

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 3346 of 2018

The Kolkata Municipal Corporation

Vs.

Smt. Kajari Banerjee

For the petitioner : Mr. Alok Kr. Ghosh,
Mr. S.K. Debnath..... advocates

For the opposite party : Mr. R.N. Chakraborty,
Mr. M. Ahmed..... advocates

Heard on : 18.12.2020

Judgment on : 22.12.2020

Hiranmay Bhattacharyya, J.:

This application under Article 227 of the Constitution of India is at the instance of Kolkata Municipal Corporation and is directed against the order dated March 27, 2018 passed by the Learned Municipal Assessment Tribunal, Kolkata Municipal Corporation, Second Bench in M.A. Appeal no. 947 of 2012 thereby modifying the order of the Hearing Officer and assessing the annual valuation in respect of the property of the opposite party herein.

This case had a chequered career. The Hearing Officer by an order dated March 24, 2012 assessed the annual valuation of the premises in question at Rs. 23,500/- with effect from fourth quarter of 2009-10.

Previously, the opposite party herein preferred an appeal being M.A. Appeal no. 947 of 2012 challenging the aforesaid order dated March 24, 2012 passed by the hearing officer. The Learned Municipal Assessment Tribunal by an order dated February 16, 2015 allowed the said appeal upon holding that the reasonable rent of the premises in question should be 1.10 per square feet per month. Kolkata Municipal Corporation challenged the aforesaid order dated February 16, 2015 before this Hon'ble Court by filing an application under Article 227 of the Constitution of India being C.O. no. 2623 of 2017. By an order dated December 18, 2017, a coordinate bench of this court was pleased to allow the Civil Order No. 2623 of 2017 by setting aside the order dated February 16, 2015 and remanding the matter to the Tribunal for its fresh consideration in accordance with law within the time limit stipulated therein.

After remand the Learned Tribunal by an order dated March 27, 2018 allowed the said appeal being M.A.A. 947 of 2012 in part thereby modifying the order passed by the Hearing Officer and assessing the annual valuation in respect of the property in question.

By the order impugned the Learned Tribunal has reduced the annual valuation fixed by the Hearing Officer and has assessed the same on the basis of the materials placed by the respective parties before the learned Tribunal.

Kolkata Municipal Corporation preferred the instant civil revisional application under Article 227 of the Constitution of

India being dissatisfied with the annual valuation assessed by the learned Tribunal.

Mr. Alope Ghosh, learned Advocate appearing on behalf of the petitioner has contended that the learned Tribunal below acted illegally and with material irregularity in reversing the finding of the Hearing Officer by assessing the annual valuation of the property in question by taking the annual valuation of a property assessed by the Tribunal in M.A.A. no. 272 of 1996 as the basis. He contends that the learned Tribunal below relied upon a judgment passed in respect of other premises for the purpose of assessing the Annual Valuation without ascertaining as to whether the premises which was the subject matter in M.A.A. 272 of 1996 is identical and comparable with the premises in question.

Mr. Ghosh further contends that the assessment period in respect of the property involved in M.A.A. no. 272 of 1996 is fourth quarter of 1993-94 whereas the assessment period of the property in question is fourth quarter of 2009-10. Thus, according to Mr. Ghosh, when there is a long gap of sixteen years in between the assessment period of the case relied upon by the opposite party herein before the Tribunal and the assessment period of the premises in question, the learned Tribunal ought not to have accepted the valuation of the referred case as the basis for assessing the annual valuation of the property in question.

Mr. Ghosh also contends that the annual valuation of a premises should be fixed as per the provisions contained in

section 174 of the Kolkata Municipal Corporation Act., 1980 (for short “the said Act”). According to him, the learned Tribunal acted illegally and with material irregularity by assessing the annual valuation of the property in question by comparing it with the valuation fixed by the learned Tribunal in respect of other premises.

Mr. Ghosh further contends that the learned Tribunal acted illegally and with material irregularity by taking the annual valuation fixed in respect of an old premises as the basis for assessing the annual valuation of the premises in question, which is a newly constructed one. He contends that the procedure adopted by the Tribunal by applying the Mayor’s guidelines dated February 8, 1986 for arriving at the annual valuation of the premises in question by taking the annual valuation of an old premises as the basis is not permissible in law. According to him the aforesaid Mayor’s guidelines can be applied only in respect of the self-same premises and cannot be applied to arrive at a conclusion in respect of a different premises.

Mr. Ghosh contends that the initial onus is upon the assessee to show that the valuation proposed by the Kolkata Municipal Corporation is not correct by producing the materials on record. Once such initial onus is discharged, the onus shifts upon the Municipal Authority to place other materials showing the claim of the assessee placed before the Hearing Officer was wrong. He contends that the assessee failed to discharge her onus in the instant case. In support of his submission that the

initial onus lies upon the assessee, he relies upon a judgment in the case of Calcutta Municipal Corporation vs. Kapoor and Company Private Limited reported at 2002(2) CHN 377.

Mr. Ghosh further contends that the order of the Tribunal is an unreasoned one and the same is liable to be set aside. He refers to the following unreported judgments of co-ordinate benches of this court in support of his contention that an unreasoned order passed by the Tribunal is liable to be set aside under Article 227 of the Constitution of India.

- (i) Judgment dated 12.12.2018 passed in CO no. 3368 of 2017 (the Kolkata Municipal Corporation vs. Sri Vivek Kumar Agarwal and Another)
- (ii) Order dated 05.10.2018 passed in CO 2353 of 2017 the Kolkata Municipal Corporation vs. Rakesh Sarkar
- (iii) Order dated 11.03.2019 passed in CO no.1747 of 2018 (Kolkata Municipal Corporation vs. Smt. Mallika Pal)
- (iv) Judgment dated 14.08.2018 passed in CO no. 936 of 2018 (Radhyshyam Bansal vs. The Kolkata Municipal Corporation and others)

Mr. Chakraborty, learned advocate for the assessee/ opposite party herein has seriously disputed the contentions of Mr. Ghosh. According to Mr. Chakraborty, the Municipal authority did not produce the records in its possession in respect of the premises in question apart from a copy of the Inspection Book of the assessment period in question. He contends that the municipal authority also relied upon the original proposal (Exhibit A) which is the basis of determination of valuation by the

Hearing Officer. According to him the valuation proposed by the municipal authority is without any basis. The assessee filed the written objection before the Hearing Officer disputing the proposed valuation. The assessee discharged her onus as to what could be the reasonable rent for the premises in question by producing a copy of the judgment passed by the Tribunal in M.A.A. 272 of 1996 in respect of a premises which is situated in the vicinity. He contends that the learned Tribunal after considering the materials on record assessed the annual valuation by applying the guidelines framed by the Hon'ble Supreme Court of India in the case of India Automobiles (1960) Ltd. vs. Calcutta Municipal Corporation and Another, reported at (2002) 3 SCC 388.

Mr. Chakraborty further refers to two judgments of coordinate benches of this court in the case of Kolkata Municipal Corporation vs. Smt. Shibani Mukherjee, reported at 2017 (3) CLJ (Cal) 593 and Kolkata Municipal Corporation vs. Sri Rama Prasanna Mitra, reported at (2016) 4 WBLR (Cal) 621 and contends that when the Tribunal after considering the materials produced before it had arrived at a conclusion and there is no laches in the decision-making process, the order passed by the Tribunal may not be interfered with.

I have heard the learned advocates for the parties and have considered the materials on record. After going through the provisions of the said Act and the Calcutta Municipal Corporation Taxation Rules, 1987 (for short, 'the said rules'), I find that the annual valuation should be fixed by the Hearing Officer after

hearing the objection from the assessee. Such valuation has to be assessed in accordance with the provisions contained in Section 174 of the said act.

The municipal authority proposed the valuation of Rs. 29,170/- in respect of the premises in question with effect from the fourth quarter of 2009-10. The assessee challenged the aforesaid proposed valuation by filing an objection.

The Hearing Officer fixed the annual valuation of the premises in question at Rs. 23,500/- by passing the following order on March 24, 2012-

“R.O is present. Heard both sides A.A.C & R.O written objection are considered A.V is fixed at Rs. 23,550/-”

The said act casts a duty upon the Hearing Officer to make an assessment in accordance with law. The Hearing Officer while disposing of the objection filed by the assessee is statutorily obliged to follow the principles of natural justice. Assignment of reason is one limb of the principles of natural justice. The order passed by the Hearing Officer is an appealable one under Section 189 (5) of the said act before the Municipal Assessment Tribunal. When an unreasoned order is passed by the Hearing Officer, the Tribunal while adjudicating the appeal against such an order would feel great difficulty in adjudicating the same. As such the Hearing Officer is obliged to disclose the reasons for arriving at the conclusion.

In the instant case, the order passed by the Hearing Officer failed to disclose any reasons for fixing the annual valuation at Rs. 23,550/-. There is no consideration whatsoever of the

objections raised by the assessee before the Hearing Officer. Thus, the learned Tribunal was justified in not accepting the valuation fixed by the Hearing Officer.

The Hon'ble Supreme Court in the case of India Automobile (supra) held that while determining the rents on the basis of reasonableness, prevalent rate of rent of lands and building in the vicinity of the property being assessed is one of the relevant considerations. The Hon'ble Supreme Court in the said reports held as-

“23.The 1980 Act, therefore, requires application of mind by the municipal authorities to determine the rents on the basis of reasonableness by keeping into account all relevant circumstances including the 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 lands and building in the vicinity of the property being assessed.....”

The municipal authority took into consideration the reasonable rent at Rs. 3.00/- per square feet for the covered area and Rs. 1.00/- per square feet for the roof. The municipal authority failed to justify the basis of taking the aforesaid rates of reasonable rent. The proposal of the municipal authority was thus without any basis as has been rightly held by the learned Tribunal in the impugned order.

There is no dispute to the proposition of law laid down in the case of Kapoor (supra) that the initial onus is upon the assessee to show what is the actual gross annual rent including

service charges which could be reasonably expected from the premises in question while valuation is assessed in accordance with the provisions contained in Section 174 of the said act. Rule 19 (6) of the said rules empowers the Municipal Assessment Tribunal to allow a party to produce evidence. The assessee produced the certified copy of the judgment of the Tribunal in M.A.A. 272 of 1996 as an evidence of the expected annual rent prevailing in the locality. Thus, the assessee discharged the initial onus by producing evidence in this regard. The municipal authority also produced copies of the judgments of the Tribunal in M.A.A no. 989 of 2005 and M.A.A. no. 1008 of 2009 as evidence in support of the expected annual rent prevailing in the locality.

The decision of the Tribunal in M.A.A. no. 272 of 1996 is in respect of a flat at premises no. 110, Hazra Road within Ward no. 84 of the Kolkata Municipal Corporation. The judgment of the Tribunal in M.A.A. 989 of 2005 is in respect of Nakuleswar Bhattacharjee lane within the same ward. The judgment of the Tribunal M.A.A. no. 1008 of 2009 is in respect of premises on Rashbehari Avenue also within the same ward. The premises in question is a flat situated on Hazra Road within ward no. 84 of the Kolkata Municipal Corporation.

The premises of the assessee and the premises which was the subject matter in M.A.A. no. 272 of 1996 are both situated on Hazra Road. The prevalent rate of rent of lands and building in the vicinity of the property being assessed is a relevant consideration for determination of annual valuation of a property

as held in *India Automobiles* (supra). The proposal being the exhibit A is without any basis. The only evidence which were before the Tribunal for the purpose of assessment of the annual valuation of the property in question were the judgments of the Tribunal produced by the parties as evidence of the expected annual rent prevailing in the locality. The municipal commissioner is the custodian of records for the purpose of assessment of annual valuation and is under an obligation to produce the records in connection therewith. It is also not in dispute that several directions were passed by the Tribunal upon the municipal commissioner to produce the records in connection with the instant matter. For reasons best known to the municipal authority, no evidence has been produced from their end to show the prevailing reasonable rent in the locality namely Hazra Road in the instant case. The only evidence that was available before the Tribunal with regard to the prevailing rate of rent on Hazra Road was the judgment passed by the Tribunal in M.A.A. no. 272 of 1996. The Tribunal was thus justified in accepting the rate of rent fixed in M.A.A. 272 of 1996 as the basis for calculation of the annual valuation in the instant case.

The decision of the Tribunal in M.A.A. no 272 of 1996 fixing the reasonable rent in respect of a flat on Hazra Road was with effect from fourth quarter of 1993-94 whereas the valuation of the premises of the assessee in the instant case is with effect from fourth quarter of 2009-10. The Learned Tribunal was justified in enhancing the valuation proportionately by applying the guidelines given in the Mayor's order dated February 8, 1986 in the absence of any other evidence on record. The Tribunal

cannot be faulted with for enhancing the annual valuation proportionately by applying the Mayor's order in the instant case.

The premises of the opposite party herein is a new construction and the premises which is the subject matter of M.A.A. 272 of 1996 is an old one, the learned Tribunal assessed the reasonable rent of the premises in question at Rs. 1.10/- per square feet per month for the covered area and Rs. 0.55/- per square feet per month for the roof area with effect from fourth quarter of 2009-10.

The annual valuation fixed by the Tribunal cannot be said to be without any basis. Though there was an element of guess-work in assessing the annual valuation of the property in question but the same was inevitable in the circumstances of the instant case and the municipal authority was wholly responsible for the same as they have withheld the best evidence. The assessment of annual valuation made by the Tribunal has a reasonable nexus to the materials available on record and as such the same cannot be said to be an arbitrary one. There is also no laches in the decision-making process.

It has been held by a coordinate bench of this court in Shibani Mukherjee (supra) that no interference under Article 227 of the Constitution of India is called for if the court finds no laches in the decision-making process. It has also been held by this court in Ramaprasanna (supra) that in the absence of any material produced by the municipal authority to show that the annual valuation would have been much higher than what has been assessed by the Municipal Assessment Tribunal and the

Municipal Tribunal has decided the annual valuation of the premises on the basis of the materials on record, the order passed by the Tribunal does not call for any interference. The judgments cited by the opposite party squarely applies to the facts of the instant case.

Now, I propose to deal with the decisions relied upon by Mr. Ghosh. In the case of Mallika Pal (supra) the order of the Municipal Assessment Tribunal was set aside on the ground that the learned Tribunal reduced the valuation without assigning any reasons therefore. In the case of Radhyshyam Bansal (supra) the order of the Municipal Assessment Tribunal was set aside and the matter was sent back on remand to the Tribunal as the learned Tribunal mechanically affirmed the unreasoned assessment of annual rent made by the Hearing Officer and also that the yardsticks for assessment of the annual rent fixed by the Hon'ble Supreme Court of India in various judgments was not followed by the Tribunal. In Rakesh Sarkar (supra) a coordinate bench of this court was pleased to set aside the order passed by the Municipal Assessment Tribunal as the same was an unreasoned one. In the case of Vivek Kumar Agarwal (supra) a coordinate bench of this court was pleased to set aside the order passed by the Tribunal as the same was an unreasoned one and also that the Tribunal being a quasi-judicial authority did not follow the procedures for disposal of an appeal.

In the instant case the Learned Tribunal followed the procedures laid down under the said act and the said rules while deciding the appeal against the order passed by the Hearing

Officer. The Tribunal allowed the parties to produce evidences in support of their respective cases in appeal. The Tribunal arrived at a valuation after taking into consideration the materials on record and by supplying cogent reasons in support of the conclusion arrived at. The yardsticks framed by the Hon'ble Supreme Court of India for determination of the annual valuation of the property in question have also been followed by the Tribunal in the instant case. For the reasons as aforesaid, the decisions relied upon by Mr. Ghosh do not have any manner of application in the instant case.

In view of the reasons as aforesaid, I am of the view that the impugned order does not suffer from any infirmity warranting interference under Article 227 of the Constitution of India. C.O. no. 3346 of 2018 is dismissed without, however, any order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis.

(Hiranmay Bhattacharyya, J.)