

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

APO 115 of 2022

WPO 81 OF 2019

**Anil Saraf and Ors.
Vs.
The Kolkata Municipal Corporation & Ors.**

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Appellants : Mr. Arindam Banerjee, Adv.
Mr. Abhirup Chakraborty, Adv.

For the KMC : Mr. Biswajit Mukherjee, Adv.
Mr. Swapan Kr. Debnath, Adv.

For the Respondent No. 5 : Mr. Joyak Kumar Gupta, Adv.
Mr. Pawan Kr. Jajodia, Adv.

For Orders on : 30.01.2024

Apurba Sinha Ray, J. :-

The Factual Matrix:-

The appellant's case:-

1. The writ petitioners being the heirs of Sampat Devi Saraf are lessees under the respondent no. 5 being the successors of East India Properties, in respect of a 3117 sq.ft. property on the third floor of a multi-storied building by virtue of a registered deed dated 27.05.1963 executed by and between the original owner Bijoy Kumar Sadhukhan and the said superior lessor.

2. The Corporation assessed annual valuation of the entirety of the premises with effect from 3rd quarter of 1966-67. Such assessment was challenged by the respondent no. 5 in the Presidency Small Causes Court, Calcutta and ultimately the same travelled to the Hon'ble Supreme Court. The Apex Court by its judgment dated 30.03.1998 reported at (1988) 4 SCC 368 held that for the period of first eight years during the subsistence of a tenancy, the contractual rent being the 'fair rent' would be regarded as the basis for fixing the annual value under Section 168 of the Calcutta Municipal Corporation Act, 1951 and thereafter the annual value has to be determined in accordance with Section 8(1)(d) of the West Bengal Premises Tenancy Act, 1956.

3. However, the Corporation did not make any assessment of the petitioners' portion during the period when the Calcutta Municipal Corporation Act, 1951, was in operation. The said Act was repealed by the Kolkata Municipal Corporation Act, 1980 with effect from 4th January, 1984.

4. It is contended that by enacting Section 635 of the 1980, Act, the assessment which was made in connection with any property or building has been saved.

5. By seven notices, all dated 12th June, 2013, the Corporation for the first time assessed the petitioners' portion, that is, a flat of 3117 sq.ft., as a separate unit of assessment and made the purported assessments; two under the 1951 Act (since repealed) and five under the 1980, Act. Such assessments were preceded by suo moto treatment of the petitioners' portion as a unit of assessment, suo moto mutation of the name of Anita Sureka as person liable to pay property tax in respect of the petitioners' portion and suo moto grant of separate assessee number for the petitioners' portion. All were done behind the back of the petitioners and without having afforded them any pre-decisional hearing. The annual valuations under the said assessments were fixed by the hearing officer of the KMC constituted under Section 187 of the 1980 Act but copies of orders of assessment

were not served upon the writ petitioners. A letter of intimation dated 05.12.2017 was issued by the Corporation from which the petitioners for first time came to learn about the said decision of the Corporation. The said letter of intimation dated 05.12.2017 was challenged by the petitioners by filing the instant writ petition wherein it was contended that the said suo moto treatment of Anita Sureka as person liable in respect of the petitioners' portion, suo moto grant of separate assessee number in respect of the petitioners' portion, the letter of intimation and the assessments made thereafter, were all bad in law.

6. Learned counsel of the appellants Mr. Arindam Banerjee has submitted that the two assessments under the 1951 Act purported to be made in the year 2013 are wholly bad and without jurisdiction. In the year 2013 the 1951 Act stood repealed by the 1980 Act with effect from January 4, 1984. None of the two assessments under the 1951 Act had been made during the subsistence of the 1951 Act or was pending midway as on the date of repeal of the 1951 Act. Accordingly, no proceeding under the 1951 Act can in law be construed to have been saved under the provisions of Section 635 of the 1980 Act or under the Bengal General Clauses Act, 1899. The said two impugned assessments are also violative of Articles 14 and 265 of the Constitution. Learned Counsel further argued that the annual valuations under the five assessments made under 1980 Act have not

become final under Section 190 thereof in view of non-service of copies of orders of the hearing officer and consequential unlocking of the appellate remedy under Section 189 thereof. Learned counsel has also drawn the attention of this court to the judgment in the case of **Sahu Jain Charitable Society Vs. KMC reported at (2018) 3 CHN 328= (2018) 2 Cal LT 227** wherein it was held by a co-ordinate Bench that the KMC could not make any general re-valuation under Section 179(2)(d) of the 1980 Act for a retrospective period of more than three years from the date of revising order. The special leave petition carried by the Corporation from such judgment was dismissed. Accordingly the five assessments under the 1980 Act are bad and void as they are dated back to more than three years prior to 2013 when the revision of assessments was first proposed. Therefore, both the assessments under the 1951 Act and under 1980 Act as reflected in the letter of intimation and challenged in the writ petition are bad and void.

KMC's contention:-

7. Learned counsel for the KMC Mr. Biswajit Mukherjee has submitted that the premises in question, i.e., 20B Adbul Hamid Street (previously known as British India Street) is in the Dalhousie area where the writ petitioners occupy an area admeasuring 3117 sq.ft. being suite no. 3C on the third floor and are paying a lease rent of Rs.

360 per month. The owner of the premises in the records of the KMC was one Bijoy Sadhukhan, who granted lease to M/s. East India Commercial Company Limited and ultimately, the East India Commercial Company Limited assigned or conveyed the lease hold right to Raj Kumar Saraf, Anil Kumar Saraf, Lalita Saraf, Sarita Saraf, and Anita Saraf on 'ownership basis' at a rent of Rs. 360 per month in the year 1967. It was a registered instrument.

8. Learned counsel further submitted that from the records it appears that East India Commercial Company Limited challenged the assessments made by the KMC for the 3rd quarter of 1966-67. The said challenge ultimately went before the Hon'ble Supreme Court and the Supreme Court by its judgment and order dated 30th March, 1998 laid down the formula for computing the valuation. The KMC was under an obligation to complete the annual valuation strictly in terms of the formula propounded in the said judgment. In 2013 the KMC proceeded to determine the annual valuation of the suit property from 3rd quarter 1966-67 onwards till 2nd quarter 2009-10. Learned counsel has further stated that while undertaking such exercise, it came to the knowledge of the KMC that the appellants/ writ petitioners were holding a 3117 sq.ft. suite on 'ownership basis' and paying a paltry rent of Rs. 360 per month. Considering that the assessment of the writ petitioners' portion would have adverse impact on the

determination of annual valuation of the other portions of the building, the KMC apportioned and separated the said 3117 sq.ft. held by the writ petitioners and allotted a separate assessee number being assessee no. 110460103204.

9. The KMC simultaneously issued seven hearing notices on 12.06.2013 under Section 184(3) of the KMC Act for determining the annual valuation of the portion held by the writ petitioners.

10. Learned counsel further contended that the petitioners attended the hearing before the hearing officer and consequent upon such hearing the annual valuation for the periods proposed in the hearing notices were determined. Presumably, copy of the order passed by the hearing officer was also served as there is no whisper from the end of the writ petitioners regarding non-service of copy of the order until the filing of the present writ petition in 2019 wherein the petitioners raised a grievance regarding non-service of the order for the first time. The petitioners never filed any appeal against the said determination of annual valuation and as a result the said annual valuation became final by operation of Section 190 of the KMC Act, 1980 and KMC issued the periodic property tax bills but the petitioners remained silent and did not pay the same. On 12.08.2013 and 28.09.2013 the petitioners raised certain objections about the annual valuation but it

will appear that there is no whisper in the said objections about the non-service of the order. Rather, in the objection dated 28.09.2013 the petitioners suggested a valuation and admitted their liability of about 6 lakhs towards the tax.

11. As the periodic property tax bills were not paid, the KMC issued letter of intimation dated 05.12.2017 and although a liberty was afforded to the petitioners to raise objection to the said letter, the petitioners did not raise any objection. Ultimately the petitioners filed the writ petition challenging the said letter of intimation. As a corollary to the challenge to the letter of intimation the appellants are seeking to challenge the determination of annual valuation which was already made in 2013. Learned counsel for the KMC has submitted that the decision in Sahu Jain's Case, supra, cited by the appellants, is not applicable to the present case since that judgment was delivered on 26.04.2018. The said judgment cannot be applied in respect of the annual valuation finalized in the year 2013, without there being any challenge subsisting in respect of such determination. Moreover, the learned counsel argued with reference to the prayers in the present writ petitioners that the final determination of the annual valuation is not under challenge. The Hon'ble Division Bench in **Sahu Jain's case, supra**, has failed to take into consideration the judgment of a coordinate bench in the case of **KMC Vs. Abdul Halim Ghaznavi**

Molla reported at AIR 1998 Cal 345 wherein the Court held otherwise.

12. In conclusion the learned counsel for the KMC submitted that the writ petitioners on the one hand have accepted their liability to the tune of Rs. 6 lakhs vide letter dated 28th September, 2013 and at the same time have turned around and challenged the valuation in 2019. If the annual valuation is determined on the basis of the rent of Rs. 360 paid by the appellants/petitioners in respect of 3117 sq.ft. of flat in Dalhousie area the same would jeopardize and discriminate against the valuation of other unit holders in the area. According to learned counsel, the Hon'ble First Court considered the entire facts and thereafter delivered the judgment. There is no submission on behalf of the appellants indicating any infirmity in the said judgment. Also, the writ petition was filed after an unexplained and inordinate delay.

13. In reply, learned counsel for the appellants submitted that the indenture of 03.05.1967 should be read as a whole and mere mention of the term 'ownership basis' cannot change the nature of the indenture. Moreover, Section 2(62) of the 1980 Act cannot be interpreted to mean that a lessee is an owner. If the said absurd interpretation is given, various provisions of the KMC Act, 1980 will become absurd and meaningless. The proposition that Section 183 of

the KMC Act, 1980 is attracted in the case of lease by virtue of the lease deed dated 03.05.1967, is incorrect. Requirement of mutation can only arise if there is a transfer of title of immovable property. It is also contended that the corporation cannot grant apportionment or separation by treating the possession of a tenant or lessee as the subject matter of separation or apportionment. This would militate against Section 178(1) or 178(2) of the KMC Act, 1980.

14. Learned counsel also submitted that the appellants have specifically challenged and sought quashing of the letter of intimation dated 05.12.2017 in the writ petition and therefore the contention of KMC's in this regard is not correct. Learned counsel also contended that it is trite law that when a court of law declares or clarifies a legal provision, the same would be retrospective as if the same was always the law as declared and clarified unless the Court expressly declares that the same will operate prospectively. As the orders of the hearing officer regarding assessments were not served upon the writ petitioners, the assessment orders under the Act, 1980 cannot be said to have reached finality in view of Section 190 of the KMC Act, 1980. The proposition that as the appellants did not file written objection within the prescribed period, the valuation has become final is incorrect, since the proposed assessments are wholly without jurisdiction and void and it matters little whether or not the appellants

filed any written objection within the meaning of Section 186 of the KMC Act, 1980. The non-filing of written objection by the appellants within the time mentioned in the notice cannot validate an otherwise null and void proposal of assessment.

15. Learned Counsel submitted that it is settled law that each assessment is a separate and independent proceeding. What had gone up before the Hon'ble Supreme Court was the assessment of 1966. Nothing prevented the municipal authorities from making subsequent assessment under the 1951 Act and then with effect from 04.01.1984 when the KMC Act 1980 came into force, from making periodical assessments under the KMC Act, 1980. The argument of the KMC that there was an order of injunction from any court of law preventing the KMC authority from making subsequent independent assessment, does not hold good since the case of East India Commercial Company Private Limited was disposed of by the Hon'ble Supreme Court in the year 1998. The assessments qua the appellant's portion were made in the year 2013 that is 15 years after the said judgment of the Hon'ble Supreme Court. If the municipal authorities have not taken appropriate action under the statute at the appropriate time though not restrained by any court, they are bound by the legal consequences thereof.

16. It was submitted that the decision of Abdul Halim Ghaznavi Molla's (supra) is irrelevant for deciding the case of Sahu Jain. In Sahu Jain (supra), the Hon'ble Division Bench read into the relevant provision a period of limitation considering other provisions of the statute and in particular Section 573, and held that the said period would apply for retrospective assessments of escaped re-valuation. Accordingly, by not considering the case of Abdul Halim Ghaznavi Molla (supra) which was on a totally different point, it cannot be said that efficacy of the judgment in Sahu Jain is being anyway diminished or effaced.

17. The said letter of intimation is a non-statutory document. The said letter of intimation reflected against the assessee in the records of the Corporation. The statute does not say that if the letter of intimation is not responded within the period as mentioned in the letter of intimation the right of the citizen to challenge the demands evaporates.

18. Learned Single Judge's observation:-

"The Court, being aware of the fact that the issue was pending consideration for nearly thirty years, directed the assessing authority to make fresh assessment in accordance with law. The manner in which the property is required to be assessed has also been laid down by the Hon'ble Supreme Court. KMC was duty bound to comply the direction passed by

the Supreme Court. The Hon'ble Supreme Court permitted reassessment of annual valuation to be made from the year 1966- 67. The Court consciously did not restrict the KMC to reassess only for the preceding three years. On the contrary, the Court directed reassessment to be made for the last thirty years and more.

After the assessing authority reassessed the annual valuation, the petitioners have taken recourse to the ratio laid down by this Court in the matter of Sahujain (supra). In Sahujain (supra), there was no direction from the Hon'ble Supreme Court for reassessment of the annual valuation. Direction passed by a superior forum always prevails over any order passed by the subordinate authority. Accordingly, the decision of Sahujain cannot be applied in the facts and circumstances of the present case to nullify the order passed by the Hon'ble Supreme Court in respect of the self-same premises, the lessor of the property being the same. KMC cannot be expected to apply different yardsticks to assess the annual valuation of the same property.

As regards the liability to pay tax, the petitioners in their objection never denied their liability to pay the same. The petitioners are primarily aggrieved by the quantum of the tax that has been assessed. The petitioners, holding the property on ownership basis, are liable to pay property tax in the mode and manner as laid down by the Supreme Court.

Opportunity was provided to the petitioners to file objection to the valuation of assessment within a specified time period. The petitioners filed their objection out of time. The allegation of the petitioners that they have been doubly charged as the owner of the property already cleared the dues is also misconceived. The tax deposited by the owner in respect of the said property is abysmally low compared to the area occupied by the petitioners. The Corporation

accordingly charged the petitioners in the manner as set out by the Hon'ble Supreme Court

The building where the subject property is located consists of several tenements. For collecting the tax in respect of the portion of the property which the petitioners are possessing, the Commissioner was required to apportion the same and identify the person liable to pay tax. The Corporation is concerned only with collection of tax from the person liable to pay. The petitioners holding the subject portion of the property on ownership basis is liable to pay tax in accordance with the provisions of law and in line with the judgment passed by the Hon'ble Supreme Court.

The Corporation is not a party to the indenture of lease between the lessor and the lessee. If the petitioners have any issue with the lessor/landlord as regards payment of tax, they can always approach the appropriate forum for relief. The Corporation ought not to be dragged into the private dispute in between the parties.

Whether liability to pay tax in respect of the leasehold property is to be borne by the petitioner or the private respondent, being the lessor, as per indenture of lease, is a private dispute in between the lessor and the lessee and the same is not decided in the present writ. The party paying tax before the KMC, if permitted in law, may initiate proceedings for reimbursement of the same before the appropriate forum, in accordance with law, if so advised.

This Court is of the opinion that there is no error on the part of KMC in exercising jurisdiction to reassess the value of the property in question. No interference is called for.

WPO No. 81 of 2019 fails and is here by dismissed”.

Court’s view:-

19. No doubt this case has a chequered history. It appears that the initial challenge was made in respect of the assessment for the three quarters 1966-67 in the court of Learned Chief Judge, Presidency Small Causes Court, Calcutta. The matter went up to the Hon’ble Supreme Court which in the year 1998 gave certain directions which are as follows:-

“20. In the present case, it is not known as to when the property was first let out and when does the period of eight years come to an end. It is no doubt true that in special leave petition, it has been stated that the premises were constructed after 1964 and they were let out only in 1966 but the assessing authority has not examined the question by taking into consideration the effect of the proviso to Section 8(1)(d) of the Tenancy Act. It would, therefore, be necessary to determine as to when the property was first let out so that for a period of eight years during the subsistence of tenancy, the contractual rent being the "fair rent" will be regarded as the basis for fixing the annual value under Section 168 of the Municipal Act. Thereafter the annual value has to be determined in accordance with section 8(1)(d) of the Tenancy Act.”

20. The date of the said judgment was March 30, 1998. It appears that KMC initiated the process of assessment as per direction of the

Hon'ble Supreme Court in the year 2013, that is, 15 years after the date of judgment. Therefore a question may arise as to whether or not the KMC has the authority to make the relevant assessment particularly in respect of periods of 1/1967-1968, 2/1977-1978, 2/1985-1986, 2/1997-1998 after 15 years from the actual direction given by the Hon'ble Supreme Court.

21. A procedure or proceeding cannot be said to be just, reasonable and fair unless the same is concluded with some expedition. Therefore, it is expected that the process or the exercise indicated in the relevant judgment of the Hon'ble Supreme Court should have been completed by the KMC in a reasonable time bound manner. However, the delay of 15 years cannot be justified by any means. No attempt was made on behalf of the KMC to justify why such delay took place in complying with the direction of the Hon'ble Supreme Court. Can KMC take the plea that it can comply with the direction of the Hon'ble Court even after expiry of a long period as per its convenience since there is no time fixed for that purpose? The judicial decisions referred to by the parties do not show that there is any law either propounded by the Hon'ble Supreme Court or promulgated by the legislature under which the KMC authorities are empowered to take up the issue after 15 years of the relevant judgment without giving any notice to the concerned parties even though their unit or their areas is/are being apportioned

on the basis that the concerned persons are possessing the property as owners.

22. Section 635 of the KMC Act, 1980 has laid down the provision for repeal and savings. It has been laid down as hereunder:-

“635. (1) with effect from this date of coming into force of this Act. In [Kolkata] Municipal Act, 1951 (West Ben Act XXXIII 1951) shall stand repealed.

(2) Notwithstanding such repeal-

a.....

b....

c...

d...

e. any assessment of lands and buildings made in respect of any ward or group of wards under the Calcutta Municipal Act, 1951, shall continue to remain in force until assessment in respect of lands and buildings of such ward or group of wards is made under this Act, and the payment of the property tax for any such land or building for any quarter prior to the quarter commencing on the 1st day of April, 1984 shall be made in accordance with the provisions of that Act.”

23. The process of assessment of lands and building which was started or commenced under the CMC Act, 1951 is saved by virtue of the said provision. In this case the assessment was done in respect of the entire premises or building during 1966-67. At that time no assessment was made for subsequent periods, no process for assessment was commenced or pending in respect of the said building for subsequent period when the Calcutta Municipal Corporation 1951

was repealed. The process of assessment in respect of the subsequent period was first time commenced in 2013 in view of the direction of the Hon'ble Apex Court. Indisputably, it is a fact that as the relevant issue was pending before the Hon'ble Apex Court, subsequent assessment as referred to above could not be done. The decision or the judgment of the Hon'ble Supreme Court saves the relevant assessment process.

24. Therefore, it is true that KMC can take the plea that as per direction of the Hon'ble Supreme Court they have started the process of assessment for the period subsequent to 1966-67, or they have assessed the annual valuation afresh; but without any sufficient reason can KMC claim that even after 15 years from the date of direction of the Hon'ble Supreme Court, it can take up the assessment process, particularly in respect of the periods 1/1967-1968, 2/1977-1978, 2/1985-1986, 2/1997-1998?

25. The Learned Single Judge has observed that the action taken by the KMC is in compliance with the direction of the Hon'ble Supreme Court contained in the judgment passed in the reported case law as stated above. I have noted hereinbefore the directions issued by the Hon'ble Supreme Court in the relevant case which has been reported in (1998) 4 SCC 368 (East India Commercial Company Pvt. Ltd. Vs.

Corporation of Calcutta). Even at the cost of repetition the said directions are again noted below:-

“20. In the present case, it is not known as to when the property was first let out and when does the period of eight years come to an end. It is no doubt true that in special leave petition, it has been stated that the premises were constructed after 1964 and they were let out only in 1966 but the assessing authority has not examined the question by taking into consideration the effect of the proviso to Section 8(1)(d) of the Tenancy Act. It would, therefore, be necessary to determine as to when the property was first let out so that for a period of eight years during the subsistence of tenancy, the contractual rent being the "fair rent" will be regarded as the basis for fixing the annual value under Section 168 of the Municipal Act. Thereafter the annual value has to be determined in accordance with section 8(1)(d) of the Tenancy Act.”

26. From the above it transpires that it was the direction of the Hon’ble Supreme Court to ascertain when the property was first let out so that for the period of first eight years during the subsistence of the tenancy the contractual rent can be regarded as the basis for fixing the annual valuation and thereafter the annual valuation of the building is to be determined in accordance with Section 8(1)(d) of the West Bengal Premises Tenancy Act, 1956.

27. There is no material on record from the side of the KMC to show that the relevant exercise in accordance with the directions of the

Hon'ble Supreme Court as stated above was undertaken by the KMC. It is further relevant to mention that in the affidavit filed by the respondent no. 4, the Assessor Collector (North) in the Assessment Department of the KMC which was filed on behalf of respondent nos. 1 to 3 and self, the said respondents have contended in paragraph 6 at page 8 as hereunder:-

“In this connection it may be stated that the assessment in respect of the premises could not be completed for the reasons of disputes raised by the respondent no.5 and finally, pursuant to the judgment and order passed by the Hon'ble Supreme Court of India in East India Commercial Company Private Limited -Vs- Corporation of Calcutta, reported in 1998 (4) SCC 368, the assessment of premises was started in two phases, the first under the Calcutta Municipal Act, 1951 and second under the Kolkata Municipal Corporation Act, 1980. Accordingly, the hearing of assessment w.e.f 1/1967-68 till 2/1977-78 under the Calcutta Municipal Act, 1951 was completed without any change in the status of occupiers and it was only during the hearing of assessments for the periods stating under the Kolkata Municipal Corporation Act, 1980, the respondent no.5 declared that the writ petitioners are assignees/transferees in respect of the office block, being the subject matter of this writ petition, and not tenants and produced all relevant documents in support of its claim.”

28. From the above it transpires that it was the respondent no. 5 who declared that the present appellants were assignees or transferees in respect of the office block being the subject matter of the writ

petition and produced all relevant documents in support of his claim. It is unfortunate that the KMC did not consider it fit to call the present appellants to participate in the relevant proceeding and the KMC authority relied solely upon the submission of the respondent no. 5 and also the documents filed in support of the claim of the respondent no. 5.

29. The KMC has disregarded the principles of natural justice in view of the fact that even when it was going to pass an adverse order against the present appellants, the KMC authority did not consider it fit to ask the appellant to participate in the proceeding.

30. It is true that after apportioning the portion that is flat no. 3C and holding the appellants as persons liable to pay tax, the KMC authority issued seven notices to the appellants. In the written objections filed by the appellants it was specifically pleaded that they were not the persons responsible to pay the tax and all the relevant liabilities were upon the respondent no. 5. There is no document filed from the side of the KMC to show how they have dealt with such issue raised by the appellants.

31. It is very much relevant to refer to some recitals of the relevant registered indenture of lease dated March 3, 1967, for the purpose of

proper adjudication of the instant case. At page 8 paragraph no. 1 it has been mentioned as hereunder:-

“That the parties hereto of the Second Part shall pay to the company a sum of the rate of Rs.360/- (Rupees three hundred and sixty only) per month calculated at the rate of 12 paisa per sq. ft. of floor area of the said office block inclusive of owner's and occupier's share of municipal rates and taxes. The said sum of Rs.360/- (Rupees three hundred and sixty only) will be payable by the parties hereto of the Second Part to the company on or before the 31st day of each and every month following the month for which the same will become due according to the English Calendar commencing from the month following that on which delivery of possession of the said office block is given.”

32. From the above it transpires that monthly rental or premium is inclusive of owner's and occupier's shares of municipal rates and taxes. Furthermore, in clause 13 and 14 at page 11, it has been agreed between the parties as hereunder:-

“13. In the event of any future enhancement or enhancements of the rates and taxes by the corporation of Calcutta over and above the existing rate the same will be exclusively borne and payable by the Company.

14. The company shall also exclusively bear and pay all future statutory taxes, levies or charges which may hereafter be imposed in respect of the said building and/or the said leasehold.”

33. From the above it transpires that as per agreement between the concerned parties the respondent no. 5 was liable to pay the municipal taxes in respect of the premises occupied by the appellants. But it is rightly held by the Learned Single Judge that the KMC is not concerned with or bound by the private agreement executed between the parties and therefore even if there is an agreement for payment of taxes from the side of the respondent no. 5 in respect of the demised premises, the KMC is not bound by such agreement and as such the KMC can raise bills on the appellants being the superior lessors, in accordance with provisions of the Kolkata Municipal Corporation Act, 1980.

34. It is true that the appellants have been put in possession of the premises comprising of 3117 sq.ft. on ownership basis. It is also further contended that the present appellants are using the said property by demising the same to different sub-tenants or sub-lessees in lieu of heavy rent/premium. It may be mentioned that the relevant plea in this regard taken by the KMC was not categorically and specifically denied by the appellants, apart from giving an evasive and vague denial.

35. Needless to mention, as the appellants have been authorized to induct sub-lessees in respect of the demised premises, and sub-leases

have been created, they are said to have exercised their rights as an incidence of ownership in connection with such sub-lessees.

36. The appellants have relied heavily upon the case of Sahu Jain (supra) wherein a co-ordinate Bench has read into the relevant section of the KMC Act, 1980, a limitation period of three years. In other words, in Sahu Jain's case it has been held that whenever a statute or an Act is silent about the limitation period, the Court is bound to take three years as a reasonable period for limitation. The factual aspects of Sahu Jain's case show that on the basis of a mistaken instruction, the learned counsel withdrew certain concession under law which subsequently appeared that no such instruction was given by the parties to their learned counsel and the parties were allowed to agitate before the concerned court in subsequent proceedings and the parties were given liberty to take up the said issue afresh. But in our case it appears that the appellants in their objection dated 28.09.2013 specifically stated what should be the actual annual valuation for the demised premises. Therefore, the said letter dated 28.09.2013 written by the appellants themselves distinguishes the instant case from Sahu Jain's case since in the present case, there is no allegation of wrong instruction given to the learned advocates. On the other hand the appellants being the parties themselves consciously wrote the said letter dated 28.09.2013 addressed to the Assessor-Collector (North)

Kolkata Municipal Corporation stating what would be the annual valuation in respect of the demised premises. Therefore, it cannot be said that there was any wrong instruction or anything else which swayed the appellants to write such letter to the concerned authority of KMC.

37. The contents of the said letter are quoted below:-

“Anil Saraf

<i>ADDRESS:</i>	<i>20B, BRITISH INDIAN STREET, SUITE 3B, 3 FLOOR, KOLKATA-700069</i>
<i>CONTACT NO</i>	<i>033-2248-4792/ 3174</i>
<i>E MAIL ID</i>	<i>anil.saraf@hydrochem.in sarafanil@gmail.com</i>

Date: 28/09/2013

*To,
Assessor-Collector (North)
Kolkata Municipal Corporation*

*Ref No. Premise No. : 20B, Abdul Hamid Street
 (British Indian Street)
 Suite 3C, 3 Floor, Kolkata-700069
 Assessee No. : 110460103204
 Notice In the Name of Anita Saraf*

Sub: Objection regarding Valuation Notices

Dear Sir,

I, Anil Saraf, for self and on behalf of Anita Saraf (Nee Anita Sureka), Smt. Lalita Choudhury, Smt. Sarita Modi, Smt. Usha Saraf (Wife of Lt. Raj Kumar Saraf), Mr. Archit Saraf and Mr. Anirudh Saraf (both being

son of Lt. Raj Kumar Saraf), has been served 7 notices in the name of Anita Saraf (Nee Anita Sureka), for determination of Annual Valuation, details whereof are given herein below:

<i>Notice No.</i>	<i>Period</i>
635747	1/1967-1968
635749	2/1977-1978
635750	2/1985-1986
635752	2/1991-1992
635753	2/1997-1998
635754	2/2003-2004
635756	2/2009-2010

As discussed with Your good self, I will like to submit as follows:

1) Please refer to our previous objection letter dated 12/08/2013, as submitted to the Hearing Officer during hearing on 12/08/2013 in order to determine the liability of tax.

2) As per the Notice, Annual Value has been assessed based on present valuation of area for 2009-2010 @ 4.32/Sq Feet and then determined for previous years with deduction of 20% per 6 Year and arrived at for the starting Year being 1967-1968 @ 1.27/Sq Feet and thereby total amount assessed, approximately amounts to Rs. 20 lacs, which is excessively high.

3) However the basis of assessment should have been by taking assessable rate and valuation of Year 1967-1968 as the base rate, then which would have been lower to around 0.40/Sq Feet and then the assessable rate for following years should have been arrived thereby resulting in the total tax liability approximately to Rs. 6 lacs.

4) In support of my above contention, please refer to valuation of M/s Prem Kayal and Rashmi Kayal owning premises on the same floor and same building. Valuation for the period during 2005 has been done @ Rs. 1.46/Sq Feet.

5) Also Annual Value in building opposite to ours, i.e. 1, Abdul Hamid Street, and constructed much later than our building, Assessment for 2003 was done @ 2.25/Sq feet which is lower by more than 50% than the Annual valuation Notice served to us for the respective year, copy of the bill for office in Unit No. 304B, 3rd Floor, is enclosed herein.

6) Similarly, valuation is much low for nearby multistoreyed building at 2A, Ganesh Chandra Avenue, wherein the Assessment for 2003 was done @ 2.04/sq feet which is again lower by more than 66% than the Annual Valuation Notice served to us for the respective year, Copy of bill for flat No. 4 on 6th Floor, for the said Year is enclosed.

It is therefore on the same basis that we have requested that our valuation should be done for and from the Year 1966-1967 at Rs. 0.40/Sq Feet and adding thereto subsequent escalation as per KMC rules.

We would pray to your good self that our plea is considered with all due diligence and that we get a fair justice.

Thanking you,
Regards
Anil Saraf

Enclo: As above”

38. From the above it transpires that the appellants have themselves admitted the extent of their liability. Further they have drawn the attention of the concerned authorities regarding the proposed annual valuation of their premises in view of the annual valuation of the neighboring premises. From the contents of the above letter, according to the appellants, their total tax liability may be around Rs. 6 lakhs approximately.

39. But it appears from the record that such admission of liability was made by the appellants in the year 2013, that is also more than fifteen years from the date of direction of the Hon'ble Apex Court as regards the period from 1967-1968 to 1997-1998. Needless to mention that an admission of liability beyond the prescribed period shall not revive the time barred claim or liability unless there is an expressed or implied promise to pay. It is true that in the case of KMC Vs. Abdul Halim Ghaznavi Molla, *supra*, the observation of the Hon'ble Division Bench that no presumption can be raised upon expiry of certain period, that the municipal taxes cannot be recovered, was not considered in the case of Sahu Jain (*supra*). It was also held therein that a provision for limitation can only be brought about by a statute and such statute in certain cases may be statutes of repose but the legislature in its wisdom may not make any provision therefor.

40. We can say the other way around that the Division Bench in Abdul Halim Ghaznavi Molla's case (*supra*), decided on 02.04.1998, did not consider the case law of New Delhi Municipal Committee Vs. Life Insurance Corporation of India reported in (1977) 4 SCC 84, wherein the Hon'ble Apex Court was pleased to observe that the unlimited period of time did not exclude the concept of reasonableness and, therefore, in our case also, the directions of the Hon'ble Supreme Court in connection with relevant matter concerning the periods from

1967-1968 to 1997 to 1998 were not complied with by the KMC in a reasonable time bound manner and as a result of which several difficulties have emerged in balancing the relevant provisions of the KMC Act with the claims and counter-claims of the parties herein.

41. Though it is true that the impugned valuation as per assessment of the KMC was not challenged by the appellants on the ground that the appellants did not receive any communication of final order, it would be difficult to believe that after the hearing on 12.08.2013 they would remain idle over the issue. They could and should have enquired from the KMC office or could have pointed out to the appropriate authority non-receipt of copy of the final order in connection with the annual valuation.

42. In the facts of this case, though the assessment was not done in a time bound manner from the side of the KMC we cannot allow a 'tax holiday' to the appellants for the sheer callousness of the concerned KMC personnel and therefore, after giving anxious consideration to the appellants' admitted liability as reflected in their letter dated 28.09.2013, we direct the KMC to consider the proposal of the appellants as contained in the above mentioned letter. The relevant excerpts which are to be taken into consideration are:-

“It is therefore on the same basis that we have requested that our valuation should be done for and from the Year 1966-1967 at Rs. 0.40/Sq Feet and adding thereto subsequent escalation as per KMC rules.

We would pray to your good self that our plea is considered with all due diligence and that we get a fair justice”

43. As the said letter discloses that the appellants are ready to pay the amount as proposed by them, we find that there is an implied promise to pay the said amount of taxes from the side of the appellants and as such the KMC is at liberty to consider the proposal of the appellants and to make a fresh assessment for the periods as reflected in the letter dated 28.09.2013 of the appellants. Needless to mention, the delay in assessing the annual valuation for the periods of 2/2003-2004 & 2/2009-2010 is systematic delay, which should be condoned in greater public interest of the society. The entire exercise has to be completed by the KMC within three months after issuing fresh separate notices involving the periods of 1967-1968 to 1997-1998 in one hand and the periods from 2003-2004 & 2009-2010 on the other, and also after giving reasonable opportunity of hearing to the parties and all the stakeholders.

44. In view of the above discussion the impugned judgment and order passed by the learned single Judge in connection with WPO No.

81 of 2019 dated 23.09.2022 is hereby set aside. The appeal is allowed in part.

45. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

I Agree.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)