IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

C.O. 1607 of 2018
The Kolkata Municipal Corporation
Vs.
Mr. Rupen Mondal

For the petitioners	:	Mr. Alok Kumar Ghosh Mr. Swapan Kumar Debnath
For the opposite party	:	Mr. Sankha Subhra Dutta
Heard on	:	28.08.2023
Judgment on	:	06.09.2023

Ajoy Kumar Mukherjee, J.

1. Felling aggrieved by the order dated 24th July, 2017 passed by learned First Bench Municipal Assessment Tribunal , Kolkata Municipal Corporation (KMC) in MA Appeal No. 1844 of 2012, arising out of an order dated 24th April, 2017 passed by the Hearing Officer KMC relating to fixation of annual valuation, present application under Article 227 of the Constitution of India has been preferred.

2. Petitioner states that a new twelve storied building was constructed at 9A, Jatindra Mohan Avenue, Kolkata-700006, consisting of several flats. According to the petitioner said building is the best building on the said road and locality with all amenities of drainages, sewerage, electricity, road, water supply etc. of the KMC, which was completed within the first quarter of 2008-09.

3. The opposite party purchased a flat measuring an area of 861 sq.ft., being Flat No. 8D, at 8th Floor of the building and a car parking space measuring an area of 134 sq.ft. at the said premises.

4. Opposite party herein applied to the KMC to mutate her name against the said purchased flat and the KMC authorities in due compliance with the law mutated the name of the opposite party and gave assessee number. KMC also issued notice, proposing the amount for assessment of annual valuation in respect of the said flat w.e.f. second quarter of 2008-09. After service of notice upon the opposite party, with the said proposal, the opposite party herein raised her objection and by an order dated 6th August, 2012 the Hearing Officer of KMC after considering the objection fixed annual valuation in respect of the said flat and car parking space at Rs.27,020/- for the period w.e.f. 2/2008-09 taking into consideration, rent at the rate of 2.75 per sq.ft. per month for the flat and Rs. 1 per sq.ft. per month for open car parking space.

5. Being aggrieved by the said order opposite party herein filed an appeal being no. MAA No. 1844 of 2012 before the Municipal Assessment Tribunal and learned 1st Bench of the Municipal Assessment Tribunal upon hearing the parties in the appeal, passed the order impugned allowing the appeal in part. The Tribunal modified the order of the hearing officer by reducing the amount of annual valuation and fixed the same at Rs. 14,030/- for the periods w.e.f. 2/2008-09.

6. Mr. Alok Kumar Ghosh, learned Counsel appearing on behalf of petitioner submits that the tribunal should not have held that the annual valuation of the premises in question would be Rs. 14,030/-. The Tribunal committed wrong in fixing the annual valuation of the premises in question at Rs. 14,030/- upon taking into account the rate of rent as fixed in the Judgment passed in MAA No. 1819 of 2012 in respect of other flat which was based on the judgment passed in MAA No. 335 of 2010 in respect of the Premises situated on a lane namely Ram Chandra Ghosh Lane. Mr. Ghosh further submits that the Tribunal failed to assign any reason having due regard to the statutory provisions of law in support of it's determination of annual valuation and as such the order of the Tribunal is not sustainable. He further contended that the Tribunal failed to make any effort to ascertain the estimated market rental value of the flat for the purpose of determination of annual valuation of the premises in question and he also did not consider the inspection book copies referred to by the petitioner at the time of hearing of the appeal in it's true perspective. Accordingly Mr. Ghosh has prayed for setting aside the order impugned.

7. Mr. Dutta learned Counsel appearing on behalf of the opposite party submits that the assessment made by the hearing officer of KMC was exorbitant and has been made without taking into consideration the relevant provisions of law. Such assessment made by the hearing officer was arbitrary and as such the Tribunal rightly allowed the appeal in part which does not call for any interference.

8. I have considered submissions made by both the parties.

9. On perusal of the order impugned it appears that the said order was passed relying upon the judgment referred to by the appellant /opposite party herein passed in MAA No. 1819 of 2012 which relates to other flat of the premises in Appeal, wherein RR has been fixed by the said bench of Tribunal at the rate of Rs. 140 per sq.ft. per month for flat area and at the rate of Rs. 0.70 per sq.ft. per month for car parking space w.e.f. 2008-2009. Learned counsel appearing on behalf of the petitioner, Mr. Ghosh during argument submitted that the order passed in the said MAA no. 1819 of 2012 has already been set aside by this High Court in C.O. No. 3368 of 2017 on 12.12.2018 and as such he submits that the judgment on the basis of which the impugned order was passed, does not exist any more.

10. In fact in the present case, the Tribunal has modified the valuation of the flat in question on the sole consideration of the order passed in MAA 1819 of 2012, which has got no existence at present. Further more the order impugned is bereft of any cogent reason. Needless to say that Tribunal being the quasi judicial authority is bound to follow the procedure laid down in the KMC Act of 1980 and Rule of 1987 while discharging their duty.

11. On careful reading of section 174 (a) of the Kolkata Municipal Corporation Act, 1980 it appears that the corporation is empowered to fix the annual valuation of a premises for the purpose of determining, the tax to be paid in respect of said premises. Apex Court while dealing with Municipal laws in force in different states in India laid down guidelines for determination of annual rent, which should be determined on the basis of:-

(a) Actual gross annual rent, where the premises has been let out.

(b) If the premises has not been let out then on rent of hypothetical tenancy basis.

(c) Valuation arrived on the basis of capital value from which the annual value has to be found applying a suitable percentage, where either of the first two modes is not available.

(Bombay Municipal Corporation Vs. LIC, AIR 1970 SC 1584: 1970 (1) SCC 791 (para-8) & Guntur Municipal Council Vs. Guntur town Rate Payers' Association (AIR 1971 SC 353): 1970 (2) SCC 803 (para 5& 6).

12. In this context it should be made clear that fixation of annual valuation arbitrarily is not permissible under the law. Neither the corporation nor the Tribunal is free to assess any arbitrary annual value and corporation has to look to what is "fair rent" which would be payable for the premises in question during the year of assessment under the West Bengal premises Tenancy Act, 1997. The premises in question, if not actually let out, then the hypothetical fair rent, rent of neighbouring premises and other attending facts and circumstances of the potentialities should be taken into account for the purpose of assessment of annual valuation.

13. In ***India Automobiles Vs. Calcutta Municipal Corporation,*** reported in **AIR 2022 SC 1089**, Apex Court observed:-

> ***24.*** *"......... We are of the view that the basis for determination of annual rent value has to be the standard rent where the Rent Control Act is applicable and in all other cases reasonable determination of such rent by the municipal authorities keeping in view various factors as indicated herein earlier, including the rent which the tenant is getting from his sub-tenant. In appropriate cases the owner of the property may be in a position to satisfy the authorities that the gross*

annual rent of the building of which the annual valuation was being determined cannot be more than the actual rent received by such owner from his tenant. The municipal authorities shall keep in mind the various pronouncements of this Court, the statutory provisions made in the specified Municipal Acts, keeping in mind the applicability or non-applicability of the Rent Act and the peculiar circumstances of each case, to find out the gross annual rent of the building including service charges, if any, at which such land or building might, at the time of assessment, be reasonably expected to let from year to year in terms of Section 174 of the 1980 Act."

14. Since the Tribunal below failed to exercise jurisdiction vested in it by law and reassessed annual valuation on the basis of a judgement, which has already been set aside and that the Tribunal did not pass cogent speaking order while refixing annual valuation of the premises, which caused grave miscarriage of justice, I hereby set aside the impugned order concerning annual valuation in respect of the premises in question for the period w.e.f. 2nd quarter of 2008-09, with a direction to decide MAA No. 1844 of 2012 afresh, keeping in mind the aforesaid guidelines and also on the basis of the available materials on record, including the inspection book copies and also following statutory rules in respect of determination and fixation of annual valuation as laid down in the relevant provisions of the Kolkata Municipal Corporation Act and Rules thereunder, within a period of six months from the date of communication of this order.

16. C.O. 1607 of 2018 is accordingly disposed of.

There will be no order as to the costs.

Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJOY KUMAR MUKHERJEE, J.)