28.02.2024

Court : **04**
Item : **06**
Matter : **CO**
Status : **DO**
Bench ID : **266175**
Transcriber : **NANDY**

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 1606 of 2018

The Kolkata Municipal Corporation
Vs.
Abha Sharma

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

1. There is no Counsel to represent the Opposite Party when the matter is called on today. Over and above, there is no prayer for accommodation.
2. It appears from the order-sheet that an interim order of stay is obtaining in favour of the petitioner which was extended on 22.11.2018, when also there was none to represent the opposite party.
3. The opposite party has acquired a flat bearing no. 4A, on the fourth floor of the building, in premises No. 9A, Jatindra Mohan Avenue, Kolkata and applied for mutation for her name against the said purchased flat which was allowed by the petitioner/corporation.
4. A notice was issued proposing the assessment value in respect of the said flat from the second quarter of 2008-09. The notice proposed annual valuation of Rs.38,750/- based on a rate being Rs.2.75/- per sq.ft. per month for the flat in question; and Rs.1.00/- per sq.ft per month for the open car parking space.
5. The opposite party was aggrieved by such determination/proposal which was considered by the Hearing Officer, on an objection being filed. The Hearing Officer has affirmed the determination, and the issue was taken up in appeal by the opposite party in MAA 1826 of 2012 under Section 189(5) of the Kolkata Municipal Corporation Act. The appellate

forum vide judgment dated 24.04.2017 has reduced the annual valuation based on a rate being Rs.1.40/- per sq.ft. per month for the flat; and Rs.0.70/- per sq.ft. per month for the open car parking space for the period in question.

6. Learned Counsel for the Corporation submits that the Tribunal has acted in illegal exercise of jurisdiction and proceeded to decrease the determination arrived at by the Hearing Officer merely by accepting the reliance placed by the appellant on an order passed in MAA 1819 of 2012, on the ground that the determination therein relates to a flat in the same premises possessing identical characteristic. It is submitted that while exercising jurisdiction, the Tribunal under Section 189(5) was required to consider the determination of annual value taking into consideration the legally recognized parameters, on the basis of some material to sustain the decision, according due and manifest consideration, which has not been done. Simply relying upon the decision in another case (MAA 1819 of 2012), the Tribunal has decreased the determination. It is thus submitted that the order is unsustainable as being passed in flagrant violation of the statutory obligations and illegal exercise of jurisdiction.

7. Learned Counsel has handed over a copy of the order passed in CO 3368 of 2017 wherein the determination of annual value in MAA 1819 of 2012 has already been set aside. He submits that in view of this development, the sole foundation on which the order was passed by the Tribunal also has ceased to exist and the Tribunal's order is thus unsustainable.

8. On going through the order passed by the learned Tribunal, this Court finds that other than relying upon

the determination made in MAA 1819 of 2012, the Tribunal has not taken into consideration any relevant parameter such as location of the premises, use, age of the structure, occupancy etc., for determination of annual rental value in terms of the statutory provisions nor there is any reason assigned for modifying the order of the Hearing Officer otherwise.

9. The order, therefore, is clearly unsustainable as passed in illegal exercise of statutory jurisdiction and material irregularity, merely relying upon the determination in another case which as noted above, has already been interfered with by this Court.

10. In so far as the non-recording of reasons for determination, the Court would consider it appropriate to take into consideration decision of the Hon'ble Apex Court in ***Kranti Associates Private Limited & Anr. Vs. Masood Ahmed Khan & Ors.*** *reported in* ***(2010) 9 SCC 496,*** wherein the requirement for recording of reasons in a decision-making process has been held to be imperative to ensure fairness in the decision-making process. In the instant case, the Tribunal has not recorded any reason to show what was crossing the mind of the Authority to arrive at a conclusion that the determination by Hearing Officer was excessive. There is no reason in support of the determination of annual value by the Tribunal. The order on this score also is not sustainable.

11. In view of the discussion above, the Court would set aside the determination made by the Tribunal under order dated 24.04.2017 passed in MAA 1826 of 2012 and remit the matter to the Tribunal of the Petitioner/Corporation for determination afresh

regarding annual valuation, after due notice upon the affected party and taking into consideration the relevant parameters, in accordance with law.

12. Accordingly, the revisional application stands allowed.

13. **CO 1606 of 2018** is **disposed of**.

(Madhuresh Prasad, J.)