8th December, 2023
(D/L No.5)
Ct. No.29
(SKB)

C.O.807 of 2019

The Kolkata Municipal Corporation and another
Versus
M/s. Anamika Kala Sangam Trust

Mr. Swapan Kumar Debnath
... for the petitioner

Mr. Uttiyo Mallick,
Ms. Trini Joarder,
Ms. Vedika Surekha
... opposite party

1. In this revisional application as filed under Article 227 of the Constitution of India, the judgment and order dated 8th August, 2016 as passed by learned 2nd Bench, Municipal Assessment Tribunal, The Kolkata Municipal Corporation in Municipal Assessment Appeal being MAA No.4091 of 2008 has been impugned at the instance of the Kolkata Municipal Corporation (hereinafter referred to as the "KMC") who is the petitioner before this court.
2. By the impugned judgment, learned Tribunal set aside the order of the Hearing Officer dated 18th September, 2008 in respect of assessment of annual valuation for the premises No.777, Anandapur, Kolkata w.e.f. 3rd quarter of 2007-08 for Rs.20,48,200/- holding that the provision of Section 174(2) and Section 174(4)(A) of The Kolkata

Municipal Corporation Act, 1980 (hereinafter referred to the said 'Act') have got no manner of application while assessing valuation of the said property.

3. In course of his argument, Mr. Debnath, learned counsel for the KMC/petitioner at the very outset draws attention of this court to the Annexure 'A' to the instant revisional application being the photocopy of the deed of licence dated 4th July, 2008 as executed in favour of the opposite party by the Kolkata Municipal Development Authority (in short 'KMDA') in respect of the said property. It is argued by learned counsel for the petitioner that from the recital of the said deed of licence, it is clear that the process of acquisition by the Government of West Bengal for the purpose of the KMDA has not been completed. It is candidly admitted by learned counsel for the petitioner that the Assessing Officer while assessing the valuation of the property failed to visualize the effect of non-completion of acquisition in respect of the said land by the Government of West Bengal for KMDA and, thus, its finding with regard to the assessment from the 1st quarter of 1984 to 1985 to 3rd quarter 2007-08 is wrong and, to the effect, the petitioner before this court is not challenging the finding of the learned Tribunal.

4. Mr. Debnath, however, submits before this court that the learned Tribunal while passing the impugned judgment has placed his reliance upon Section 176 of the said Act without looking into the Explanation-II of Section 176 of the said Act. It is further argued that learned Tribunal has failed to visualize that since by a deed of licence dated 4th July, 2008 possession of the property-in-question has been delivered to the opposite party by the KMDA, which is a statutory body, the provision of Explanation-II of Section 176 would apply in this case in stead of Section 176 only of the said Act. He, thus, submits that the impugned order may be set aside by directing the Hearing Officer to reassess the property-in-question from 3rd quarter of 2007-08 by applying the provisions of Explanation-II of Section 176 of the said Act.
5. Per contra, learned counsel for the opposite party, in course of his submission, places reliance upon a judgment dated 27th March, 2023 *[The Kolkata Municipal Corporation Vs. M/s. South City Projects (Kolkata) Ltd.]* as passed in *C.O.3437 of 2015* by a co-ordinate Bench in respect of an adjacent land. It is submitted by learned counsel for the opposite party that when the petitioner/KMC is admitting its Hearing Officer's fault with regard to the application

of Section 174(2) and 174(4)(A) of the said Act, there cannot be any justification to interfere with the impugned order. It is further argued on behalf of the opposite party that the view taken by the learned Tribunal is very much justified and the same is sustainable in the eye of law.

6. On perusal of the entire materials as placed before this court and after hearing the learned counsel for the contending parties, it appears to this court that for effective adjudication of the instant matter, a brief look to Section 176 of the said Act is required and the same is reproduced herinbelow in verbatim:

> "**176. Annual valuation of lands or buildings belonging to various statutory bodies.**—The annual value of any land or building belonging to the State Government or any of the statutory bodies mentioned in clause (a) of sub-section (8) of section 171 shall be deemed to be five per cent of the cost of acquisition thereof, subject to any revision made in this behalf by the State Government on an application by any such body or by the Corporation.
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> [Explanation I.]—For the purpose of this section, the cost of acquisition shall mean,—
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> (i) in the case of any land or building acquired under the Land Acquisition Act, 1894 (1 of 1894), as amended by the Kolkata Improvement Act, 1911 (Ben. Act V of 1911), the value of such land or building as determined under the Land Acquisition Act, 1894, as so amended or by the Tribunal constituted under the Kolkata Improvement Act, 1911 or by any appellate authority under any of the enactments as aforesaid;
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> (ii) in the case of any land or building acquired by private treaty, the purchase price of such land or buildings;
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> (iii) in the case of any land or building taken for an improvement scheme under section 54 or section 55 of the Kolkata Improvement Act, 1911, such amount as may be determined under either of those sections;
>
> (iv) in the case of any land or building belonging to the State Government or any of the statutory bodies mentioned in clause (a) of sub-section (8) of section 171, such amount as may be determined under the provisions of the Act governing such body or of any

> other law in force for the time being and applicable to such body.
> [Explanation II.]—If the possession of any land or building acquired, constructed, purchased or owned by, or belonging to, Government or any of the statutory bodies mentioned in clause (a) of sub-section (8) of section 171 is delivered to any person under any agreement or licensing arrangement or lease or any other instrument, such land or building shall be construed to be belonging to such person to whom property has been so delivered and the annual valuation of such land or building shall be determined in terms of section 174."

7. On perusal of the Explanation-II of Section 176 of the said Act, vis-a-vis the photocopy of the deed of licence dated 4th July, 2008 as executed by and between the KMDA and the opposite party herein, this court has got no hesitation to hold that the property-in-question has been delivered to the opposite party herein and that the property-in-question is presumed to be a government land since prior to the delivery of possession, KMDA being a statutory body, is in actual possession of the said property since the process of acquisition by the West Bengal was then under due process as reveals from the recitals of the deed of licence. It may be so that with the passage of time, the property has already been acquired.
8. Such being the position, this court holds that the property-in-question is required to be valued by applying the provision of the Explanation-II of

Section 176 of the said Act in stead of Section 176 of the said Act.

9. This court most respectfully disagrees with the submission of the learned counsel of the opposite party that the facts and circumstances involved in this case is almost equivalent to the facts and circumstances as involved in the judgment as passed by the co-ordinate Bench in C.O.807 of 2019.

10. In view of the discussions made hereinabove, this court while disposing of the instant revisional application directs the Hearing Officer to reassess the valuation of the property-in-question i.e. premises No.777, Anandapur, Kolkata w.e.f. 3rd quarter of 2007-08 by applying the provision of Explanation-II of Section 176 of the said Act after giving opportunity of filling objection and hearing to the opposite party and shall come to a logical conclusion of the same within a period of three months from the date of communication of this order.

11. With the aforementioned observation, the impugned judgment and order dated 8th August, 2016 as passed by learned 2nd Bench, Municipal Assessment Tribunal, The Kolkata Municipal Corporation in Municipal Assessment Appeal being MAA No.4091 of 2008 is modified to the extent indicated hereinabove.

12. Accordingly, C.O.807 of 2019 is disposed of.

13. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Partha Sarathi Sen, J.)