

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

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

C.O. 130 of 2021

**The Kolkata Municipal Corporation
Vs**

Kusum Nahata & Anr.

With

C.O. 132 of 2021

**The Kolkata Municipal Corporation
Vs.**

Ananda Kumar Gupta & Anr.

With

C.O. 134 of 2021

**The Kolkata Municipal Corporation
Vs.**

Dr. Amitabha Ghosh

With

C.O. 136 of 2021

**The Kolkata Municipal Corporation
Vs.**

Vandana Dhurka & Ors.

For the petitioner : Mr. Alok Kumar Ghosh
Mr. Fazlul Haque

Heard on : 01.03.2024

Judgment on : 19.03.2024

Ajoy Kumar Mukherjee, J.

1. Aforesaid four applications have been preferred against fixation of annual valuation in respect of different flats at premises no. 36 B, Panditya Road in word no. 85, Kolkata -29 for the period w.e.f. 4th Quarter 2014-

2015. Due to commonality of issues involved in all the four applications they are heard together and are governed by this common order.

2. For better understanding a short description about the cases are given below:-

Case Number (1)	MAA Appeal No. (2)	Date of order (3)	Flat no. & period of Assessment (4)	Annual valuation fixed by Hearing Officer (5)	Annual Valuation fixed by the Ld. Tribunal (6)
i). C.O. 130 of 2021 KMC Vs. Kusum Nahata & other	i). MAA No. 1276 of 2015.	i). 13 th December, 2018	i). Flat Measuring covered area of 2356 Sq. ft. servants room and 200 Sq.ft. two open car parking space. 4 th Quarter 2014-215	i). 98,790/-	i). 40,500/-
ii). C.O. 136 of 2021 KMC Vs. Bandana Dhurka	ii). MAA No. 1277 of 2015	ii). 1 st March, 2019	ii). Flat measuring covered area of 1056sq.ft., 374 sq. ft. common area, one servant quarter measuring 60 sq.ft. one covered car parking space of 100 sq.ft. and one open car parking space measuring 100 sq.ft. at premises no. 36B Panditya Road. 4 th quarter 2014-2015.	ii). 62,000/-	ii). 17,860/-

iii). C.O. 134 of 2021 KMC Vs. Dr. Amitava Ghosh.	iii). MAA No. 1267 of 2015	iii). 24 th June, 2019	iii). Flat measuring covered area of 1419 sq.ft. 65 sq.ft. servant room, common area 524 sq.ft. 100 sq.ft. car parking space and 100sq.ft. open car parking space on the ground floor at the premise no. 36B Panditya Road. 4 th Quarter, 2014-2015.	iii). 85,510/-	iii). 24,530/-
iv). C.O. 132 of 2021 KMC Vs. Ananda Kumar Gupta and another	iv). MAA No. 1266 of 2015	iv) 9 th August , 2019	iv). Flat measuring covered are of 1747 sq.ft. 614sq.ft. common area , one covered car parking space 100sq.ft. and one open car parking space 100 sq.ft. on the premises no. 36B Panditya Road. 4 th quarter, 2014-2015	iv). 97,590/-	iv). 40,000/-

3. Mr. Ghosh learned counsel appearing on behalf of the petitioner submits that notices were issued upon the respective opposite parties /owners of respective flats for hearing of the proposed annual valuation and the respective opposite parties raised objection and by an order dated 11th July, 2015, the hearing officer-VI of the KMC (Kolkata Municipal

Corporation) considering the objection, fixed the annual valuation of the respective flats mentioned in column no. 5 as shown in the table for the period w.e.f. fourth quarter 2014-2015.

4. The respective flat owners as shown in the table No.2 filed appeal against the order of the hearing officer of the KMC and the learned Bench of the Municipal Assessment Tribunal after hearing the parties in the appeal, passed the impugned order and allowed the respective appeal upon modification of the order of the hearing officer of the KMC by reducing the amount of the annual valuation and fixed the annual valuation as shown in column no. 6 of the aforesaid table.

5. Mr. Ghosh on behalf of the KMC further submits that the learned Tribunal should not have decreased the annual valuation abruptly which amounts to reduction of more than cent percent. He further submits that learned Tribunal committed wrong in fixing the annual valuation of respective premises in question upon taking into consideration the judgment passed in MAA no. 478 of 2001, which has got no connection with the present cases. He further submits that aforesaid premises may have situated on the same road and within same postal zone, but that cannot be the basis of valuation of the flats of present premises and Tribunal below has passed the order without considering entire perspective of the fact of the case, and he failed to assign reason with proper particulars, having regard to the statutory provisions of law, in support of his determination of annual valuation.

6. He further submits that unfortunately Tribunal below did not consider that it is a multi-storied building complex which is situated within the land

measuring 7 bighas 11 chittacks and 15 sq.ft. and each block was constructed at G+9. The complex is a life style apartment having all modern amenities such as swimming pool, water body, playground, children playground, health club with GYM, club room, spa, community hall, etc. Tribunal also failed to consider that the building is situated near notable places like Sishu Mongal Hospital, Jotindas Park Metro Station, Boys School having security arrangements and the entry and exists in the premises are also restricted.

7. Mr. Ghosh further submits that the Tribunal below should have considered all the provisions of section 174 of the Kolkata Municipal Act, 1980 (in short KMC Act 1980) including the provision under sub-section (2) & (3) of 174 to the extent that the reasonable rate should be assessed on the basis of existing market rent to be fetched at the rate of per sq.ft. per month at the time of fixation of annual valuation. In this context the Tribunal did not make any attempt to ascertain the estimated market rental value of the flat, for the purpose of determination of the annual valuation of the premises in question. The Tribunal did not consider the copies of inspection book (IB) referred to by the petitioner at the time of hearing of the appeal, in its true perspective and rejected the same erroneously.

8. Mr. Ghosh Strenuously argued that the Tribunal while assessing the annual valuation did not follow the applicable norms and guidelines as laid down by the Hon'ble Supreme Court and this High Court and erroneously relied the judgment passed in MAA 478 of 2001, without mentioning as to how the said judgment is applicable for the assessment of present valuation. Infact annual valuation of premises in connection with MAA 478 of 2001

was decided 14 years back and it is not at all comparable with the issue involved in the present context. He further submits that the annual valuation in respect of the premises in question was made after completion of construction w.e.f. February, 2011-2012 upon taking into account the reasonable rate per sq.ft. per month and such assessment cannot be altered and/or reduced while deciding the annual valuation in question on apportionment basis. He further submits that Tribunal below committed further wrong in taking into consideration the Mayors order dated 08.02.1986, since the guidelines/conditions contained therein cannot be applied in the present context and it cannot peril over the law and such guideline cannot be applied mechanically to determine the annual valuation of the premises, irrespective of the guideline framed by the Apex Court in the case of ***India Automobiles Ltd. Vs. Calcutta Municipal corporation and another***, reported in **2002 (2) JT 101 (SC)** for determination of annual valuation of any premises.

9. He should have appreciated that Mayor's guideline are not applicable in the instant case. He ought to have considered that the premises no. 39/1E in connection with MAA 478 of 2001, was constructed more than 15 years ago. Beside that the reasonable rent in that locality has increased rapidly during this long period and as such assessment made in the said case in the year 2001-2002 cannot be the basis of determination of reasonable rent for the year 2014-2015. The Tribunal below though recorded the evidences as adduced by both the parties, but failed to exercise any effort to analyse the same for arriving at a definite finding and observation in connection with determination of annual valuation.

Accordingly judgment passed by the Tribunal below are wholly misconceived and devoid of any substance in connection with the determination of annual valuation of the respective flats in question. Petitioner accordingly prayed for setting aside the orders impugned.

10. On perusal of the orders impugned passed by the Tribunal below it appears that the point for determination before the said Tribunal was whether the impugned order passed by the hearing officer suffers from any irregularity or illegality, deserving interference and if it deserves interference then what should be the correct annual valuation.

11. It further appears that though Tribunal below has referred the reported judgment of ***India Automobiles Limited Vs. Calcutta Municipal Corporation and another*** , reported in **2002 (2) JT 101 (SC)** and also quoted the relevant portion which says that while assessing annual valuation the Tribunal is to keep in mind all relevant circumstances including actual rent received by the owner, hypothetical standard rent, the rent being received by the tenant from his sub tenant and other relevant considerations such as prevalent rate of rent of lands and building in the vicinity of the property being assessed, but while passing the order impugned Tribunal without pondering upon said considerations, has only blamed the respondent/KMC for not producing any judgment of the said Tribunal which might have passed in connection with any other property situated within the vicinity of the case property. Accordingly Tribunal was of the view that the building situated in the same road can be taken as guideline to determine rate of rent of the building in question and in this

context he also took assistance from Mayors order dated 08.02.1986 regarding guidelines of assessment of land and building.

12. Taking the guidelines from the Mayors order dated 08.02.1986, the RR which was fixed at Rs. 0.80 per sq.ft. per month for covered area w.e.f. January, 2001 in respect of 39/1E Panditya Road, Tribunal below fixed the RR for the present case which appears to be not based upon the sound principles laid down by the Apex Court in **India Automobiles Limited Case (supra)**. Rule 15 of the Kolkata Municipal Corporation (Taxation Rules) 1987, the KMC enjoys the power of the Civil Court to secure and to summon any witness or for production of any documents which the Tribunal may require for disposal of the Appeal before it and the detailed procedure of the hearing of 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 the appeal as provided in Rule 20 of the aforesaid Rules of 1987.

13. Here the Tribunal below by the order impugned has modified annual valuation of the said flat, on the basis of judgment passed by the self-same Tribunal in MAA 478 of 2001, read with Mayors report. Merely because property involves in the said judgment situates in the same road of KMC, it cannot be the yardstick of the assessment for computing the annual valuation of the present flats in a newly constructed premises. The Tribunal being the quasi-judicial authority is bound to follow the procedure while discharging its duty. In **India Automobiles Limited Case (supra)** it has been clearly laid down that the appellate court while determining the gross annual rent at which the building in controversy at the time of assessment

is reasonably expected to let from year to year less the allowances and other considerations referred in section 174 of the KMC Act, 1980.

14. On careful reading of section 174 of the KMC Act, 1980, it appears that by a detailed provision 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 such 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 8 Rate Payers' Association (AIR 1971 SC 353): 1970 (2) SCC 803 (para 5& 6).

15. In this context it should be made clear that fixation of arbitrary annual valuation (as has been done in the present context) is not permissible under the law. Neither the corporation nor the Tribunal is free to assess any arbitrary annual value. The 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.

16. In *India Automobiles Limited Vs. Calcutta Municipal Corporation and another*, reported in **(2002) 3 SCC 388**, 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.”

17. 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.

18. In view of above C.O. 130 of 2021 (KMC Vs. Kusum Nahata & other), C.O.136 of 2021 (KMC Vs. Bandana Dhurka), C.O. 134 of 2021 (KMC Vs. Dr. Amitava Ghosh), C.O. 132 of 2021 (KMC Vs. Ananda Kumar Gupta and another) are hereby allowed with a direction to decide the appeals being no.s MAA 1276 of 2015, MAA 1277 of 2015, MAA 1267 of 2015 and 1266 of 2015 afresh in compliance with the provisions as laid down in the Kolkata Municipal Corporation Act 1980 and the Rules made thereunder, as well as guidelines laid down by the Apex Court and this Court and also considering

the available material on record (inspection book copies etc.), preferably within a period of six month from the date of communication of the order.

19. C.O. 130 of 2021, CO 132 of 2021, CO 134 of 2021, CO 136 of 2021 are accordingly disposed of. Let a copy of this order be placed in the record of each of the aforesaid cases.

20. There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)