IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

Present :- Hon'ble Justice Amrita Sinha

WPO 855 of 2022

Bateli Tea Company Limited & Ors.
Vs.
The Kolkata Municipal Corporation & Ors.

For the writ petitioners	:-	Mr. Raghunath Chakraborty, Adv. Ms. Tanusree Das, Adv. Md. Apzal Ansari, Adv.
For the respondents	:-	Mr. Ranajit Chatterjee, Adv. Ms. Tanushree Das Gupta, Adv. Ms. Komal Shaw, Adv.
Hearing concluded on	:-	05.04.2023
Judgment on	:-	13.04.2023

Amrita Sinha, J.:-

The petitioner no.1 company, being the owner of premises no. 13, Pramatha Chowdhury Sarani, New Alipore, Kolkata 700053, is aggrieved by the annual valuation assessed by the Corporation in respect of the said premises.

The annual valuation of the said premises was allegedly enhanced on a declaration filed by the representative of the company at the time of obtaining permission for conversion of mode of use of the ground and first floor of the subject property from residential to commercial.

The petitioners submit that the annual valuation was revised and raised without following the due provision of law and by merely inducing the representative of the petitioners to submit a declaration on a non-judicial stamp paper of rupees ten accepting the annual valuation as assessed by the Corporation.

It has been contended that there is no provision in law by which the revised annual valuation can be accepted by an assessee by submitting a declaration on a non-judicial stamp paper of rupees ten. According to the petitioners, the said undertaking was obtained by force and coercion. Petitioners being layman, ignorant of the statutory provisions, on good faith submitted the declaration and was made to accept the exorbitant annual valuation as assessed by the Corporation.

It has been submitted that the Corporation cannot compel an assessee to accept any valuation not assessed in accordance with the statutory provisions. The Corporation being a statutory authority is bound to act in accordance with the statute and cannot act arbitrarily in the matter of fixation of annual valuation.

The petitioners have submitted objection before the Corporation against such illegal assessment of annual valuation. Prayer has been made for setting aside the said valuation with a further prayer to reassess the property for fixing up the proper valuation of the same.

In support of the aforesaid submission the petitioners have relied upon the judgment delivered by a coordinate bench of this Court on 27th September 2016 in ***WP No. 25670 (W) of 2012*** in the matter of ***Sulphotek System Private Limited -versus- Kolkata Municipal Corporation and Others*** affirmed by the Hon'ble division bench on 1st March 2017 in ***MAT 2037 of 2016 with CAN 1281 of 2017*** in the matter of the ***Kolkata Municipal Corporation and Others -versus- Sulphotek Systems Private Limited***. Reliance has also been placed on the judgment delivered by this Court in the matter of ***PS Group Reality Limited and Others -versus- The Kolkata Municipal Corporation and Others*** reported in ***(2012) 3 WBLR (Cal) 916*** paragraphs 6, 12, 16 and 19.

The respondents oppose the prayer of the petitioners. It has been submitted that the subject premises comprises of a four-storied building with built up area of 10,760 sq.ft. situated on 7.48 cottah of land in New Alipore which is a prime locality of the city.

The representative of the petitioner company approached the Corporation seeking permission to use the ground and first floors of the building measuring 2,000 sq.ft. for commercial purpose. The petitioner's representative expressed desire to pay off the outstanding property tax dues prior to the permission being granted for conversion of the mode of use of two floors of the subject property.

On scrutiny of records it revealed that the subject property was assessed at a considerably low rate compared to similar properties in the neighbourhood/vicinity. After making the necessary calculations the annual valuation of the subject property was assessed at rupees one lakh fifty thousand only for the covered built up area of 10,760 square feet, on the reasonable rent of rupees 1.29 per square feet which was still low compared to similar properties in the neighbourhood.

The proposed assessment of annual valuation was intimated to the authorised representative of the petitioner with request to submit the filled up self-assessment form for valuation of the property under the Unit Area Assessment system which was necessary for granting permission for change of use of a portion of the subject property from residential to commercial.

The filled up self-assessment form duly signed by the representative of the petitioners was submitted before the concerned officer of the Corporation along with a declaration written on non-judicial stamp paper of rupees ten recording the acceptance of the revised annual valuation. The assessment was made in accordance with the formula under the Unit Area Assessment method prescribed in the statute with 20% capping applied for the entire property. As the assessment was formula based, there is hardly any scope to dispute the correctness of the same once the self-assessment form is correctly filled up and submitted by the assessee. The acceptance was recorded in the inspection book maintained by the Corporation.

As the petitioner's representative accepted the annual valuation and waived their right to file objection on the proposed revised annual valuation, the Corporation did not issue any separate notice of hearing prior to revising the annual valuation of the subject property. The petitioner even though accepted the assessed annual valuation, but did not pay the enhanced taxes pursuant to the bills raised by the Corporation.

The respondents vehemently oppose the allegation of use of any force, coercion or duress at the time of revision of the annual valuation. It has been submitted that the representative of the petitioner, on the advice of the petitioner company, submitted all documents and gave consent to the proposed revision and the same was recorded in the inspection book and consequently property tax bills were also raised relying on the accepted calculation.

It has been submitted that more than a month after acceptance of the enhanced annual valuation, the petitioners submitted a legal representation before the Corporation setting up an untrue story of application of force and coercion for granting permission for change of mode of use of the subject property from residential to non-residential. It has been contended that, the petitioner only after obtaining legal advice, submitted the objection to the enhancement of annual valuation by distorting facts. The acceptance of the proposed annual valuation was absolutely voluntary and there was no force or coercion by the Corporation upon the petitioners to accept the annual valuation as assessed.

The respondents pray for dismissal of the writ petition.

The respondents rely on the judgment passed by a coordinate bench of this court on 5 April 2019 in ***WP No. 17470 (W) of 2009*** in the matter of ***Ramgopal Kejriwal -versus- Kolkata Municipal Corporation and Others***.

I have heard and considered the rival submissions made on behalf of both the parties. The petitioners primarily try to make out a case that the provision of the Kolkata Municipal Corporation Act, 2008 has not been complied prior to revising the annual valuation of the property as notice of hearing was not issued prior to enhancing its annual valuation.

Part IV, Chapter III of the Kolkata Municipal Corporation Act, 2008 deals with taxation and the powers of taxation and property taxes. The mode and manner in which a property is to be assessed is prescribed therein. There is a provision for periodic assessment and revision of assessment. There is also provision for filing objections against valuation of assessment and hearing of such objections. The annual valuation assessed after hearing of objections fixing up the annual valuation of the subject property can be tested before the appellate forum.

In the present case, admittedly, the annual valuation of the property was revised and enhanced without affording a formal opportunity of filing objection to the proposed annual valuation. The annual valuation of the property stood enhanced allegedly as the assessee accepted the proposed enhancement by filing a declaration on a non-judicial stamp paper of rupees ten. The said acceptance was also recorded in the inspection book maintained by the Corporation.

The petitioners try make out a case that the said acceptance was obtained by force and coercion. The aforesaid submission of the petitioners is, however, not backed up by supporting documents to show that the petitioners were compelled to accept the proposed annual valuation. On the contrary, it appears that in the earnest desire to obtain the permission to change the mode of use of the subject property from residential to commercial, the petitioners voluntarily accepted the proposed annual valuation. The timeline leading to the filing of the writ petition suggests that the Corporation acted only on the request of the representative of the company. Apart from a legal objection filed nearly a month after acceptance of the enhanced annual valuation, there is nothing on record to show that the petitioners actually objected to the annual valuation which was proposed to be enhanced.

It is apparent that the petitioners were satisfied with the enhancement as made but lodged objection only upon obtaining legal advice. On the plea of pendency of the instant writ petition, the Corporation has alleged that, the petitioner company is enjoying a virtual tax holiday and not paying the taxes consequent to the property tax bills raised by the Corporation.

The issue to be decided is whether the assessee will be bound to abide by the proposed annual valuation allegedly accepted in the form of a declaration signed and submitted on a non-judicial stamp paper of rupees ten. The Corporation tries to set up the issue of waiver on the part of the assessee to raise objection by arguing that there has been voluntary acceptance of the proposed enhanced annual valuation by signing and submitting the declaration by the assessee.

On a perusal of the statute it does not appear that there is any provision to accept the enhanced annual valuation by submitting declaration on non-judicial stamp paper. Law provides that the revision proposed to be made is to be intimated to the assessee who has a right to file objection, if any, and thereafter to conduct a hearing to settle the objection raised by the assessee. The assessment made by the hearing officer may be subjected to scrutiny in appeal before the Municipal Assessment Tribunal.

Can the Corporation, being a statutory authority, act in any manner not laid down in the statute? The settled and the time-tested principle of law is that a statutory authority is required to act within the four corners of the statute and not otherwise. Corporation cannot apply discretion at the time of periodic assessment, revision of assessment or amendment of assessment. Assuming that no force was applied on the assessee to accept the annual valuation and further assuming that the assessment has been made in accordance with the formula as prescribed in law, nevertheless, the proposed annual valuation is required to be intimated to the assessee. Non-filing of objection within the prescribed time limit will amount to acceptance of the proposed change in the annual valuation; but not granting an opportunity to the assessee to file objection will certainly amount to violation of the statutory provisions.

It would have been suffice had the proposed amendment/enhancement was intimated to the assessee and date was fixed within which objection could be made and on the date of hearing the objection, the assessee may submit the declaration; but without following the steps as laid down in the statute the Corporation has presently been caught in the wrong foot. It may be that the calculations made to arrive at the assessed annual valuation is in accordance with the formula laid down in law, but there is hardly any scope to bypass the statutory provision and obtain a declaration from the assessee recording acceptance of revised annual valuation.

It may happen that an assessee, with a view to obtain certain benefit from the Corporation, submits the declaration and thereafter backtracks from the same. The Corporation, being a statutory body, will not be in a position to invoke any penal provision relying upon such declaration despite the fact that such declaration was signed and submitted voluntarily by the assessee without any force or compulsion from the Corporation. To rule out any such possibility, the legislature has consciously laid down a uniform procedure which is required to be followed at the time of revision, reassessment or amendment of annual valuation of the property.

Counter argument of the Corporation would be that, even a statutory right may be waived. True it is, but the same will only hold good as long as the assessee files the declaration and abides by the same. If the assessee cries foul, it will practically not be possible for the authority to compel the assessee to act in accordance with the said declaration.

The learned Single Judge in Sulphotek System (supra) was pleased to quash and set aside the impugned annual assessment made by the Assessor-Collector on the basis of the declaration submitted on non-judicial stamp paper of rupees ten. The Hon'ble Division Bench affirmed the said order.

In PS Group (supra) the learned Single Judge was pleased to quash and set aside the impugned annual valuation made on the declaration submitted on non-judicial stamp paper of rupees ten. The order of the leaned Single Judge was carried in appeal by the Kolkata Municipal Corporation but the appeal was disposed as the matter was amicably settled between the parties out of Court.

The ratio laid down in the above judgments will be applicable in case of the petitioner.

In view of the discussions made hereinabove the Court is of the opinion that the flaw in revising the annual valuation of the subject property is required to be rectified. The manner in which the error can be remedied is to set aside the impugned annual valuation of the subject property. The impugned valuation is, accordingly, quashed and set aside. It will be open for the Corporation to take steps for assessment of annual valuation of the property in accordance with law, at the earliest.

The writ petition stands disposed of.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)