

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**WPA 8711 of 2021
IA No: CAN 1 of 2024**

**Kesoram Textiles Mills Limited & Anr.
Vs.
The Kolkata Municipal Corporation & Ors.**

For the Petitioners	: Mr. Laxmi Gupta	 Senior Advocate
	Mr. Biswajit Mukherjee	
	Mr. Debdatta Sen	
	Ms. Ledia Dasgupta	advocates

For the KMC	: Mr. Alak Kumar Ghosh	
	Ms. Manisha Nath	 advocates

Reserved on : 15.07.2024

Judgment on : 25.07.2024

Hiranmay Bhattacharyya, J.:-

1. The writ petitioner has prayed for issuance of a mandamus to command the municipal authorities to set aside the Letter of Intimation dated 04.12.2020; to implement the order dated 18.02.1998 and to reevaluate the correct property tax.
2. Kesoram Textile Mills (for short "Kesoram")/the writ petitioner claims to be the owner of two premises being Nos. C2 and S-1 Garden Reach Road, Kolkata-700024. The said properties were within the jurisdiction of the then Garden Reach Municipality. Garden Reach Municipality subsequently merged with Kolkata Municipal Corporation (for short "KMC") on and from January, 1984.

3. The concerned Hearing Officer of KMC passed an order dated 18.02.1998 determining the Annual Valuation of the aforesaid holdings for the period 1983-84. Thereafter, the Annual Valuation of the aforesaid holdings was amended under Section 192(2) of the Kolkata Municipal Corporation Act 1980 (for short “the 1980 Act”) with effect from 1st Quarter 1984-85 by an order dated 02.03.2000.
4. Mr. Gupta, learned Senior Counsel appearing in support of the writ petition challenged the jurisdiction of the authority under the 1980 Act to assess the valuation of holdings of Kesoram for the period 1983-84 as per the provisions of the 1980 Act in utter disregard of Section 635A of the said Act which provides that assessment for such buildings for any period prior to 1st April, 1984 shall be made in accordance with the provisions of the Bengal Municipal Act, 1932 (for short “the 1932 Act”). He further contended that amendment of valuation in exercise of power under Section 192 was also without jurisdiction as the same was given retrospective effect without any case of fraud etc being made out. Mr. Gupta further submitted that since the first assessment after the area within which the said holdings are situated are included within the limits of Kolkata, was without jurisdiction, the same is nullity and as such all subsequent assessments are nullity. Mr. Gupta placed reliance upon a decision of the Hon’ble Supreme Court in the case of **Ashok Leyland Ltd. vs. State of Tamil Nadu and another** reported at **AIR (2004) SC 2836** in support of his contention that an order passed without jurisdiction is nullity. He submitted that even while applying the Clause 11 of the Circular of 1986 the authorities did not assess the valuation under Section 174(4A) of the 1980 Act.
5. Mr. Ghosh, learned Senior Counsel representing KMC raised an objection against maintainability of this writ petition on two fold grounds. Firstly, that the writ petitioner is in effect challenging the assessment made in the year 2000 by filing a writ petition in the year 2021 and, therefore, the

writ petition is liable to be dismissed on the ground of delay and laches. Secondly, the order of assessment is an appealable one and the appeal lies before the Municipal Assessment Tribunal. He submitted that the writ petitioner cannot be allowed to bypass such statutory appellate remedy which is not only an efficacious one but effective as well. In support of such contention he placed reliance upon a decision in the case of *A.V. Venkateswaran, Collector of Customs, Bombay vs. Ramchand Sobhraj Wadhawani and Anr.* reported at AIR 1961 SC 1506. By referring to the reliefs claimed, Mr. Ghosh submitted that only the Letter(s) of Intimation (for short “LOI”) and not the assessment. Orders are under challenge in this writ petition and, therefore, this Court should not enter into the merits of the Assessment Order in this writ petition. Mr. Ghosh, however submitted that since the valuation arrived at by order dated 18.02.1998 was erroneous, such valuation was amended in exercise of powers under Section 192 of the 1980 Act.

6. In response to the objection on the maintainability of the writ petition, Mr. Gupta placed reliance upon a decision of the Hon’ble Supreme Court in the case of ***Ramchandra Shankar Deodhar and ors. vs. The State of Maharashtra and ors.*** reported at **(1974) 1 SCC 317** and contended that there is no rule that whenever there is delay, the Court must necessarily refuse to entertain the writ petition. He contended that each case depends on its own facts and in the case on hand the LOI dated 04.12.2020 gave rise to the cause of action of this writ petition and the writ petition was filed on 26.03.2021 and there was no delay and laches on the part of the writ petitioners in approaching this Court. By referring to the decisions of the Hon’ble Supreme Court in the case of ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai*** reported at **(1998) 8 SCC 1** and ***Radha Krishan Industries vs. State of Himachal Pradesh and ors.*** reported at **(2021) 6 SCC 771**. Mr. Gupta contended that existence of an alternative statutory remedy cannot operate as an absolute bar in approaching the Writ Court. Mr. Gupta contended that

the amendment of the valuation was made without giving an opportunity of hearing to the writ petitioners and the order amending the valuation was also not served upon the writ petitioners. Thus, according to Mr. Gupta there has been violation of the principles of natural justice. Mr. Gupta referred to a decisions of the co-ordinate bench of this Court in the case of **Turner Morrison & Co. Ltd. & Ors. vs. State of West Bengal and Ors.** reported at **(2002) 3 CHN 448** and **Shaw Wallace & Co. Ltd. vs. Calcutta Municipal Corporation & Ors.** reported at **(2002) 4 CHN 315** and contended that in cases where the reasoned orders for assessment are not supplied, a writ petition is maintainable.

7. Heard the learned advocates for the parties and perused the materials placed.
8. After going through the writ petition this Court finds that the primary grievance of the writ petitioner is that instead of implementing the annual valuation of the aforesaid premises as determined by the order dated 14.02.1998 a fresh revaluation order under Section 192 of the 1980 Act was passed thereby amending the annual valuation with effect from first quarter 1983-84 and second quarter 1989-90.
9. The writ petitioner claims to have received two LOIs under the Waiver Scheme in the year 2012 wherefrom they came to know that the annual valuation of the aforesaid premises had been increased from first quarter 1984-85 up to the date of issuance of the said LOI. However, the writ petitioner approached this Court only on 26.03.2021.
10. This Court has to first consider whether such belated approach to the writ Court should be entertained.
11. The Hon'ble Supreme Court in **Ram Chandra Shankar Deodhar** (supra) held that the rule that the Court may not inquire into belated and stale claims is not a rule of law but a rule of practice based on sound and proper exercise of discretion and there is no inviolable rule that whenever

there is delay, the Court must necessarily refuse to entertain the petition. It is for the Courts to decide whether to exercise its discretion depending on the facts of each case.

12. In the case on hand, the revaluation order dated 02.03.2000 passed under Section 192(2) of the 1980 Act is the assessment of Annual Valuation of the premises in question which was to take effect from 1st quarter 1984-85. Assessment for the said period is the first assessment after the area where the premises are situated were included within the jurisdiction of KMC. Such assessment forms the foundation of the subsequent revaluation(s). The said order as well as the report containing the basis of arriving at the proposed Annual Valuation has been disclosed in the affidavit filed by KMC. No document has been produced by KMC to prove that the said order as well as the report as indicated hereinbefore were duly served upon the petitioner at the relevant point of time. A person aggrieved against the assessment made by KMC cannot challenge the same effectively unless the order disclosing the reasons therefor are supplied to such party. That apart, no third party rights can be said to have accrued due to the delay on the part of the petitioner in approaching this Court. For all the reasons as aforesaid, this Court is not inclined to shut the door of the Writ Court on the face of the petitioner on the ground of delay.
13. This Court has to now decide whether to entertain this writ petition as the order passed under Section 192 of the KMC Act is an appealable order and the appeal lies before the Municipal Assessment Tribunal.
14. In **Whirlpool Corporation** (supra), it has been held that the rule requiring the exhaustion of statutory remedies before granting writ is a rule of policy, convenience and discretion rather than a rule of law. It was further held that availability of alternative remedy would not operate as an absolute bar and a writ petition can be entertained in exceptional circumstances namely (i) for enforcement of any Fundamental Rights, or

- (ii) where there has been a violation of the principles of natural justice, or
(iii) where the order or proceedings are wholly without jurisdiction, or (iv)
the vires of an Act is challenged.
15. The same proposition has been reiterated by the Hon'ble Supreme Court in ***Radha Krishna Industries*** (supra).
16. The Hon'ble Supreme Court in the case of ***A.V. Venkateshwar*** (supra) held that the existence of an alternative remedy is a bar to the entertainability of a petition under Article 226 of the Constitution of India unless there was a complete lack of jurisdiction in the Officer or the authority to take the action impugned or where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice. Such an order could, therefore, be treated as void or non-est.
17. The issue whether the KMC can demand payment of tax at the enhanced rate before service of a copy of order as enjoined under Section 188(3) of the 1980 Act fell for consideration in ***Shaw Wallace & Co. Ltd.*** (supra). A Coordinate Bench after considering the provisions of the 1980 Act held that the right to prefer appeal 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 the copy of the order, no demand can be made on the basis of the determination.
18. As observed hereinbefore, no material has been produced by KMC to show that order dated 02.03.2000 as well as the report showing the basis of proposed valuation has been served upon the petitioner at the relevant point of time. That apart, the writ petitioner claims that no opportunity of hearing was given and the petitioners have also alleged that the proceedings as well as the orders passed therein are wholly without jurisdiction. The case on hand falls within the exceptions carved out by the Hon'ble Supreme Court in ***Whirlpool Corporation*** (supra) and,

therefore, this Court instead of relegating the writ petitioner to the statutory appeal remedy heard learned advocates on the merits of the issues involved in this writ petition.

19. Writ petitioner has prayed for setting aside the LOIs dated 04.12.2020. The said document is only an intimation to an assessee/Kesoram as to the bills that are lying outstanding against property tax.
20. Mr. Ghosh is right in submitting that the writ petitioner has not prayed for setting aside the assessment made under Section 192 of KMC Act. However after considering the averments and the grounds stated in the writ petition and also that the order passed under Section 192 of KMC Act has been disclosed by KMC in its affidavit, this Court heard the learned Advocates for the parties as to the propriety of the said order.
21. Record reveals that on an earlier occasion the writ petitioner challenged the order of the Hearing Officer dated January 22, 1997 assessing the Annual Valuation of the premises in question for the period 2nd quarter 1989-90 before this Hon'ble Court in WP No. 778 of 1997.
22. The Co-ordinate bench after noting the provisions of Section 635A of the 1980 Act disposed of the writ petition by an order dated 09.07.1997 by directing the concerned authorities to first of all, make the assessment of the annual valuation of the petitioner's premises for the period 1983-84 under the provisions of the 1980 Act and, thereafter, for the subsequent periods of general valuation under the said Act after giving the petitioners a reasonable opportunity of hearing.
23. Kesoram filed an objection against the proposed Annual Valuation for the period 1983-84 in respect of the premises in question. The Hearing Officer applied the Mayor's Order being Circular no. 6 of 1986 dated 20.06.86 and reduced the proposed Annual Valuation and fixed the Annual Valuation of the premises in question for the period first quarter of 1983-84 and second quarter of 1989-90.

24. The applicability of the Circular no. 6 of 1986 for determination of the Annual Valuation of the premises in question for the quarter 1983-84 is not in issue in this writ petition as would be evident from the pleadings as well as the prayer for implementation of the order of the Hearing Officer dated 18.02.1998.
25. Subsequently, an order dated 02.03.2000 was passed by the Deputy Municipal Commissioner thereby amending the aforesaid valuation in exercise of powers under Section 192 of KMC Act. Petitioner appears to be aggrieved by such exercise of power by the authorities.
26. After going through the order of the Hearing Officer dated 18.02.1998, this Court finds that the Annual Valuation was fixed by applying Clause 3 of the Circular dated 20.06.1986. However, Clause 11 of the same circular was applied while amending the valuation. The reasons for amendment was specifically recorded in the order dated 02.03.2000. It was stated therein that the premises was recorded as a factory and as such Clause 11 of the said circular ought to have been followed. It was also recorded that the property was revalued in the order dated 18.02.1998 without considering the valuation of the land.
27. Clause 11 of Circular no. 6 of 1986 is extracted hereinbelow.

“11. Factories, Workshops, Petrol Pumps and Godown Etc.:

Lands and buildings used as factories, workshops, petrol pumps, godowns and for similar other purpose by owners should be valued according to the provisions of Sec 174 (4A) of the Act.”

28. It appears from the aforesaid Clause that Land and Buildings used as factory should be valued according to the provisions of Section 174(4A) of the 1980 Act. It has not been disputed by the writ petitioner in course of hearing that the premises is recorded as factory in the records of KMC. The mode of calculation as well as other details contained in the report proposing the valuation has not been disputed by the learned counsel for the petitioners in course of hearing of this writ petition.

29. Mr. Gupta would contend that the concerned authority while amending the valuation did not assess the property according to the provisions of Section 174(4A) of the 1980 Act. It appears from the affidavit of KMC that the Deputy Assessor Collector reported that the panel assessor assessed the valuation of the premises in question for the year 1983. After going through the said report this Court finds that the assessment was made by applying the provisions laid down under Section 174(4A) of the 1980 Act. The order dated 2nd March, 2000, states that the assessment made was erroneous and, therefore, amendment is needed.
30. In **Turner Morrison & Co. Ltd.** (supra), a Coordinate Bench after noting the provisions laid down under Section 188(3) and proviso to Section 189(5) held that Hearing Officer being a quasi judicial authority is required to inform the party to be affected by his decision the reasons therefor and not only the extent of affectation.
31. The order dated 2nd March, 2003 noted that no objection against the proposed amendment of the annual valuation was filed and, therefore, the Deputy Municipal Commissioner confirmed the proposed annual valuation of the premises in question with effect from first quarter of 1984-85. It may be true that the order dated 2nd March, 2000 only records that the proposed annual valuation has been confirmed but the basis of arriving at the proposed annual valuation has not been reflected in the said order. However, considering the fact that the basis of arriving at the proposed annual valuation has been disclosed in the affidavit filed by the KMC and it appears therefrom that the proposed valuation was made by applying the provisions of Section 174(4A) of the 1980 Act and the provisions contained in the Mayor's guideline/order dated 8.02.1986, more particularly Clause 11 thereof, this Court is of the considered view that the proposed annual valuation was made in accordance with Section 174(4A) of the 1980 Act which was confirmed by the order dated 02.03.2000. Therefore, this Court is not inclined to accept the argument

of Mr. Gupta that the amendment of valuation was made without applying the provisions under Section 174(4A) of the 1980 Act.

32. Section 192(1)(VI) provides that the Municipal Commissioner may at any time amend the Municipal Assessment Book by altering the assessment on the land or building which has been erroneously valued or assessed through fraud, mistake or accident, in which case such alteration shall take effect from the date such erroneous valuation or assessment took place.
33. The word “or” used between the expressions “erroneously valued” and “assessed through fraud” in Section 192(1)(vi) implies that they are disjunctive and the expression “in which case” following such expressions shall also be relatable to the expression “erroneously valued”.
34. After going through Section 192(1)(VI), this Court holds that in a case of erroneous valuation necessitating amendment of the Municipal Assessment Book by way of altering the assessment, such alteration shall take effect from the date such erroneous valuation or assessment took effect.
35. In the case on hand, the erroneous valuation was made by an order dated 18.02.1998 for the periods namely first quarter 1983-84 and the second quarter of 1989-90 for both the premises in question. Therefore, the Deputy Municipal Commissioner while passing his order dated 02.03.2000 was right in directing that the alteration shall take effect from the date such erroneous valuation was given effect to.
36. In **Ashok Leyland** (supra) the Hon’ble Supreme Court held that when an order is passed without jurisdiction the same becomes a nullity. There is no quarrel to the aforesaid proposition of law laid down by the Hon’ble Supreme Court but the same cannot come to the aid of the petitioner as this Court has already observed that the order of amendment of

valuation passed under Section 192(2) of the 1980 Act cannot be said to be without jurisdiction.

37. For the reasons as aforesaid, this Court is not inclined to grant any relief to the petitioners. The writ petition accordingly stands dismissed. Consequently the application stands disposed of. There shall be, however, no order as to costs.
38. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

(P.A.-Sanchita, Rinki)