at Rs.1,11,880/- with effect from 3rd Quarter of 1988-99 and at Rs. 4,07,500/- with effect from 3rd Quarter of 1994-95.

2. By the order impugned in this appeal, the learned Single Judge directed the respondent No.5 of the writ application to consider the matter afresh and pass a reasoned order after giving opportunity of hearing to the writ-petitioner.

3. Being dissatisfied, the Calcutta Municipal Corporation has come up with the present appeal.

4. In the writ application the grievance of the writ petitioner was that in assessing the valuation for the periods in question, the special officer did not take into consideration an additional monthly amount of Rs. 4,140/- being the income of M/s. Amantron, a lessee of the writ petitioner, arising out of its business conducted by letting out a portion of the leased property, in addition to the monthly rental of Rs. 950/- paid by the said M/s. Amantron. Apart from the

said point, according to the writ petitioner, the entire amount realized by the said M/s. Amantron from different persons for using the part of the property on ceremonial occasion included licence, garbage tax and various other services rendered by it to its customers and thus, those cannot be said to be rent realized by it. The writ-petitioner further alleged that no valid reason was assigned in support of the annual valuation arrived at by the appellant.

5. The writ-application was opposed by the Calcutta Municipal Corporation thereby alleging inter alia that in view of existence of efficacious alternative remedy by way of appeal against such order, the writ-application was not maintainable. The Calcutta Municipal Corporation further justified its action for taking into consideration the amount realized by the lessee of the writ-petitioner for user of the said property.

6. As indicated earlier, the learned Single Judge has set aside the order of assessment and has remanded the matter back for fresh hearing keeping all the points open.

7. After hearing, Mr. Das Adhikari, the learned senior advocate, appearing on behalf of the appellant and Mr. Ghose, the learned advocate appearing on behalf of the writ-petitioner and after going through the materials on record we are not inclined to interfere with the discretion exercised by the learned Single Judge in the matter of rehearing subject to some guidelines indicated hereinafter.

8. We, however, find that the first point raised by the writ-petitioner that while making annual valuation, the rent realized by his lessee cannot be taken into consideration has already been decided by the Supreme Court of India in the case of India Automobiles (1960) Ltd. Vs. Calcutta Municipal Corporation and Another, holding that the rent realized by a tenant from its sub-tenant can also be taken into consideration for the purpose of assessing of annual valuation. We, however, find substance in the contention of Mr. Ghose, the learned advocate appearing on behalf of the writ-petitioner, that specific finding should be given for the sum alleged to be realized by the lessee of the writ petitioner as rent. In other words, even for the purpose of application of the law laid down by the Supreme Court in the case of India Auto Mobiles (supra), it must be proved that the sub-tenant was realizing a particular amount as rent of the property from its sub-tenant and in the absence of such finding, the assessment of valuation cannot be supported.

9. We, therefore, dispose of this appeal by modifying the order impugned only to this extent that the Calcutta Municipal Corporation Authority will give fresh proposal giving in details the basis of the proposed valuation by following the aforesaid decision of the Supreme Court in the case of India Auto Mobiles Ltd. (supra), and the special officer will also decide the annual valuation strictly in accordance with the said decision and other provisions of the Calcutta Municipal Corporation Act.

10. The matter is pending for a long time and as the proposed assessment is for

the periods of years 1994-95 and 1988-89, we direct the special officer to dispose of the proceeding positively within two months from the date of communication of this order. The Calcutta Municipal Authority is directed to give fresh proposal of the valuation positively within fortnight from today. It is needless to mention that the special officer will give opportunity of hearing to the writ-petitioner before arriving at the final decision. We make it clear that we have not otherwise gone into the merit of the assessment order.

11. The mandamus-appeal is, thus, disposed of with the aforesaid observations.

12. In the facts and circumstances, there will be, however, no order as to costs.