(2023) 03 CAL CK 0038

In the Calcutta High Court

Case No : C.O. No. 1494, 1495, 1496, 1497, 1499, 1500, 1501, 1502, 1503, 1504, 1505 Of 2020

Kolkata Municipal Corporation — APPELLANT

Vs

Kripendra Lal Dey & Anr. — RESPONDENT

Date of Decision : 13-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 227
Kolkata Municipal Corporation (Taxation) Rules, 1987 — Rule 9(3), 9(3)(c), 15, 19, 20, 21
Kolkata Municipal Act, 1980 — Section 174, 180, 184(4), 186, 188, 189, 600

Citation : (2023) 03 CAL CK 0038

Hon'ble Judges : Ajoy Kumar Mukherjee, J

Bench : Single Bench

Advocate : Alok Ghosh, Fazlul Haque

Final Decision : Allowed

Judgement

Ajoy Kumar Mukherjee, J

1. Opposite parties are not represented inspite of services.

2. As issue involved in all the aforesaid applications under Article 227 of the constitution of India are same, all the applications are heard together and are hereby governed by this common order.

3. Being aggrieved and dissatisfied with the order passed by the learned 2nd Bench, Municipal Assessment Tribunal, The Kolkata Municipal Corporation arising out of an order dated November 12, 2014, passed by the Hearing Officer-IV, The Kolkata Municipal Corporation, relating to fixation of annual valuation in respect of the different flats at 46, Chanditola Lane, Kolkata-700040 for the period with effect from 4th quarter of 2013-2014, present applications under Article 227 of the Constitution of India have been preferred.

4. For better understanding a short description about the cases are given below:

Case number

MAA Appeal No.

Date of order

Flat no. & period of assessment

Annual valuation fixed by Hearing

Officer

Annual Valuation fixed by the Ld. Tribunal

1.C.O 1505 /2020 KMC -Vs-Kripendra lal Dey

MAA 504 of 2015

16.04.2018

3A , 3rd Floor Block2, 46 Chanditola Lane, kolkata-40 4/2013- 2014

39,860/-

17,240/-

2.C.O 1494 /2020 KMC Vs-Partha Pratim Ghosh

MAA 689 of 2015

13.08.2018

2E , 2nd Floor Block2, 46 Chanditola Lane, kolkata-40 4/2013- 2014

39,380/-

17,070/-

3.C.O 1495/2020 KMC Vs-Amlan Sengupta & ors

MAA 493 of 2015

17.07.2018

3F , 3rd Floor Block1, 46 Chanditola Lane, kolkata-404/2013- 2014

36,600/-

15870/-

4.C.O 1496/2020 KMC Vs Saikat Konar Sons

MAA 488 of 2015

04.07.2018

2A , 2nd Floor Block1, 46 Chanditola Lane, kolkata-40 4/2013- 2014

37,950/-

16,410/-

5.C.O 1497 /2020 KMC Vs. Bhartesh shomrani

MAA 502 of 2015

23.04.2018

4A , 4th Floor Block1, 46 Chanditola Lane, kolkata-40 4/2013- 2014

36,600/-

15,870/-

6.C.O 1499/2020 KMC Vs. Sanjukta Roy

MAA 500 of 2015

17.07.2018

1D , 1st Floor Block1, 46 Chanditola Lane, kolkata-40 4/2013- 2014

29,870/-

12,940/-

7. C.O 1500 /2020 KMC Vs. premanjan paul & sons

MAA 492 of 2015

13.07.2018

3D , 3rd Floor Block2, 46 Chanditola Lane, kolkata-40 4/2013- 2014

28,820/-

12,480/-

8. C.O 1501 /2020 KMC Vs. Sarika Mehra & sons

MAA 688 of 2015

13.08.2018

4E , 4th Floor Block2, 46 Chanditola Lane, kolkata-40 4/2013- 2014

44,750/-

18,420/-

9.C.O 1502 /2020 KMC Vs. Gouri Ghosh and sons

MAA 490 of 2015

08.06.2018

1A , 1st Floor Block2, 46 Chanditola Lane, kolkata-40 4/2013- 2014

38,510/-

16,700/-

10.C.O 1503 /2020 KMC Vs. Anubha Sanyal

MAA 501 of 2015

14.06.2018

1A , 1st Floor Block1, 46 Chanditola Lane, kolkata-40 4/2013- 2014

36,600/-

15870/-

11. C.O 1504 /2020 KMC Vs. Archana Mukherjee

MAA 491 of 2015

25.06.2018

3E , 3rd Floor Block2, 46 Chanditola Lane, kolkata-40 4/2013- 2014

39,380/-

17080/-

5. Petitioner contended that a multistoried building has been constructed at the premises No.46, Chanditola Lane, Ward No. 097, Kolkata-700040 consisting of several flats after obtaining building plan sanctioned with all modern facilities. The said building according to petitioner is the best building on the said record with all amenities of drainages sewerage, electricity, road, water supply etc. of the Kolkata Municipal Corporation. The opposite parties purchased their respective flats in the said building as stated in the tabular statement. The petitioner issued a notice proposing amount of assessment of Annual Valuation in respect of the said flats with effect from 4th quarter 2013-14. After service of notice upon the opposite parties, with the said proposal the opposite parties raised their objection and by an order dated 12th November, 2014 the Hearing officer-IV of the Kolkata Municipal Corporation, considering the objections, fixed the Annual Valuation of the said flats as above

6. Being aggrieved by the said order opposite parties herein preferred appeal against the said orders of the Hearing Officer-IV of the Kolkata Municipal Corporation dated 12.11.2014, before the learned Municipal Assessment Tribunal, Kolkata Municipal Corporation. The 2nd Bench of the Municipal Assessment Tribunal upon hearing the parties in the Appeal passed orders as above allowing the appeal in part, upon modification of the order of the Hearing Officer-IV by reducing the amount of the Annual Valuation as mentioned in the table.

7. Mr. Ghosh Learned Counsel appearing on behalf of the petitioners submits that the learned Tribunal having due regard to the facts and circumstances of the case and also the law, should not have reduced the Annual Valuation of flats in

question which is about cent percent. He further submits that the Mayor's guideline can not prevail over the law or the guidelines framed by the court but unfortunately the learned Tribunal considered the Mayor's guidelines as the only parameter without taking into account the parameters laid down by the Hon'ble Apex Court and thereby Learned Tribunal Committed wrong in passing the impugned order. He further submits Learned Tribunal failed to make any effort to ascertain the reasonable rental value of the flat in a newly constructed multistoried building for the purpose of determination of Annual Valuation of the premises in question and Municipal Tribunal committed gross violation of principles of Natural Justice since impugned orders under challenge are not supported by reason. The learned Tribunal did not consider the copies of inspection books referred to by the petitioner at the time of hearing of the appeal in its true perspective and wrongly rejected the same. His further contention is Learned Tribunal committed wrong in taking into account its own order passed in MAA 108 of 2005 in respect of premises No. 32/36 Chandi Ghosh Road, Kolkata and failed to appreciate that the said valuation in respect of premises no. 32/36 was decided ten years back and does not relate to same road of the premises in question and no comparable issue is reflected in the order under challenge. Accordingly Mr. Ghosh has prayed for setting aside the orders impugned.

8. On perusal of the said impugned orders passed by the Municipal Assessment Tribunal, KMC it appears that point for determination before the said Tribunal was

(i) whether the impugned order passed by the learned Hearing Officer suffers from any irregularity or illegality deserving interference

(ii) if so, what should be the Annual Valuation.

9. It further appears that learned Tribunal while passing the order has merely recorded the submissions of the respective parties and though learned Tribunal has referred the judgment passed by the Apex Court in India Automobile (1960) Limited Vs. Calcutta Municipal Corporation and another, reported in (2002) 3 SCC 388 but the learned Tribunal has failed to discuss anything with reference to the said judgment consequently there is no finding or observation as to how the Mayors order are applicable in the present case. It further appears that learned Tribunal while passed the orders has taken into consideration another judgment passed in a different case being MAA No. 108/2005 which was relied by the opposite parties herein, but the said judgment has also not been discussed with reference to the facts of the present case. The Annual Valuation of the premises being 32/36 Chandi Ghosh Road was decided with effect from February, 2002 -2003. It is submitted by corporation that the said premises is old one and does not relate to same road, where as present premises are new one and has been newly assessed. It has not been explained in the orders impugned as to how said premises can be considered as comparable unit with the present Flats which are within newly constructed building. Since the Annual Valuation of the premises No. 32/36 Chandi Ghosh Road was decided almost 12 years back, obviously during this long period of twelve years, the rental value has been substantially

increased. Even learned Tribunal has not discussed anything about the entries made in inspection Book. He thus prayed for setting aside the orders.

10. The Kolkata Municipal Act 1980 provides the detailed provisions of taxations and property tax under part-IV Chapter XII of the said Act. Under section 180 of the said Act the Annual Valuation of a land or building may be revised on the grounds mentioned in the said provisions under the said Act. Section 184(4) of the said Act mandates that before making any revision/ fixation of Annual Valuation, Municipal Commissioner shall give notice of not less than thirty days to the owner enabling the said person to raise objection to the proposed Annual Valuation . Section 188 of the Act deals with hearing and determination of objections of valuation. Section 189 of the Act of 1980 provides for preferring appeal before the Municipal Assessment Tribunal for disposal of appeal preferred against order passed under section 188 of the Act.

11. The State Government by virtue of section 600 of the Said Act of 1980 has framed the Kolkata Municipal Corporation (Taxation) Rules, 1987. Section 188 of the said Act read with Rule 9(3) of the said Rule, provides detailed procedure for hearing and disposal of an objection to the proposed Annual Valuation of the property in question. Said provisions make it clear that the duty casts upon Hearing Officer to adhere to the said procedure while dealing with the objection under section 186 of the Act. The Hearing Officer under Rule 9(3) (c) of the said Rule is vested with the jurisdiction to call upon the person appearing before him at the time of hearing to file written statement supported by duly sworn-in affidavit, if necessary giving particulars of his submission in support of the disputes raised against the proposed Annual Valuation of the property. Similarly Tribunal by virtue of Rule 15 enjoys the power of Civil Court to secure and to summon any witness or for production of any document which the tribunal may require for disposal of the appeal before it and the detailed procedure for hearing of the appeal has been laid down in Rule 19 of the said Rule, which includes local inspection, in case of necessity, of such premises, which are the subject matter of appeal as provided in Rule 20 of the Rules of 1987.

12. Here the Tribunal by the order impugned has modified Annual Valuation of the said Flat on the basis of judgment passed by the self same Tribunal in MAA 108/2015 and Mayor’s report. Merely because property in the said referred judgment is situated under the same ward of the Kolkata Municipal Corporation or may be within the same locality where the said Flats are situated, cannot be the yardstick of assessment for computing the Annual Valuation of the present Flats, in a newly constructed premises. The Tribunal being the Quasi Judicial authority is bound to follow the procedure while discharging its duty.

13. That apart the order under challenge is not supported by reason though the requirement of recording adequate reason by a quasi judicial authority is must under Rule 21 of the Rule of 1987. Learned Tribunal though referred India Automobiles Limited Case (supra) but did not consider the Apex Court’s observation in Paragraph 25 where it has been clearly stated that the Appellate

Tribunal shall consider the appeals in the light of the judgment by keeping in mind all the circumstances including the rent actually received by the owner of the building and the rent being paid to the tenant by his sub-tenant. The Appellate Tribunals are also directed to keep in mind the peculiar circumstances of the case, if any, for determining the gross Annual rent at which the building in controversy at the time of assessment is reasonably expected to let from year to year, less the allowance and other considerations referred to in section 174 of the Act of 1980. The court has also framed a guideline to this context in paragraph 23 of the judgment.

14. Accordingly it is apparent, while modifying order of the Hearing Officer, the learned Tribunal had not given any cogent reason for such modification in violation of the principle of Natural Justice and also in violation of statutory obligations as stated above, which is casted upon the Tribunal for assessment of Annual Valuation.

15. In view of above facts and circumstances of the case I find that the order impugned are not sustainable as modification of the Annual Valuation has not been done on the basis of the norms laid down in the statue and has been arbitrarily settled without following the procedure laid down in the judgment. Accordingly I have no other option but to set aside the impugned orders passed by Municipal Assessment Tribunal in MAA 504 of 2015, MAA 689 of 2015 , MAA 493 of 2015 , MAA 488 of 2015 , MAA 502 of 2015 , MAA 500 of 2015 , MAA 492 of 2015 , MAA 688 of 2015 , MAA 490 of 2015 , MAA 501 of 2015 , MAA 491 of 2015 with a direction to decide the aforesaid appeals afresh in compliance with the provisions as laid down in the Kolkata Municipal Corporation Act, 1980, rules thereunder as well as guidelines as laid down by the court, and also considering available materials on record including the inspection book copies, preferably with a period of six months from the date of communication of the order.

16. C.O. 1505 of 2020, C.O. 1494 of 2020, C.O. 1495 of 2020, C.O. 1496 of 2020, C.O. 1497 of 2020, C.O. 1499 of 2020, C.O. 1500 of 2020, C.O. 1501 of 2020, C.O. 1502 of 2020, C.O. 1503 of 2020, C.O. 1504 of 2020 are accordingly allowed. Let a copy of this order shall be placed in the record of each of the aforesaid cases.

There will be no order as to costs.

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