(2022) 02 CAL CK 0041

In the Calcutta High Court

Case No : C.O. No. 318 Of 2019

Kolkata Municipal Corporation APPELLANT

Vs

Anurag Jalan RESPONDENT

Date of Decision : 17-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 227
Kolkata Municipal Corporation Act, 1980 — Section 174, 175, 176, 177, 178, 180, 189, 189(5), 189(10A)

Citation : (2022) 02 CAL CK 0041

Hon'ble Judges : Ajoy Kumar Mukherjee, J

Bench : Single Bench

Advocate : Alok Kumar Ghosh, Fazlul Haque

Final Decision : Allowed

Judgement

Ajoy Kumar Mukherjee, J

1. Being aggrieved by and dissatisfied with judgment and order dated February 13th , 2018 allowing the appeal in part passed by the Learned 2nd

Bench, Municipal Assessment Tribunal, The Kolkata Municipal Corporation (KMC) in Municipal Assessment Appeal being M.A.A. No. 1823 of 2012

(Mr. Anurag Jalan -Vs. The Kolkata Municipal Corporation), present petitioner has preferred this revisional application under Article 227 of the

constitution of India.

2. The facts of the case, material for the present, is that a new high rise building of XII storied was constructed at the premises No. 9A , Jatindra

Mohan Avenue, in ward no. 18, Kolkata-700006, consisting of several flats, after obtaining a sanctioned building plan. Construction of said building

was completed within 1st quarter of 2008-09.

3. Opposite party purchased a flat measuring a covered area of 861 square feet and can parking area 134 square feet being flat No. 2D on the 2nd

Floor of the building at the said premises No. 9A, Jatindra Mohan Avenue, in ward no. 18, Kolkata-700006. Post purchase, the opposite party applied

to the K.M.C./petitioner to mutate their names against the said purchased flat and K.M.C. authorities accordingly mutated their names and gave

Assessee number.

4. After service of the notice upon the opposite party and after considering the objection raised by the opposite party regarding proposal of the amount

of the assessment of Annual Valuation in respect of the said flat, w.e.f. 2nd quarter of 2008-09, petitioner herein / K.M.C. fixed the Annual Valuation

of the said flat at Rs. 27,020/- for the periods w.e.f. 2/2008-09 taken into consideration their assessed reasonable rate, at the rate of 2.75 per square

feet , per month.

5. Opposite party being aggrieved by that order of fixing Annual Valuation of the said flat by the K.M.C. preferred an appeal being No.

M.A.A.1823/2012 and Learned Municipal 2nd Bench of the Municipal Assessment Tribunal upon hearing the parties in the appeal passed the

impugned order on February 13th, 2018 allowing the appeal in part, upon modifying of the order of the Hearing Officer by reducing the amount of the

annual valuation from Rs.27,020/- to 14,030/- for the periods w.e.f. 2/2008-09

6. Feeling aggrieved by the said order dated 13.02.2018, petitioner herein preferred the present revisional application on the ground that Learned

Municipal Assessment Tribunal did not consider the cost price of the premises and the rise of rent. He ought to have considered the rise of cost of the

price of the premises as well as the assessment of Annual Valuation which was fixed as first time and also the rise of reasonable rent of the premises,

likely to be fetched during the period of the Assessment w.e.f. 2nd quarter 2008-09.

7. It is further contended by the petitioner that Learned Municipal Assessment Tribunal should have appreciated that the rate of rent fetched by the

premises in question @ Rs.2.75 per sq.ft, per month and open car parking @1.00per square feet per month which was taken into consideration to

assess the annual valuation by the Hearing Officer, should not have been modified. Most importantly, Learned Municipal Assessment Tribunal should not have relied upon the judgement of the Learned Municipal Assessment Tribunal, K.M.C., passed in M.A.A. No. 1819/2012, to modify the order of

Hearing Officer, because the said judgment has already been set aside by this Honâ??ble Court.

8. Further contention of the petitioner is that the Learned Municipal Tribunal acted improperly and wrongfully by not considering the inspection book

copies, referred to by the petitioner at the time of hearing of the appeal,since the same were the basis of orders of Hearing Officer and cannot be

replaced by the observation made by the Tribunal passed in M.A.A. No. 1819/2012 which has already been set aside. Lastly, learned Municipal

Tribunal failed to make any effort to ascertain the estimated market reasonable rental value of the flat, for the purpose of determination of annual

valuation of the premises in question and also committed gross violation of principles of natural justice, since the impugned order is not supported by

proper reasoning.

9. On perusal of the said impugned order passed by the Learned Municipal Assessment Tribunal on February 13th , 2018 it appears that the points for

determination before the said Tribunal was

a) Whether the impugned order passed by the Learned Municipal Hearing Officer suffers from any irregularity or illegality deserving interference

from this Tribunal and,

b) If so, what should be the Annual Valuation.

10. It further appears that the said judgment and order dated February 13th, 2018 is cryptic one and the said judgment is based upon the contention

made by the Learned Advocate for the opposite parties herein, who relied upon the judgment of the self same Tribunal passed in M.A.A. No.

1819/2012 in relation to another flat of the self same building . Relying upon annual valuation made in the said case, the rate of rent was fixed in the

present case also at Rs. 1.40 per square feet per month for covered area and Rs 0.70 per square feet per month for car parking space w.e.f. 2/2008-

2009.

11. The relevant portion of the observation made by the Tribunal in support of their order on January 5th , 2018 may be reproduced below:

â??The Ld. Advocate for the appellant has argued that the Ld. Hearing Officer arbitrarily fixed the A.V. without paying any respect to the provision of the Act of 1980. The Ld. Advocate for the appellant has relied on the copy of the decision of MAA 1819 of 2012 in respect of Flat No. 1C, 1st

Floor by premises No. 9A, Jatindra Mohan Avenue, Kolkata -700006 of ward no-18 where in the Tribunal fixed RR at Rs. 1.40 per sq.ft per month

for covered area & @ Rs. 0.70 per sq.ft. per month for C.P space in respect of self same premises same qrt. i.e. 2/2008-09 but different flat.

On the other hand, it is argued by the Ld. Advocate for the respondent that the order of the Ld Hearing Officer is reasonable and should be affirmed

in the instant case.

Having regard to the submission of both sides in the light of documents and referred case of the appellant, we are of the considered view that the RR

of the premises â?"in-question should be Rs. 1.40 per sq.ft per month for covered area & Rs.0.70 per sq. ft. per month for C.P. space w.e.f. 2/2008-

09.

Thus the present AV of the premises in question will be :-

Rs.(861x1.40x12)-10%+Rs.(134x0.70x12)-10%

= Rs. 14031.36, or say Rs.14030/-w.e.f. 2/2008-09.â??

12. Needless to mention that, section 174 to 178 of the Kolkata Municipal Corporation Act, 1980 have laid down detailed procedure regarding

determination of Annual Valuation. Provision for revision of assessment has also been made in section 180 of the said Act and Section 189 of the Act

also provides for appeal before the Municipal Assessment Tribunal and section 189(10A) makes the provision for preferring a petition before the self

same Municipal Assessment Tribunal for review of the order passed by the said Municipal Assessment Tribunal.

13. In the present case, K.M.C., petitioner had not filed any review application, instead they had preferred for the revisional application. Be that as it

may , on perusal of the aforesaid judgment dated January 5th , 2018 it is quite clear from the quoted abstract that the impugned order was passed

simply on the basis of the assessment as made by the self same Tribunal in M.A.A. 1819/2012.

14. Fact remains that, the judgment passed in M.A.A. 1819/2012, relying upon which the impugned judgment was passed, has been set aside in C.O.

No. 3368/2017.

15. It is also pertinent to mention that while passing the said judgment in M.A.A. 1819/2012, the Learned Tribunal relied upon another judgment

passed by self-same Tribunal in M.A.A. 335/2010. Said Bench of this Court while setting aside the order passed in M.A.A. 1819/2012 was pleased to

hold in C.O. No. 3368/2017 :

â??.....16. The Tribunal before relying on itâ??s said judgment must come into the conclusion regarding the relevancy of the said judgment in the

facts and circumstances of the appeal before it. Merely because the property in the said referred judgment is situated under the same ward of the

Kolkata Municipal Corporation or within the same locality where the said flat is situated cannot be the sole yardstick of assessment of the annual

valuation of the said flat.

17. The detailed procedure since has been laid down under the said Act and the said rules for disposal of an appeal under Section 189 (5) of the said

Act, the Tribunal being the quasi judicial authority is bound to follow the said procedure in discharging itâ??s duty. There is manifest dereliction of

discharge of the statutory obligation by the Tribunal as the Tribunal has failed to follow any of the said procedure in allowing the appeal before it.

18. The order of the hearing officer, no doubt is also lacking the statutory requirement but the Tribunal has vested with the power under the said Act

and the said Rule to assess the annual valuation of the flat in question even by the taking additional evidence under Rule 19(6) of the said Rule. The

Tribunal choose not to resort to the said provisions of the said Act and the said Rule in assessing the annual valuation of the said flat.â??

16. In view of the aforesaid specific observation made in C.O. 3368/2017 by a Bench of this court, it is quite clear that the basis or the foundation

upon which the impugned judgment was written by the Municipal Assessment Tribunal of K.M.C. in M.A.A. No. 1823/2012, does not exist anymore.

17. Furthermore while modifying the order of the Hearing Officer, Learned Municipal Assessment Tribunal had not given any cogent reason for such

modification, in violation of the principles of natural justice and also in violation of the statutory obligation as casted upon the Tribunal for assessing the

Annual Valuation.

18. In view of the fact that the judgment passed in M.A.A. 1819/2012 based on which the impugned judgment is written, has been set aside by a

Bench of this court in C.O. No. 3368 of 2017 and also considering the fact that no other reasoning for modifying the valuation order has been given in

the impugned order so in exercise of the jurisdiction under Article 227 of the Constitution of India, I have no other option but to set aside the impugned

order passed by the Municipal Assessment Tribunal, 2nd Bench, Kolkata Municipal Corporation in M.A.A. 1823/2012, with a direction to decide the

M.A.A. 1823/2012, afresh in strict compliance of the provisions as laid down in Kolkata Municipal Act 1980.

19. C.O. No. 318/2019 is allowed . There will be no order as to costs .

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

Let the copy of the order be sent to the learned 2nd Bench Municipal Assessment Tribunal Kolkata Municipal Corporation.

