28.02.2024

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Item : 04
Matter : CO
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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 1604 of 2018

The Kolkata Municipal Corporation
Vs.
Ashok Kumar Shaw & Anr.

Mr. Alak Kumar Ghosh, Advocate
Mr. Swapan Kumar Debnath, Advocate
……for the Petitioner/KMC

1. From the order-sheet, it is apparent that after due service of notice there was no appearance on behalf of the opposite parties when this Court had extended the interim order of stay, on 22.11.2018. Today again when the matter is called on, there is none to represent the opposite parties.
2. It is the case of the petitioner that upon acquiring the Flat No. 6B, on the 6th floor of premises no. 9A – Jatindra Mohan Avenue at Kolkata, the opposite party applied to the Kolkata Municipal Corporation (KMC) seeking mutation of her name against the purchased flat which was mutated in the name of the opposite party. A notice was thus issued proposing the amount of assessment of annual valuation in respect of the flat with effect from the second quarter of 2008-09.
3. Upon receiving the notice, the opposite party raised an objection. The Hearing Officer of the petitioner /Corporation considering the objection, fixed the annual value of the flat and car parking space at Rs.39,730/-, for the period with effect from the second quarter of 2008-09. The assessment was based on rent, considered reasonable at Rs.2.75/- per sq.ft. per month for the flat; and Rs.1.00/- per

sq.ft. per month for the open car parking space.

4. The opposite party was dissatisfied with such assessment and preferred the appeal bearing no. MAA 1835 of 2012 against the order of the Hearing Officer dated 06.08.2012. The learned Municipal Assessment Tribunal of the Corporation in purported exercise of jurisdiction under Section 189 of the Kolkata Municipal Corporation Act, has upon hearing the parties allowed the appeal by modifying the order of the Hearing Officer and causing reduction of the amount of annual valuation, which has been determined at Rs.20,350/- for the period noted above.
5. The said determination was based on consideration of a reasonable rent at RS.1.40/- per sq.ft. per month for the flat; and for the parking space Rs.0.70/- per sq.ft. per month.
6. The Corporation is before this Court in the instant proceeding complaining that the Tribunal has exercised the jurisdiction with material irregularity and in flagrant violation of the statutory requirement, whereby it was mandatory upon the Tribunal to take into consideration the relevant parameters for arriving at a conclusion regarding the annual valuation. Instead of doing so, the annual value has been determined at a rate lesser than that which was determined by the Hearing Officer merely by accepting its own earlier decision in MAA 335 of 2010 passed in respect of a flat situated elsewhere, i.e. at 13, Ram Chandra Ghosh Lane.
7. The Court on examining the order passed by the learned Tribunal finds that merely by relying upon the determination in MAA 335 of 2010, the Tribunal

has arrived at an assessment without regard to any relevant parameters, even though the flat of the opposite party in question, as per the order of the Tribunal is situated at Jatindra Mohan Avenue. It is not even a case where the Tribunal has relied upon another flat in the same premises which in an appropriate case, may be considered to be a relevant factor.

8. In the instant case, the determination is with reference to an order passed in another MAA 335 of 2010 with respect to a flat situated on a different road and, therefore, the assessment is found to be clearly unsustainable. Even otherwise, the order of the Tribunal is considered by this Court to be the result and product of an illegal exercise of statutory jurisdiction. The judgment of the Tribunal is without taking into consideration any relevant/ statutory parameter for determination, such as location of the premises, its use, age, quality and nature of the structure, occupancy etc.. The order of the Tribunal is also bad as it does not contain any reason showing consideration. For non-recording of reasons in support of the order, also, the Tribunal's judgment is unsustainable in view of the decision of the Apex Court in the case of ***Kranti Associates Private Limited & Anr. Vs. Masood Ahmed Khan & Ors.,*** reported in ***(2010) 9 SCC 496.***

9. Having observed as above, this Court would **set aside** the order dated 06.12.2016 passed by the Tribunal in MAA 1833 of 2012 and remit the matter to the Tribunal for determination afresh after due notice and complying with the statutory formalities /requirements, in accordance with law.

10. Accordingly, the revisional application stands allowed.
11. **CO 1604 of 2018** is **disposed of**.

(Madhuresh Prasad, J.)