

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO 1160 of 2015

APEEJAY SURRENDRA PARK HOTELS LTD. & ANR.
Versus
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE SAUGATA BHATTACHARYYA

For the Petitioners : Mr. Abhrajit Mitra, Sr. Adv.
Mr. Arindam Banerjee, Adv.
Mr. D. Sarkar, Adv.
Mr. B. Kumar, Adv.

For the Kolkata Municipal
Corporation : Mr. L.K. Gupta, Sr. Adv.
Mr. Biswajit Mukherjee, Adv.
Mr. Fazlul Haque, Adv.
Mr. Debangshu Mondal, Adv.

Heard On : 16.11.2022

Judgment On : 16.11.2022

Saugata Bhattacharyya, J.:

This writ petition is presented questioning the order of the Municipal Commissioner, Kolkata Municipal Corporation, being respondent no. 2,

whereby land of the petitioners has been reassessed for refixation of annual value and accordingly has upwardly revised such annual value of the said land at Rs.9,50,39,000.00/-.

Mr. Abhrajit Mitra, learned senior advocate representing the petitioners submits that the land in question was leased out in favour of the petitioners by executing deed of lease on 6th May, 2009 for a period of 99 years with effect from 22nd July, 2008 against lease premium of Rs.1,35,77,00,000/- with an annual rent of Re.1/-. Initially the annual value of the land in question was fixed at Rs.1,37,14,100/- with effect from 2nd quarter, 2009-2010. Thereafter vide communication dated 23rd August, 2011 the Chief Manager (Revenue) intimated the petitioners that on application of the provisions as contained under Section 192(1)(vi) of the Kolkata Municipal Corporation Act, 1980 the annual value which has been fixed by the Hearing Officer-XIII on 31st January, 2011 was cancelled and taking into consideration seven percent of the bid/deed value of the land in question i.e. Rs.135,77,00,000/- the annual value was fixed at Rs.9,50,39,000/-. Accordingly, the tax in respect of the said land in question was fixed and it was intimated that fresh bills would be generated for payment thereof.

The decision of the Chief Manager (Revenue) dated 23rd August, 2011 was questioned by the petitioners on filing writ petition which was disposed of vide order dated 16th September, 2013 and a coordinate Bench by passing order quashed the decision of the Chief Manager (Revenue) dated 23rd August, 2011 upon finding that the same was not issued in consonance with relevant provisions as contained under Section 192 (2) of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as “the said Act of 1980).

Subsequently, the Chief Manager (Revenue) being the respondent no. 3 issued notice dated 6th November, 2013 intimating the petitioners to participate the hearing proceeding to be conducted on 3rd December, 2013 at a fixed time. Being aggrieved by issuance of the said notice dated 6th November, 2013 petitioners preferred another writ petition being W.P. No. 152 of 2014 and the same was disposed of by another coordinate Bench on passing order dated 12th March, 2014. The coordinate Bench set-aside the notice dated 6th December, 2013 (sic) since it was found that the same was not issued on compliance of Section 192 (2) (i) and (ii) of the said Act of 1980. However, while disposing of the writ petition the coordinate Bench granted liberty to the KMC authority to initiate proceedings under Section 192 of the said Act of 1980 for revaluation of the land in question.

Pursuant to the order passed by the coordinate Bench on 12th March, 2014 the concerned authority of the KMC issued notices dated 19th November, 2014, 26th December, 2014, 24th February, 2015, 7th April, 2015 and 15th June, 2015 to the petitioners for holding hearings in order to reassess the annual value of the land in question in terms of Section 192 of the said Act of 1980. Upon concluding the proceedings initiated under Section 192 an order dated 2nd July, 2015 was issued by the respondent no. 2 whereby it was intimated to the petitioners that the order dated 23rd August, 2011 was affirmed wherein it was decided that the annual value of the land in question was fixed at Rs.9,50,39,000/- instead of Rs.1,37,14,100/-.

It has been contended on behalf of the petitioners that notices issued after the order dated 12th March, 2014 are erroneous since before amending the Municipal Assessment Book in connection with assessment of the land in question the annual value was fixed at Rs.9,50,39,000.00/- with effect from 2nd quarter of 2009-2010 and such fixation of annual value shows the issue of

revision of annual value was predetermined before hearing the petitioners. It has been submitted that under Section 192(1) of the said Act of 1980 in terms of clause (vi) it has been contemplated that alteration of assessment of land or building, if has been erroneously valued or assessed by “fraud”, “mistake” or “accident”, is permissible and in such case alteration shall take effect from the day such erroneous valuation or assessment took effect. According to the petitioner the impugned order dated 2nd July, 2015 is silent on any of the aforesaid three factors i.e. fraud or mistake or accident as provided in sub-section (1) (vi) which permits the respondent no. 2 to amend the Municipal Assessment Book in order to upwardly revise the valuation of the land. It would have been incumbent on the respondent no. 2 to explain in the order impugned how fraud or mistake or accident caused erroneous fixation of annual value of the land in question. Another aspect has also been highlighted on behalf of the petitioners that the respondent no. 2 in effect affirmed the order of the respondent no. 3 dated 23rd August, 2011 without considering the order dated 16th September, 2013 passed by the coordinate Bench quashing the said order dated 23rd August, 2011. Therefore, it is impermissible to confirm an order of administrative authority subsequent to the order passed by the Hon’ble High court quashing the same. Lastly, it has been submitted that Section 192 empowers appropriate authority of the KMC to amend the Municipal Assessment Book by altering the assessment if there is fraud, mistake or accident while assessing the annual valuation but in the present case instead of initiating the proceedings for amending the Municipal Assessment Book the respondent no. 2 confirmed the order dated 23rd August, 2011 of the respondent no. 3.

Mr. L.K. Gupta, learned senior advocate, appears on behalf of KMC and submits that land in question measuring 3.358 acres on Eastern Metropolitan Bypass was leased out in favour of the petitioners by executing deed of lease

dated 6th May, 2009 and the said land in question was assessed at Rs.1,37,14,100/- towards annual valuation which is erroneous resulting in initiation of proceedings under Section 192(1)(vi) of the said Act of 1980 for reassessment. Laying stress on the provisions under Section 174 (2) as substituted by Section 6 of the Kolkata Municipal Corporation (Amendment) Act, 2006 it has been submitted that annual value of any land which is not built upon shall be fixed at seven percent of the estimated market value of the said land. According to KMC since lease premium is Rs.1,35,77,00,000/-, seven percent of the lease premium in terms of Section 174 (2) should be reckoned as annual value of the land in question which is not built upon. In course of argument advanced on behalf of the respondent KMC reliance has also been placed on Section 183 (6) of the said Act of 1980 wherein it has been provided that on request of respondent no. 2, registering authority shall furnish such particulars regarding registration of instruments of transfer of immovable properties in Kolkata as the respondent no. 2 may, from time to time, require. Therefore, according to KMC on conjoint reading of Sections 174 (2) and 183 (6) the respondent no. 2 is empowered to treat the lease premium paid by the petitioners while settling the land in question in petitioners' favour on lease as market value of the said land and seven percent of the said market value would revise the annual value of the said land at Rs.9,50,39,000/-.

On query being made to Mr. L.K. Gupta representing the KMC that in the impugned order of the respondent no. 2 at first blush it does not appear the relevant factors as contemplated under Section 192(1)(vi) have been explained; it has been submitted that though the impugned order does not contain such discussions but the relevant documents which are available on records of the concerned authority of the KMC would certainly demonstrate that initial fixation of annual value at Rs.1,37,14,100/- was not the correct annual valuation which led the authority to upwardly revise such annual value at

Rs.9,50,39,000/-. Therefore, according to KMC absence of discussions on anyone of the said three factors as contemplated under Section 192(1)(vi) in the impugned order and due consideration thereon by the respondent no. 2 is not fatal in reassessing annual value of the land in question.

It has further been submitted by Mr. Gupta that at page 100 of the writ petition, minutes of the proceeding of hearing conducted on 27th April, 2015 is recorded by respondent No. 2 wherein the mistake committed by the concerned authority of K.M.C. has been narrated while recording the submissions of the department made before the said respondent No. 2. It has also been contended that such recording of submissions made on behalf of the department on 27th April, 2015 was within knowledge of the petitioners and it was open to them to raise objections against such submissions. Therefore, it cannot be submitted on behalf of the petitioners that they were not aware of the reasons behind amendment of assessment book with regard to value of land in question.

Making the aforesaid submissions on behalf of the K.M.C. Mr. Gupta, has defended the decision of the respondent No. 2 as contained in the impugned order dated 2nd July, 2015.

This Court has heard the learned Advocates representing the parties and perused the documents available on record including the decision of the respondent No. 2 as contained in the order dated 2nd July, 2015.

From the submissions made on behalf of K.M.C. authorities and also in consideration of the order dated 23rd August, 2011 of the respondent No. 3, it is apparent that the respondent No. 2 intended to initiate proceeding for amendment of municipal assessment book so far the petitioner-assessee is concerned in respect of the land in question in terms of sub-section (1)(vi) of Section 192. For

better understanding the case made out on behalf of the petitioners as well as K.M.C. Authorities, this Court finds it proper to quote Section 192 of the said Act of 1980, which runs intra:-

“192. Amendment of Municipal Assessment Book. – [(1)]

Notwithstanding anything contained in Section 190 the Municipal Commissioner may, at any time, amend the Municipal Assessment Book –

- (i) by inserting therein the name of any person whose name ought to be inserted; or*
- (ii) by inserting therein any land or building previously omitted together with valuation thereof ; or*
- (iii) by striking out the name of any person [or any land or building] not liable for the payment of [property tax] thereupon; or*
- (iv) by increasing or decreasing for adequate reasons the amount of any annual value and of the [property tax] thereupon; or*
- (v) by making or cancelling any entry exempting any land or building from liability to [property tax]; or*
- (vi) by altering the assessment on the land or building which has been erroneously valued or assessed through fraud, mistake or accident, in which case such alteration shall take effect from the date such erroneous valuation or assessment took effect ; or*
- (vii) by inserting or altering an entry in respect of any building erected, re-erected, altered or added to, after the preparation of the assessment book, in which case such insertion or alteration shall take effect from the date such erection, re-erection, alteration or addition was made.*

[(2) (i) A notice of not less than fifteen days shall be given to the [the recorded owner or the recorded person liable to pay tax] of the land or building of the place, time and date on which any amendment of the Assessment Book is intended to be made under this section.

(ii) Any person on whom a notice of amendment is served under this sub-section may file an objection in writing to the Municipal Commissioner at least three days before the date fixed in the notice and the provisions of sections 186 to 190 shall apply, mutatis mutandis, to such objection.]”

(emphasis supplied)

The case of the K.M.C. is that there was necessity to reassess annual value of the land in question in terms of Section 192(1)(vi) and on mere reading of the provisions contained under sub-section (1)(vi), it appears that presence of any of the three factors namely fraud, mistake or accident may lead to a situation which empowers the Municipal Commissioner to initiate proceeding for amendment of municipal assessment book. Therefore, on the anvil of provisions couched in Section 192(1)(vi), this Court requires to appraise the decision of the respondent KMC as contained in the order dated 2nd July, 2015. On mere reading of the said order dated 2nd July, 2015, this Court is at a loss as to how and on what basis, the respondent No. 2 revised the annual valuation of the land in question, save and except, there has been an overt confirmation of the order dated 23rd August 2011 passed by the respondent No. 3 though the same was quashed by the coordinate Bench vide order dated 16th September, 2013.

It is trite law that the respondent No. 2 being the statutory authority needs to observe fair play while passing order revising annual value of the land in question upon concluding the proceeding which was initiated under Section 192(1)(vi). In addition thereto, the respondent No. 2 is also required to assign adequate reasons in support of enhancement of the annual value of the said land. Unfortunately, the impugned order dated 2nd July, 2015 is devoid of any cogent reason in support of substantial enhancement of annual value of the land.

This Court, considering the decision of the respondent No. 2, as communicated vide order dated 2nd July, 2015 and while adjudicating the validity of the said order, is required to elicit reasons from the order itself. In this regard, reliance is placed on five-judge Bench judgment of the Apex Court reported in **(1978) 1 SCC 405 (Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors.)**. This Court finds it apt to quote paragraph 8 of the judgment below:-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. In Gordhandas Bhanji:

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow order.”

Another aspect which does not escape notice of this Court that the respondent No. 2 in the order impugned dated 2nd July, 2015 in effect confirmed the order of respondent No. 3 which was quashed by the coordinate Bench vide

order dated 16.09.2013. After quashing the order dated 23rd August, 2011 of the respondent No. 3 by the coordinate Bench, it was not open to the respondent No. 2 to confirm the said order and based on such order enhance the annual valuation of the land in question. Such stand which emanates from the impugned order dated 2nd July, 2015 is deprecated.

Accordingly, the order dated 2nd July, 2015 stands set aside and the writ petition is allowed.

However, this order shall not preclude the concerned authorities of K.M.C. to initiate appropriate proceedings in accordance with law for reassessment/revaluation of the land in question of the petitioners. If the proceeding is initiated for reassessment of the land of the petitioners within 30 days from this date, same shall be taken to a logical conclusion within four months thereafter. All points are kept open with regard to reassessment proceedings, if initiated by the appropriate authority of K.M.C. It is made clear that in the event the concerned authority of the K.M.C. initiates such proceedings, the petitioners shall not pray for unnecessary adjournments or raise ground which is not available under the relevant provisions of law.

Accordingly, the writ petition is disposed of.

However, there shall be no order as to costs.

Urgent Photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(SAUGATA BHATTACHARYYA, J.)