

WPA 2213 of 2022

M/s. B.K. Construction & Finance
Co. (P) Limited
Vs.
The Kolkata Municipal Corporation &
Ors.

Mr. Arabinda Chatterjee
Mr. Manik Lal Podderfor the petitioner

Ms. Chaitali Bhattacharya
Mr. Subhendu Roy Chowdhury
..for the State

Mr. Biswajit Mukherjee
Mr. S.K. Debnath ..for the KMC

This writ petition has been filed challenging an order passed by the Hearing Officer, Kolkata Municipal Corporation dated January 7, 2022, by which the annual valuation of the property situated at 142A, M.G. Road, Kolkata 700 007 was revised and consequently enhanced.

Mr. Chatterjee, learned senior advocate appearing on behalf of the petitioner has challenged the said annual valuation on the following grounds:-

a) The hearing officer acted beyond jurisdiction by including interest fetched on the security money given by the tenant to the petitioner, which was lying in a fixed deposit.

b) The interpretation of Section 174(1)(unamended) of the Kolkata Municipal

Corporation Act, 1980 as made by the hearing officer was unreasonable and arbitrary and based on extraneous consideration.

c) The order suffers from error apparent on the face of record as the expression “deemed”, in this case would mean actual rent, as the rental amount was never in dispute.

d) The payment of security deposit to the landlord by the tenant was a private arrangement and whether the same fetched any interest could not be a matter for determination of the annual valuation, by the hearing officer.

e) The reference made to the cases of Usha Martin Telecom Limited and Prantik Co-operative Housing Society Limited were vague, as the reasons for the applicability of the said decisions in this matter, have not been expressed in the order impugned.

According to Mr. Chatterjee, learned Senior Advocate, judicial review of the order impugned is permissible. The principles laid down by the Hon’ble Apex Court with regard to interference of the High Court under Article 226 of the Constitution of India, despite there being an alternative remedy by way of an appeal is squarely applicable in this case, it is urged.

Mr. Mukherjee, learned advocate appearing on behalf of the Kolkata Municipal Corporation submits that the question of jurisdiction goes to the very root of an order. The hearing officer has interpreted Section 174(1)(unamended) and has come to a conclusion that the 'deemed rent' would include the interest accrued on the security deposit. The hearing officer was of the view that the actual rent along with the interest that accrued on the fixed deposit, which was a part of the rent agreement and was a payment made in view of such rent agreement, was rightly added to the actual rent. He submits that the legislature in its wisdom has consciously used the word "deemed" in order to deal with situations of such nature, or else, the words 'actual rent fetched' would have been used.

Mr. Mukherjee further submits that even if the interpretation by the hearing officer is found to be incorrect, this Court in judicial review should not interfere with the order impugned as this is neither a case of violation of principles of natural justice nor a case of infringement of any fundamental rights. The order is also not wholly without jurisdiction.

Heard the learned advocates for the parties.

The expression 'without jurisdiction' means lack of pecuniary jurisdiction or lack of territorial jurisdiction or lack of jurisdiction with regard to the

subject matter. The hearing officer, who has passed the impugned order is the authority empowered under the law to deal with matters relating to determination of the annual valuation. The authority has decided the issue on an interpretation of the provisions of law. The reasons have been assigned for such decision. Supporting decisions have also been cited by the authority.

Under such circumstances, this Court is of the view that judicial review of this order, when there is an alternative remedy by way of an appeal, is not permissible.

The contention of Mr.Chatterjee is with regard to the merits of the order and as such the appellate authority should be approached by the petitioner in accordance with law.

With regard to the period of limitation prescribed under the law, the petitioner will be entitled to pray for condonation of delay on the ground of prosecuting the matter before the wrong forum.

The writ petition is disposed of without any decision on the merits of the order impugned.

All points raised in this writ petition shall be adjudicated by the learned Assessment Tribunal.

The appeal be preferred within a period of four weeks from the date of communication of this order.

The appellate authority shall hear out the appeal in accordance with law and pass necessary orders.

The petitioner shall be entitled to pray for interim orders as per law.

This writ petition is, thus, disposed of.

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

All parties are directed to act on the basis of server copy of this order and/or the learned advocate's communication.

(Shampa Sarkar, J.)