

**IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
Original Side**

Present:

**The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Rai Chattopadhyay**

***APO No.38 of 2021
With
GA No. 1 of 2021
With
GA No. 2 of 2022
With
WPO No. 186 of 2020***

***The Kolkata Municipal Corporation & Ors.
Versus
Smt. Anuradha Chaudhuri & Ors.***

For the Appellants/KMC

: Mr. Alope Kumar Ghosh,
Mr. Gurudas Mitra,
Mr. S. Panda.

For the Respondent No.1

: Mr. Rudraman Bhattacharyay,
Ms. Piyali Sengupta,
Ms. Amrita Panja Moulick,
Mr. Satwaki Mukherjee.

For Respondent No.2

: Ms. Subhangini Singh,
Ms. Niharika Singh,
Mr. Ashok Kumar Singh.

Hearing concluded on : 10/08/2022

Judgment on: 11/01/2023

Rai Chattopadhyay,J.

(1) In the impugned judgment dated 19.01.2021, Ld. Single Bench has founded its decision on the reasons inter alia that there cannot be any deprecation and denial of an existing right or benefit by any action involving civil consequence without substantial compliance with the principles of natural justice. Ld. Single Bench has found that, in case of the writ petitioner/respondent no.1, the action taken by the appellant/corporation would not fulfill the required criteria of adherence with the said principles, her plea has remained unheard though she has been subjected to face civil consequences by the impugned action of the appellant/Corporation. Ld. Single Bench has further held that doors of this constitutional court are not closed for her, even though the statute might have provided a remedy by way of an appeal. The writ petitioner/respondent was directed to be allowed an opportunity of hearing, before the 'Hearing Officer' and all the steps of the Corporation for enhancement of the valuation of the property by issuance of Red Cards and raising supplementary bills, were set aside.

(2) Appellant/Corporation is dissatisfied and aggrieved with the said judgment dated 19.01.2021, passed by the Ld. Single Bench in writ petition

No. WPO 1861 of 2020. They have challenged the same and justified their own action, inter alia, on the grounds argued before this court. The arguments made by Mr. Alope Kumar Ghosh, appearing for the appellant/corporation, may be summerised, as follows:-

- (3) Appellant's first challenge is to the maintainability of the writ petition.
- (4) Appellant says that the law and the Rules made thereunder, ordain preferring an appeal before the appropriate forum, in case an assessee is aggrieved with an order of the 'Hearing Officer' as regards the assessment of property valuation and tax imposed thereon. Provisions under Section 189 of The Kolkata Municipal Corporation Act, 1980 (therein after referred to as the KMC Act, 1980) was resorted to, which is as follows:-

189. Appeal before the Municipal Assessment Tribunal:-

(1) There shall be a Municipal Assessment Tribunal for hearing and disposal of an appeal against an order passed under section 188.

(2)

(3)

(4)

(5) Any owner or person liable to payment of 3 [property tax] may, if dissatisfied with the determination of objection under section 188 appeal to the Tribunal: Provided that such appeal shall be presented to the Tribunal within forty-five days from the date of service of 4 [a copy of the order] under section 188 and shall be accompanied by a copy of the said order.

- (6) No appeal under this section shall be entertained unless the 3 [property tax] in respect of any land or building for the period ending on the date of presentation of the appeal on the valuation determined under section 188 has been deposited 5 [in the office of the Corporation] and the appeal shall abate unless such 3 [property tax] is continued to be deposited till the appeal is finally disposed of.**
- (7) The provisions of Part II and Part III of the Limitation Act, 1963 (36 of 1963) relating to appeal shall apply to every appeal preferred under this section.**
- (8)**
- (9) The decision of the Tribunal with regard to valuation or assessment shall be final and no suit or proceeding shall lie in any Civil Court in respect of any matter which has been or may be referred to or has been decided by the Tribunal.**
- (10) The valuation fixed after disposal of the appeal under this section shall take effect from the quarter in which such valuation would have taken effect and shall continue to remain in force during the period such valuation would have remained in force, had no appeal been filed.**
- (5)** It is submitted that, order dated 26.12.2019- of the Hearing Officer, with respect to the respondent no.1/writ petitioner's property in this case, shall be amenable to challenge vide a statutory appeal, by virtue of the aforesaid provision of law and there would be very little or no scope for this court of equity to interfere into the same.
- (6)** Thereafter, the appellant has taken up the point of voluntary abstention of the respondent No.1/ writ petitioner from appearing as well as submitting any written objection before the Hearing Officer. It is submitted that such conduct of the assessee even after due receipt of the notice would firstly

entitle the Hearing Officer to determine the valuation of the property without hearing her and without considering her objection and on the other hand would disentitle the assessee to receive any copy of the order, as per section 188 of the Act, as an 'objector'.

(7) Mr Ghosh has father emphasized that the respondent No.1 /writ petitioner has obtained the benefit under the 'Waiver of Interest and Penalty of the Property Tax Payers Scheme 2020'. She applied for waiver of interest and penalty under the said scheme before passing of the impugned judgment and order dated 19.01.2021 and after passing of the impugned judgment she has remitted all arrears under the said scheme. It has been argued that as per clause 6(2) of the Scheme of 2020, she has accepted the annual valuation of the property and has paid the arrear property tax under the said Scheme. Therefore according to the appellant/ Corporation, any plea of prejudice of her at this juncture is only futile.

(8) Mr. Ghosh has relied on the following judgments for the propositions as narrated below :

i. Ashoka Hotel vs KMC reported in 2000(1) Calcutta High Court Notes

740 – held that where no objection was filed, the provisional

assessment would not be set aside and writ petition/appeal would stand dismissed.

ii. KMC vs Kapoor & Company Private Limited reported in **2002(2)**

Calcutta High Court Notes 377 - held the stages of proceedings before the Hearing Officer, that first the assessee would discharge his onus to show the reasonable rent of the property including service charge, thereafter the authority would ponder upon the basis of its provisional assessment. Hearing Officer would arrive at a decision only after consideration of materials placed on record by both the parties. In this case the lease deed was the only material available before the Hearing Officer and he has done no error or illegality by arriving at a decision on the basis of the same, more so when the respondent No.1/ writ petitioner has refrained from attending the hearing, in spite of receipt of notice.

iii. Recovery Nursing Home Private Limited vs KMC & Others reported in

2019(3) Calcutta Law Journal (Cal) 281 – held that non-filing of written objection would not mean the Hearing Officer to be denuded of

his jurisdiction to fix the annual valuation, that the writ court cannot turn itself as the appellate authority.

- iv. Bhavnagar University vs Patitam Suger Mills Private Limited & Others** reported in **(2003) 2 SCC 111 (para 61)** – held that statements of fact recorded in the judgment are conclusive, incontrovertible by affidavit or other evidence.
- v. An unreported** decision of this Court in **Rakesh Kumar Jindal & Another vs KMC & Others (APO No. 125 of 2020)** – held no prejudice having been caused to the assessee due to non supply of copy of order as per Form-H of the KMC (Taxation) Rules, 1987 and upheld the order of learned Single Bench to relegate the petitioner to the statutory appellate authority.

(9) The respondent No.1/writ petitioner's answer to the same may be narrated in the following words:

The principles of audi alteram partem and the principles of natural justice has been denied by the Hearing Officer. The fixation of the annual valuation has been determined without following the process of law and the order has been passed without assigning any reason thereof. The

order passed by the Hearing Officer is a nullity as it is contrary to the purpose for which notices were issued. The Corporation authorities have allowed some deduction in respect of the earlier valuation and the Hearing Officer in his said order has disallowed such deduction which was earlier allowed to the respondent No. 1/writ petitioner. No calculation and/or basis of determination of annual valuation fixed with effect from 1st Quarter, 2013-14 and 2nd Quarter, 2016-17 had been given in the said order of the Hearing Officer.

No reasoning has been recorded in support of the fixation of the annual valuation in terms of the Ground No. ii(b) in the hearing notices. Such an unreasoned order is a nullity in the eyes of law. The only sentence which has been passed by the Hearing Officer in respect of the fixation of annual valuation is “ The A.V. is fixed ex-parte at Rs. 10,80,000/- (FNR) w.e.f. 01/2013-14 under Section 188 of the K.M.C Act, 1980.” and “A.V. is fixed at Rs. 12,96,000/- (INR) w.e.f. 02/2016-17 under Section 188 of the K.M.C. Act, 1980.”

No order of the Hearing Officer was communicated along with the rate card, neither the rate card contains the text of the order as passed

by the Hearing Officer. The said rate card only contains the amount of the annual valuation fixed. The rate cards which were supplied to the writ petitioner in terms of Form-H recorded that the same were being issued after consideration of the objection. The copy of the order passed by the Hearing Officer also contains a heading “Objection Docket”, whereas her objections were never considered by the authority.

Lastly, that the right to prefer appeal accrues only on service of copy of the order. Unless the order has been communicated to the assessee and/or the objector, it is difficult for him or her to prefer appeal in absence of being informed about the reasons mentioned in the said order of the Hearing Officer.

(10) Along with Section 189 of the K.M.C Act, 1980, Mr. Rudraman Bhattacharyay, appearing for the party has also relied on Rules 9 and 10 of the Calcutta Municipal Corporation (Taxation) Rules, 1987, on this aspect, which are as follows:-

Rule 9 Objections -

(2) – When an objection is determined and order is passed, the Municipal Commissioner shall cause to be given or tendered or sent by hand or under registered post a copy of such order to the person filing the objection in Form – H.

Rule 10 From, presentation and registration of appeals -

(3)(a) – Every Memorandum of Appeal shall, unless the Chairman allows time for furnishing the requisites, be accompanied by a copy of the order appealed against.

(11) Mr. Bhattacharyay, has relied on the following three judgments, to fortify his arguments:-

- i. **(2006) 4 CHN 905 – Turner Morrison & Co. Ltd. & Anr. –vs.- State of West Bengal & Ors. and Calcutta Municipal Corporation & Ors. –vs.- Anomoni Narayan & Ors. – Para 9**

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“It is the mandate of the legislature upon the Corporation to provide for a copy of the order passed by the Hearing Officer to the objector. So long such communication is not made, it would not be proper for the Corporation to raise supplementary bill and compel the objector to pay the same without exercising his right under the statute to have an appeal preferred before the Tribunal.”

- ii. **(2002) 3 CHN 65 – Narendra Dev Narayan –vs.- Calcutta Municipal corporation & Ors. – Para 13**

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“In the instant case, I have already indicated that no reason has been communicated in support of the determination although, some reasons were in fact assigned. Under such circumstances, in my view, the right to prefer appeal has practically not yet accrued. The right to prefer appeal in reality will accrue only on service of copy of the order when the period of limitation for preferring appeal will start running and thus before service of copy of the order, no demand can be made on the basis of the determination.”

- iii. **(1998) 2 Cal LJ 87 – The Calcutta Municipal Corporation & Ors. –vs.- Paresh R. Kampani & Ors. – Para 4.**

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“It is now well settled principles of law that assignment of reason is also one of the limbs of principles of natural justice and an unreasoned order is a nullity particularly when an appeal lies therefrom. When an unreasoned order is passed, even the Appeal

Court would feel great difficulty in considering the same in its proper perspective.”

(12) The facts of the case, which are necessary for proper adjudication of the instant appeal, may be narrated down in the following manner :

The respondent No.1/writ petitioner is the owner of premises No.26, Sarat Chandra Bose Road, Kolkata-700020, Flat No.11 and an assessee under the appellant Corporation. She has been owning and possessing the said property after duly remitting tax and rates to the appellant Corporation, for years together. Previously the annual valuation of the premises was Rs.7,77,600/-.

The respondent No.1/writ petitioner entered into a lease agreement with the proforma respondent No.2/Bank of Baroda on July 9, 2013, for a period of 10 years, starting from May 17, 2011 which was subsequently renewed by the other indenture dated May 17, 2021, for a further period of 10 years. The parties agreed that all municipal rates and taxes shall be borne by the proforma respondent No.2/Bank of Baroda, by reimbursing the said amount to the respondent No.1/writ petitioner, upon

production of receipt. As a lessee, the proforma respondent No.2/Bank of Baroda was inducted into the property to occupy and perform therefrom.

Appellant has stated that at a subsequent period, the respondent No.1/writ petitioner and the proforma respondent No.2/Bank of Baroda mutually agreed that the later would remit the taxes and any increase thereof, directly to the appellant Corporation, which are evident from the office records of the appellant.

Appellant issued notice dated September 30, 2019, under section 184 of the Kolkata Municipal Corporation Act, 1980, specifying the assessed annual valuation to the tune of Rs. 12,96,000/- (twelve lakh ninety six thousand), with effect from 2nd quarter of 2016-2017 and Rs. 10,80,000/- (ten lakh eighty thousand), with effect from 1st quarter of 2013-2014. Appellant, by dint of the said notice, sought appearance of the respondent No.1/writ petitioner, before the Hearing Officer, on November 8, 2019. A written objection was also invited under provisions of section 186 of the said Act.

Section 184 of the Kolkata Municipal Corporation Act, 1980, is an enabling provision by exercise of which the Corporation may

revise the annual valuation of the property. This provision, precisely, section 184(3) of the said Act would require the Corporation to issue written notice, in case increase of the previously assessed annual valuation, is sought to be effected.

According to the respondent No.1/writ petitioner, she was represented by her Ld. Advocate before the Hearing Officer, along with the original notice dated September 30, 2019 and the objection petition, on the date of hearing, i.e, November 8, 2019, though the Hearing Officer neither accepted her objection petition nor heard the Ld. Advocate appearing on her behalf. Contrarily, the appellant has stated that the respondent No.1/writ petitioner failed to appear or be represented on the said date of hearing, i.e, November 8, 2019, also that she has failed to file any written objection in terms of the provisions under section 186 of the said Act.

Fact remains that subsequently similar notices were issued to the respondent No.1/writ petitioner, twice, fixing the dates of hearing on September 27, 2019 and November 8, 2019, respectively. However, according to the appellant, on none of the occasions the respondent No.1/writ petitioner turned up, either personally or through her

representative, before the Hearing Officer. She has also not submitted any written objection.

Thus the Hearing Officer determined the increased rate of annual valuation of the said property, vide his order dated November 8, 2019, at the rate of Rs. 12,96,000/- (twelve lakh ninety six thousand), with effect from 2nd quarter of 2016-2017 and Rs. 10,80,000/- (ten lakh eighty thousand), with effect from 1st quarter of 2013-2014.

There have been further subsequent events like sending written representation dated December 18, 2019, by the Ld. Advocate of the respondent No.1/writ petitioner to the appellant Corporation, seeking redress of the grievance of not being afforded with an opportunity of hearing and also not being served with a copy of order of the Hearing Officer dated November 8, 2019. Appellant states to have responded by supplying copy of order dated November 8, 2019, along with its letter dated December 26, 2019, to the Ld. Advocate of the respondent No.1/writ petitioner. This fact is , however, denied by the respondent No.1/writ petitioner.

(13) Ld. Single Bench is also very much alive to the facet that, by an order under Section 188 of the KMC Act, 1980, the appellant has subjected the respondent no.1/writ petitioner to the consequences of paying enhanced rates and taxes, with respect to her property and in that event, the rule of law would require the principles of natural justice to be duly sub served. There appears to be no error committed by the Ld. Single Bench, in following the proposition as above and also the ratio of the decision in **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors.**, reported in (1998) 8 SCC 1, by the Hon'ble Apex Court. It would be beneficial to quote the relevant portion of the impugned judgment dated 19.01.2021, as follows:-

“11. In the decision of Whirlpool Corporation Vs Registrar of Trade Marks, Mumbai and Others reported in (1998) 8 SCC 1, it has been decided that alternative remedy had consistently been held by the Supreme Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any fundamental right, where there has been violation of the principles of natural justice and where the orders or the proceedings were wholly without jurisdiction or the vires of an Act was challenged. The rule requiring exhaustion of statutory remedies before filing a writ petition was a rule of policy, convenience and discretion, rather than a rule of law. Much water had flown under the bridge but there had been no erosive effect on these decisions which continue to hold the field with the result that the law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution of India, inspite of existence of alternative statutory remedies was not affected especially in a case where the authority had acted without jurisdiction or had violated the principles of natural justice. In this case, the writ petition is maintainable as the orders passed by the Hearing Officer were in the

absence of the petitioner. The relevant portion of the said judgment is quoted below:-

“17. A specific and clear rule was laid down in State of U.P. v. Mohd. Nooh [AIR 1958 SC 86 : 1958 SCR 595] as under: “But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies.”

18. This proposition was considered by a Constitution Bench of this Court in A.V. Venkateswaran, Collector of Customs v. Ramchand 10 Sobhraj Wadhvani [AIR 1961 SC 1506 : (1962) 1 SCR 753] and was affirmed and followed in the following words:

“The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned Solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive, and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court.”

(14) Therefore, it is the trite law, that the provision of appeal, being available under the statute, shall not deter the aggrieved person to approach a court of equity, in case, in following the procedures under the law, the State Authority defies or fails to comply with the principles of natural justice as that though may not affect the procedural relief available but shall be defiant of the rule of law and prejudicial to the person’s interest.

(15) This brings us to the second point of argument advanced by Mr. Ghosh, for the appellant.

(16) Mr. Ghosh mentions the point of grievance of the respondent no.2/writ petitioner, that she has not been allowed to take part in the hearing and has also not been served with a copy of the order of the Hearing Officer dated 26.12.2019. He says that the respondent no.1/writ petitioner opted out from taking part in the hearing of the case and was not an ‘objector’ before the Hearing Officer. According to him, this shall make the provisions of law to apply against the writ petitioner so far as the aspect of service of copy of order to her, is concerned, i.e, the law shall not require such a service upon her. Also that the law shall not require the Hearing Officer to desist from passing his order of revised assessment of the property, as the property owner (the respondent no.1/writ petitioner in this case) has refrained from filing any ‘objection’.

(17) Section 184 (unamended) and 186 of the KMC Act, 1980, having been relied on, may be reproduced below:-

“184. Public notice and inspection of assessment list.—(1) When a general revaluation under sub-section (1) of section 180 in any ward of the Corporation or part thereof, as the case may be, has been completed, the Municipal Commissioner shall cause the respective

valuation to be entered in an assessment list in such form and containing such particulars with respect to each land or building as may be prescribed.

(2) When the assessment list has been prepared the Municipal Commissioner shall give public notice thereof and of the place where the list or a copy thereof maybe inspected, and every person claiming to be the owner, lessee, sub-lessee or occupier of any land or building include in the list and any authorized agent of such person shall be at liberty to inspect the list and to take extracts therefrom free of charge.

(3) The Municipal Commissioner shall give public notice of the place, time and date, not less than one month after the preparation of the assessment list as aforesaid, when he will proceed to consider the annual valuations of lands and buildings entered in the assessment list, and in all cases in which any land or building is for the first time assessed, or the annual value of any land or building is increased, he shall also give written notice thereof to the owner or to any lessee, sub-lessee or occupier of such land or building and shall also specify in the notice the place, time and date, not less than one month thereafter, when he will proceed to consider such valuation.

(4) Before making any revision of annual value under sub-section (2) of section 180 and clause (a), clause (b) and clause (c) of section 185, the Municipal Commissioner shall give the owner, any lessee, sub-lessee or occupier of any land or building, notice of not less than thirty days that he proposes to make the revision and consider any objection which may be made by such owner, lessee, sub-lessee or occupier.

Explanation.- A written notice under this section shall be deemed to be duly served, if it is sent through any mode of service of Indian Postal Service or as may be decided by the Corporation, to the owner or to any lessee, sub-lessee or occupier of any land or building and, in such case the date of sending such notice through Postal Department or through any other means shall be deemed to be the date of service of the notice to the owner or to the lessee, sub-lessee or occupier of such land or building, as the case may be.”

“186. Objections against valuation of assessment.—Any objection to the annual value determined by Corporation under sub-sections (1) and (2) of section 180 or clause (a), clause (b) or clause (c) of section 185, shall be made by the owner or the person liable to pay the property tax, In writing, to the Municipal Commissioner before the date fixed in the notice under sub section (4) of section 184 and shall state in what respect the annual value is disputed.”

(18) Section 188 (3) of the Act (unamended) has also been relied on to submit that the appellant's statutory duty of supply of copy of order arises, only when there is an objection by the property owner and determination of such objection by the Hearing Officer, vide a written order passed by him and not otherwise. Mr. Ghosh would emphasize that record shows due service of notice upon the respondent no.1/writ petitioner. Mr. Ghosh would further submit, that though the said respondent having not submitted any written objection under Section 186 of the Act, was not entitled for supply of copy of order as per Section 188 of the Act, the appellant/Corporation in response to the letter of her learned Advocate dated 08.12.2019, has supplied her a copy of the written and reasoned order passed by the Hearing Officer on 26.12.2019. Thus according to Mr. Ghosh there would be no scope for her to be aggrieved for non supply of copy of order passed by the Hearing Officer and also that the question of her prejudice shall also not arise on the pretext that non-receipt of copy of order passed by the Hearing Officer has in any way deferred or deterred her from preferring a statutory appeal.

(19) The question of prejudice to have been caused to the respondent no.1/writ petitioner is two dimensional here. Respondent no.1 says that on

30.09.2019 notices were issued to her under Section 184 (3) and 184 (4) of the KMC Act, 1980 (unamended), seeking her appearance before the Hearing Officer on 08.11.2019 for assessment of the annual valuation of the concerned property upon proposal of the appellant/Corporation to enhance the same to the tune of Rs. 10,80,000/- and Rs. 12,96,000/- for 1st quarter of 2013-14 and 2nd quarter of 2016-17, respectively, instead of the previous valuation of Rs. 7,77,600/-. She was put on notice to file written objection against the said proposed valuation and the date of hearing was fixed on 08.11.2019. Respondent No.1 says that though she was duly represented by her learned lawyer before the Hearing Officer on the date of hearing, with the written objection, neither his presence was noted nor he was allowed to submit the written objection, on the said date to the Hearing Officer. Contrarily, it is appellant's case that respondent no.1 has voluntarily refrained from appearing before Hearing Officer, on the scheduled date and submitting any written objection. These counter versions have given rise to the question as to whether respondent no.1 would be considered to be an 'objector' within the four corners of law or not.

(20) It would not be out of context, to accentuate the fact that both the contesting parties have conceded about the Hearing Officer finally determining the assessment of the concerned property, in absence of the respondent no.1 – the reasons thereof being differently emphasized by the appellant and the respondent no.1.

(21) According to the appellant/corporation, the respondent no.1 refraining herself to appear before the Hearing Officer and her failure in filing any written objection has given it the right to determine property assessment, in absence of the owner/respondent no.1. Hence, valuation was finally determined and bills were raised. However, after a thorough and careful reading of the relevant provisions under Section 186, and 188 of the KMC Act, 1980, one must find that the authority has not been empowered with any specific provision as to the same. Legislators have not provided for proceeding ex-parte by the Hearing Officer in case of determination of the valuation of the property, without giving an opportunity of hearing to the owner thereof. The question of coming into play of the principles of natural justice would only intervene at this very juncture and compliance with the principles of audi alteram partem would be inevitable. Determination of the

property valuation in any manner other than by following the said principles would render the same as illegal, nullity, perverse and vexatious. Therefore, when the Ld. Single Bench has grounded its decision, on the proposition that if the law requires a particular thing to be done in a particular manner, it must be done in that manner or not at all – relying on the judgment of Hon'ble Supreme Court in **Dipak Babaria & Anr. vs. State of Gujrat & Ors.**, reported in **(2014) 3 SCC 502**, we place concurrence with the same.

(22) This brings us to the second dimension of the matter, i.e, upon her prayer, the respondent no.1 has been supplied with a copy of order passed by the Hearing Officer. Section 188(3) of the Act is the enabling provision by dint of which a copy or order of the Hearing Officer shall be supplied to the assessee/objector and not otherwise. Corporation accepts supply of copy of order to the respondent no.1. In that event the Ld. Single Bench has not faulted in considering status of respondent no.1 as that of an 'objector' under Section 188 of the said Act, and that the appellant /Corporation to have conceded to the same. It has also been unerringly held that in such an event when the Corporation supplies a copy of order to the respondent No.1 / writ petitioner, the law recognizes her to be an 'objector' within its purview.

It shall not be futile to mention that in Form-H, the appellant has mentioned to have considered the 'objection' of the assessee/respondent no.1. Appellant, though has termed the same to be a 'mistake' and a minor one to be overlooked, but that submission is however, also not accepted, in view of the serious effect it would bear.

(23) In that event, it was incumbent upon the Hearing Officer to have passed his order mandatorily and only after hearing the respondent no.1/writ petitioner and not otherwise.

(24) Ld. Single Bench has very aptly relied on the following two decisions of the Hon'ble Supreme Court, on this aspect:-

“15. In the matter of H.L. Trehan & Ors. vs Union of India & Ors., reported in AIR 1989 SC 568, it has been held that it was a well established principle of law that there could not be any deprivation or curtailment of a right or benefit enjoyed by a person, without the compliance of the rules of natural justice. In M/s Dwarkadas Marfatia & Sons vs. Board of Trustees of the Port of Bombay, reported in (1989) 3 SCC 293, it had been held that all actions of the executive or quasi-judicial authority were open to judicial review and the court could see that such body fulfilled the statutory purpose and acted in public interest and not in an arbitrary manner. Thus, the actions of the KMC in the facts of this case are subject to judicial review, as the KMC had failed to comply with the statutory provisions.”

(25) Hence, argument by the appellant of due consideration of the lease deed and other materials by the Hearing Officer to pass an order under Section

188 of the Act, would not suffice, unless the owner of the property is given a hearing before that office. The argument that deed of lease executed between the respondent no.1 and the proforma respondent Bank and the amount of rent settled therein would entail automatic enhancement of property valuation for which, to hear the assessee would be an empty formality, is also not substantiated in view of the mandatory statutory provisions as discussed earlier. No less important is to mention about the non consideration by the Hearing Officer of the relevant record regarding remittance of all arrears and property tax by the respondent No. 1/ writ petitioner under the 'Waiver of Interest and Penalty of the Property Tax Payers Scheme 2020' as claimed by the appellant Corporation. Though the appellant is assertive about the same while brushing aside assessee's plea of prejudice but has been unsuccessful to show due consideration there upon by the Hearing Officer at the time of delivering his order.

(26) The entire discussion as above would certainly lead to the conclusion that affording an opportunity of being heard to the respondent No.1/ writ petitioner would have been the statutory duty of the appellant and imperative in this case. There would have been no scope for the Hearing

Officer under the law, to determine the valuation of the property, without affording an opportunity of to the owner/assessee. Therefore such a determination by the Hearing Officer suffers from gross illegality and noncompliance with the principles of natural justice. Learned Single Judge is absolutely just and proper in finding the same in the impugned judgment which requires no interference to the same by this Court.

Arijit Banerjee, J.:

1. I am in agreement with the reasons recorded and conclusion reached by my learned Sister.
2. I only wish to add that the order assailed before us is a well considered one containing detailed reasons. The learned Judge has found that there has been violation of the principles of natural justice on the part of the appellant Corporation. Accordingly, the learned Judge has remanded the matter to the competent authority for fresh consideration.
3. We should keep in mind that while hearing an intra Court appeal, the Division Bench should not interfere with the order under appeal only because it may have a different opinion. If the view taken by the learned Single Judge is a plausible one, the order impugned ought not to be touched. In the present case, on a

perusal of the documents on record it does appear to me that the respondent/writ petitioner was not afforded adequate opportunity of hearing before the annual valuation of the property concerned for the relevant quarters was enhanced.

4. Hence, the judgment of the learned Single Bench is upheld. The present appeal being APO No. 38 of 2021 is dismissed.
5. Connected and pending applications, if any, are also disposed of. It is made clear that the directions made in the impugned judgment dated 19-01-2021 Should be complied with within a period of 60 (sixty) days from the date of communication of this order.
6. Parties shall act on the server copy of the judgment, till the date of receipt of certified copy thereof.

I Agree,

(Rai Chattopadhyay, J.)

(Arijit Banerjee, J.)