OD-2

ORDER SHEET

WPO/1787/2022

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

VINOD KUMAR AGARWAL
Versus
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 30th March, 2022.

Appearance:
Mr. Raghunath Chakraborty, Adv.
Ms. Amrita De, Adv.
For the petitioner.

Mr. Ranajit Chatterjee, Adv.
Mr. Dwijadas Chakraborty, Adv.
For the K.M.C.

The Court:- The writ petition has been filed alleging the arbitrary action on the part of the Kolkata Municipal Corporation. The two main grounds of challenge are:-

a) Despite the annual valuation having been fixed by the Municipal Assessment Tribunal at Rs. 24,900/- with effect from 2nd Quarter 2006-2007, the adjustments with regard to the over payment made by the petitioner have not been given. Such inaction of the Corporation is alleged to be contrary to the provisions of Section 197(a) of the Kolkata Municipal Corporation Act, 1980.

b) That the hearing notices which have been issued on and from July 23, 2019 with the proposed annual valuation of Rs. 48,220/- have been issued in total non-application of mind and without considering the order of the Municipal Assessment Tribunal as also the provisions of Section 197(a) of the Kolkata Municipal Corporation Act.

Reliance has been placed on a Division Bench judgment of this Court reported in ***(2019)1 CAL LT 88 (HC) (Subrata Sen-Versus-The Kolkata Municipal Corporation & Ors.).*** In the said decision the Hon'ble Division Bench held that even if an order of the Municipal Assessment Tribunal is the subject matter of an application under Article 227 of the Constitution of India before the High Court, till such time the order of the Assessment Tribunal is set aside or altered, the Corporation must abide by the decision of the Tribunal and raise the property tax bills on the basis thereof.

Reliance has also been placed on an unreported judgment passed in ***MAT 1343 of 2014 (Kalpana Sarkar-Versus-The Kolkata Municipal Corporation & Ors.)*** where the Hon'ble Division Bench of this Court held that the basis of the annual valuation of subsequent quarters, in the absence of change of circumstances, shall be the annual valuation assessed by the Municipal Assessment Tribunal.

Mr. Chatterjee, learned Advocate appearing on behalf of the Corporation submits that the hearing notices which have been challenged is pursuant to a change in the taxation event i.e. the increase in rent on account of rise of rent since the last valuation. This is an incident/event which occurred after the order of the Municipal Assessment Tribunal, which gave rise to the notices issued by the hearing officer. According to Mr. Chatterjee, the petitioner may have inducted a new tenant or the rent payable may have been substantially increased. As a result of which, such hearing notices have been issued. It is also on record that the proposal of the annual valuation of Rs. 48,220/- was from the 2nd Quarter of 2007-2008.

With regard to the first ground of challenge, the Corporation shall give adjustments, if any excess amount has been paid by the petitioner pursuant to the earlier annual valuation on and from the second quarter of 2006 – 2007, which was reduced by the Tribunal to Rs. 24,900/-. Such adjustment shall be given in accordance with law. The register shall be corrected within two weeks from date, in terms of the decision in Subrata Sen (supra).

With regard to the demand notices, the petitioner is directed to approach the hearing officer with his grievances and substantiate his case as pleaded before this Court to the effect that, no subsequent taxable event had taken place which would give rise to the proposal for increase of the annual valuation to Rs. 48,220/-. The Division Bench

Judgment of this Court in MAT 1343 of 2014 clarifies that in the absence of a subsequent taxable event, the annual valuation of subsequent periods shall be taken as the valuation which was assessed by the Municipal Assessment Tribunal. In this case, the same is Rs. 24,900. [See Kalpana Sarkar (supra)]

Under such circumstances, the writ petition is disposed of with a direction upon the hearing officer to look into the issues and consider the grievance of the petitioner with regard to the proposed annual valuation with effect from 2nd Quarter 2007-2008 upon giving an opportunity of hearing the petitioner. The hearing officer shall conclude the proceedings within one month from the date of communication of this order.

The writ petition is thus disposed of.

(SHAMPA SARKAR, J)

snn.