THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

C.O. 1804 of 2019

The Kolkata Municipal Corporation
Vs.
Sri Sukanta Chakraborty

For the petitioner	:	Mr. Alak Kumar Ghosh Mr. Fazlul Haque
For the opposite parties	:	Mr. Arunangshu Chakraborty Ms. Geniya Mukherjee Mr. Arijit Bera Ms. Jeva Rashid Ms. Shaika Amrin
Heard on	:	17.07.2023
Judgment on	:	31.07.2023

Ajoy Kumar Mukherjee, J.

1. Two applications being aforesaid C.O. 1804 of 2019 and C.O. 1808 of 2019 have been preferred against fixation of annual valuation in respect of a flat at 3rd Floor, at premises no. 6/6 Kali Charan Ghosh Road Kolkata -50, for the period with effect from 2nd quarter of 2012-2013 which relates to present C.O. 1804 of 2019 and the other application being C.O. 1808 of 2019 relates to 3rd quarter of 2011-2012 in respect of self same property. Due to commonality of issues involved in both the applications, they are taken up together and disposed of by this common order.

2. Subject matter of challenge in the present revisional application is order of modification of annual valuation by the Municipal Assessment Tribunal in MAA Appeal No. 655 & 656 of 2013 dated 18th April, 2016.

3. The opposite party herein had raised objection against the annual valuation at Rs. 27020/- with effect from 3rd quarter of 2011-2012 and 2nd quarter of 2012-2013 as proposed by the Assessment officer of the corporation in respect of flat measuring covered area of 1906 square meter on the 3rd Floor of the building at premises no. 6/6 Kali Charan Ghosh Road, Kolkata-50. The Hearing officer of KMC after considering the objection filed by the opposite party fixed the annual valuation of the said flat at Rs. 24,860/- for the period with effect from 3rd quarter, 2011-2012 and 25,450/- for the period from 2nd quarter 2012-2013. Being aggrieved by the said order, regarding fixation of annual valuation by the assessment officer, opposite party preferred appeal being MAA No. 655 of 2013 and 656 of 2013 for the said two quarters before the learned Municipal Assessment Tribunal of KMC. Learned 2nd Bench of the Tribunal, upon hearing the parties in the appeal passed the impugned order, allowing the appeal in part upon modification of the order of hearing officer by reducing the amount of annual valuation and fixed the annual valuation at Rs. 10061/- for the period with effect from 3rd quarter of 2011-2012 and 2nd quarter of 2012-2013.

4. Challenging said impugned order, Mr. Ghosh appearing on behalf of the petitioner/KMC argued that the Tribunal has reduced the annual valuation more than cent percent without any basis. The Tribunal committed wrong in fixation of the annual valuation of the premises in question at Rs. 10,060/- upon taking into account the order passed in MAA

No. 141 of 2000, which case is factually different and has got no applicability in the present context. His contention is Tribunal should have assessed reasonable rent on the basis of existing market rent. Merely because the road or the postal zone area are same with that of MAA No. 141 of 2000, that cannot give rise to make equal valuation of all the premises in the said locality. In fact the tribunal without considering the legal provisions as laid down in section 174 of the Kolkata Municipal Corporation (KMC) Act of 1980 and without assigning any reason has made the said re assessment. The Tribunal even failed to ascertain the estimated market rental value of the flat for the purpose of determination of annual valuation of the premises in question. The Tribunal also violated the principles of natural justice. The Tribunal even did not consider the copies of inspection book referred by the petitioner at the time of hearing of the appeal in its proper perspective. The Tribunal also did not consider the cost price of the premise and the rise of rent in the locality and has wrongfully exercised its jurisdiction. He further contended that the judgment of the said Tribunal passed in other case being MAA No. 141 of 2000, relying upon which the said impugned order was passed , has already been set aside by this High Court and learned Tribunal should not have relied upon and passed the impugned order, modifying order of the hearing officer. Accordingly the order is bad in law and liable to be set aside.

5. Mr. Chakraborty learned counsel appearing on behalf of the opposite parties raised objection contending that assessment made by the hearing officer of the KMC was exorbitant and also without any basis and as such the Tribunal after considering the issue in its proper perspective has revised the same. In such view of the mater and considering the other aspect prevailing in the locality the order impugned does not call for any interference.

6. I have heard both the parties and also considered submissions made by the parties. On perusal of the order impugned it appears that while the hearing officer of KMC, after considering the objection raised by the opposite party herein, fixed the annual valuation of the said flat amounting to Rs. 24,860/- and 25,450/- with effect from 3/2011-2012 and 2/2012-2013, the Appellate Tribunal by the impugned order has reduced it to Rs. 10,060/- with effect from 3rd quarter of 2011-2012 and second quarter of 2012-2013.

7. The relevant portion of the order passed by the Tribunal in support of such reduction may be quoted

> *"The Ld. Advocated for the appellant has argued that the Ld. Hearing Officer arbitrarily fixed the A.V without paying any respect to the provision of the Act of 1980. In support of his contention copy of judgment of the Tribunal in M.A.A-141 of 2000 wherein R.R was fixed @Rs.0.60 per sq.ft per month for covered area & Rs. 0.30 per sq.ft per month for C.P space w.e.f 1/98-99.*
>
> *On the other hand, it is argued by the Ld. Advocate for the respondent that the order of the Ld Hearing Officer is reasonable and should be affirmed.*
>
> *On careful perusal of the referred cases of the appellant, it appears that the referred case of the appellant is situated at same road and same postal zone i.e. premises no. 6D/1, Kali Charan Ghosh Road, Kol-700050 within ward no 02.*
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> *Having regard to the submission of both the parties, documents relied on specially the location, R.R & the effective Qts of the referred case of the appellant, we are of the considered view that the R.R of the premises in question should be fixed at Rs.0.85 per sq.ft per month w.e.f. 3/2011-2012 & 2/2012-2013.*
>
> *Therefore, the A.V of the said demised premises under present appeal w.e.f 3/2011-2012 & comes to:*
>
> *Therefore the annual valuation of the said flat w.e.f. 3/2011-2012 & 2/2012-2013 comes to:*
> *(1096 X Rs.0.85 X12-10%)*

=Rs. 10061.28 or say Rs.10,060/-"

8. It further appears that while passing the impugned order, the court below has considered one of its earlier order passed in MAA No.141 of 2000 where in Rate of Rent (RR) was fixed at Rs. 0.60 per square feet per month for covered area and Rs. 0.30 per square feet per month for car parking space with effect from 1st quarter of 1998-1999. Needless to say that said MAA was disposed of more than 12 years back. It has not been explained in the order impugned as to how the order passed in aforesaid MAA No. 141 of 2000 is relevant in the present context, specially when mode of assessment made in said MAA No. 141 of 2000 has already been set aside by this court. If that be so how it can be the comparable unit. It is needless to mention that since the annual valuation in connection with premises in MAA No. 141 of 2000 was tested almost 12 years back, obviously during this long period of 12 years the rental value has been substantially increased. Not only that learned tribunal has not discussed about the entries made in the inspection book.

9. The Kolkata Municipal Corporation Act 1980 provides the detailed provisions of taxations and property tax under part IV chapter XII of the said Act. Under section 180 of the said Act the annual valuation of a land or building may be revised on the grounds mentioned in the said provisions under the said Act. Section 184(4) of the said Act mandates that before making any revision/fixation of annual valuation, the Municipal Commissioner shall give notice not less than 30 days to the owner enabling the said person to raise objection to the proposed annual valuation. Section 188 of the Act deals with hearing and determination of objection of valuation. Section 189 of the Act of 1980 provides for preferring appeal before the Municipal Assessment Tribunal for disposal of appeal preferred against the order passed under section 188 of the Act.

10. The State Government by virtue of section 170 read with section 600 of the Act of 1980 has framed Calcutta Municipal Corporation (Taxation) Rules 1987. Section 188 of the said Act read with rule 9(3) of the said Rule of 1987 provides detailed procedure for hearing and disposal of an objection to the proposed annual valuation of the property in question. Said provisions make it clear that the duty casts upon Hearing Officer to adhere to the said procedure while dealing with the objection under section 186 of the Act. The Hearing officer under Rule 9(3) (c) of the said Rule of 1987 is vested with the jurisdiction to call upon the person appearing before him at the time of hearing to file written statement supported by duly sworn-in affidavit, if necessary, giving particulars of his submission in support of the disputes raised against the proposed annual valuation of the property. Similarly Tribunal by virtue of Rule 15 enjoys the power of civil court and to summon any witness or for production of any document which the Tribunal may require for disposal of the appeal before it and the detailed procedure for hearing of the appeal has been laid down in Rule 19 of the said Rule, which includes local inspection, in case of necessity, of such premises, which are the subject matter of appeal as provided in rule 20 of the Rule of 1987.

11. Here the Tribunal by the order impugned has modified annual valuation of the flat in question on the basis of one of its earlier judgment in connection with a completely different premises passed in MAA No. 141 of

2000. Merely on the ground that property situates under the same ward of Kolkata Municipal Corporation or may be within the same locality where the suit flat situates, cannot be the yardstick of assessment for computing annual valuation of the present flat. The Tribunal being the quasi judicial authority is bound to follow the procedure while discharging their duty. Accordingly it is apparent, while modifying order of hearing officer, the learned Tribunal has not recorded any cogent reason for such modification in violation of principle of natural justice and he has passed the order in violation of the statutory/obligation casted upon the Tribunal for assessment of annual valuation.

12. On careful reading of section 174 (a) of the Kolkata Municipal Corporation Act, 1980 (in short KMC 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 guideline 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).

13. In this context it should be made clear that fixation of annual valuation arbitrarily (as has been done in the present context) is not permissible under the law. Either the corporation or the Tribunal is not 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 neighboring premises and other attending facts and circumstances of the potentialities should be taken into account for the purpose of assessment of annual valuation.

14. 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."*

15. Since the Tribunal below failed to exercise jurisdiction vested in it by law and also the Tribunal did not pass cogent speaking order while deciding annual valuation of the premises, which caused grave miscarriage of justice, this court has no other alternative but to interfere with the order impugned invoking power under Article 227 of the Constitution of India.

16. In such view of the subject matter I have no other option but to set aside the impugned order concerning annual valuation made by the Tribunal for 2nd quarter of 2012 -2013 and 3rd quarter of 2011-2012 in MAA 655 of 2013 & MAA 656/2013 dated 7th July, 2013 with a direction to decide MAA 655 of 2013 and MAA 656 of 2013 afresh keeping in mind the aforesaid guidelines and also on the basis of available materials on record including the inspection Book copies and also following statutory Rules in respect of determinations and fixation of annual valuation as laid down in the relevant provisions of the Kolkata Municipal Corporation Act, within a period for six months from the date of communication of the order.

17. C.O. 1804 of 2019 is accordingly disposed of. In view of disposal of C.O. 1804 of 2019, C.O. 1808 of 2019 is also disposed of accordingly. Let a copy of this judgment be placed in the record of C.O. 1808 of 2019.

There will be no order as to 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.)