**(2017) 01 CAL CK 0026**

**In the Calcutta High Court**

**Case No :** C.O. 4420 of 2007

Subha Sankar Dey — APPELLANT

Vs

The Kolkata Municipal Corporation — RESPONDENT

**Date of Decision :** 31-01-2017

**Acts Referred:**
Calcutta Municipal Corporation Act, 1980 — Section 182(2)(iv)

**Citation :** (2017) AIR(Calcutta) 125

**Hon'ble Judges :** Debi Prosad Dey, J.

**Bench :** Single Bench

**Advocate :** Mr. Alok Ghosh and Mr. Swapan Kumar Debnath, Advocates, for the Petitioner; Mr. Gopal Chandra Das, Advocate, for the Opposite Parties

**Final Decision :** Dismissed

# Judgement

Debi Prosad Dey, J.—Challenge in this revisional application is the judgement and order dated 17th August, 2007 passed by the Municipal Assessment Tribunal, The Kolkata Municipal Corporation in M.A.A. No. 989 of 2005 whereby and where under the Tribunal has partly allowed the appeal preferred by the petitioner in matters of assessment of annual valuation for the land and building at premises No. 14/2, Nakuleswar Bhattacharjee Lane, Kolkata-700026 with effect from 4th quarter of 2004-05.

2. The factual aspect as it transpires from the application under Article 227 of the Constitution of India is that the petitioner is the absolute owner of the land and building at premises No. 14/2, Nakuleswar Bhattacharjee Lane, Kolkata- 700026 and the petitioner has constructed a three-storied building by demolishing two-storied building thereon with the sanctioned plan of Kolkata Municipal Corporation. After completion of the said three-storied building, the Hearing Officer assessed the annual valuation of the said building to the tune of Rs.1,24,850/-.

3. Being aggrieved thereby, the petitioner has preferred an appeal before the

 

Tribunal and the Tribunal has partly allowed the said appeal by assessing the annual valuation of the property at Rs.90,490/-.

4. The petitioner has challenged the said decision of the Tribunal by this application.

5. Learned senior advocate Mr. Alok Ghosh submits that the assessment of annual valuation of the property of the petitioner by the Tribunal is not only illegal but the same is required to be set aside for the following reasons :-

I. While assessing the annual valuation of the three-storied newly constructed building of the petitioner, the Tribunal did not consider that the garage in the ground floor was included within the covered area of 1500 sq.ft.

II. The Tribunal has unnecessarily relied on a Book instead of looking into the relevant factors at the time of assessing the annual valuation.

III. As per Mr. Ghosh, the rate should be Rs.1.50 per sq.ft., but the Tribunal has arbitrarily fixed at Rs.1.80 per sq.ft.

IV. The Tribunal did not assign any reason, but the assessment has been conducted on the basis of assumption of the members of such Tribunal.

V. Though there was a direction for making payment of rates to the Corporation, but the Corporation has been issuing enhanced rates towards payment of municipal rent ignoring the order passed by this Court.

6. Learned advocate appearing on behalf of Kolkata Municipal Corporation submits that factual matters cannot be looked into in a proceeding under Article 227 of the Constitution of India. It is further submitted that some new facts have been placed before this Court and such facts were never agitated before the Hearing Officer or before the Tribunal and accordingly such facts cannot be taken into consideration by this Court.

7. Learned advocate appearing on behalf of Municipal Corporation submits that the Tribunal has taken into consideration all the relevant facts while assessing the annual valuation of the property of the petitioner and such valuation has been made in terms of Section 182 (2)(iv) of Kolkata Municipal Corporation Act.

8. Learned advocate for the Corporation further submits that the Book has been relied on by the Tribunal only in order to show the location of the premises of the petitioner and besides that the Tribunal did not take any other help from the Book referred to in the judgement of the Tribunal.

9. It is well settled principle of law that while deciding a proceeding under Article 227 of the Constitution of India, the court shall not act as a revisional or appellate court. The court will only look into the fact as to whether while exercising jurisdiction, the Tribunal has exceeded it or has failed to exercise the jurisdiction vested in it. I have gone through the order passed by Kolkata Municipal Assessment Tribunal and find that the Tribunal has taken into

 

consideration about the construction made by the petitioner. The Tribunal has also considered the fact that the assessment of the annual valuation has been made in terms of Section 182 (2)(iv) of Kolkata Municipal Corporation Act. The Tribunal has also considered the locality and the amenities available to the covered area of such premises of the petitioner. The Book, namely, "Calcutta And Environs" referred to in the judgement of the Tribunal, has been relied on only to show the locational advantage of the premises of the petitioner. On that score, the Tribunal did not commit any error in deciding the location of the premises of the petitioner by referring that Book.

10. In the premises set forth above, I find no illegality in the order passed by the Tribunal and accordingly the revisional application is dismissed.

 