

(2024) 04 CAL CK 0028
In the Calcutta High Court
Case No : C.O. No. 1815 Of 2015

Kolkata Municipal Corporation

APPELLANT

Vs

Susanta Das

RESPONDENT

Date of Decision : 10-04-2024

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 168, 180, 184(4), 188, 189, 600

Citation : (2024) 04 CAL CK 0028

Hon'ble Judges : Prasenjit Biswas, J

Bench : Single Bench

Advocate : Alok Kumar Ghosh, Swapan Kumar Debnath

Final Decision : Allowed

Judgement

Prasenjit Biswas, J

1. The instant revisional application under Article 227 of the Constitution of India is directed against the impugned order dated 5th July, 2013 passed by the learned 1st Bench, Municipal Assessment Tribunal, Kolkata Municipal Corporation in connection with M.A. Appeal No. 2367 of 2012 which has arisen out of an order dated 6th November, 2012 passed by the Hearing Officer (XI), Kolkata Municipal Corporation relating to fixation of annual valuation in respect of premises no. 99A, Humayun Kabir Sarani, Kolkata 700053.

2. The opposite party is one of the flat owners in respect of five storied building which was constructed at the premises no. 99A, Humayun Kabir Sarani after obtaining a sanctioned plan from the present petitioner. The present opposite party along with other flat owners of the said building situated at premises no. 99A approached before this petitioner/the Kolkata Municipal Corporation with a prayer for mutation of their names as owners/persons responsible to pay the municipal taxes. The names of the opposite party had been mutated by the corporation and assessee number was provided to him. Thereafter the

corporation for the purpose of assessment of annual valuation of the flat served notice upon the owners/persons including this opposite party who are responsible for each flats for proposing annual valuation on the basis of reasonable rent to be faced @ Rs. 3.50/- per sq.ft per month for flat area and @ Rs. 1.50 per square feet per month for common and parking space for the period w.e.f. 3/2008-09. The objection was raised against the said valuation by the opposite party at the time of hearing before the Hearing Officer/ Kolkata Municipal Corporation and the concerned officer of the corporation reduced the amount of reasonable rent so proposed by the present petitioner/ Kolkata Municipal Corporation.

3. This opposite party along with one another flat owner preferred appeal before the Municipal Assessment Tribunal, Kolkata Municipal Corporation against the order passed by the said Hearing Officer of the Corporation. In respect of assessment of the premises in question the petitioner/ the Municipal Corporation considered the rent of the premises @ Rs. 3.50 per square feet per month for a common and car parking space, served notice proposing the annual valuation at Rs.43,700/- to the opposite party. But the Hearing Officer after considering the submissions of both the sides and the records fixed the annual valuation of the premises in question at Rs. 35,700/-and not accepted the proposed annual valuation of Rs. 43,700/- for the period w.e.f. 3rd quarter 2008-2009 by the petitioner/the Kolkata Municipal Corporation.

4. Being aggrieved of the said order passed by the Hearing Officer, the opposite party (herein) filed an appeal being M.A.A. No. 2367 of 2012 before the learned Municipal Assessment Tribunal, the Kolkata Municipal Corporation. After giving opportunity of hearing to both the sides the Municipal Assessment Tribunal allowed the appeal preferred by the petitioner modifying the order of Hearing Officer and allowed the said appeal being no. M.A.A. No. 2367 of 2012 in-part.

5. Relevant portion of the impugned order is as follows:-

" That the appeals being MAA No. 2367 of 2012 be and the same is allowed in part on contest against the Respondent but considering the circumstances, no order is made as to costs. The impugned order of the Ld. H.O. is hereby modified. The AV of flat no. 303 on 3rd floor of Mpl. Premises no. 99A, Humayun Kabir Sarani, Kol- 700053 (Assessee No. 11-081-18-0305-4) is fixed at Rs. 15,200/- w.e.f. 3/2008-2009."

6. Despite service affected upon the opposite party he did not venture to appear and contest the present revisional application.

7. It is submitted by the learned Counsel appearing on behalf of the petitioner that the Municipal Assessment Tribunal did not consider the fact that the building situated at the premises in question was newly constructed and the valuation of the said premises was done for first time on the basis of the present market rent of the locality during the assessment period of 3rd quarter 2008-2009. It is further submitted by the learned Counsel that the Municipal Assessment Tribunal wrongly modified the order passed by the Hearing Officer by taking the rent @

Rs. 1.20 per square feet per month for flat area of Rs. 0.60 per square feet per month for common and car parking space and wrongly passed the impugned order dated 5th July, 2013. It is stated by the learned Counsel that the Municipal Assessment Tribunal at the time of passing of the order wrongly considered another judgments passed by it being no. M.A.A. 3333 and 3334 of 2002 as in those cases assessment orders were passed for the period w.e.f. 3/1988-89 and 1/1989-90 but in the case at hand the assessment of the premises was made by the corporation which was constructed in the year 1999. So, there is no relevancy and applicability of those orders passed by the Assessment Tribunal in case of consideration of Assessment in respect of this case as the building constructed in the year 1999 and in the year 2008 are not the same and the price for construction and selling prices are different and the rent of the premises in question have also increased during the periods of assessment. So, as per submission of the learned Counsel that the Municipal Assessment Tribunal passed the impugned order wrongly considering the reasonable rent of the building which was constructed in the year 1988. So, it is submitted by the learned Counsel that there is illegality and irregularity in the impugned order passed by the Municipal Assessment Tribunal and the said order cannot be sustained under the eye of law.

8. There is a detailed provision of taxation and property tax in the Kolkata Municipal Corporation Act, 1980 under Part IV Chapter XII. 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. Section 188 of the Kolkata Municipal Corporation Act read with Rule 9(3) of the Calcutta Municipal Corporation (Taxation) Rules, 1987 provides procedure for hearing and disposal of an objection to the proposed annual valuation of the property in question. It is clear from the said provision that duty is casted upon the hearing officer to adhere to the said procedure while dealing with the objection under Section 186 of the Act.

10. As per Rule 9(3) of the Kolkata Municipal Corporation (Taxation) Rules, 1987 the Hearing Officer is vested with 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.

11. It appears from Rule 15 of the said Rules of 1987 that the Chairman shall have the power of a civil court under the Code of Civil Procedure, 1908 to call for

any document from its custodian and to summon a witness at the hearing of the appeal, if he considers it necessary to do so for proper disposal of any appeal or any proceeding before the Tribunal. 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. The Calcutta Municipal Corporation (Taxation) Rules, 1987 has been framed by the State government by virtue of Section 600 of the Kolkata Municipal Corporation Act, 1980. So it is clear from the above mentioned provision of the Act and the Rule that the duty is casted upon the hearing officer to adhere to the said procedure while dealing with an objection under Section 186 of the Act.

12. At the time of hearing learned Counsel appearing on behalf of the petitioner draws attention of the Court about the decision rendered by a Co-ordinate Bench of this Court in C.O. No. 3368 of 2017 (The Kolkata Municipal Corporation Vs. Sri Vivek Kumar Agarwal and Anr.) in which learned Bench has observed interalia:-

"13. It is really shocking that the hearing officer did not at all bother to follow the minimum statutory requirement as contemplated in the aforementioned provisions of the said Act and the said Rule for disposal of an objection to the proposed annual valuation."

13. The attention of the Court is further drawn by the learned Counsel appearing on behalf of the petitioner to the decision rendered by the Hon'ble Apex Court in case of India Automobiles (1960) LTD. Vs. Calcutta Municipal Corporation and Another reported in (2002) SCC 388.

14. In case India Automobiles (1960) LTD. (supra) Hon'ble Apex Court observed interalia that:-

"21. A perusal of various judgments, relied upon by the learned counsel for the parties, clearly shows that this Court has taken a consistent view regarding the determination of annual value of land or building for the purposes of determination of taxes under the Municipal Acts. On the basis of various Statutes relating to the determination of the annual value for the purposes of Municipal Acts, this Court has devised two distinct groups. One such group deals with the municipal laws of some States which do not expressly exclude application of Rent Restrictions Acts in the matter of determination of annual value of a building for the purposes of levying municipal taxes and the other group deals with the municipal laws which expressly exclude application of the Rent Restriction Acts in the matter of determination of annual value of land or building on rental method. Whereas in the first category of cases the determination of annual value has to be made on the basis of fair or standard rent notwithstanding the actual rent, even if it exceeds the statutory limits. In the other group where the restriction in

the Rent Acts has been excluded, the determination of annual value of building on rental method is referable to the method provided under the relevant Municipal Act. Whereas the Padma Debi's case, LIC's case, Guntur Town Rate Payee's case, Dewan Daulat Rai's case (supra) deal with the first group of municipal laws, the cases in Ratanprabha's case, AGM, Central Bank of India's case, East India Commercial Company's case, Balbir Singh's case, Indian Oil Corporation's case and Srikant's case (supra) deal with the second group. As already noticed, this Court in LIC's case dealt with the first category as in Section 168 of the Calcutta Municipal Corporation Act, there existed no non-obstante clause. The observations of the Bench of this Court which dealt with the case on 10th October, 2001 cannot be taken in isolation."

15. I have already mentioned herein above that by virtue of Rule 15 of the Calcutta Municipal Corporation (Taxation) Rules, 1987 the Tribunal enjoys the power to call for document and attendance of a person. In the case in hand the Tribunal by passing the impugned order has modified the valuation of the flat in question on the basis of judgments passed by it in MAA No. 3333 and 3334 of 2002 in connection with flat no. 4B (4th floor), Mpl. Premises no. 91, Humayun Kabir Sarani, Kol-53 but the Tribunal did not give any supportive reasons for acceptance of those orders passed in above different cases in case of assessment of valuation of the flat situated at the premises in question. It is to be kept in mind that merely because the property in the said referred judgments are situated at the same locality the same cannot be a sole yardstick of assessment for computing the annual valuation of the case flat. The detail procedure as enshrined in the Act and the Rules as referred above is to be followed by the Tribunal at the time of discharging its duty as being a quasi judicial authority. It is apparent while modifying order of hearing officer, the learned Tribunal has not recorded any reason for such modification and passed the order impugned solely on the basis of its earlier judgments. The learned Tribunal must state the relevancy of the said judgements before relying on it at the time of passing the impugned order. It is clear from the impugned order that there is dereliction of discharge of statutory obligation by the Tribunal as it has failed to follow any of the procedure in allowing the appeal after modifying the order passed by the hearing officer.

16. 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.

17. 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.

18. As there is illegality and material irregularity in the impugned order dated

5th July, 2013 passed by the 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.

19. In view of facts and circumstances and discussions made above the impugned order dated 5th July, 2013 passed by the Municipal Assessment Tribunal, The Kolkata Municipal Corporation is hereby set aside.

20. The Municipal Assessment Tribunal, Kolkata Municipal Corporation, 1st Bench is hereby directed to decide M.A. Appeal No. 2367 of 2012 afresh in strict compliance of the provision of the Kolkata Municipal Corporation Act, 1980 and the Calcutta Municipal Corporation (Taxation) Rules, 1987.

21. C.O. being No. 1815 of 2015 is hereby allowed.

22. There will be no order as to costs.

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