

(2016) 09 CAL CK 0048
In the Calcutta High Court

Case No : MAT No. 1201 of 2016 with CAN No. 8894 of 2016

Kolkata Municipal Corporation

APPELLANT

Vs

Karnani Properties Limited

RESPONDENT

Date of Decision : 19-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) AIR(Calcutta) 10 : (2016) 4 CalHCN 696

Hon'ble Judges : Mr. Biswanath Somadder and Mr. Siddhartha Chattopadhyay, JJ.

Bench : Division Bench

Advocate : Mr. Alok Kumar Ghosh and Mr. Swapan Kumar Debnath, Advocates, for the Appellants; Mr. Kishore Datta, Mr. N. Chaudhury, Ms. A. Poddar and Mr. Samik Chakraborty, Advocates, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. Biswanath Somadder, J. - By consent of the parties, the appeal is treated as on day's list and taken up for consideration along with the application for stay and disposed of as follows:-

This appeal arises out of the order passed by the learned Single Judge dated 11th May, 2016. By the said order, the Kolkata Municipal Corporation (being the appellant herein) was directed to consider the writ petitioner's application for reconsideration of the valuation on the date of the assessment as determined by the Supreme Court in the case of The Corporation of Calcutta v. Smt. Padma Devi and Others reported in AIR 1962 SC 151 (para-11) and also upon consideration of the observations made by the learned Single Judge in the order dated 11th May, 2016, within a certain time-frame.

2. Even a bare perusal of the impugned order reveals that the judgment of the Supreme Court has been quoted and relied upon wholly out of context. The reason is, the municipal affairs of Kolkata are now governed by the Kolkata Municipal Corporation Act, 1980 (as amended till date). The 1980 statute was

not even in existence when the Supreme Court delivered its judgment in the year 1962. That apart, and in any event, the issue which was before the learned Single Judge was primarily in respect of an application made by the writ petitioner for reconsideration/revision of valuation of the premises-in-question by the concerned authority of the Kolkata Municipal Corporation. The learned Single Judge appears to have also made certain observations which practically leaves the Kolkata Municipal Corporation with no choice but to reconsider/revise the valuation based on the writ petitioner's application simply in the manner in which the writ petitioner wants.

3. A statutory authority cannot be directed by the writ Court to consider the writ petitioner's case as he/she wants. The most important requisite for issuance of a writ in the nature of mandamus is that it lies to enforce a legal duty. A clear statutory duty must exist before it can be enforced through mandamus. A writ in the nature of mandamus is issued in favour of a person who establishes a legal right in himself, which is enforceable. With these principles in mind, the learned Single Judge ought to have given a direction upon the Kolkata Municipal Corporation to consider the writ petitioner's application for reconsideration/revision of valuation of the premises-in-question in accordance with law with a certain time-frame. Instead, the learned Single Judge directed the Kolkata Municipal Corporation to reconsider/revise the valuation of the premises-in-question on the date of assessment upon following a judgment of the Supreme Court rendered in the year 1962, which - as discussed hereinbefore - has no manner of application at all and also based on the observations made by the learned Single Judge, which, for reasons stated hereinbefore, ought not to have been directed.

4. The Kolkata Municipal Corporation, in such facts and circumstances, shall consider the application of the writ petitioner seeking reconsideration/revision of assessment of annual valuation of the premises-in-question, strictly in accordance with law and communicate its decision to the writ petitioner as expeditiously as possible, preferably within a period of three weeks, but not later than four weeks from the date of communication of a photostat certified copy of this order.

5. The impugned order dated 11th May, 2016, stands modified accordingly.

6. Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.