(2004) 02 CAL CK 0067

In the Calcutta High Court

Case No : C.O. No''s. 2470 and 2471 of 2003

Kolkata Municipal Corporation APPELLANT

Vs

Netai Sundar Dutta and Another RESPONDENT

Date of Decision : 09-02-2004

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 174(1)
Constitution of India, 1950 — Article 227

Citation : (2004) 2 CHN 616

Hon'ble Judges : S.P. Talukdar, J

Bench : Single Bench

Advocate : Asoke Kumar Das Adhikary and Sandip Kumar De, for the Appellant;

Final Decision : Allowed

Judgement

S.P. Talukdar, J.—Both the cases being No. 2470 of 2003 and 2471 of 2003 are directed against judgment and order dated 19.01.2001 passed by the Municipal Assessment Tribunal. The Tribunal by the said common order decided two cases being Municipal Assessment Appeal (MAA) 1564 of 1996 and Municipal Assessment Appeal 1565 of 1996.

2. Appellant before the Tribunal, which is opposite party No. 1 in the present cases, by filing the said two appeals, being MAA 1564 of 1996 and MAA 1565 of 1996, challenged two orders of the Hearing Officer-XII dated 19.6,96 fixing the annual valuation of 171C, Acharya Prafulla Chandra Road, Kolkata-700 004, Ward No. 11 at Rs. 15,120/- with effect from 2/92-93 and at Rs. 16,090/- with effect from 2/94-95 on the ground that the valuations made are excessive, improper and unjust.

3. Petitioner prayed for setting aside of the order dated 19.01.01 passed by the Tribunal on the ground that it was passed without considering the fact and materials and there was no application of mind.

4. Mr. Asoke Kumar Das Adhikary, learned Counsel for the petitioner submitted

that the Tribunal while passing the impugned order acted illegally and in an arbitrary manner. Impugned order reveals that no oral evidence was adduced by the parties. Hearing Officer fixed the annual valuation in respect of the premises No. 171C, A. P. C. Road, Ward No. 11, Kolkata-700 004 at Rs. 15,120/- with effect from 2/92-93. The Tribunal while leaving the previous valuation of Rs. 1460/- unaltered and undisturbed did not assign any reason whatsoever.

5. Mr. Das Adhikary appearing for the petitioner submitted that the impugned order does not at all reveal that the Tribunal considered the materials on record. In this context, he referred to the decision in the case of Trambak Rubber Industries Ltd. Vs. Nashik Workers Union and Others, , in support of his contention that the impugned order being passed in an arbitrary manner and it being without any basis, it calls for interference by this Court. It is true that a particular thing need be done in the particular way, as specified, or not at all and the other methods are forbidden. In this context learned Counsel for the petitioner referred to the decision in the case of Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, , wherein it was observed that "where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden. This rule squarely applies where the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other".

6. Attention of the Court was also drawn to the decision in the case of Calcutta Municipal Corporation and Ors Vs. M/s. Bala Bestos India Ltd,, . There is no doubt that it is for the assessee to lead evidence and prove as to what should be the correct rateable value.

7. Section 174(1) of the Kolkata Municipal Corporation Act, 1980 deals with the determination of annual value. It is command of the statute that annual valuations is to be determined following the guidelines as well as the procedure as laid down in the said provision. It is for the concerned authority to take into consideration the reasonably accepted rent at the time of assessment. It may be that it will not be always possible to dot every ''i'' and cut every ''t'' while following such guidelines. But, there is no reason as to why an attempt shall not be made to arrive at a rational amount following the statutory guidelines.

8. It is perhaps needless to mention that the order under challenge does not reflect any application of mind on the part of the Tribunal. In such backdrop it is difficult to brush aside the grievances as ventilated by Mr. Das Adhikary, learned Counsel for the petitioner.

9. Accordingly, the impugned order dated 19.01.2001 passed by the Municipal Assessment Tribunal in MAA 1564 of 1996 and MAA 1565 of 1996 be set aside. Both the cases arising out of an application under Article 227 of the Constitution of India thus stand allowed and the Municipal Assessment Tribunal be directed to re-hear the matters, as referred to earlier, after giving opportunity to the parties

to adduce evidence, if necessary and pass order in the light of the observations made in the body of the judgment This order decides both C. O. No. 2470 of 2003 and C. O. No. 2471 of 2003 respectively.

10. Xerox certified copy, if applied for, be supplied to the parties expeditiously.

