22.02.2022
Ct. 21
D/L 02
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C.O. 1270 of 2021
(Via Video Conference)

The Kolkata Municipal Corporation
-Vs-
Smt. Preeti Raijada.

Mr. Aloke Kr. Ghosh,
Mr. Dwijadas Chakraborty,
... for the Kolkata Municipal Corporation/petitioner

The present application under Article 227 of India is at the instance of Kolkata Municipal Corporation being aggrieved by the judgement passed by the learned Municipal Assessment Tribunal, 2nd Bench, in MAA no. 1536 of 2015 on 30.10.2018 whereby the tribunal has reduced annual valuation of Rs.89,940/- as assessed by Hearing Officer to Rs.37,380/- in respect of 3rd Floor flat with car parking space situated in Premises No. 15, Kavi Sabitri Pr. Chattopadhyay, Kolkata-700026 with effect from 1/2015-16.

Hearing Officer of Kolkata Municipal Corporation ward no. 85, for the purpose of calculation of tax in respect of flat no. 3 situated at 3rd floor measuring 2500 sq. ft. along with 13.3 sq.

ft. common toilet at roof top, 134.55 sq. ft. covered car parking area and open car parking space measuring 150 sq. ft used by the residential purpose has assessed the annual valuation of such property at Rs.89,940/-.

Being aggrieved the owner of the flat has preferred an Appeal before the Tribunal. While allowing the Appeal, learned Tribunal has reduced the annual valuation as assessed by hearing Officer from Rs.89,940/- to Rs. 37,490/-. Hence, the present application by Corporation.

From the impugned order it appears the learned Tribunal had taken into consideration Mayor's order dated 08.02.1986, but nothing has been mentioned in the impugned order whether the flat in question is a new one or old one.

Mayor's Order dated 08.02.1986 provides that in case premises exclusively occupied by owners for their own residential purpose then for assessment of the said premises:-

1.(a) The gross annual rent of all old buildings where no additions alterations or improvements have been made should be revised and increased normally by ten per cent of the gross annual rent taken during last general revision of valuation.

(b) In case of a newly erected building the provisions of section 174 (4A) of the Act should be applied to arrive at the annual valuation. Necessary deduction from reasonable rent under proviso to section 174(1) should be allowed.

(c) In case of an old building where additions, alternations and improvements have been made the gross annual rent for the entire building shall be taken by computing the rentals for the old and new portions as under:-

(i) the rent for the old portion should be increased normally by ten per cent and

(ii) that of the new portion shall be taken at not less than 150 per cent of rate of rent for the old portion.

(d) If any such building is found to be grossly undervalued the Assessor or Dy. Assessor as the case may be should valued it properly so as to ensure reasonableness compared to the valuation of similar other properties in the locality.

The judgement impugned reflects the learned Tribunal had taken into consideration the Mayor's Order for the assessment of the valuation of the premises in question. If that be so then it should have followed above guidelines as contained therein.

But the judgement is silent whether the building in question is new or old or whether there or any alteration or improvement being taken place or not. This Court finds the impugned order is devoid of the reasoning on what basis it has come to the finding that the R.R. or the reserve rent of the premises in question is at Rs. 1.30 per sq. ft in the year 2015-16. This Court holds the learned Tribunal below has passed the order impugned without applying judicial mind and which is liable to be set aside. The matter is send back to the learned Tribunal for fresh hearing.

Accordingly, **C.O 1270 of 2021 is allowed.**

Interim order, if any, stands discharged.

There will be no order as to costs.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(**Kesang Doma Bhutia, J**.)