

(2024) 05 CAL CK 0019
In the Calcutta High Court
Case No : C.O. No. 1468 Of 2015

Kolkata Municipal Corporation

APPELLANT

Vs

Surama Singh

RESPONDENT

Date of Decision : 14-05-2024

Acts Referred:

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

Citation : (2024) 05 CAL CK 0019

Hon'ble Judges : Prasenjit Biswas, J

Bench : Single Bench

Advocate : Alak Kr. Ghosh, Swapan Kr. Debnath, Raghunath Chakraborty, Arpita Patra

Final Decision : Allowed

Judgement

Prasenjit Biswas, J

1. This instant revisional application has been filed at the behest of the petitioner/ The Kolkata Municipal Corporation challenging the impugned order dated 28th April, 2011 passed by the learned 2nd Bench, Municipal Assessment Tribunal, The Kolkata Municipal Corporation in connection with M.A. Appeal No. 3333 of 2002.

2. By passing the impugned order learned Tribunal allowed the appeal in part and modified the impugned order passed by the Hearing Officer of the Kolkata Municipal Corporation. The learned Tribunal accepted the rate of rent of the case premises @ Rs. 1.00 per sq.ft per month w.e.f. 4/1999-2000 for flat area and 0.50 per sq.ft. per month for common area, car parking space and for staircase and lift.

3. A five storied new building was constructed at the premises no. 91, Humayun Kabir Sarani, Kolkata after obtaining a sanctioned plan from the Kolkata

Municipal Corporation (here in after will be referred as KMC) having total numbers of 8 flats therein. The said 8 flats were subsequently transferred/sold out to 8 persons including the private respondent (herein) and all of them approached before the K.M.C to mutate their names. Accordingly, K.M.C mutated their names as owners/persons responsible to pay municipal taxes and assessee numbers were provided to them for the purpose of assessing the annual valuation of the flats of the premises in question. K.M.C served notice upon the owners/persons including this private respondent with a proposal of annual valuation taking into account on the basis of reasonable rent to be faced @ of Rs. 3.50 per square feet per month for the area of the flat along with common and parking space for the period w.e.f. 4/1999-2000. The predecessor-in-interest of this private respondent raised objection to the said notices of the proposed annual valuation before the Hearing Officer, Kolkata Municipal Corporation and the Hearing Officer after giving opportunity of being heard to the parties fixed the annual valuation in respect of the flats of the premises and reduced the reasonable rent so proposed by the K.M.C.

4. The matter was taken to the Municipal Assessment Tribunal by the private respondent challenging the order passed by the Hearing Officer of the K.M.C. After hearing of both sides the learned Tribunal passed the impugned order in which it accepted the rate of rent @ 1.00 per sq.ft per month w.e.f 4/1999-2000 for the flat area and @ 0.50 per sq.ft per month for common area, car parking space and for stair and lift. The impugned order passed by the learned Tribunal is hereby reproduced as under.

As there is difference of 5 Qtre. In between 4/99-2000 and 1/2001-2002, only 3% will be enhanced from the A.V. w.e.f. 4/99-2000 for finding out the A.V. w.e.f. 1/2001-2002.

Therefore, the A.V. of the flat under appeal w.e.f. 4/99-2000 (M.A.A. No. 3333/02) comes to :

$(771 \times \text{Rs } 1.00 \times 12 \text{ less } 10\%) + (115 \times \text{Rs } 0.50 \times 12 \text{ less } 10\%) + (206 \times \text{Rs } 0.50 \times 12 \text{ less } 10\%)$

= Rs. 10,060.2 or say Rs. 10060.00

And the A.V. for the flat under appeal w.e.f. 1/2001-2002 (M.A.A No. 3334/02) comes to :

= Rs. 10,060.00 + 3%

= Rs. 10361.8 or say Rs. 10,360.00

As a result, both the appeal succeed in part and the impugned orders of Ld. H.O – are modified.

5. Mr. Alak Kumar Ghosh learned Advocate appearing on behalf of the K.M.C submits that the learned Tribunal did not consider the facts that the case premises situated at 91, Humayun Kabir Sarani, Kolkata was newly constructed

and valuation was fixed for the first time considering the present market rent prevailing at the locality for the assessment period of 4th quarter, 1999-2000 and 1st quarter of 2001-2002. It is submitted by the learned Counsel that the Tribunal wrongly modified the order of the Hearing Officer by taking the reasonable rent @ Rs. 1.00 per sq.ft. per month for flat area and @ Rs. 0.50 per sq.ft. per month for staircase and lift and for common area including car parking space. It is contended by Mr. Ghosh that at the time of passing the impugned order learned Tribunal did not assign any reason as to how it has calculated the annual valuation of the premises in question which was newly constructed. It is further submitted by the learned Counsel that the Tribunal arbitrarily and wrongly considered the judgment passed by it in MAA No. 1768A, 1769 and 1769A of 2001 for the premises no. 21, 91, Humayun Kabir Sarani, Kolkata 700053 w.e.f. 1/1995-96, 3/1988-89 and 1/1989-90. It has further been submitted that the learned Tribunal should have considered that the present building has been constructed in the year 1999 and the judgments relied upon the Tribunal relates to the building which was constructed in the year 1988 and as such the price for construction and selling premises are totally different and the rate of rent of the premises has been increased during the periods of assessment. It is argued further on behalf of the K.M.C that the Tribunal should assign reason in the impugned judgment and failing which a miscarriage of justice has been occurred for which interference of this Court has been sought for.

6. Mr. Ghosh on behalf of the K.M.C further assailed that both the premises might have situated on the same road but that cannot be the basis for assessment of valuation of the flat of the present premises. As per submission of Mr. Ghosh the learned Tribunal at the time of assessing the annual valuation did not at all follow the applicable norms and guidelines as laid down by the Hon'ble Supreme Court and High Court and erroneously relied the judgment passed by it in earlier occasion without mentioning as to how the said judgments are applicable for the assessment of present valuation.

7. The attention of this Court is drawn by Mr. Ghosh on behalf of the K.M.C about the decisions rendered by this Court in different cases i.e. case of Kolkata Municipal Corporation vs. Kripendra Lal Dey & Anr. Passed in connection with C.O. 1505 of 2020 With C.O. 1494 of 2020 With C.O. 1495 of 2020 With C.O. 1496 of 2020 With C.O. 1497 of 2020 With C.O. 1499 of 2020 With C.O. 1500 of 2020 With C.O. 1501 of 2020 With C.O. 1502 of 2020 With C.O. 1503 of 2020 With C.O. 1504 of 2020 dated 13.03.2023 , Kolkata Municipal Corporation vs. Sunbeam Tradecom Private Limited in C.O 681 of 2021 dated 24.03.2021 and also a decision passed by this Court in Kolkata Municipal Corporation vs. Sri Susanta Das in C.O. No. 1815 of 2015 dated 10.04.2024.

8. Mr. Ragunath Chakraborty learned Counsel for the private respondent submits before this Court that the present revisional application is barred by law of limitation and as per submission of Mr. Chakraborty that although there is no time limit for filing revisional application under Article 227 of the Constitution of

India but the petitioner is duty bound to explain the delay in filing the instant revisional application. As per submission of Mr. Chakraborty there is no satisfactory explanation of delay in preferring the revisional application for which this instant application may be entertained and virtually the petitioner/corporation has measurably failed to explain for such delay and as such it may be considered as barred by law of limitation. In support of his contention he cited a decision of this Court in the case of Kolkata Municipal Corporation vs. Smt. Shibani Mukherjee reported in 2017 (3) CLJ 593.

9. Mr. Chakraborty strenuously argued that save and except taking vague plea in giving explanation for condoning the delay there is nothing in the application which can be trusted upon. So the present application may be dismissed by holding that the same is barred by the law of limitation.

10. Per contra, Mr. Ghosh appearing on behalf of the K.M.C submitted that there are some procedural delays in getting the proper instruction from the appropriate authority and as such delay was occurred and such explanation for delay in filling the revisional application may be appeared in the revisional application. The attention of the court is drawn by Mr. Ghosh to a decision rendered by Single Bench of this Court in case of The Kolkata Municipal Corporation vs. Sunbeam Tradcom Private Limited in C.O 681 of 2021 dated 24.03.2021 whereby the learned single bench upon reliance of a decision rendered by the Hon'ble Apex Court in case of Executive Officer, Antiyur Town Panchayat vs. G Arumugam (Dead) by Legal Representatives reported in (2015) 3 SCC 569 condoned the delay in preferring revisional application. Although there is a justification in the submission of Mr. Chakraborty but the issue involved is of a larger public interest as property tax is to be paid by the owner of the property to the concerned municipal authorities under the statute itself and when there is a procedural lapse of the department in preferring appeal within stipulated period of time then the Court should take a lenient view, condone the delay allow the matter to be decided on merit. So, this Court holds that the explanation as given by the K.M.C in filing this application before this Court is satisfactory and K.M.C cannot be deprived of an opportunity to challenge the order impugned before this Court.

11. Mr. Chakraborty learned Counsel appearing on behalf of the respondent/ assessee further submits that the Tribunal has placed its reliance upon the judgment as passed by it in MAA No. 1768A, 1769 and 1769A of 2001 for the premises no. 21, 91, Humayun Kabir Sarani, Kolkata 700053 w.e.f. 1/1995-96, 3/1988-89 and 1/1989-90 and the present building is also situated in the same premises for which the impugned order was passed. It is further argued by Mr. Chakraborty that the petitioner/K.M.C is the custodian of all the records and what prevented them to place the other judgments which might have been passed by the Tribunal in respect of the premises in question and as such the learned Tribunal is very much justified in passing the impugned order by accepting the aforesaid judgments as a precedent. As per submission of the Mr. Chakraborty that there is nothing wrong and irregularity in the impugned order

and as such it is a fit case for dismissal of the instant revisional application.

12. Reliance has been placed by Mr. Chakraborty upon the decision passed by this Court in case the Kolkata Municipal Corporation vs. Smt. Kajari Banerjee in C.O. 3346 of 2018 in which the learned Single Bench was pleased to dismiss the revisional application preferred by the K.M.C. Reliance has further been placed by Mr. Chakaraborty to a decision rendered by this Court in Kolkata Municipal Corporation vs. KMDA (Licensor) in C.O. No. 643 of 2019 wherein the learned Single Bench dismissed the revisional application preferred by K.M.C challenging the order passed by the learned Tribunal in assessing the annual valuation of the property.

13. I have anxiously considered the submission advanced by both the parties and have also gone through the decision cited by them.

14. The Kolkata Municipal Act 1980 entails a detailed provision of Taxation and Property Taxes under part IV, Chapter XII of the Act. Section 180 of the said Act provides that the annual valuation of a land or building may be revised on the grounds as stipulated therein. Section 184 provides that before making any fixation of annual valuation municipal commissioner shall give notice to the owner enabling the said person to raise objection in regard to the proposed annual valuation. Section 188 of the said Act provides for hearing and determination of objection of valuation. Section 189 of the said Act provides appeal before the Municipal Assessment Tribunal.

15. It is profitable to quote the observation of Hon'ble Apex Court in case of India Automobiles (1960) Ltd. Vs. Calcutta Municipal Corporation And Another reported in (2002) 3 SCC 388 in which Hon'ble Apex Court says that while assessing annual valuation the Tribunal is kept in mind all relevant circumstances including actual rent received by the owner, hypothetical standard rent, the rent being received by the tenant from his sub-tenant and other relevant consideration such as prevalent rate of rent of land and building in the vicinity of the property being assessed.

16. In India Automobiles Ltd (supra) the Hon'ble Apex Court observed at paragraph 24 interalia that:-

"We do not find any conflict in the judgments of this Court so far as the determination of annual value of the property under the municipal laws is concerned. Distinction, if any, is based upon the relevant provision of the statute of a State with which this Court was dealing, particularly with respect to such Statutes which contained a non obstante clause. 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”.

17. The learned Tribunal in passing the impugned order modified the annual valuation of the case premises solely on the basis of the judgment passed by the self-same Tribunal which was decided long back and as such it cannot be a sole yardstick for the assessment of computing the annual valuation of the present flats which is a newly constructed premises. The tribunal is bound to follow the procedure as laid down by the Hon'ble Apex Court in above referred case. The Hon'ble Apex Court while dealing with municipal laws in force in different states in India prescribed guidelines for determination of annual rent on the basis of the actual gross annual rent where the premises has been let out, if the premises has not been let out then on rent of hypothetical tenancy based and valuation arrived on the basis of capital value from which the annual valuation has to be found applying a suitable percentage, whether either of the first two modes is not available. The impugned order passed by the learned tribunal is not supported by any reason and it passed the said order on the basis of the earlier judgment passed by it but no reason has been assigned as to why those judgments which were passed long ago is relevant in considering the assessment of annual valuation which was newly constructed and was firstly to be assessed.

18. It should be kept in mind that the fixation of arbitrary annual valuation is not permissible under the law. Both the Tribunal and the Corporations are not permitted to assess the annual valuation arbitrarily. They have to look to what is fair rent which would be payable for the premises in question during the year of assessment. The Tribunal by virtue of provision of Rule 15 of the Kolkata Municipal Corporation (Taxation) Rules, 1987 enjoys the power of Civil Court and detailed provision of hearing of appeal has been laid down in Rule 19 of the said rule which includes local inspection in case of necessity in respect of premises which are the subject matter of appeal so as provided in Rule 20 of the Rules of 1987. Merely because property in the referred judgment is situated in the same locale cannot be the ground of assessment for computing the annual valuation of the premises in question which is a newly constructed building. The Tribunal should have to follow the procedures as laid down in the Act and Rule at the time of disposing of the appeal placed before it. So, I am of the view that the Tribunal had not given any cogent reasons for modification in valuation assessed by the Hearing Officer, the K.M.C and by doing so they violated the statutory obligations as stated above.

19. As a detailed guideline has been laid down by the Hon'ble Apex Court in case

of India Automobiles Ltd. at the time of assessing annual valuation of the premises, I am of the opinion that guideline has to be adhered to by the Tribunal at the time of passing of the judgment. In view of the decisions of the Apex Court I am not inclined to give reliance upon the decision passed by the learned Single Bench of this Court as cited on behalf of the private respondent.

20. Since the Tribunal has failed to exercise jurisdiction so vested in it by law and the impugned order is lacking of any reason while deciding the annual valuation of the premises in question it caused a miscarriage of justice and as such it is not tenable under the eye of law.

21. As there is flagrant violation of the statutory obligation as casted upon the Tribunal under the provisions of the Act and as such this Court being the High Court in exercise of jurisdiction under Article 227 of the Constitution of India must interfere with such kind of orders when such order is passed by a quasi judicial authority.

22. As there is illegality and material irregularity in the impugned order dated 28th April, 2011 passed by the learned 2nd Bench, Municipal Assessment Tribunal, the Kolkata Municipal Corporation, the same is liable to be rejected and there is no option but to send it before the said Tribunal to hear the matter afresh.

23. In view of facts and circumstances and discussions made above the impugned order dated 28th April, 2011 passed by the learned 2nd Bench, Municipal Assessment Tribunal, the Kolkata Municipal Corporation is hereby set aside.

24. The Municipal Assessment Tribunal, Kolkata Municipal Corporation, 2nd Bench is hereby directed to decide M.A. Appeal No. 3333 of 2002 afresh in strict compliance of the provision of the Kolkata Municipal Corporation Act, 1980 and the Calcutta Municipal Corporation (Taxation) Rules, 1987.

25. C.O. being No. 1468 of 2015 is hereby allowed.

26. There will be no order as to costs.

27. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.