

**THE KOLKATA MUNICIPAL CORPORATION
VS. PULLMAN COMMOTRADE PRIVATE LIMITED**

Mr. Alok Kumar Ghosh

Mr. S.K. Debnath

Ms. Manisha Nath

..for the petitioner

Mr. Rachit Lakhmani

Mr. Arnab Basu Mallick

..for the opposite party

This revisional application arises out of an order dated February 3, 2016 passed by the learned Municipal Assessment Tribunal, 2nd Bench, in M.A.A. No.539 of 2013.

The petitioner before this Court is the Kolkata Municipal Corporation. The Kolkata Municipal Corporation (KMC) has challenged the above order on several grounds, inter alia, that the learned Tribunal:- (i) failed to take into account the provisions of Section 174 of the Kolkata Municipal Corporation Act, 1980; (ii) failed to take into account the reasonable rent the premises would have fetched had the premises been let out; (iii) failed to take into account the reasons supplied by the Hearing Officer while fixing the annual valuation at Rs.66,070/- with effect from 2/2007-2008.

Mr. Ghosh, learned advocate appearing on

behalf of the petitioner submits that the KMC was advised by their learned advocate to prefer this revisional application challenging the aforementioned order belatedly as the officers of KMC had not considered the order impugned in its right perspective and had failed to take steps immediately against the said order. He further submits that once the opposite party/assessee prayed for refund of the excess amount paid on the basis of the valuation made by the Hearing Officer, after reduction in the annual valuation by the order impugned, only then the senior officials of the KMC sought to take legal advice and accordingly, their learned advocate advised the KMC to prefer this revisional application. He further submits that the junior officers were complacent and did not bother to take any initiative or consider the impact of the order impugned until the writ petition was served upon them. Such explanation for the delay in filing the revisional application appears in Paragraph-17 thereof.

Reliance is placed on the decision of the Hon'ble Apex Court in the matter of ***Executive Officer, Antiyur Town Panchayat Vs. G. Arumugam (Dead) by Legal Representatives reported in (2015) 3 SCC 569***, wherein the Hon'ble Apex Court condoned the delay of 1373 days in filing a second appeal on the ground that in case of a lapse of an officer at the relevant point of time to take action, the Court should take a lenient view,

condone the delay and allow the matter to be decided on merits.

Mr. Lakhmani, learned advocate appearing on behalf of the opposite party/assessee submitted that although the period for filing an application under Article 227 of the Constitution of India has not been prescribed by law but the said application should be filed within reasonable time and there must be some explanation for the delay caused by the authority in filing this revisional application. He further relies on the decision of the Hon'ble Apex Court in the matter of ***Bithika Mazumdar & Anr. Vs. Sagar Pal & Ors. reported in (2017) 2 SCC 748*** to counter the argument of Mr. Ghosh on the point of limitation. Mr. Lakhmani submitted that the explanation was not satisfactory and it was only because the writ petition was filed by the assessee claiming the refund that the KMC woke up from its slumber and preferred this revisional application.

I find justification in the contention of Mr. Lakhmani but the issue involved is of a larger public interest as property tax is public money to be paid by the owner of the property to the concerned municipal authorities under a constitutional mandate as also under the statute itself. The money collected by the civic body is used for providing means of better living in terms of civic amenities and essential services. Thus, this Court holds

that the explanation of the KMC as to the reasons for delay in filing this application before this Court is satisfactory and the KMC cannot be deprived of an opportunity to move this Court challenging an order, which has caused injustice and loss of revenue.

In my opinion, this revisional application is not barred by limitation and should be considered on merits.

Coming to the question of sustainability of the order impugned before this Court, it appears that the learned Tribunal considered the annual valuation of the previous quarter 1/2007-2008 and held that the annual valuation would not change on account of change of user of the premises to commercial purpose.

It has been settled by several judicial decisions that the annual valuation of premises should be considered on the basis of the annual rent such premises would fetch in case the same was let out. Although, the learned Tribunal has come to a finding that the premises was being used for non-residential purpose, yet, the learned Tribunal failed to perform the exercise of considering the reasonable rent that the premises would fetch. The premises is a big flat on the 14th floor at Premises No.10, Belvedere Road, Amarjyoti Apartment, Kolkata – 700027 and was being used exclusively for commercial purpose. The learned Tribunal did not take

into account the reasons assigned by the Hearing Officer and also failed to mention why the Hearing Officer's calculation could not be accepted. The position of law has been clarified by the Hon'ble Apex Court in the matter of ***India Automobiles (1960) Ltd. Vs. Calcutta Municipal Corporation and Anr. reported in (2002) 3 SCC 388.***

The relevant portion of the said judgment is set out hereunder, for convenience.

“We find some substance in the submission of the learned counsel for the appellant that permitting the municipal authorities to assess the annual value only on the basis of the rent paid by the sub-tenant to the tenant and fixing its liability on the owner may adversely affect the owners of the buildings who have let their premises at a time when rents were meagre and who under the rent control statutes are deprived of getting possession back of the lands and buildings from their tenants. 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. Only because the owner of the building is not getting the same rent which the sub-tenant is paying to his lessor, cannot be made a basis to deprive the corporations from determining the annual valuation and taxing the land or building on that basis. If such a plea is accepted, it would be against the provisions of the statute which has been enacted to provide civic services in the form of water, drainage, sewerage, collection, removal and disposal of solid waste, fire prevention and fire safety maintenance of street and public places etc., in the municipal area where such land or building is situate.”

“We are of the view that the basis for determination of annual rent value has to be the standard rent where the Rent Control Act is applicable and in all other cases reasonable determination of such rent by the municipal authorities keeping in view

various factors as indicated herein earlier, including the rent which the tenant is getting from his sub-tenant. In appropriate cases the owner of the property may be in a position to satisfy the authorities that the gross annual rent of the building of which the annual valuation was being determined cannot be more than the actual rent received by such owner from his tenant. The municipal authorities shall keep in mind the various pronouncements of this Court, the statutory provisions made in the specified Municipal Acts, keeping in mind the applicability or non-applicability of the Rent Act and the peculiar circumstances of each case, to find out the gross annual rent of the building including service charges, if any, at which such land or building might, at the time of assessment, be reasonably expected to let from year to year in terms of Section 174 of the 1980 Act.”

Mr. Lakhmani submitted that the annual valuation of the other similar units have been fixed at the same rate by the KMC. However, such averment or contention is not a part of the records and it also does not appear in the order impugned that the learned Tribunal was persuaded by such contention while coming to the annual valuation of the property in question at Rs.24,260/- with effect from 2/2007-2008.

Under such circumstances, this revisional application is allowed. The order impugned is quashed and set aside.

The learned Tribunal is directed to hear out the appeal filed by the opposite party/assessee, afresh, on its own merits after taking into consideration the parameters which have been laid down by the Hon'ble Apex Court and also this Court as also the provisions of law. The appeal should be disposed of preferably within

two weeks from date of communication of this order. The order shall be a reasoned one. The petitioner's prayer for adjustment and/or refund will be subject to the final result of the appeal. If advised, the assessee may be allowed to file additional evidence before the learned Tribunal and the KMC shall also be given an opportunity to rebut the same. The observations in this revisional application are only for the purpose of disposal of the proceedings before this Court and not on merits of the lis. The appeal will be heard afresh on the basis of the evidence provisions of law, pleadings, and the judgments operating in the field.

This revisional application is disposed of.

There will be however no order as to costs.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.

(Shampa Sarkar,J.)