IN THE HIGH COURT AT CALCUTTA

CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee.

C.O. No. 320 of 2019

The Kolkata Municipal Corporation .

Vs.

Mr. Gopi Mali and Anr.

For the petitioner: Mr. Alok Ghosh,
Mr. Fazlul Haque

For the opposite party: None.

Heard on: 24.12.2021

Judgement on: 14.01.2022

Ajoy Kumar Mukherjee, J.

1. Being aggrieved and dissatisfied by judgment and order dated January 5th, 2018 allowing the appeal in part passed by the Learned 2nd Bench, Municipal Assessment Tribunal, The Kolkata Municipal Corporation (KMC) in Municipal Assessment Appeal being M.A.A. No. 1825 of 2012 (Mr. Gopi Mali & Shila Mali-Vs. The Kolkata Municipal Corporation), present petitioner has preferred this revisional application under Article 227 of the constitution of

India on the ground that Learned Municipal Assessment Tribunal did not consider the cost price of the premises and the rise of rent. He ought to have considered the rise of cost of the price of the premises as well as the assessment of Annual Valuation which was fixed as first time and also the rise of reasonable rent of the premises, likely to be fetched during the period of the Assessment w.e.f. 2nd quarter 2008-09.

2. It is further contended by the petitioner that Learned Municipal Assessment Tribunal should have appreciated that the rate of rent fetched by the premises in question @ Rs.2.75 per sq.ft, per month which was taken into consideration to assess the annual valuation by the Hearing Officer should not have been modified. Most importantly, Learned Municipal Assessment Tribunal should not have relied upon the judgement of the Learned Municipal Assessment Tribunal, K.M.C., passed in M.A.A. No. 1819/2012, to modify the order of Hearing Officer because the said judgment has already been set aside by this Hon'ble Court.

3. Further contention of the petitioner is that the Learned Municipal Tribunal acted improperly and wrongfully by not considering the Inspection Book copies referred to by the petitioner at the time of hearing of the appeal since the same were the basis of orders of Hearing Officer and cannot be replaced by the observation made by the Tribunal passed in M.A.A. No. 1819/2012 which has already been set aside. Lastly, Learned Municipal Tribunal failed to make any effort to ascertain the estimated market reasonable rental value of the flat for the purpose of determination of annual valuation of the premises in question and also committed gross violation of principles of natural justice, since the impugned order is not supported by proper reasoning.

4. The facts of the case, material for the present is that a new high rise building of XII storied was constructed at the premises No. 9A , Jatindra Mohan Avenue, in ward no. 18, Kolkata-700006, consisting of several flats after obtaining a sanctioned building plan. Construction of said building was completed within 1st quarter of 2008-09.

5. Opposite party purchased a flat measuring a covered area of 861 square meter being flat No. 3D on the 3rd Floor of the building at the said premises No. 9A, Jatindra Mohan Avenue, in ward no. 18, Kolkata-700006. Post purchase, the opposite party applied to the K.M.C./petitioner to mutate their names against the said purchased flat and K.M.C. authorities accordingly mutated their names and gave Assessee number.

6. After considering the objection raised by the opposite parties regarding proposal of the amount of the assessment of Annual Valuation in respect of the said flat w.e.f. 2nd quarter of 2008-09 and also after service of the notice upon the opposite party, K.M.C. fixed the Annual Valuation of the said flat at Rs. 25,570/- for the periods w.e.f. 2/2008-09 taken into consideration their assessed reasonable rate, at the rate of 2.75 per square feet , per month.

7. Opposite party being aggrieved by that order of fixing Annual Valuation of the said flat by the K.M.C. preferred an appeal being No. M.A.A.1825/2012 and Learned Municipal 2nd Bench of the Municipal Assessment Tribunal upon hearing the parties in the appeal passed the impugned order on January 5th , 2018 allowing the appeal in part, upon modifying of the order of the Hearing Officer by reducing the amount of the annual valuation from Rs.25,570/- to 13,020/- for the periods w.e.f. 2/2008-09.

8. On perusal of the said impugned order passed by the Learned Municipal Assessment Tribunal on January 5th , 2018 it appears that the points for determination before the said Tribunal was

a) Whether the impugned order passed by the Learned Municipal Hearing Officer suffers from any irregularity or illegality deserving interference from this Tribunal and,

b) If so, what should be the Annual Valuation.

9. It further appears that the said judgment and order dated January 5th , 2018 is cryptic one and the said judgment is based upon the contention made by the Learned Advocate for the opposite parties herein, who relied upon the judgment of the self same Tribunal passed in M.A.A. No. 1819/2012 in relation to another flat of the self same building . Relying upon annual valuation made in the said case, the rate of rent was fixed in the present case also at Rs. 1.40 per square feet per month for covered area w.e.f. 2/2008-2009.

10. The relevant portion of the observation made by the Tribunal in support of their order on January 5th , 2018 may be reproduced below:

> *"Keeping in mind the settled principle as laid down as to the applicability of same rate of rent in respect of another flat in the same premises possessing identical characteristics and identical period of assessment, we feel inclined to fix rate of rent of the demised flat at par with the rate of rent as fixed in the referred judgment as comparable unit.*

Thus the present AV of the premises in question will be:-

Rs. (861x1.40x12) – 10%

= Rs.13018.32 or say, Rs. 13020/-"

11. Needless to mention that, section 174 to 178 of the KMC Act, 1980 have laid down detailed procedure regarding determination of Annual Valuation. Provision for revision of assessment has also been made in section 180 of the said Act and Section 189 of the Act also provides for appeal before the Municipal Assessment Tribunal and section 189(10A) makes the provision for preferring a petition before the self same Municipal Assessment Tribunal for review of the order passed by the said Municipal Assessment Tribunal.

12. In the present case, K.M.C., petitioner had not filed any review application, instead they had preferred for the revisional application. Be that as it may , on perusal of the aforesaid judgment dated January 5th , 2018 it is quite clear from the quoted abstract that the impugned order was passed simply on the basis of the assessment as made by the self same Tribunal in M.A.A. 1819/2012.

13. Fact remains that, the judgment passed in M.A.A. 1819/2012, relying upon which the impugned judgment was passed, has been set aside in C.O. No. 3368/2017.

14. It is also pertinent to mention that while passing the said judgment in M.A.A. 1819/2012, the Learned Tribunal relied upon another judgment passed by self-same Tribunal in M.A.A. 335/2010. Said Bench of this Court while setting aside the order passed in M.A.A. 1819/2012 was pleased to hold in C.O. No. 3368/2017 :

".....16. The Tribunal before relying on it's said judgment must come into the conclusion regarding the relevancy of the said judgment in the facts and circumstances of the appeal before it. Merely because the property in the said referred judgment is situated under the same ward of the Kolkata Municipal Corporation or within the same locality where the said flat is situated cannot be the sole yardstick of assessment of the annual valuation of the said flat.

17. The detailed procedure since has been laid down under the said Act and the said rules for disposal of an appeal under Section 189 (5) of the said Act, the Tribunal being the quasi judicial authority is bound to follow the said procedure in discharging it's duty. There is manifest dereliction of discharge of the statutory obligation by the Tribunal as the Tribunal has failed to follow any of the said procedure in allowing the appeal before it.

18. The order of the hearing officer, no doubt is also lacking the statutory requirement but the Tribunal has vested with the power under the said Act and the said Rule to assess the annual valuation of the flat in question even by the taking additional evidence under Rule 19(6) of the said Rule. The Tribunal choose not to resort to the said provisions of the said Act and the said Rule in assessing the annual valuation of the said flat."

15. In view of the aforesaid specific observation made in C.O. 3368/2017 by a Bench of this court, it is quite clear that the basis or the foundation by which the impugned judgment was written by the Municipal Assessment Tribunal of K.M.C. in M.A.A. No. 1825/2012, does not exist anymore.

16. Furthermore while modifying the order of the Hearing Officer, Learned Municipal Assessment Tribunal had not given any cogent reason for such modification, in violation of the principles of natural justice and also in violation of the statutory obligation as casted upon the Tribunal for assessing the Annual Valuation.

17. In view of the fact that the judgment passed in M.A.A. 1819/2012 based on which the impugned judgment is written has been set aside by a Bench of this court in C.O. No. 3368 of 2017 and also considering the fact that no other reasoning for modifying the valuation order passed by the Hearing Officer has been given in the impugned order, in exercise of the jurisdiction under Article 227 of the Constitution of India, I have no other option but to set aside the impugned order passed by the Municipal Assessment Tribunal, 2nd Bench, Kolkata Municipal Corporation in M.A.A. 1825/2012 with a direction to decide the M.A.A. 1825/2012, afresh in strict compliance of the provisions as laid down in Kolkata Municipal Act 1980.

18. C.O. No. 320/2019 is allowed .

There will be no order as to costs .

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJOY KUMAR MUKHERJEE, J.)