Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Saugata Bhattacharyya

W.P.A. 12285 of 2014
(IA NO: CAN 1/2014 (Old No: CAN 5212/2014), CAN 2/2015 (Old No: CAN 2455/2015 & CAN 3/2016 (Old No: CAN 6208/2016)

Bhavesh Rajnikant Kampani
-vs-
The Kolkata Municipal Corporation & Ors.

For the Petitioners	: Mr. Partha Sarathi Bhattacharya,, Mr. Sukanta Chakraborty, Mr. Anindy Halder
For the KMC	: Mr. Biswajit Mukherjee, Mr. Fazlul Haque

Hearing concluded on : 08.04.2024

Judgment on: 08.04.2024

Saugata Bhattacharyya, J.:

The writ petition is directed against the order dated 25th November, 2013 passed by the hearing officer in order to determine the annual valuation of 28/3A Convent Road within the jurisdiction of Kolkata Municipal Corporation (for short "KMC") from the period of 2nd quarter, 2008-2009.

Mr. Bhattacharya, learned senior advocate appears on behalf the petitioner and submits that the impugned order dated 25th November, 2013 was passed after the order was passed by the coordinate Bench on the first writ petition being WPA 5500 of 2011 dated 28th August, 2012. The hearing officer of KMC was required to consider the objection which is at page 73 of the writ petition dated 20th December, 2010 and supplementary written objection which is at pages 105 to 110 of the writ petition. According to the petitioner this objection dated 20th December, 2010 and the supplementary written objection were not taken into consideration while determining the annual valuation of the aforesaid premises in question on the basis of the order of the coordinate Bench dated 28th August, 2012.

It is also submitted that there was an enquiry report which is at page 144 of the writ petition dated 14th August, 2009 which was also required to be taken into consideration at the time of hearing to determine annual valuation of the premises in question but the final order dated 25th November, 2013 does not depict consideration on such enquiry report. Lastly it is contended that though point has been taken on behalf of the KMC other three agreements amounting to Rs.10,000/-, Rs.53,000/- and Rs.20,000/- are not disclosed in the writ petition but paragraph 28 of the writ petition goes to show that it has been stated specifically apart from the agreement amounting to Rs. 5,000/- there were three other agreements but according to the petitioner those agreements are not required to be taken into consideration by the hearing officer since these three agreements pertain to realisation of service charge not rent.

According to the petitioner the decision dated 25th November, 2013 of the hearing officer is not in consonance with the order of the coordinate Bench dated 28th August, 2012 since on consideration of the issue hearing officer has arrived at conclusion fixing identical annual valuation of Rs.9,34,160/- which was the previous valuation as determined by the hearing officer. Therefore there is absurdity in the order dated 25th November, 2013; annual valuation was required to be decided on the basis of the observations as contained in the order of the coordinate Bench dated 28th August, 2012.

During course of hearing issue was raised relating to existence of appeal provisions against the said order dated 25th November, 2013 but it is specifically the contention of the petitioner based on the statements made in paragraph 31 of the writ petition that in the event of preferring an appeal under Section 189 petitioner is required to deposit the outstanding dues which the petitioner is not in a position to deposit which compelled the petitioner to approach this Court with the present writ petition.

It is also contended on behalf of the petitioner that determination of objection under Section 188(2) has not been done by the hearing officer while fixing the annual valuation.

KMC is represented by Mr. Mukherjee, learned advocate who has made submission in order to defend the assessment order dated 25th November, 2013 upon placing reliance on the documents annexed to the supplementary affidavit affirmed on 17th January, 2024. Orders passed by the hearing officer in terms of the order dated 28th August, 2012 are annexed to the said supplementary affidavit. According to KMC the issue was heard extensively by the hearing officer on 1st April, 2013, 20th May, 2013, 8th July, 2013, 15th July, 2013, 9th September, 2013, 30th September, 2013, 18th November, 2013 and lastly on 25th November, 2013.

It has been submitted before this Court on placing reliance on the order dated 15th July, 2013 of the hearing officer that apart from the agreement of Rs.5,000/- three other agreements amounting to Rs.53,000/-, Rs.10,000/- and Rs.20,000/- had to be taken into consideration by the hearing officer in view of unamended Section 174 of the Kolkata Municipal Corporation Act, 1980. It is contemplated under Section 174 as argued on behalf of the KMC that for determination of annual valuation of the property the basis would be the "*gross annual rent including service charges*"; therefore the concerned authority of KMC is authorised to reckon three other agreements which according to the petitioner were the agreements relating to realisation of service charges.

However, it is submitted that all the three agreements do not pertain to realisation of service charge but the agreement amounting to Rs.10,000/- was made by and between the parties which is leave and licence agreement in connection with 200 square fit on the first floor of the premises in question. Therefore, the agreement of

Rs.10,000/- needs to be treated as agreement for realisation of rent and not for realisation of service charge.

In support of the contention made on behalf of the KMC that the hearing officer is authorised to consider other agreements relating to realisation of service charge, reliance has been placed on the judgment of the Hon'ble Division Bench, reported in ***2006 SCC Online Cal 624,*** *Paragraphs 13 and 15* ***(Calcutta Municipal Corporation & Ors-vs-Damodar Ropeways & Construction Company Private Ltd. & Ors.)***.

In addition thereto reliance is also placed on the judgment of the Apex Court, reported in ***AIR 2003 SC*** *Page 4278* ***(Calcutta Gujrat Education Society & Anr. –vs-Calcutta Municipal Corporation & Ors.)***.

In order to demonstrate requirement of deducting income tax from the rent, Section 194–I of the Income Tax Act, 1961 has been relied upon and based on such provisions, it is contended that the contention of the petitioner that in connection with service charge, income tax/TDS is deductible but not from rent is not correct, even in connection with payment of rent, 10% is deductible towards income tax.

The definition of rent as provided in Section 194–I of the Income Tax Act, 1961 is also relied upon wherein it has been provided that the "*rent*" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any,-

(a) land; or
(b) building (including factory building); or
(c) land appurtenant to a building (including factory building); or
(d) machinery; or
(e) plant; or
(f) equipment; or
(g) furniture; or
(h) fittings:

Therefore, according to KMC even the relevant provisions of the Income Tax Act, 1961 postulates wider definition of "*rent*" as attributed by unamended Section 174 of the Kolkata Municipal Corporation Act, 1980 which includes "*any payment*" and 10% amount is deductible towards income tax in connection with such rent which has been fastened for the use of any land or building.

The writ petition has been heard on number of occasions when the learned advocate representing the KMC previously tried to rely upon three other agreements apart from the agreements relating to Rs. 5,000/- and this Court having found that those three agreements which were considered by the hearing officer while fixing annual valuation are not adequately described in the pleadings granted leave to the concerned authority of KMC to file supplementary affidavit and the supplementary affidavit has been used which was affirmed on 17th January, 2024. Petitioner was also granted opportunity to deal with such supplementary affidavit by filing a reply and the said reply has been used on behalf of the petitioner.

During course of hearing question arose whether the issue is to be sent to the appellate authority as contemplated under Section 189 of the Kolkata Municipal Corporation Act, 1980 or not and the same point is also considered today but having seen the averments made in paragraph 31 of the writ petition, this Court has decided to examine the impugned order of assessment dated 25th November, 2013 since in the said paragraph it has been averred on behalf of the petitioner that he is not in a position to deposit the outstanding dues in order to avail of the remedy of preferring appeal under Section 189.

In pursuit of determining annual valuation of the premises in question an order was passed on 20th December, 2010 fixing annual valuation at Rs. 9,34,160/- which triggered the first writ petition being WPA 5500 of 2011 and the same was disposed of by the coordinate Bench vide order dated 28th August, 2012. On perusal of the said order dated 28th August, 2012, it appears that fixing of annual valuation vide order dated 20th December, 2010 was set aside with a direction upon the concerned authority of KMC to fix the annual valuation afresh taking into consideration the written objection filed by the petitioner. Pursuant thereto, a detailed exercise has been made by the hearing officer to finalize the annual valuation of the premises in question and while doing so in the order dated 15th July, 2013 and in the subsequent final order dated 25th November, 2013 hearing officer considered other three agreements apart from the agreement of Rs. 5000/- in order to arrive at the amount which is to be fixed as annual valuation of the premises in question.

This Court is tasked to find out an answer whether the hearing officer was justified in reckoning three other agreements apart from the agreement of Rs. 5000/- while determining the annual valuation or not since it has been contended on behalf of the petitioner that other three agreements pertain to realization of service charges therefore these three agreements are not relevant in taking decision in the matter of finalization of annual valuation.

Since it is contended on behalf of the KMC that unamended Section 174 of the Kolkata Municipal Corporation Act, 1980 was pressed into service, this Court is required to consider the provisions as contemplated under Section 174 wherein it has been specifically provided that annual valuation of any land or building shall be deemed to be "*the gross annual rent including service charges*".

The issue was considered by the Hon'ble Division Bench in ***Damodar Ropeways*** (supra) wherein in paragraph 13 it has succinctly been decided "*gross rent*" means not only the rent which the landlord could get in lieu of his enjoyment of the property assigned to the tenant but also all other charges incidental thereto and it was observed that the tribunal or the hearing officer did not make any mistake while considering the gross rent which is inclusive of service charge and the order impugned in the said proceeding was not interfered with.

Taking note of the issue involved in this writ petition, this Court can safely conclude that there is no statutory impediment in fixing annual valuation of the property in question based on not only the agreement of Rs. 5,000/- but three other agreements as delineated in the orders of the hearing officer dated 15th July, 2013 and 25th November, 2013 specially when the issue has been fortified by the judgment of the Hon'ble Division Bench passed in ***Damodar Ropeways*** (supra).

The Court is aware of the fact that a point has been taken on behalf of the petitioner that explicitly written objection and supplementary written objection were not taken into consideration by the hearing officer which according to the order dated 28th August, 2012 the hearing officer was required to take into consideration.

In view of such submission and on specific query made to the learned advocate for the petitioner that whether consideration of the written objection would have changed the outcome of the proceeding which was initiated by the hearing officer pursuant to the order dated 28th August, 2012; this court does not get any satisfactory reply.

In addition thereto, on minute scrutiny of the orders passed on several occasions by the hearing officer after the order was passed by the coordinate Bench on 28th August, 2012 it appears that other aspects have been taken into consideration while determining the annual valuation of the premises in question.

Accordingly, this Court finds no infirmity in the order dated 25th November, 2013 and consequently, the writ petition stands dismissed.

Applications, if pending, also stand dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)

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