

(2023) 08 CAL CK 0076
In the Calcutta High Court
Case No : C.O. 184, 186 Of 2018

Kolkata Municipal Corporation

APPELLANT

Vs

Sukumar Chakraborty.

RESPONDENT

Date of Decision : 21-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 227
Calcutta Municipal Corporation (Taxation) Rules, 1987 — Rule 9(3), 15, 19, 20
Kolkata Municipal Corporation Act, 1980 — Section 170, 174, 174(2), 174(3), 180, 184(4), 186, 188, 189, 600

Citation : (2023) 08 CAL CK 0076

Hon'ble Judges : Ajoy Kumar Mukherjee, J

Bench : Single Bench

Advocate : Alak Kumar Ghosh, Swapan Kumar Debnath

Final Decision : Disposed Of

Judgement

Ajoy Kumar Mukherjee, J

1. In view of commonality of issues involved in both the applications being C.O. 184 of 2018 and C.O. 186 of 2018, those are taken up together and are being disposed of by this common order. Being aggrieved by the order dated 11th April, 2014 passed by learned 2nd Bench, Municipal Assessment Tribunal, Kolkata Municipal Corporation (KMC), in MA Appeal No. 87 of 2013, C.O. 184 of 2018 has been preferred and being aggrieved by the order dated 21.01.2015 passed by the learned 1st Bench, Municipal Assessment Tribunal, KMC in MA Appeal No. 85 of 2013, the other application being C.O. 186 of 2018 has been preferred. Both the applications relate to fixation of annual valuation in respect of two separate flats situated in same premises being no. 37/2A Canal West Road. While flat no. 3A in 3rd Floor of the said premises is the subject matter of C.O. 184 of 2018, on the other hand flat no 3C in the 3rd Floor of the same building is the subject matter of C.O. 186 of 2018. Petitioner of C.O. 184 of 2018 (First application) contended that the opposite party purchased a flat being Flat No. 3A measuring

an area of 1429 Square feet at 3rd Floor and Car parking space measuring of an area of 134.5 square feet, whereas the opposite party of the second application being C.O. 186 of 2018 purchased the flat No. 3C in the same building measuring 1418 square feet and of a car parking space, measuring of area of 135 square feet.

2. Both the opposite parties after purchase applied to the petitioner herein for mutation of their respect name against the said respective purchased flat including car parking space. The KMC authorities issued a notice proposing the amount for assessment of annual valuation in respect of said flats and car parking space with effect from 1st quarter of 2010-2011. After service of notice upon the opposite party, with the proposal of assessment of annual valuation, the respective opposite parties raised their objection and by an order dated 13.12.2012, the hearing officer of KMC, after considering the objection, fixed annual valuation of the flat and car parking space in respect of first application being C.O. 184 of 2018 at Rs. 33,870/- for the period w.e.f 1/2010-2011 taking into consideration reasonable rent at the rate of Rs. 2.10 per square feet per month for covered arear and at the rate of Rs. 1 per square feet per month for car parking space. On the other hand the hearing officer of KMC fixed annual valuation in respect of flat and car parking space in connection with second application being C.O. 186 of 2018 at Rs. 33,620/- for the period w.e.f. 1/2010-2011.

3. Felling aggrieved, the opposite parties herein preferred appeal being MA 84 of 2013 and MAA No. 87 of 2013 against said order of the hearing officer dated 13.12.2012 before the learned Municipal Assessment Tribunal, KMC. The Tribunal after hearing the parties in the appeal, passed order allowing the appeal in part and modifying the order of the hearing officer, reduced the amount of the Annual Valuation and refixed annual valuation at Rs. 18,590/- for the said period in respect of flat in question for the aforesaid first application and Rs. 18,460/- for the flat in question for the second application.

4. Mr. Ghosh learned Counsel appearing on behalf of the petitioner submits that the Tribunal should not have decreased the valuation abruptly, without disclosing proper reason. The Tribunal should have considered the relevant provision of section 174 of the Kolkata Municipal Corporation Act 1980, including the provisions laid down in sub-section (2) and sub-section (3) of section 174 to the extent that the reasonable rent should be assessed on the basis of the existing market rate to be fetched at the rate of per square feet per month. At the time of the fixation of annulation valuation, in fact, the learned Tribunal failed to make any effort to ascertain the estimated market rental value of the flat for the purpose of determination of annual valuation of the premises in question. On the contrary the order impugned has been passed in gross violation of principles of natural justice as it was passed without considering the submissions made by the petitioner. Accordingly the petitioner has prayed for setting aside the order impugned.

5. In spite of service of summons the opposite parties are not represented in the present case.

6. I have considered submissions made by learned Advocate for the petitioner and I have also gone through the respective orders in respect of which the present applications have been preferred. It appears that in respect of the first application being C.O. 184 of 2018, the court below observed that the locality where the demised flat situates is thickly populated having well connectivity with other parts of Metropolitan City Kolkata and all KMC amenities are available. In spite of observing higher escalation of costs with the advancement of days in maintaining of such KMC amenities, the Tribunal abruptly fixed rent of the demised flat at Rs. 1.15 per square feet per month for flat area and Rs. 0.58 per square feet per month for car parking space for the said period. It further appears while the Tribunal has fixed the said rent, they have not given any reason and it is palpably clear from the order that said rate of rent has been fixed whimsically without any basis.

7. Similarly while the order impugned passed in connection with second application being C.O. 186 of 2018, the Tribunal relied upon an earlier judgment passed by the same tribunal being MAA No. 87 of 2013 which was passed in connection with another flat of the premises in appeal where same Bench has fixed RR at Rs. 1.15 per square feet per month for flat area and 0.58 per square feet per month for car parking area w.e.f. 1/2010-2011. Accordingly applying same rate of rent Tribunal below reduced Annual Valuation at Rs. 1.15 per square feet per month for flat area and Rs. 0.50 per square feet per month for car parking area w.e.f. 1/2010-2011. What is the basis of fixing such rate of rent either in respect of premises involved in MAA No. 87 of 2013 or in respect of present applications has not been stated anywhere in the concerned orders.

8. The Kolkata Municipal Corporation 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, the Municipal Commissioner shall give notice not less than 30 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 objection of valuation. Section 189 of the Act of 1980 provides for preferring appeal before the Municipal Assessment Tribunal for disposal of appeal preferred against the order passed under section 188 of the Act.

9. The State Government by virtue of section 170 read with section 600 of the Act of 1980 has framed Calcutta Municipal Corporation (Taxation) Rules 1987. Section 188 of the said Act read with Rule 9(3) of the said Rule of 1987 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 of 1987 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 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 Rule of 1987.

10. Here the Tribunal by the order impugned has modified annual valuation of the First flat in question being flat No. 3 A absolutely assigning. No reason while disposing MAA 87 of 2013 and in case of second flat in MAA 85 of 2013 Annual Valuation reduced on the basis of one of its earlier judgment in connection with the premises passed in MAA No. 87 of 2013. It has not been stated why assessment made in that MAA No.87 of 2013 has been taken as model yardstick of assessment for computing annual valuation of the said flat No. 3C. The Tribunal being the quasi-judicial authority is bound to follow the procedure while discharging their duty. Accordingly it is apparent, while modifying order of hearing officer, the learned Tribunal has not recorded any cogent reason in respect of 1st flat and unexplained reasoning without any basis for 2nd flat while such modification, in violation of principle of natural justice has been made and he has clearly passed the order in violation of the statutory obligation casted upon the Tribunal for assessment of annual valuation.

11. On careful reading of section 174 (a) of the Kolkata Municipal Corporation Act, 1980 it appears that the corporation is empowered to fix the annual valuation of a premises for the purpose of determining, the tax to be paid in respect of said premises. Apex Court while dealing with Municipal laws in force in different states in India laid down guidelines for determination of annual rent, which should be determined on the basis of:-

- (a) Actual gross annual rent, where the premises has been let out.
- (b) If the premises has not been let out then on rent of hypothetical tenancy basis.
- (c) Valuation arrived on the basis of capital value from which the annual value has to be found applying a suitable percentage, where either of the first two modes is not available.

(Bombay Municipal Corporation Vs. LIC, AIR 1970 SC 1584: 1970 (1) SCC 791 (para-8) & Guntur Municipal Council Vs. Guntur town Rate Payers' Association (AIR 1971 SC 353): 1970 (2) SCC 803 (para 5& 6).

12. In this context it should be made clear that fixation of annual valuation

arbitrarily (as has been done in the present context) is not permissible under the law. Neither the corporation nor the Tribunal is free to assess any arbitrary annual value and corporation has to look to what is "fair rent" which would be payable for the premises in question during the year of assessment under the West Bengal Premises Tenancy Act, 1997. The premises in question, if not actually let out, then the hypothetical fair rent, rent of neighbouring premises and other attending facts and circumstances of the potentialities should be taken into account for the purpose of assessment of annual valuation.

13. In *India Automobiles Vs. Calcutta Municipal Corporation*, reported in AIR 2022 SC 1089, Apex Court observed:-

24. "..... We are of the view that the basis for determination of annual rent value has to be the standard rent where the Rent Control Act is applicable and in all other cases reasonable determination of such rent by the municipal authorities keeping in view various factors as indicated herein earlier, including the rent which the tenant is getting from his sub-tenant. In appropriate cases the owner of the property may be in a position to satisfy the authorities that the gross annual rent of the building of which the annual valuation was being determined cannot be more than the actual rent received by such owner from his tenant. The municipal authorities shall keep in mind the various pronouncements of this Court, the statutory provisions made in the specified Municipal Acts, keeping in mind the applicability or non-applicability of the Rent Act and the peculiar circumstances of each case, to find out the gross annual rent of the building including service charges, if any, at which such land or building might, at the time of assessment, be reasonably expected to let from year to year in terms of Section 174 of the 1980 Act."

14. Since the Tribunal below failed to exercise jurisdiction vested in it by law and also the Tribunal did not pass cogent speaking order while refixing annual valuation of the premises, which caused grave miscarriage of justice, this court has no other alternative but to interfere with the order impugned invoking power under Article 227 of the Constitution of India.

15. In such view of the matter I have no other option but to set aside the impugned order concerning annual valuation made by Tribunal for first quarter of 2010-2011 with a direction to decide MAA No, 87 of 2013 and 85 of 2013 afresh keeping in mind the aforesaid guidelines and also on the basis of the available materials on record including inspection book copies and also following statutory rules in respect of determination and fixation of annual valuation as laid down in the relevant provisions of the Kolkata Municipal Corporation Act, within period of six months from the date of communication of the order.

16. In view of above C.O. 184 of 2018 and C.O. 186 of 2018 are accordingly disposed of.

There will be no order as to the costs.

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