(2007) 08 CAL CK 0067

In the Calcutta High Court

Case No : M.A.T. No. 2326 of 2007 with C.A.N. No. 5343 of 2007

Manoshi Mohalanobish APPELLANT

Vs

K.M.C. and Others RESPONDENT

Date of Decision : 08-08-2007

Acts Referred:

Citation : (2008) 1 CHN 924

Hon'ble Judges : Pranab Kumar Chattopadhyay, J;Kalidas Mukherjee, J

Bench : Division Bench

Advocate : Alok Ghosh, Achintya Banerjee and Sk. Faridullah, for the Appellant;L.C. Bihani, N.C. Bihani and Rituparna Sarkar, for the Respondent

Final Decision : Allowed

Judgement

Re: C.A.N. No. 5348 of 2007

1. This application has been filed in connection with the appeal preferred from the judgment and order dated 18th May, 2007 passed by the learned Single Judge in W.P. No. 17843(W) of 2003 whereby and whereunder the said learned Single Judge was pleased to dismiss the writ petition filed by the appellant herein.

2. The appellant/writ petitioner herein is the owner of a flat in Neelachal Abasan Co-operative Society Ltd. within Kolkata Municipal Corporation area. The said appellant/writ petitioner is aggrieved by the hearing notices issued by the Kolkata Municipal Corporation authorities on the ground that the said hearing notices are not only vague and ambiguous but also the same do not disclose any reason for assessing the annual valuation for different period in respect of the flat in question.

3. From the records we find that three hearing notices were issued stimultaneously by the Kolkata Municipal Corporation authorities to the appellant herein for the said assessment of the annual valuation of the flat in question. The proposed annual valuation mentioned in the aforesaid hearing notices for the period in question and also the grounds mentioned therein are summarised

hereunder:

Period with effect Proposed annual Gnojiad from valuation

w.e.f. 1/1998-99 Rs. 19,760/- -the annual valuation so assessed is due to arising of taxable event in the inter- vening period

w.e.f.2/2001-02 Rs. 21,740/- -rise of rent since last valuation

w.e.f.1/2002-03 Rs. 54,000/- -the annual valuation so assessed is due to arising of taxable event in the inter- vening period.

4. Undisputedly, all the three notices were served upon the appellant at a time. It is also not in dispute that they valuation of the flat in question was not assessed previously and therefore, the annual valuation in respect of the flat in question was also required to be determined for the first time by the competent authority apart from the revised annual valuation for the subsequent period pursuant to the aforesaid hearing notices. It is the case of the appellant that the hearing notice in respect of the period with effect from first quarter of 1998-99 does not disclose the proper ground for assessing the annual valuation in respect of the flat in question and the other hearing notice for the period with effect from second quarter of 2001-02 although disclosed the ground for revision of the annual valuation due to the rise of rent since last valuation, but the concerned assessor-collector of the Kolkata Municipal Corporation failed to take note of the fact that the valuation of the flat in question was not assessed previously and, therefore, the question of rise of rent since last valuation cannot be a ground for revision of the annual valuation in respect of the flat in question. In the third hearing notice for the period with effect from First Quarter 2002-03, annual valuation was sought to be revised on the ground "arising of taxable event in the intervening period."

5. On examination of the order passed by the concerned hearing officer, we find that the annual valuation in respect of the period with effect from first quarter 2002-03 has been determined on the basis of rental valuation.

6. Mr. Aloke Ghosh, learned Counsel of the appellant/writ petitioner, submits that the hearing office while assessing the annual valuation in respect of the flat in question for the period first quarter 2002-03, has travelled beyond the scope of the hearing notice.

7. It is true that the appellant/writ petitioner herein has submitted objection in answer to the aforesaid hearing notices issued by the Kolkata Municipal Corporation authorities without prejudice to the interest of the assessee but due to non-disclosure of proper ground and/or reason in the aforesaid hearing notices, the said writ petitioner could not submit proper objections in answer to the said hearing notices. Furthermore, we are also convinced that the hearing officer while revising the annual valuation in respect of the period with effect from first quarter 2002-03 clearly travelled beyond the scope of the hearing notice as in the hearing notice for the aforesaid period in question, concerned

authority of the Municipal Corporation did not disclose that the annual valuation of the flat in question would be revised on the rental basis. The appellant/writ petitioner, therefore, could not submit proper objection pursuant to the said hearing notice. It is the duty of the concerned authority of the Kolkata Municipal Corporation to specifically mention the ground for assessing and/or revising the annual valuation in respect of any property. In the event, the proper reasons and/ or grounds are not mentioned, then the same would prevent the assessee concerned from submitting the appropriate objection. If the ground mentioned in the hearing notice is vague and does not disclose the proper reason then the same cannot be sustained in the eye of law and the authorities are not entitled to proceed on the basis of such vague notice for the purpose of taking any decision as in that event the interests of the assessee would be seriously prejudiced.

8. The authorities of the Kolkata Municipal Corporation can determine and/or assess and/or revise the annual valuation in respect of a property only after disclosing proper reason and/or basis in support of the proposed annual valuation and/or revision of the same. However, such determination regarding annual valuation and/or revision thereof should be made after granting adequate opportunity of hearing to the concerned assessee. If the hearing notice is itself vague then the assessee concerned will be deprived of the adequate opportunity to meet the grounds or the reasons for the assessment or revision of the annual valuation in respect of the property in question. Furthermore, the hearing officer cannot travel beyond the scope of the hearing notice. Unfortunately, the hearing officer while revising the annual valuation for the period with effect from first quarter 2002-03 revised the annual valuation of the flat in question on the rental basis ignoring the fact that the aforesaid ground of rental basis was not mentioned in the hearing notice served upon the appellant/writ petitioner.

9. Mr. Aloke Ghosh, the learned Counsel of the appellant, referred to and relied on the decision of the Supreme Court in the case of Food Corporation of India v. State of Punjab and Ors. reported in 2001(1) CC 291 in support of the argument that a vague and unspecific notice does not provide the desired reasonable opportunity to the assessee concerned.

10. The aforesaid decision, in our opinion, is very much applicable in the facts and circumstances of the present case.

11. Mr. L.C. Bihani, the learned Counsel representing the Kolkata Municipal Corporation authorities, submits that so far as the hearing notice for the period with effect from the First Quarter 1998-99 is concerned, it has disclosed the proper ground and the writ petitioner understood the same and filed objection in relation to the said notice.

12. Scrutinising the said hearing notice it appears that the premises in question has been assessed at an annual value of Rs. 19,760/- with effect from the First Quarter 1998-99 and thereafter, it has also been mentioned in the said hearing notice as hereunder:

The revised annual valuation so assessed is due to the ground as stated in item

herei

Arising of taxable event in the intervening period.

The annual valuation can be revised only when the same was determined on an earlier occasion. In the present case, the annual valuation was not determined on any earlier occasion. So question of revising for the period in question could not and did not arise. Hence, we do not accept the aforesaid contention of the learned Senior Counsel of the K.M.C. authorities.

13. For the reasons discussed hereinabove, we are unable to affirm the I decision of the learned Single Judge as we are of the opinion that the reason disclosed in all the three hearing notices for assessment of the annual valuation or revision thereof for the flat in question are totally vague and improper. Accordingly, we quash all the three aforesaid hearing notices issued by the Kolkata Municipal Corporation and also set aside the order passed by the hearing officer on 7th November, 2003 in respect of the period 1/1998-99; 2/ 2001-02 and 1/2002-03 all dated 16th October, 2003. The appropriate authority of the Kolkata Municipal Corporation is directed to determine the annual valuation of the flat in question of the appellant/writ petitioner afresh and, therefore, revise the said annual valuation for the subsequent period strictly according to law.

14. The judgment and order under appeal passed by the learned Single Judge, therefore, stands set aside and this appeal as well as the connected application stand allowed.

15. There will be, however, no order as to costs.

16. Let xerox plain copy of this order, duly countersigned by the Assistant Registrar (Court) be given to the learned Advocates of the parties.