IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present :

THE HON'BLE JUSTICE PARTHA SARATHI SEN

CO 834 of 2019

The Kolkata Municipal Corporation

Vs.

Aninda Sankar Mitra

For the petitioner :	**Mr. Alok Kr. Ghosh, Adv.,** **Mr. Swapan Kr. Debnath , Adv.**
For the O.P:	**Mrs. Aparajita Rao, Adv.,** **Miss. Ankana Basu, Adv.**
Last heard on:	**22.03.2023.**
Judgement on:	**28.03.2023.**

Partha Sarathi Sen, J:-

1. In this revisional application as filed under Article 227 of the Constitution of India, the order dated June 13, 2018 as passed by Learned Second Bench, Municipal Assessment Tribunal, Kolkata Municipal Corporation in M.A. Appeal No. 268 of 2015 has been assailed. By the impugned judgement, learned Tribunal while allowing the said appeal has been pleased to modify the assessment order dated 13.01.2015 as passed by the hearing officer of the Kolkata municipal Corporation in respect of flat No.407, 4^{th} floor of premises No.6/5D, Anil Mitra Road, Kolkata-700053. The Kolkata Municipal Corporation hereinafter referred to as the

‘Corporation’ (in short) felt aggrieved and thus preferred the instant revisional application.

2. In support of instant revisional application, learned advocate for the Revisionist/Corporation at the very outset draws attention of this Court to the annexure -A being the copy of the inspection book of the aforementioned premises. It is submitted that after construction of the said premises which is a new G +4 building, annual valuation was fixed to the tune of Rs. 27,47,300/-with effect from third quarter of 2006-2007 and challenging the said valuation the owners/persons liable in respect of the said newly constructed premises have not preferred any appeal and thus the said said valuation reached its finality. It is further submitted that similarly for the second quarter of 2007-2008, annual valuation of the said premises was assessed to the tune of Rs. 28,84670/-by increasing 5% of the annual valuation with effect from third quarter of 2006-2007 and challenging the said valuation also the owners/persons liable have not preferred any appeal and thus the said valuation also reached its finality.

3. It is thus argued that while passing the impugned judgement, the Learned tribunal ought to have considered the aforesaid facts as available from the I.B. Book in respect of the said premises and thus must not disturb the rate of assessment as made by the Hearing officer on 13.01.2015.

4. It is further argued on behalf of the Revisionist/Corporation that there is no justification on the part of the Learned Tribunal to place on reliance on the judgement of M.A.A 1032 of 2008 in the impugned judgement since the premises involved in the present appeal and the premises involved in M.A.A

1032 of 2008 do not stand on the same footings on account of their different age of construction.

5. It is also argued that while passing the impugned judgement, the Learned Tribunal failed to consider the true spirit and mode of assessment of the determination of annual valuation as envisaged in Section 174 of the KMC Act, 1980, hereinafter referred to as the 'said Act'. It is thus contended that the assessment as made by the Learned Tribunal is exceptionally low and the same may be set aside by allowing the instant revisional application.

6. Per contra, Learned Advocate for the Opposite Party/owner at the very outset draws attention of this Court to the order dated 13.01.2015 as passed by the hearing officer of the Kolkata municipal Corporation in respect of flat No.407, 4th floor of premises No.6/5D, Anil Mitra Road, Kolkata-700053. It is contended that since the hearing officer in his said order dated 13.01.2015 has assigned no reason as to how, he has arrived to the calculation of Annual Valuation of the said flat, Learned Tribunal is very much justified in passing the judgement which is the subject matter of challenge in the instant appeal. Drawing attention to the impugned judgement, it is contended on behalf of the opposite party that the Learned Tribunal has assigned sufficient reason for assessing the valuation in respect of the flat in question and at the same time discussed the accepted principle of Law relating to assessment and fixation of annual valuation in respect of the flat in question. It is thus argued that it is fit case for dismissal of the instant revisional application.

In support of her argument, Learned Advocate for the Opposite party placed her reliance upon the following reported decisions :

(a) ***India Automobiles Ltd -vs- Calcutta Municipal Corporation & another*** reported in ***(2002) 3 SCC 388***.

(b) ***Surendra Enterprises Pvt. Ltd -vs- Calcutta Municipal Corporation & others*** reported in **AIR *1995 Cal 26***.

(c) ***Commissioner, Kolkata Municipal Corporation & others -vs- Hastings Propoerty & otheres*** APO No. 213 of 2004 in W.P. 1050 of 1996 as passed by a Division Bench of this Hon'ble Court.

7. I have meticulously perused the entire materials as placed by the contending parties at the time of hearing. I have also perused the order dated 13.01.2015 as passed by the hearing officer of the Kolkata municipal Corporation in respect of flat No.407, 4th floor of premises No.6/5D, Anil Mitra Road, Kolkata-700053 and the impugned judgement. I have also perused the provision of Section 174 of the 'said Act'. I have also given due consideration over the submissions of the Learned Advocates for the contending parties.

8. On conjoint perusal of the provision of Section 174 of the 'said Act' and the decisions as cited from the Bar, I have no hesitation in mind to hold that when a hearing officer passes an assessment order, he acts as a quasi judicial authority and therefore he is duty bound to assign sufficient reasons while passing such order of assessment. Since the order dated 13.01.2015 as passed by the hearing officer of the Kolkata municipal Corporation in respect of flat No.407, 4th floor of premises No.6/5D, Anil Mitra Road,

Kolkata-700053 is not at all speaking, in my considered view the Appellate Tribunal is very much justified in modifying the assessment as made by the hearing officer.

9. As rightly pointed out by the Learned Advocate for the opposite party in the reported decision of ***India Automobiles Ltd*** (supra), the Hon'ble Apex while dealing with the provision of Section 174 of the said Act expressed the following view :

> *" .... The 1980 Act, therefore, requires application of mind by the municipal authorities to determine the rents on the basis of reasonableness by keeping into account all relevant circumstances including the actual rent received by the owner, hypothetical standard rent, the rent being received by the tenant from his sub-tenant and other relevant consideration, such as prevalent rate of rent of lands and building in the vicinity of the property being assessed. Only because the owner of the building is not getting the same rent which the sub-tenant is paying to his lessor, cannot be made a basis to deprive the corporation from determining the annual valuation and taxing the land or building on that basis. If such a plea is accepted, it would be against the provisions of the statute which has been enacted to provide civic services in the form of water, drainage, sewerage, collection, removal and disposal of solid waste, fire prevention and fire safety maintenance of street and public places etc., in the municipal area where such land or building is situate............................"*

10. Keeping in mind the legislative provisions of Section- 174 of the said Act and the propositions of Law as enunciated in the case of **India Automobiles Ltd** (supra), I shall make an endeavour to assess as to how far the Assessment Tribunal is justified in assessing the annual valuation of the flat in question in the impugned judgement by reducing the same as fixed by the Hearing officer vide; his order dated 13.01.2015. Admittedly in page 7 of the certified copy of the impugned judgement, the Tribunal has assigned reason for increasing the RR (rate of rent) of the flat in question @ 13 % but has miserably failed to justify as to how the judgement of the said Tribunal in M.A.A. 1032 of 2008 can be made applicable in M.A.A. 268 of 2015. However keeping in mind that the flat in question is situated in moderately prominent area in the City of Kolkata having all the facilities of urbanization in its vicinity and the R.R.(rate of rent) as fixed by the Tribunal is on the lower side, justice would be sub served if the R.R (rate of rent) of the flat in question is fixed @ **Rs. 2.25p per square feet for the covered area** and **Re.1/- per square feet for the car parking** with effect from **third quarter of 2012-2013.**

11. The revisionist Kolkata Municipal Corporation is thus directed to calculate the annual valuation of the flat No.407, 4th floor of premises No.6/5D, Anil Mitra Road, Kolkata-700053 at the rate mentioned in the preceding paragraph of this judgement with effect from third quarter of 2012-2013.

12. With the above mentioned observation, the instant revisional application is disposed of. The impugned order dated June 13, 2018 as passed by

Learned Second Bench, Municipal Assessment Tribunal, Kolkata Municipal Corporation in M.A. Appeal No. 268 of 2015 is thus modified to the extent indicated hereinabove.

13. Urgent Photostat Certified copy of this judgment, if applied for, be supplied to the parties expeditiously after complying with all necessary legal formalities.

(Partha Sarathi Sen, J.)