09 **24.05.2024**

Ct. No. 04

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CO 2397 of 2018

The Kolkata Municipal Corporation
Vs.
Kishore Mali and another.

Mr. Alok Kumar Ghosh,
Mr. Swapan Kumar Debnath.
... for the petitioner.

The petitioner/Corporation has filed this revisional application challenging the determination made by the Municipal Assessment Tribunal dated 19th May 2017 whereby and whereunder the valuation for the purposes of property tax of the flat in question has been assessed at the rate of Rs. 1.40 per sq.ft. per month. The flat is situated at 9A, Jatindra Mohan Avenue, Kolkata – 700006, within the jurisdiction of the petitioner/Corporation.

It is submitted by the learned Counsel for the petitioner that the determination is arbitrary and not relying on the statutory parameters specified for this purpose. The determination has been made by the Tribunal relying upon the determination with respect to a property situated elsewhere, i.e. at 13, Ram Chand Ghosh Lane. The determination, therefore, is clearly unsustainable.

The Court would take notice of the fact that despite due service of notice upon the opposite parties, they have remained unrepresented since 22nd November 2018 and successive dates thereafter, being 21st February 2024 and 19th April 2024. Today also, they are unrepresented.

The facts as discerned from the records are that the flat in question was purchased by the opposite parties. The same was having an area of 861 sq.ft. and bearing no. 7D situated on the 7th floor of the building. The opposite parties applied for mutation and an assessee number was granted to the opposite parties being no.11-018-15-00475. The amount of proposed assessment was communicated to the opposite parties effective from 2nd Quarter of 2008-2009.

The amount was found to be excessive by the opposite parties and they raised an objection in this regard. The objection was considered by the Hearing Officer of the petitioner/Corporation herein and the property tax was fixed at the rate of Rs. 2.75 per sq.ft. per month for the flat, vide order dated 6th August 2012.

Aggrieved by such determination, the opposite parties preferred an appeal before the Municipal Assessment Tribunal. The appeal, bearing no. MAA No. 1841 of 2012 has been allowed by the order dated 19th May 2017, impugned in the instant proceeding.

Learned Counsel for the petitioner would submit that the order is unsustainable being perverse inasmuch as the determination is based on the valuation of a flat located elsewhere, contrary to the statutory parameters for determination. The consideration is thus unsustainable.

Upon going through the order impugned, the Court finds that the assessment of the property tax has been based on decision passed in MAA 335 of 2010, which is in respect of some other property situated at 13, Ram Chand Ghosh Lane. There is no basis whatsoever for considering the annual valuation of the opposite parties property to be at par with another property situated in a different building at a different location.

The Court finds that the decision is also in violation of the statutory parameters laid down for such determination and without taking into consideration the relevant parameters, such as age of the building, its quality, its occupancy etc. The decision, therefore, is found to be bereft of relevant reasons.

In this connection, the learned Counsel for the petitioner has also placed reliance on a decision of the Apex Court in case of M/s. Kranti Associates Private Limited and another vs. S.H. Masood Ahmed Khan and others, reported in (2010) 9 SCC 496. Relying upon this report, this Court earlier set aside the order passed in MAA 1833 of 2012.

The Court is in agreement with the submission advanced by the learned Counsel for the petitioner.

The impugned order being without reference to any relevant statutory parameters for determination is found to be without jurisdiction and perverse being unsustainable in view of the settled legal position.

The order passed in MAA 1841 of 2012 is thus set aside and the matter is remitted to the Tribunal for determination afresh after due notice, complying with the statutory formalities/requirements in accordance with law.

The revisional application is allowed.

CO 2397 of 2018 is disposed of.

(Madhuresh Prasad, J.)