

**W.P. No. 460 of 2019
G.A. No. 966 of 2020
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side
Kanak Projects Limited & Anr.
Vs.
Kolkata Municipal Corporation & Ors.**

For the Petitioner : Mr. Arindam Banerjee, Advocate
Mr. Pratik Ghose, Advocate
Mr. Avishek Roy Choudhury, Advocate

For the KMC : Mr. Alok Ghosh, Advocate
Mr. Subhrangsu Panda, Advocate

Hearing concluded on : September 4, 2020

Judgment on : September 25, 2020

DEBANGSU BASAK, J. :-

1. The petitioners have assailed the order dated July 24, 2019 passed by the Hearing Officer IV, of the Kolkata Municipal Corporation, in this present writ petition.

2. Learned Advocate appearing for the Kolkata Municipal Corporation has questioned the maintainability of the writ petition on the ground

that the writ petitioners have a statutory alternative efficacious remedy available by way of an appeal. According to him, since the writ petitioners did not exhaust such remedy, the writ petition should not be entertained.

3. Learned Advocate appearing for the petitioners has submitted that, notwithstanding the existence of a statutory alternative remedy, a writ petition as of the present nature is maintainable. In support of such contention, he has relied upon **1998 Volume 8 Supreme Court Cases (Whirlpool Corporation v. Registrar of Trade Marks, Mumbai & Ors.)**, an unreported decision of the Division Bench rendered in **APO No. 213 of 2004 W.P. No. 1050 of 1996 (Commissioner, Kolkata Municipal Corporation & Ors. v. Hastings Property & Ors.)**, **1973 Volume 1 Supreme Court Cases page 633 (Raza Textiles Ltd. v. Income Tax Officer, Rampur)**, an unreported decision of the Division Bench rendered in **W.P. No. 23027 (W) of 2017 (M/s. Universal Consortium of Engineers (P) Ltd. & Anr. v. State of West Bengal & Ors.)** dated February 18, 2019 and **2002 Volume 3 Supreme Court Cases 388 (India**

Automobiles (1960) Ltd. v. Kolkata Municipal Corporation & Anr.).

4. Learned Advocate appearing for the petitioners has drawn the attention of the Court to the notices issued by the Kolkata Municipal Corporation under Sections 184 of the Kolkata Municipal Corporation Act, 1980. He has drawn the attention of the Court to the fact that, by the impugned notices, the Kolkata Municipal Corporation authorities were trying to revise the annual valuation of an immovable property with effect from the second quarter of 2009-2010. In fact, he has submitted that, there were six several hearing notices by which, Kolkata Municipal Corporation authorities were revising the annual valuation in respect of the same immovable property, in respect of different periods as specified in such notices. He has drawn the attention of the Court to an unreported decision of the Division Bench of this Hon'ble Court rendered in ***GA 2067 of 2015, APO 265 of 2015, WP 1021 of 2011 (Sahujain Charitable Society & Anr. v. The Kolkata Municipal Corporation & Ors.)*** and submitted that, in ***Sahujain Charitable Society & Anr. (supra)***, the Division Bench

has held that, the Commissioner, Kolkata Municipal Corporation can only have the power to revise valuation within a reasonable period of time. The Division Bench has held that the period for which the valuation of a property can be raised must not be more than three years before the date of the revising order. In the facts of the present case, the hearing notices were of September 2018 for periods which were beyond three years from the date of such hearing notices. Therefore, the claims of Kolkata Municipal Corporation being barred by the laws of limitation, as laid down in **Sahujain Charitable Society & Anr. (Supra)** the resultant impugned order of the Hearing Officer is without jurisdiction. When the impugned order is without jurisdiction, a writ petition is maintainable.

5. In the given facts and circumstances of the case and in the light of the authorities cited, the issue of maintainability has to be decided.

6. As noted above, an order dated July 24, 2019 passed by the Hearing Officer IV of the Kolkata Municipal Corporation is under challenge in the present writ petition. The impugned order is

appealable under provisions of Section 189 of the Act of 1980. The writ petitioner has not denied the existence of a statutory alternative remedy. The writ petitioner has however contended that, since ***Sahujain Charitable Society & Anr. (supra)*** has laid down a period of limitation, and since, the hearing notices as well as the impugned has considered periods beyond three years from the date of the hearing notices, the resultant impugned order dated July 24, 2019 accepting the revision of the annual valuation for properties beyond three years from the date of the hearing notices is without jurisdiction.

7. ***Whirlpool Corporation (supra)*** has held that, existence of alternative statutory remedy is not a constitutional bar to the High Court's jurisdiction. It is however a self imposed restriction. It has held that, existence of statutory alternative remedy could not operate as a bar where the Writ Petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is under challenge.

8. In ***Hastings Property & Ors. (supra)*** the Division Bench did not interfere with the discretion exercised by the Writ Court in entertaining a writ petition, against an order of the Hearing Officer. ***Hastings Property & Ors. (supra)*** should not and cannot be construed to mean that every writ petition against an order of the Hearing Officer was maintainable. On the issue of maintainability of the writ petition it has held that, since, in the facts of that case, the writ Court exercised its jurisdiction in entertaining the writ petition the appeal Court did not to revisit the exercise of such discretion.

9. In ***Raza Textiles Ltd. (supra)*** the Supreme Court has held that, no authority, much less a quasi-judicial authority, can confer jurisdiction on itself by deciding a jurisdictional fact wrongly. The question whether the jurisdictional fact has been rightly decided or not is a question that is open for examination by the High Court. If the High Court comes to the conclusion that, the authority had clutched at the jurisdiction by deciding a jurisdictional fact erroneously, then the petitioner was entitled for the writ of certiorari.

10. In ***M/s. Universal Consortium of Engineers (P) Ltd. & Anr. (supra)*** the Division Bench has held that, existence of an efficacious alternative remedy does not impose any limitation or restraint on a High Court from entertaining a writ petition. Requiring a petitioner to exhaust the alternative remedy prior to approaching the writ court is not a rule of law but a rule of convenience and discretion. It has noticed amongst other authorities, ***Whirlpool Corporation (supra)***.

11. In ***India Automobiles (1960) Ltd. (supra)*** the Supreme Court has delved into the issue of determination of annual value of land or building of gross annual rent and apportionment of liability under the Act of 1980.

12. ***Sahujain Charitable Society & Anr. (supra)*** has dealt a writ petition in which vires of second proviso of Section 179(2) (d) of the Act of 1980 was under challenge. A demand of annual value was also under challenge. It has noticed Section 573 of the Act of 1980 and has held that:

“The proviso is very important. It says that no proceedings for recovery of inter alia municipal tax shall be commenced after the lapse of three years from the date on which such sum became due. Under the second proviso to sub-Section (2) of Section 179 of the said Act, the proviso to Section 573 would be rendered otiose by giving the Commissioner the power to collect unlimited tax by unrestricted revision of the annual valuation of the premises for an unlimited period of time. Theoretically, the tax would become due on the date of the revision made by the Commissioner but the real effect is that the persons liable to pay tax for a property could be fastened by the Commission with liability to pay tax, otherwise not realizable, long after the period of limitation.”

13. **Sahujain Charitable Society & Anr. (supra)** has held that, the Commissioner, Kolkata Municipal Corporation can only have the power to revise the valuation within a reasonable period of time. It has held that:

“In Section 573 of the Kolkata Municipal Corporation Act, 1980, the Corporation has the power to recover any sum by initiating a proceeding within three years from the date, such sum became due and payable. Therefore, on a proper interpretation of the proviso, and upon reading it down to save it from unconstitutionally, the period for which valuation of a property can be raised must not be more than three years

before the date of the revising order.”

14. In the facts of the present case, the Hearing Officer had issued seven several notices for revision of annual valuation all dated September 24, 2018. The respective dates of the notices, the quarter for which the annual valuation was sought to be revised are as follows:

<u>Date of Notice</u>	<u>Period for Annual Valuation</u>
September 24, 2018	Annual valuation with effect from 2/2006-2007
September 24, 2018	Annual valuation with effect from 02/2009-2010
September 24, 2018	Annual valuation with effect from 02/2012-2013
September 24, 2018	Annual valuation with effect from 01/2013-2014
September 24, 2018	Annual valuation with effect from 01/2014-2015
September 24, 2018	Annual valuation with effect

September 24, 2018

from 02/2015-2016

Annual valuation with effect
from 01/2016-2017

15. In the impugned order, the Hearing Officer has segregated the valuation with effect from the second quarter of 2006-2007 as there was a writ petition pending in respect of valuation with effect from 04/1996-1997, and did not pronounce on the merits of such period of time. The Hearing Officer has proceeded to consider the valuation in respect of the six other periods of valuation. The Hearing Officer has confirmed the annual valuation as proposed for such six periods of time and found that, the proposal for revision of the annual valuation did not suffer from any defect.

16. The impugned order of the Hearing Officer will demonstrate that, the writ petitioners raised the point of limitation and contended that the ratio of ***Sahujain Charitable Society & Anr. (supra)*** applied to the facts of the case. The Hearing Officer has distinguished the ratio laid down in ***Sahujain Charitable Society & Anr. (supra)*** in the facts of the present case by holding that, the writ petitioners were

setting up a defence to the revision of annual valuation based on their wrong doings as the recorded owners. It has held that, unlike the facts of ***Sahujain Charitable Society & Anr. (supra)***, two mandatory general revaluations/periodic assessments were involved. The rest were of intermediate valuation which the Kolkata Municipal Corporation proposed on the basis of change of rent in exercise of powers under Section 180 of the Act of 1980. It has held that, the writ petitioners as the recorded owners were under statutory obligation under Section 182 of the Act of 1980 to file return in respect of the premises in question. The writ petitioners as the recorded owners had failed to do so. Having failed to discharge their statutory obligations, the writ petitioners were not permitted, by the Hearing Officer, to contend that, the claim of Kolkata Municipal Corporation was barred by limitation. The Hearing Officer has also noticed the provisions of Section 573 of the Act of 1980 as well as the provisions of the Limitation Act, 1963 and held, in the facts of the present case that, the proviso appended to Section 573 of the Act of 1980 makes out an exception which provides for a limitation as regards the recovery of rates stated therein which was to be recovered as consolidated rate

meaning thereby that such recoveries, inter alia, could be made in terms of provisions of Section 220 of the Act of 1980.

17. Out of the seven periods of time for which the Hearing Officer heard the matter, the impugned order has dealt with six of the periods of time involved. Of the six periods dealt with by the impugned order, going by the ratio of ***Sahujain Charitable Society & Anr. (supra)***, without anything else, at least one of the periods of time was within the period of limitation from the date of the notices issued being September 24, 2018. Therefore, without anything else, and applying the ratio of ***Sahujain Charitable Society & Anr. (supra)***, it cannot be said that the entirety of the period of time considered by the Hearing Officer in the impugned order was beyond the period of limitation. As to whether the other periods of time considered by the impugned order were beyond the period of limitation or not and the applicability of the ratio of ***Sahujain Charitable Society & Anr. (supra)*** to the facts of the present case, it cannot be said that the Hearing Officer acted beyond his jurisdiction. It was within the jurisdiction of the Hearing Officer to consider the ratio of ***Sahujain***

Charitable Society & Anr. (supra) and take a view thereon, which he did.

18. A writ Court need not convert itself into an appellate authority, reappraise the evidence and arrive at a different conclusion than the order impugned, more so, when there is a statutory appeal available which the writ petitioners have consciously ignored. A writ Court is concerned more with the decision making process than the decision itself. The writ petitioners have not contended that the impugned order suffers from the vice of breach of principles of natural justice. They have contended that, the Hearing Officer clutched on a jurisdictional fact erroneously.

19. The Hearing Officer arrived at the conclusion that the claim was not barred by limitation on the primary finding that, the writ petitioners were guilty of failing to discharge their statutory obligations under Section 182 of the Act of 1980 and thereby enjoying a taxation on an artificial low valuation. Whether the Hearing Officer was correct or not in arriving at such conclusion would require reappreciation of

evidence by converting the writ Court as an appellate authority, which need not be undertaken in the facts of this case, particularly when there is a statutory appellate authority to do so. Whether the writ petitioner was guilty of not complying with Section 182 of the Act of 1980 was another factual aspect which has to be considered. In the event, the writ petitioners are found to have acted in breach of their statutory obligations, then, its impact on the annual valuation of the property tax is to be assessed also. In the facts of the present case, I am unable to come to the finding that the Hearing Officer clutched on to a jurisdictional fact erroneously and decided his jurisdiction wrongly. The impugned order is otherwise well reasoned. The impugned order was passed after hearing the writ petitioners. The impugned order does not suffer from the vice of breach of principles of natural justice. The impugned order is appealable under the provisions of the Act of 1980. The appellate authority would be better placed to reappreciate the evidence and come to the finding as to whether the impugned order suffers from the vice of misappreciation of a decision of the High Court or not.

20. Provisions of appeal as provided under Section 189 of the Act of 1980 requires compliance with specified preconditions. It inter alia requires deposit of specified amount. In the facts of the present case, the valuation assessed are excess of a crore of rupees. The writ petitioner has adopted this method of approaching the writ Court in order to wriggle out of the rigours of Section 189 of the Act of 1980 if possible.

21. In such circumstances, I am not minded to interfere in the present writ petition. All points raised by the parties are kept open to be adjudicated before the appropriate forum. None of the observations made herein will prejudice any of the parties in the statutory appeal, if there be any. This judgment and order cannot be construed as an order condoning the delay in filing the appeal or extending the prescribed period of limitation for the statutory appeal. W.P. No. 460 of 2019 is disposed of accordingly.

22. In view of the disposal of the writ petition itself, the application for expeditious hearing made therein being old G.A. No. 966 of 2020, New G.A. No. 1 of 2020 in W.P. No. 460 of 2019 is also disposed of.

[DEBANGSU BASAK, J.]