(2022) 02 CAL CK 0057

In the Calcutta High Court

Case No : C.O. No. 95 Of 2019

Kolkata Municipal Corporation — APPELLANT

Vs

Prasun Banerjee — RESPONDENT

Date of Decision : 25-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 227
Kolkata Municipal Corporation Act, 1980 — Section 174, 174(2), 174(3)

Citation : (2022) 02 CAL CK 0057

Hon'ble Judges : Ajoy Kumar Mukherjee, J

Bench : Single Bench

Advocate : lak Kumar Ghosh, Swapan Kr. Debnath

Final Decision : Allowed

Judgement

Ajoy Kumar Mukherjee, J

1. A combined order was passed in Municipal Assessment Appeal No. M.A.A. No. 2362/2013, M.A.A. No. 2361/2013 and M.A.A. No. 2363/2013 by the learned Second Bench of Municipal Assessment Tribunal, Kolkata Municipal Corporation on 17.06.2016, whereby learned Tribunal was pleased to allow the aforesaid three Appeals in part. Felling aggrieved in respect of valuation made for the period w.e.f. 1st quarter of 2010-2011, in connection with premises in question by that combined order dated 17.06.2016, petitioner has preferred this Revisional Application under Article 227 of the Constitution of India.

2. Petitioners case in a nutshell is that a new high rise building of G+4 storied was constructed with all modern facilities at the premises being no. 6B, Kali Charan Ghosh Road, Ward No. 02, Kolkata -700050, consisting of several flats, after obtaining sanctioned building plan. The said flat/building is on the road and locality with all amenities of drainages, sewerage, electricity, road, water supply etc. of the Kolkata Municipal Corporation hereinafter called as KMC. The said construction of the building was completed within the period of 4th quarter,

2008-2009.

3. Opposite party purchased a flat in the said building measuring 1760 sq.ft on the 4th floor and a car parking having an area of 140 sq. ft. in the said premises being no. 6B, Kali Charan Ghosh Road, ward no. 02, Kolkata - 700050 and the opposite party applied for mutation under the Kolkata Municipal Corporation Act 1980 and the KMC authority duly mutated the name of the opposite party and allotted an assessee number. Thereafter for the purpose of assessing the annual valuation of the said flat at the 4th floor, the Kolkata Municipal Authority served notice to the opposite party, proposing the Annual Valuation for the period w.e.f. 1st quarter of 2010-2011. The opposite party raised objection to the said proposed valuation and on 27.08.2013, the hearing officer of KMC, upon hearing the opposite party and also considering objection as raised, passed an order fixing the annual valuation of Rs. 39530/- for the 1st quarter of 2010-2011, taking the reasonable rent at Rs.2/-per sq.ft. per month for covering area and Rs.1/- per sq. ft. per month for car parking area for the period w.e.f. 1 /2010-2011.

4. Opposite party being aggrieved by and dissatisfied with the fixation of annual valuation, preferred an appeal before the Municipal Assessment Tribunal KMC, challenging the said order dated 27.08.2013. Learned Second Bench of the Municipal Assessment Tribunal of KMC upon hearing the appellant and KMC allowed the appeal in part by its order dated 17.06.2016 upon modifying of the order of the hearing officer by reducing the amount of the annual valuation from Rs. 39530/- to Rs 16210/- for the period w.e.f. 1/2010-2011.

5. Feeling aggrieved by the said order dated 17.06.2016, petitioner herein preferred the present revisional application on the ground that learned tribunal committed wrong in fixing the annual valuation of the premises in question at Rs. 16210 for the period w.e.f. 1/2010-2011, upon taking into account the rate of rent as fixed in the judgment passed by same Tribunal in M.A.A no. 1258/2002 in respect of a different premises situated at 22/2 Kali Charan Ghosh Road, Ward No. 02, Kolkata -700050. Learned Tribunal did not consider the judgment passed by the same tribunal in M.A.A No. 3056/2009 which was referred and relied upon by the petitioners. Moreover the learned tribunal failed to assign any reason having due regard to the statutory provisions of law in support of his determination of annual valuation. Learned tribunal should have considered the provisions of Section 174 of KMC Act 1980, including provisions under Sub-Section (2) and (3) of Section 174 to the extent that the reasonable rent should have assessed on the basis of the existing market rate to be fetched at the rate of per sq. ft. per month at the time of fixation of annual valuation. Learned tribunal failed to make any effort to assign the estimated market rental value of the flat for the purpose of determination of annual valuation of premises in question. Learned Tribunal did not consider the inspection book copies which were referred by the petitioner and he ought to have considered that the Hearing Officer did not commit any wrong while fixing the reasonable rent at Rs.2/- per

sq. ft. per month in respect of the flat area and @Rs 1.00/- per sq. ft. per month in respect of the car parking area for the period w.e.f. 1/2010-2011. Learned tribunal did not consider the substantial development with provisions of all facilities in the locality within past few years, which justifies fixation of aforesaid rent and the flat in question is situated in a newly constructed building, which cannot be equated with old building for the purpose of assessing annual valuation . Tribunal also ought to have considered the rise of cost price of the premises as well as the assessment of annual valuation which was fixed as first time and also raised reasonable rent of the premises likely to be fetched during the period for assessment w.e.f. 1st quarter, 2010-2011. Municipal Assessment Tribunal committed gross irregularity in not properly considering the comparative method in respect of the determination and fixation of the annual valuation of the premises in question as provided under the KMC Act and it should not have held that the annual valuation of the premises in question should be at Rs. 16,210/- w.e.f. 1st quarter of 2010-2011, without stating basis of such modification.

6. 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 the Tribunal and,

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

7. Needles to say that the order passed by the Tribunal on 17.06.2016 is not supported by reason. The entire judgment is based on the reference made by the opposite parties herein, in connection with a separate premises at 22/2, Kali Charan Ghosh Road, in ward No. 02, Kolkata-700050 which might have situated in the same road and under the same postal Zone. The learned Tribunal did not consider that the valuation in respect of the said premises took place at least 10 years back. Accordingly fully relying upon the Annual Valuation of the said separate premises, which took place ten years back, valuation in respect of the present premises in question was fixed at Rs. 0. 82/- per sq.ft. per month for covered area and Rs.0.41/- per sq.ft. per month for car parking area w.e.f. 01/2010-2011.

8. The relevant portion of observation made by the Tribunal in support of their order passed on 17.06.2016 may be reproduced below:-

"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. In support of her contention copy of judgment of the Tribunal In M.A.A.-1258 of 2002 is relied on, wherein the R.R. was fixed at Rs. 0.60 per sq.ft per month for covered area w.e.f. 4/99-00.

On the other hand, it is argued by the Ld. Advocate for the respondent that the order of the ld Hearing Officer 1st assessment of this assessee is reasonable and should be affirmed. The Ld. Advocate for the respondent to contradict the referred case of the appellant has filed a copy of the judgment of MAA 3056 of 2009 of the ld. 1st bench wherein the RR was fixed at Rs. 1.50 w.e.f. 1/2004-05.

It is not out of place to mention here that the premises of the referred case of the appellant is situated at premises no. 22/2 kali Charan Ghose Road, ward no. 02, Kol-50(same road and same postal zone) but the premises referred by the Respondent situated on different road i.e. premises no. 5/51/1B, Dum Dum Road, Kol-30, ward no-02(different road to which premises in question belongs).

Ld. Advocate for the Respondent also stated that a gap of ten years in between the premises of the referred case of appellant and the present premises in question.

Having regard to the submission of both the parties, documents relied on specially the location, R.R & the effective Qtr of the referred cases of the parties, we are of the considered view that the R.R of the premises in question should be fixed at Rs. 0.80, Rs.0.82 & Rs.0.85 per sq.ft per month for covered area & Rs. 0.40, Rs. 0.41 & Rs. 0.43 per sq. Ft per month for C.P area w.e.f. 1/2009-10, 1/2010-11 & 1/2012-13 respectively. Thus the present AV of the premises in question will be:-

Rs. (1760x0.80x12)-10%+Rs. (140x0.40x12)-10%

= Rs.15811.20 or say Rs. 15,810/-w.e.f. 1/2009-10

&

Rs.(1760x0.82x12)-10%+Rs. (140x0.41x12)-10%

= Rs.16206.41 or say Rs. 16,210/- w.e.f. 1/2010-11.

&

Rs.(1760x0.85x12)-10%+Rs. 9140x0.43x12)-10%

= Rs.16806.96 or say Rs.16,810/-w.e.f.1/2012-13."

9. Needless to mention that section 174 of the Kolkata Municipal Corporation Act 1980 have laid down detailed procedure regarding determination of annual valuation. On perusal of the reasoning as cited by the Tribunal as above in its order dated 17.06.2016, it is quite clear from quoted abstract that the impugned order is passed on the basis of assessment made in connection with another premises of the locality namely 22/2 Kali Charan Ghosh Road in ward no. 02, Kolkata -700050, in reference to a judgment passed by the self same Tribunal long back in M.A.A. No. 1258/2002.

10. Moreover while modifying the order of the Hearing Officer, learned Municipal Corporation assessment tribunal had not given any cogent reason and has not

disclosed the basis for modification of valuation which is in violation of the principle of the natural justice and also in violation of the statutory obligations, including calculation as casted by law for assessing the annual valuation under section 174 of the KMC Act 1980.

11. In view of the above and considering the fact that the impugned judgment/ order was passed on the basis of judgment passed in M.A.A. No. 1258 in the year 2002 and in connection with a separate premises at 22/2, Kali Charan Ghosh Road, in Ward No. 02, Kolkata 700050 and that while modifying the order of the Hearing Officer Tribunal had not given the basis on which modification was made, nor has followed the principles as laid down in section 174 of the Kolkata Municipal Corporation Act 1980, I have no other option but to set aside the annual valuation for the 1st quarter of 2010-2011 in impugned combined judgment and order dated 17.06.2016 passed by the Municipal Assessment Tribunal in connection with Appeal being No. M.A.A. 2361, 2362 and 2363 of 2013, with a direction to decide separately M.A.A. No.2362/2013 afresh on the basis of available materials on record, including the inspection book copies and following statutory rules in respect of determination and fixation of annual valuation during the period for assessment w.e.f. 1st quarter 2010-2011 as laid down in the relevant provisions of the Kolkata Municipal Act 1980.

12. C.O. No. 95/2019 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 send to the Learned 2nd Bench, Municipal Assessment Tribunal, The Kolkata Municipal Corporation.

