

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

**CO 3437 of 2015
The Kolkata Municipal Corporation
Vs
M/s. South City Projects (Kolkata) Ltd.**

For the petitioner : Mr. Alak Kumar Ghosh
Mr. Biswajit Mukherjee
Mr. Swapan Kumar Debnath

For the respondent : Mr. Abhrajit Mitra, Sr. Advocate
Mr. Satadeep Battacharya
Mr. Saptarshi Datta
Ms. Srijnita Ghosh
Mr. Pourush Kanti Pal

Heard on : 13.03.2023

Judgment on : 27.03.2023

Ajoy Kumar Mukherjee, J.

1. Being aggrieved and dissatisfied with the order dated 22nd September, 2014 passed by the learned 2nd Bench, Municipal Assessment Tribunal, The Kolkata Municipal Corporation (in short KMC) in M.A. Appeal No. 3442 of 2008 arising out of an order dated 25.07.2008 passed by the Hearing Officer-II relating to fixation of annual valuation in respect of the premises no. 770, Anandapur, Ward No. 108, for the period with effect from 1st quarter of 2007-

2008, present application under Article 227 has been preferred. The petitioner contended that the opposite party herein applied to Kolkata Metropolitan Development Authority (hereinafter called as KMDA) for the purpose of obtaining lease of the plot of land measuring an area of 2.5 acres which was in process of acquisition by the State Government for the purpose of the KMDA. Since the KMDA was not in a position to grant lease, the KMDA and the opposite party agreed to enter into an agreement of "License" in respect of the said plot. The agreement of license enabled M/S. south City Projects (Kolkata) Limited to carry on construction, 'infrastructure Tower' and to use the same for 99 years on certain terms and conditions and also the opposite party agreed to make a payment of consideration/premium amount of Rs. 11,34,37,500/- plus rent. Accordingly the deed of license was executed on 24th December, 2007 and the said consideration amount was paid to KMDA by the opposite party.

2. Now petitioners contention is that the said grant of license in contemplation of execution of a lease is nothing but a transfer of interest and right of possession and right of user in respect of the said plot of land to South city Project (Kolkata) limited. Initially petitioner contended that in law right of ownership of the said land remained with KMDA but the property for the period of 99 years belongs to M/S South City Projects (Kolkata) Limited. Accordingly petitioner contended that granting lease of the said land for 99 years in favour of said projects limited under section 105 of Transfer of the Property Act ought to be considered that there had been a rightful separation of ownership from

possession and they have transferred interest of possession and the usufructs in the said plot of land to the said projects limited and under the agreement of license the said City Projects Limited also took the liability to pay all taxes and dues on and from 24.12.2007. The opposite party applied for mutation of the name with the KMC record as person liable to pay taxes and the KMC authority granted mutation recording the name of the opposite party as person liable and also granted assessee number. Afterwards authority of the KMC served notice upon opposite party proposing the annual valuation to be fixed at Rs. 79,40,620/- for the period with effect from 1st quarter of 2007-2008 as per the provisions of the KMC Act, 1980 and also invited objection. The opposite party herein accordingly filed objection and opposite party was heard and considering the documents as placed before the hearing officer, the hearing officer fixed the annual valuation for the period with effect from 1st quarter 2007-08 to the tune of Rs. 79,40,620/- taking into account the basis at the rate of 7% of the market value as provided under section 174 of the KMC Act 1980. The opposite party challenging the said order of fixation of annual valuation dated 25th July 2008 by the hearing officer preferred an appeal being aforesaid MAA No. 3442 of 2008 before the Municipal Assessment Tribunal KMC. The said Tribunal taken up the hearing and was pleased to deliver the impugned judgment with the following observation:-

“Although the ownership of the property lies with the KMDA but in view of Sec. 189(5) of KMC Act, 1980, the appellant is empowered to file the present appeal specially when in the deed of license

(exbt-1), the appellant has been entrusted with the liability of payment of tax. Hence decided A.V. of the premises in question w.e.f. 1/2007-08 will be :- Rs. (37,850/- +20%) = Rs. 45, 420/-

As a result, the appeal succeeds in part.

The memo of appeal is sufficiently stamped. Hence,

ORDERED

That the MAA-3442 of 2008 is allowed in part on contest but without cost. The impugned order dated 25-7-2008 of Hearing officer II (Borough XII) of The Kolkata Municipal corporation is hereby modified and the ANNUAL VALUATION for the premises, namely, KMDA plot No. IND-6, Sector-'K', Nonadanga of premises No.770, Anandapur, Kolkata, having assessee No. 3110802132741 w.e.f. 1/2007-08 is fixed at Rs. 45,420/-

Let a signed copy of this judgment be sent as soon as possible to the Ld. Municipal Commissioner for information under provision of Rule-25 of KMC (Taxation) Rules, 1987.”

3. Petitioner’s further contention is that the value of the land has been substantially increased and for which the opposite party considering the market value of the land paid premium of Rs. 11,34,37,500/- and an additional amount of rent of Rs. 1 per katha per year. However, the Tribunal passed the judgment without appreciating the words “owned by” and “belonging to” as appearing in section 171 (8) and the word “belonging to” in

section 176 in the KMC Act, 1980. Practically Tribunal has failed to differentiate the words “owned by” and “belonging to” and accordingly Mr. Alak Kumar Ghosh on behalf of the petitioner submits that legislature has used the terms “belonging to” in section 176 in connection with the determination of the valuation in contradiction to “owned by” or “belonging to” in section 171 (8) (b) of the KMC Act. He further contended when the legislature used the two terms in two different sections it is understood that the words are used for two different meaning.

4. In this context Mr. Ghosh further submits that Tribunal failed to appreciate that in terms of section 171(8) (a) and (b) of the KMC Act, 1980 the same has application only where the property i.e. land “owned by” and “belonging to” KMDA for the purpose of development scheme in accordance with the published or approved plans. Section 171 (6) has application in respect of approved scheme for the purpose of subsidized housing for persons belonging to low income group or individual workers and comprising of tenements let out to such persons on a monthly rent. Accordingly section 176 has no manner of application in the present context. In the present case the valuation was done applying provisions of section 174 (3) of the Amended Act. However during the period of which assessment was done the provisions of the old Act stood amended.

5. Though in this Application KMC referred KMDA as owner of the property but during argument Mr. Ghosh referred the lease deed and contended that it has been clearly recited in the deed that the said property is in the process of

acquisition by the state of West Bengal for the purpose of the authority under due process of law. If that be so then neither KMDA nor the government is the owner of the property and as such the assessing officer assessed the annual valuation in its proper perspective.

6. Mr. Abhijit Mitra learned counsel appearing on behalf of the opposite party raised strong objection and by filing affidavit in opposition contended that application is barred by the principles of waiver, acquiescence, estoppel and petitioner has filed the petition in suppression of material facts. He further contended that the issue raised in the application challenging the order dated 22nd September, 2014 are no longer *resintegra* as the same has been conclusively decided by the Division Bench of this court in the case of ***The Kolkata Municipal Corporation and another Vs. Fabworth Promoters Private Limited & Ors.*** reported in **(2016) 3 CHN 590**. In the said judgment it had been held that the words “owned by” and “belonging to” in relation to section 171(8) and section 176 of the KMC Act are synonymous. Mr. Mitra further submits that deed of lease was executed on 24th December, 2007 and said factum of execution of deed was duly informed to the petitioner and since then the opposite party became liable to pay municipal tax. The KMC on the basis of the opposite party’s application had duly mutated its name as licensee in respect of the said premises under KMDA as licensor. He further contended that shortly thereafter the petitioner had issued five several notices under sections 184 (3) and 184 (4) of the KMC Act. In the said notices KMDA was described as licensor and in the 5th notice the opposite party was addressed as

licensee. The opposite party filed an objection against the valuation and petitioner accepted the objection that the property belongs to a statutory body and therefore is governed by section 176 of the said Act. Accordingly the valuation against the periods i.e. 2nd quarter of 1989-90, 2nd quarter of 1995-96, 2nd quarter of 2001-02 and 1st quarter of 2001-02 was reduced and fixed at Rs.31,280/-, Rs.34,410/-, Rs.34,410/-,Rs.28,410/- respectively.

7. For the period commencing 1st quarter of 2007-08 onwards a rate card was issued by the petitioner which referred to an order passed by the hearing officer dated 25th July 2008 wherein as per the rate card, the annual valuation was fixed at Rs. 79,40,620/- with effect from 1st quarter 2007-08. The Appeal was accordingly preferred against the said valuation and the Tribunal passed the impugned order after recording deposition of the witnesses of both the parties. and also upon considering facts and circumstances and materials on record. Mr. Mitra accordingly concluded said order is a reasoned order passed by the Tribunal and it does not call for any interference.

8. I have gone through the respective submissions. Mr. Ghosh's contention is that the issue to be considered in the facts and circumstances of the case is that the vacant land now in absolute control of the opposite party for all intents and purposes, is to be assessed under section 174 of the KMC Act. The concerned hearing officer decided the annual valuation of the vacant land at 7% of the estimated market value whereas the Tribunal considered that as the ownership remained with the KMDA, the annual valuation has to be assessed under the provision of 176 of the Act and accordingly the learned Tribunal

fixed the annual valuation for the premises at Rs. 45,420/- upon enhancing 20% annual valuation of Rs. 37,850/- as fixed with effect from 2/2001-02. Mr. Ghosh's further argument is that the said valuation of four respective period under section 176 of the KMC Act was made on the basis of the understanding that the land was owned by the KMDA but the deed of license shows that KMDA described itself as the authority and the land is in the process of acquisition by the state of West Bengal for the purpose of the authority under due process of law and it was admitted thereon that the authority is not in a position to grant any lease of the aforementioned land in favour of licensee. In fact it was erroneously represented before the petitioner that the KMDA was the owner of the land and hearing officer on such impression decided the annual valuation of land in question for four respective periods with effect from 1/1984-85 under the provisions of section 176 of the KMC Act. He strenuously argued that section 176 of the KMC Act is applicable for determination of annual valuation if the land is in the hands of KMDA. He further contended that it is uncertain whether the lease will ultimately be granted at all in favour of KMDA after completion of the acquisition proceeding and as the land does not belong to KMDA at the time of assessment, the same cannot be assessed for fixation of annual valuation under section 176 of KMC Act. This is also because opposite party by virtue of said transaction is in possession of the said land and in absolute control over the land and they have also raised a multistoried building therein and occupancy as well as use of property had already been changed after execution of said purported instrument and the

entire process for determination was done on erroneous basis and misconception of law as well as misconception of fact. Accordingly Mr. Ghosh argued that as opposite parties have absolute control over the land it may be treated that the land belongs to the opposite party for the purpose of assessment of the annual valuation of the land in question. He further argued that though the opposite party has alleged that a lease deed has been executed in their favour by the KMDA on 03.01.2019 but nothing appears from the said purported deed of lease that upon completion of process of acquisition of the land and transfer of title to the land in favour of the KMDA by the Government of West Bengal, the authority has granted the lease in favour of opposite party. Practically the said lease deed is absolutely silent about the devolution of the landed property. Mr. Ghosh also argued that during pendency of this revisional application, explanation (ii) has been inserted under section 176 of the KMC Act and said explanation (ii) as inserted states if the possession of any land or building acquired, constructed, purchased or owned by and belonging to government or any of the statutory body mentioned in clause (a) of sub-section (8) of section 17 is delivered to any person under any agreement including licensing agreement or lease or under 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.

9. He further contended although the said explanation (ii) has been inserted with effect from 7th August , 2019 but said explanation is applicable in the

present case since the lis has not yet been reached to its finality in view of reported judicial pronouncements. In this context he relied upon judgment in ***Lakshmi Narayan Guin & Ors Vs. Niranjana Modak*** reported in **AIR 1985 SC 111** and in ***State of West Bengal Vs. Terra firma Investment & Trading Private Limited*** reported in **1995 (1) SCC 125**, and he also relied upon the judgment of ***The Kolkata Municipal Corporation Vs. Motilal Naresh Kumar*** reported in **2007 (2) CHN 143**.

10. It appears from the submission that the property in question stands in the name of KMDA in the records of KMC. In 3rd Paragraph of the impugned order it has been clearly mentioned and even in the revisional application in paragraph 4 and paragraph 14, KMDA has been stated to be the owner of the said property by the petitioner. In fact annual valuation has been made by the Tribunal on the basis of the cost of acquisition. It also appears that initially a deed of license on 24th December , 2007 was entered in between the KMDA and the opposite party wherein opposite party was inducted as licensee for 99 years upon payment of a premium amount of Rs. 11,34,37,500/- and subsequently registered lease deed also executed by KMDA in favour of opposite party on 3rd January, 2019. It also appears that KMC had been duly informed about of the execution of license deed and they requested opposite party for mutating their name and on 6th August 2008 the mutation certificate was also issued by the petitioner in favour of the KMDA describing KMDA as licensor and opposite party as licensee in respect of the suit property. In fact the issue as to whether the words “owned by” and “belonging to” as appearing in section 171(8) (a) and

176 are synonymous or not was raised in ***The Kolkata Municipal Corporation and another Vs. Fabworth Promoters Private Limited & ors. (supra)*** and it was clearly held in the said judgment that the phrases “owned by” and “belonging to” are synonymous. Learned counsel for the KMC submitted that against said order appeal is pending before the Apex Court and as such the said observation has not reached its finality. However, as submitted by the opposite party as there was no stay upon the said observation, so the observation made by the Division Bench by this court is binding as on this date for the purpose of consideration of the present dispute.

11. It is surprising that the KMC only in its affidavit in reply for the first time have disputed KMDA’s title. It is well settled that the hearing officer has no jurisdiction to determine or decide the question of title which civil court can only do. Such issue that the KMDA was not the owner was never raised either before the hearing officer or before the Appellate Tribunal. On the contrary in all it’s earlier document and even in this Revisional Application the petitioner has addressed KMDA as owner of the said property. Even before the Municipal Appellate Tribunal KMC they had admitted KMDA’s ownership which is reflected in the impugned order. Learned lawyer for the opposite party in this context relied upon Judgment in the ***Jai Narain Parasrampuriah (dead) & Ors. Vs. Pushpa Devi Saraf & Ors*** reported in ***(2006) 7 SCC 756*** para 33 as follows:-

“33. While applying the procedural law like the principle of estoppel or acquiescence, the court would be concerned with the conduct of a party for determination as to whether he can be permitted to take a different stand in a subsequent proceeding, unless there exists a statutory interdict. If the principle of estoppel applies, Sarafs will not be permitted

by a court of law to raise the contention that the Company was not the owner of the property.”

12. In ***Sushil Kumar Vs. Rakesh Kumar*** reported in **(2003) 8 SCC 673**

para 65 as follows:-

“65. Furthermore, a person should not be permitted to take advantage of his own wrong. He should either stand by his statement made before a court of law or should explain the same sufficiently. In absence of any satisfactory explanation, the court will presume that the statement before a court is correct and binding on the party on whose behalf the same has been made.”

13. It is true that title cannot be created by admission but at the same time petitioner failed to establish, though in view of assertion burden heavily lies upon it, that such property does not belong the Government or statutory bodies under the said Act, so that section 176 of the Act can be said to be not applicable in the present context.

14. Under section 2 (62) of the KMC Act owner includes the person for the time being receiving the rent of any land and or building or of any part of any land or building whether on his account or as agent or trustee for any person or society or for any religious charitable purpose or as a receiver who would receive such rent if the land or building in or any part of land or building were let to tenant. In the present case admittedly KMDA is receiving rent for the said property. KMC also muted its name and said property has been recorded in the name of KMDA in the municipal records by the petitioner. Now after three/four decades, if the petitioner comes up with the plea that the KMDA's name was recorded in respect of the said property on erroneous belief such plea is not entertainable. Moreover, learned counsel appearing on behalf of the opposite party has rightly pointed out that the party cannot be permitted to make out

completely new case by way of rejoinder or affidavit in reply. In this context reliance has been placed upon **2022 SCC Online Bom 6639 (para 7), 2007 SCC Online Cal (809 para 6), 1987 SCC Online Cal 331 (para 13).**

15. Again the petitioner has come up with another new contention that during pendency of the instant civil revisional application explanation (ii) has been inserted under section 176 of the KMC Act and though said explanation came into effect from 7th August 2019 but as the present application is continuation of the said proceeding so the said provisions is very much applicable in the present context, since the lis has not reached it's finality.

16. In this context it can be said that the settled principle of law is that though appeal can be treated as continuation of suit but it is not so in a case of revisional jurisdiction. In this context reliance has been placed upon judgment of **Karnataka Housing Board Vs. K.A. Nagamani** reported in **(2019) 6 SCC 424** wherein it was held in paragraph 6.6 as follows:-

“6.6. Reference must also be made to the judgment of this Court in Hindustan Petroleum Corpn. Ltd. v. Dilbahar Singh [Hindustan Petroleum Corpn. Ltd. v. Dilbahar Singh, (2014) 9 SCC 78 : (2014) 4 SCC (Civ) 723] , wherein it was held that : (SCC pp. 96-97, para 28)

“28. ... Conceptually, revisional jurisdiction is a part of appellate jurisdiction but it is not vice versa. Both, appellate jurisdiction and revisional jurisdiction are creatures of statutes. No party to the proceeding has an inherent right of appeal or revision. An appeal is continuation of suit or original proceeding, as the case may be. The power of the appellate court is co-extensive with that of the trial court. Ordinarily, appellate jurisdiction involves rehearing on facts and law but such jurisdiction may be limited by the statute itself that provides for appellate jurisdiction. On the other hand, revisional jurisdiction, though, is a part of appellate jurisdiction but ordinarily it cannot be equated with that of a full-fledged appeal. In other words, revision is not continuation of suit or of original proceeding. When the aid of revisional court is invoked on the revisional side, it can interfere within the permissible parameters provided in the statute.”

(emphasis supplied)

17. Accordingly in view of aforesaid discussion I do not find any merit in the present application and as such it is liable to be dismissed.

18. C.O. 3437 of 2015 is thus dismissed.

There will be no order as to costs.

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

(AJAY KUMAR MUKHERJEE, J.)