IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Md. Shabbar Rashidi

C.O. No. 1048 of 2017

Gouri Rani Ghosh

Vs.

The Kolkata Municipal Corporation

For the Petitioner	:	Mr. Raghunath Chakraborty, Adv. Mr. Mehboob Ahmed, Adv. Ms. Mohona Das, Adv.
For the K.M.C.	:	Mr. Alak Kumar Ghosh, Adv. Mr. Gopal Chandra Das, Adv.
Heard on	:	November 22, 2024
Judgment on	:	December 04, 2024

Md. Shabbar Rashidi, J.

1. The instant revisional application is directed against the combined judgment and order dated June 29, 2016 passed by the 1st Municipal Assessment Tribunal, Kolkata, West Bengal in M.A.A. No. 129 of 2007 and M.A.A. No. 1775 of 2014.

2. By the impugned judgment and order, the learned Tribunal modified the order of assessment passed by the Hearing Officer and fixed the annual valuation of the suit premises for 4th quarter of 2005-2006 as well as for 1st quarter of 2007-2008 at the stipulated rates indicated in the impugned judgment and order.

3. The petitioner is the recorded owner and the person liable to pay municipal taxes for the municipal premises 1, 12, Durgapore Lane, Kolkata -700027 under ward No. 74. The said premise is a two-storied building and during the period of assessment, it was partly occupied by the petitioner and part of it was occupied by residential tenants.

4. There was an assessment of the demised premises with annual valuation at ₹ 39,530/- for the 4th quarter of 2005-2006, by the municipal corporation. On the basis of such proposed assessment, a notice inviting objections under Section 184 (3) was served upon the petitioner/assessee. In pursuance of such notice, the petitioner appeared before the Hearing Officer IX and filed his objection. Upon consideration of such objection, the Hearing Officer, by an order dated November 28, 2006, assessed the annual valuation of the suit premise at ₹ 39,530/- for the 4th quarter of 2005-2006 in terms of Section 188 (2) of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as "the Act of 1980").

5. It was contended that the petitioner had submitted returns for the purpose of assessment but the return disclosing the rate of rent payable by the erstwhile tenant was not considered by the Hearing Officer. The tenants were re-inducted in the building after construction of a two-storied building. Such fact was not considered by the Hearing Officer.

6. On the same date i.e. November 28, 2006 the Hearing Officer also assessed and fixed annual valuation of the demised premises at ₹ 4,000/- with effect from 1st quarter of 2001 – 2002. The Hearing Officer did not consider that the earlier tiled shed structure was demolished and the petitioner constructed a new two-storied building. The tenants were being inducted at the earlier rate of rent. The Hearing Officer also did not consider that the tenant who was occupying the entire first floor had filed a title suit against the petitioner. The actual rate of rent was not taken into consideration at the time of hearing. Being aggrieved of such determination of rent, the petitioner preferred an appeal being M.A.A. No. 129 of 2007.

7. It was also contended on behalf of the petitioner that during the pendency of the appeal being M.A.A. No. 129 of 2007, the respondent corporation again increased the annual valuation with effect from 1st quarter of 2007 – 2008. The petitioner preferred an objection against such assessment. The objection of the petitioner was disposed of by the Hearing Officer by his order dated July 15, 2014 fixing the annual valuation of the demised premises at ₹ 41,100/– with effect from 1st quarter of 2007 – 2008. Being aggrieved by such order, the petitioner preferred another appeal being M.A.A. No. 1775 of 2014 before the Municipal Assessment Tribunal in terms of Section 189 (6) of the Act of 1980.

8. The two appeals were heard together before the learned Tribunal. The Assessment Inspector attached to Ward No. 74 of Kolkata Municipal Corporation as well as the representatives of the petitioner deposed in such proceeding which disclosed that the petitioner was enjoying only 400 square feet on the ground floor of the demised premises. It was further submitted that the petitioner relied upon several documents including tenancy agreements, sanction building plan and documents pertaining to the title suit.

9. Upon hearing the parties and considering the materials placed before it, learned Tribunal disposed the two appeals by a common judgment and order which is impugned herein. The learned Tribunal held the order passed by the Hearing Officer IX dated November 28, 2006 and July 15, 2014 and the assessment made therein to be excessive, unfair, unjust, arbitrary having no basis at all. Accordingly, the two appeals were allowed in part and the order as passed by the hearing officer was modified fixing the annual valuation of the demised premises at ₹ 28,990/– with effect from 4th quarter of 2005 – 2006 and at ₹ 29,590/– with effect from 1st quarter of 2007 – 2008.

10. It was submitted on behalf of the petitioner that the impugned order suffered from serious material infirmities as the learned Tribunal did not take into consideration the materials placed before it. It was also contended that the Tribunal did not take into consideration that the demised building was being used for residential purpose. The actual rate of rent was not taken into consideration for the purpose of assessment of the annual valuation. Learned Tribunal also did not take into consideration the rate of rent as evident from the materials involved in the civil litigation between the parties. It was also contended that the Tribunal was moved by an agreement between the petitioner and the tenants with regard to re-induction of the tenants after construction of the building on enhanced rates to be determined mutually.

11. It was also contended that the rate of rent considered by the Tribunal was arbitrary. Actual rate of rent was the only consideration to be taken into account for assessment of the annual valuation of the building which was not considered by the Tribunal. The materials placed on behalf of the petitioner were not taken into consideration for the purpose of assessment of the annual valuation. According to the petitioner, the Tribunal was moved by some extraneous materials and the assessment was made on a notional basis. The Tribunal also did not consider that several other residential buildings in the locality were assessed at much lower rates than the demised building and such fact was not considered by the Tribunal.

12. In support of their contentions, learned advocate for the petitioner relied upon ***1990 SCC OnLine Cal 26*** *(**Smt. Shukuntala Gupta and Others vs. State of West Bengal and Others**)*.

13. Per contra, learned advocate for the Kolkata Municipal Corporation submitted that the judgment and order passed by the Municipal Assessment Tribunal is quite justified and based on relevant facts duly taken into consideration. It cannot be faulted in anyway whatsoever.

14. It was also submitted that major portion of the demised building which was a tile shed structure, was let out on rent to at least two old tenants. The petitioner took up demolition and reconstruction of two storied building. For such purpose, the petitioner/landlord entered into agreement with the tenants to reinstate the tenants in the building after reconstruction subject to covenant that rent of tenanted premises will be increased upon mutual negotiation. However, the rate of enhanced rent was never disclosed by the petitioner for the purpose of assessment. The petitioner submitted return on the basis of rent paid prior to reconstruction and reinstatement of tenants.

15. Relying upon the findings in the impugned judgment and order, learned advocate for KMC also submitted that the petitioner even did not allow the assessment inspector to enter into the premises for inspection for the purpose of assessment as contemplated under the provisions of the Act of 1980. Learned advocate for the Kolkata Municipal Corporation relied upon an unreported order dated May 6, 2024 passed in ***C.O. No. 1355 of 2021 (Devesh Gourisaria vs. The Kolkata Municipal Corporation and Ors.)***.

16. It is not in dispute that the petitioner is the owner and/or person responsible for payment of taxes in respect of the demised property. The materials on record also depict that the property was initially a tile shed structure and housed two tenants therein. It has also been placed that the said tenants had to be removed for the purpose of reconstruction over the suit premises. Such removal was subject to a condition that the old tenants will be reinstated in the property after its demolition and reconstruction. The demolition and reconstruction was carried on and in place of the old tile shed structure, a two-storied building was constructed over the suit land.

17. It is after such a demolition and reconstruction of the building, the assessment of the annual valuation of the newly constructed building was taken up by Kolkata Municipal Corporation. It is the case of the petitioner that the assessment was made arbitrarily without taking into consideration the relevant factors. On the contrary, Kolkata Municipal Corporation came up with the case that the old R.T. Shed Structure on the suit land was demolished and in its place a new two-storied building was constructed thereon. According to the Corporation, with the demolition of the old structure, the existing tenancy in the demised premises was determined. According to an agreement entered into between the petitioner as landlord and his two erstwhile tenants, the rate of rent for an accommodation in the newly constructed building was to be enhanced as mutually agreed between the parties.

18. It was also the claim of Kolkata Municipal Corporation that the quantum of enhanced rate of interest was never disclosed by the petitioner/landlady so that the same could be taken into consideration for the purpose of assessment of the annual valuation of the property. Not only that, when the Assessment Inspector of municipal corporation went to make an inspection of the premises for the purpose of assessment of annual valuation as per the provisions of the Act of 1980, the Assessment Inspector was denied access to the property for such purpose. For such reason, the assessment authorities resorted to the rateable value of the demised premises, at which the property might reasonably have been let out, subject of course, to the statutory deductions. The petitioner preferred an objection against such assessment before the hearing officer IX, KMC. By such method, the annual valuation of the premises was assessed at ₹ 39,530/– for the 4th quarter of 2005– 2006 and ₹ 41,100/– for the 1st quarter of 2007 – 2008.

19. The petitioner carried appeal against such orders of the hearing officer which were decided by the Municipal Assessment

Tribunal by the impugned order and judgment which is the subject matter of consideration in the present proceeding.

20. It transpires from the impugned order that the learned Tribunal had noted that the demised premises was a newly constructed two-storied building which was constructed after demolishing the old structure and that the old structure was made of R.T. Shed structure. It also noted that there were two tenants at a meagre rental. The impugned judgment also notes that at the time of demolition of the old structure separate tenancy agreements were made with the existing tenants and the landlady/petitioner with regard to the accommodation of such tenants in the newly constructed building at an enhanced rate of rent which was to be settled amicably between the parties to the agreement. It also took note of the fact that one of the tenant was allowed to occupy the entire 1st floor of the building where of the other tenant was promoted in the back portion of its ground floor. The remaining portion i.e. the front portion of the ground floor was kept under the occupation of the petitioner/landlady.

21. Learned Tribunal also noted in the impugned judgment that there was no iota of evidence suggesting to hold that the rate of rent was amicably settled and enhanced by and between the tenants and the owner/landlady in terms of the agreement made at the time of demolition of the old structure. Learned tribunal also took note of a decision relied on by the petitioner/landlady and Kolkata Municipal Corporation wherein for other buildings in the same locality i.e. Durgapore Lane, Kolkata – 700027, the annual valuation was assessed at ₹ 0.80/– per square feet per month for 1st quarter of 1997 – 1998 and at ₹ 1.25 per square feet per month for 1st quarter of 2001 – 2002. It was noted in the impugned order that the aforesaid properties referred by the parties were situated in the same locality where the demised premise was situated.

22. Upon consideration of all the facts and circumstances placed before it, the Tribunal proceeded to decide the annual valuation of the demised premises at ₹ 1.10 per square feet per month for 4th quarter of 2005 – 2006 and thereafter an enhancement at the rate of 10% per G.R. for 1st quarter of 2007 – 2008. On the basis of such calculations, learned Tribunal modified the order of the hearing officer and fixed the annual valuation at rupees 28,990/– for the 4th quarter of 2005 – 2006 and at ₹ 29,590/– for the 1st quarter of 2007 – 2008.

23. Such decision of the learned Tribunal has been challenged in the present proceeding on the ground that the Tribunal did not take into consideration the actual rent being paid by the tenants in respect of the demised premises. It was alleged that the hearing officer as well as the Municipal Assessment Tribunal did not consider the rate of actual rent paid by the tenants and proceeded to assess the annual valuation on certain extraneous considerations and hypothetic calculations.

24. Section 174 of Kolkata Municipal Corporation Act, 1980 provides for the method and factors to be taken into consideration for assessment of annual valuation of a building which is reproduced hereunder as:

> *"174. (I) Notwithstanding anything contained in the West Bengal West Bengal Premises Tenancy Act, 1956 or in any other law for the time being in force, for the purpose of assessment of the property lax, the annual value of any land or building shall be deemed to be the gross annual rent 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, less an allowance of ten percent for the cost of repairs and other expenses necessary to maintain such land or building in a state to command such gross rent:
Provided that ...."

25. From the impugned judgment and order it is evident that the Tribunal took note of the copies of agreement entered into between the petitioner/landlady and the two erstwhile tenants prior to the reconstruction of the demised building. In such agreement it was provided that the erstwhile tenants would be inducted in the newly constructed building on an enhanced rent the rate of which was to be mutually decided by the parties to the agreement. It also discloses that the aforesaid tenants were actually re-inducted in the newly constructed building. One of the tenants is occupying the entire first floor of the building whereas; another tenant was housed in the back portion of the ground floor. The remaining portion is in the occupation of the landlady. However, the rate of enhanced rent has not been disclosed.

26. The impugned judgment and order also discloses that there was an attempt on the part of the opposite party Kolkata Municipal Corporation to inspect the premises for the purpose of assessment of valuation of the building under reference. Such attempt was refuted at the behest of the petitioner/landlady and the Assessment Inspector was not allowed to enter into the premises to carry out the inspection work rendering the assessment work impossible. Such finding in the impugned judgment and order has not been specifically denied. It is for the aforesaid reasons; Kolkata Municipal Corporation had to take the route of Section 174 of the Act of 1980 for the determination of annual valuation of the demised premises.

27. Moreover, while determining the annual valuation, as is apparent from the impugned judgment, the learned Tribunal took into account the actual area of the building, assessment of other similar properties in the self-same locality together with many other factors to ascertain the annual valuation of the building in question. Such determination cannot be faulted merely on the ground of not taking into consideration, the rate of actual rent alleged to be paid by the erstwhile tenants in the building. The petitioner herself contributed in thwarting the Kolkata Municipal Corporation from taking into account the actual rent for the purpose of determination of annual valuation of the property in question, by not disclosing the enhanced rate of rent and also by not allowing the Assessment Inspector to inspect the said property for such purpose.

28. In ***Shukuntala Gupta*** (supra) a Coordinate Bench of this Court observed that,

> *"36. It is to be remembered that for the ground floor consisting of 3600 square feet the Corporation authority took into account the actual rent of Rs. 508/- per month because the petitioners had to let out the ground floor to the original tenants of the ground floor at the old rent after the old ground floor was demolished and reconstructed. Regarding the mezzanine floor of 1000 square feet personally occupied by the petitioners the rental value of 50 paise per square feet was assessed and Rs. 500/- was assessed as rental value. The rental value of the premises after its additions and alterations were assesseed as follows:*

Ground floor	*Rs. 508/-*
Mezzanine floor	*Rs. 500/-*
First floor	*Rs. 26096/-*
Total	*Rs. 27,104/-*

> *37. In that view of the matter, I am unable to hold that any illegality or irregularity was committed by the Municipal authority in making revised valuations taking the rental value of the premises at Rs. 27,104/-."*

29. In the aforecited decision, the High Court did not find any illegality or irregularity in the decision of the Municipal Authorities in the determination of annual valuation which was done on the basis of actual rent. However, in the case at hand, the petitioner herself did not disclose the actual rate of rent which was being paid by the erstwhile tenants for their allotted portions enhanced in terms of express agreements entered into in this regard by and between the petitioner and tenants. The actual rate of rent was kept veiled in order to outwit the Municipal Authorities from determining the annual valuation of the building. Not only that, the Municipal Authorities were also not allowed to take an inspection of the demised premises for such purpose.

30. The petitioner has come with another case that the learned Tribunal erred in not taking into consideration that actual rent was the sole basis of determination of the annual valuation of the property. In the case of ***Devesh Gourisaria*** (supra), it was held by the High Court that,

> *"19. At this juncture this Court considers that relevant portions of the findings of the India Automobiles (1960) Ltd. (Supra) is required to be looked into and the same is reproduced hereunder in verbatim.*
>
> *"The 1980 Act, therefore, requires application of mind by the municipal authorities to determine the rents on the basis of reasonableness by keeping into account all relevant circumstances including the actual rent received by the owner, hypothetical standard rent, the rent being received by the tenant from his sub-tenant and other relevant consideration, such as prevalent rate of rent of lands and building in the vicinity of the property being assessed. Only because the owner of the building is not getting the same rent which the sub-tenant is paying to his lessor, cannot be made a basis to deprive the corporation from determining the annual valuation and taxing the land or building on that basis. If such a plea is accepted, it would be against the provisions of the statute which has been nacted to provide civic services in the form of water, drainage, sewerage, collection, removal and disposal of solid waste, fire prevention and fire safety maintenance of street and public places etc., in the municipal area where such land or building is situate."*

20. In considered view of this Court, the reported decision of India Automobiles (1960) Ltd. (Supra) as cited from the petitioner, is no way helpful to the petitioner since in the said reported decision it has been practically held that the actual rent as received by the assessee cannot be the sole basis for determining annual valuation, since it would be against the provisions of the statute.

21. On conjoint perusal of the impugned judgment vis-à-vis the unamended provision of the said Act, it appears to this Court that in the aforementioned six appeals the learned Tribunal has duly considered the reasonable rent as expected to be obtained by the owner of the said building notwithstanding the provisions of the West Bench Premises Tenancy Act, 1956. It is pertinent to mention herein that at that material time the relationship between the landlord and the tenant was governed under the West Bengal Premises Tenancy Act, 1956 and that the said Act of 1956 also provides fixation of fair rent by the rent controller.

22. Since unamended provision of Section 174 of the said Act of 1980 clearly empowers the authority to fix property tax and assess annual valuation on the basis of the reasonable rent as expected to be received from the property in question this Court finds no illegality and infirmity in the order impugned as passed by the Tribunal."

31. Thus, mere quantum of actual rent cannot be the sole factor to determine the annual valuation of a property especially, when such vital information was withheld by the petitioner herself and the assessment inspector was denied access to the property concerned by the petitioner for the purpose of determination of annual valuation. Under the circumstances, the Municipal Authorities were quite justified in resorting to the provisions of Section 174 of the Act of 1980. Consequently, the decision of the learned Tribunal cannot be faulted.

32. In view of the discussion made hereinabove, this Court does not find any reason to hold that the impugned judgment and order suffers from illegality or irregularity warranting interference by this Court.

33. Accordingly, the instant revisional application being **C.O. No. 1048 of 2017** is dismissed, however, without any order as to costs and thus, disposed of.

34. Urgent photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance of necessary formalities.

(Md. Shabbar Rashidi, J.)