

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Md. Shabbar Rashidi

C.O. No. 3975 of 2018

The Kolkata Municipal Corporation

Vs

Sri Karnail Singh & Ors.

For the Petitioners- KMC : Mr. Alok Kumar Ghosh, Adv.,
Mr. Swapan Kumar Debnath, Adv.

For the Opposite Parties : Mr. Probal Mukherjee, Sr. Adv.
Mr. Suhrid Sur, Adv.

Heard on : January 10, 2025

Judgment on : January 24, 2025

Md. Shabbar Rashidi, J.

1. The instant revisional application is directed against an order dated October 12, 2017 passed by the 2nd Bench of the Municipal Assessment Tribunal Kolkata in MAA appeal no. 2566

of 2013. The revision is at the behest of the Kolkata Municipal Corporation.

2. By the impugned order the 2nd Bench of the Municipal Assessment Tribunal allowed the appeal filed on behalf of the opposite parties herein setting aside the order dated September 19, 2013 passed by the Hearing Officer-V of the Kolkata Municipal Corporation. The tribunal modified the annual valuation for the impugned premises to ₹. 40810/- from ₹. 1,24,960 with effect from January 2011-2012.

3. The revisional application is at the behest of Kolkata Municipal Corporation. The factual background giving rise to the impugned order is that the opposite parties were the owners and persons responsible to pay tax in respect of 257, Chitta Ranjan Avenue having two storied building and a R.T. structure of godown at the 3rd storey situated at Chitta Ranjan Avenue having all amenities like drainage, sewerage, electricity, road, water supply provided by the Kolkata Municipal Corporation. The opposite party purchased the entire premises being no. 257, Chitta Ranjan Avenue, Kolkata – 700006 for residential as well as for commercial use. However, after purchase the entire premise was being used as a commercial premise. After such

purchase the opposite parties got their names mutated in respect of the demised premises. The petitioner, the Kolkata Municipal Corporation, in compliance of the extant laws and rules, allotted a premises no. being 11-026-10-0016-7 to the aforesaid premises and also issued notice proposing the amount for assessment of annual valuation of the said premises with effect from the 1st quarter, 2011-2012. After service of notice, the opposite parties raised an objection to the proposal. In the course of disposal of the objection so raised on behalf of the opposite parties, Hearing Officer-V of Kolkata Municipal Corporation fixed annual valuation of the said premises at ₹. 124960 with effect from 1st quarter, 2011-2012 in consideration of the reasonable rent assessed at the rate of ₹. 4/- per sq.ft per month.

4. Being aggrieved with the order of the Hearing Officer-V, the opposite parties preferred an appeal before the Municipal Assessment Tribunal being MAA 2566 of 2013. The 2nd Bench of the Tribunal by its order dated October 12, 2017 passed in such appeal being MAA 2566 of 2013 allowed the appeal as above. The order passed by the Hearing Officer-V was modified reducing

the amount of annual valuation at ₹. 40810 with effect from 1st quarter, 2011-2012.

5. Such order passed by the Tribunal has been challenged in the present proceeding.

6. It was submitted on behalf of the petitioner, the Kolkata Municipal Corporation that the learned Tribunal was not justified in modifying the annual valuation of the demised premises from ₹. 124960 to ₹. 40810. It was also submitted that while modifying the order learned Tribunal took into account the rate of rent fixed in another judgment passed in MAA 370 of 2008 in respect of premises at 18, W.C. Banerjee Street, Kolkata-700006. Learned advocate for the petitioner also submitted that the order so passed by the 2nd Bench of the Tribunal was without any reason and was passed in violation of the statute in provisions of law. The learned Tribunal did not take into consideration the provisions containing Section 174 of the Kolkata Municipal Corporation Act, 1980. Learned advocate for the petitioner submitted that the annual rent was to be determined on the basis of existing market rate likely to be fetched at the rate of per sq.ft. per month. However, learned Tribunal did not endeavour to ascertain to establish rental value

of the building for the purpose of determination of annual valuation. It was also submitted by the petitioner that the impugned order, being not backed by sufficient reasons, is also violative of the principles of natural justice. Relevant documents were not considered by the learned Tribunal while passing the impugned order which were relied by the present petitioners. It was also submitted that the learned Tribunal passed the impugned order considering a judgment in MAA 370 of 2008 which was for the period of 1st quarter, 2006-2007, such order was also not backed by cogent reasons. The submissions made on behalf of the parties were also not recorded.

7. In support of their contention learned advocate for the petitioner relies upon judgment and order passed on December 12, 2018 in CO 3368 of 2017 (***The Kolkata Municipal Corporation Vs. Sri Vivek Kumar Agarwal & Another***) and CO 1505 of 2020 (***The Kolkata Municipal Corporation Vs. Kripendra Lal Dey & Others***).

8. As noted above, the opposite parties raised an objection against assessment of annual valuation by the Kolkata Municipal Corporation in respect of the premises at 257, Chitta Ranjan Avenue, Kolkata-700006. The said objection preferred

by the opposite parties was considered by the Hearing Officer-V of the Kolkata Municipal Corporation. By its order dated September 19, 2013, the Hearing Officer-V of the Kolkata Municipal Corporation disposed of the objection preferred by the opposite parties. By the said order the annual valuation of the suit premises was fixed at ₹. 124960 with effect from 1st quarter, 2011-2012. The said amount was arrived at by the Hearing Officer-V by considering the reasonable rent of the premises at ₹. 4 per sq.ft. per month.

9. Admittedly the said order passed by the Hearing Officer-V was challenged by the opposite parties in an appeal being MAA 2566 of 2013 which resulted in the impugned order.

10. The petitioner the Kolkata Municipal Corporation has come up with a definite case that the impugned order so passed in MAA 2566 of 2013 was devoid of any reason.

11. On perusal of the impugned order it transpires while determining the annual rent for the purpose of assessment of value of suit premises, the learned Tribunal relied upon an order passed in MAA 370 of 2008. Learned Tribunal took note that the aforesaid MAA 370 of 2008 was concerned with premises being 18, W.C. Banerjee Street, Ward no. 26, Kolkata-700006

wherein the reasonable rent was fixed at ₹. 0.80 per sq.ft. per month for covered area. Such rent was determined for the period 1st quarter, 2006-2007. The impugned order goes to show that having regard to the submission made on behalf of the parties and the documents relied on specially the location, reasonable rent etc., of the referred case, the Tribunal was of the considered view that reasonable rent of the premises in question should be at the rate of ₹. 1.30 per sq.ft. per month for covered area and ₹. 1.00 per sq.ft. per month for asbestos shed godown with effect from 1st quarter of 2011-2012.

12. As evident that the premises involved in the case referred by the opposite parties before the Tribunal, are apparently situated in the same Ward. The demised premise in the present litigation is situated at Chitta Ranjan Avenue whereas that in the referred case was situated at W.C. Banerjee Street, Kolkata-700006. There is nothing in the impugned order to show the vicinity of the two premises. There is also no discussion with regard to this, the commercial position of the two building. In the case referred by the opposite parties before the Tribunal the assessment was made for the period 1st quarter, 2006-2007 whereas the demised premises was assessed for the period

2011-2012. At the time of hearing before the Tribunal, it was argued on behalf of the present petitioner that the suit premise was newly renovated premise. However, there is nothing in the impugned order to demonstrate the age of the premises involved in the case referred by the opposite parties. There were surely two different locations of the two premises situated on two different roads, though, in the same Ward. However, the Tribunal did not discuss or arrive at a conclusion that the two premises were identically situated. There is also no discussion with regard to considering the reasonable rent fixed in the year 2006-2007 for the purpose of determination of fair rent in the year 2011-2012 and the consideration given for difference in the time period of assessment.

13. The present petitioner have relied upon the judgment and order passed in WP no. 27066(W) of 2013 which the learned Tribunal discarded on the ground that the principles enunciated therein was of no help to the petitioner herein. There is absolutely nothing in the order as to why the said principles were not applicable in the case.

14. Their appears no definite finding in the impugned order as to how and on what basis learned Tribunal was of the view that

reasonable rent of the premise should be fixed at ₹. 1.30 per sq.ft. per month for covered area and ₹. 1.00 per sq.ft. per month for the asbestos shed godown.

15. In the aforesaid circumstances it clearly transpires from the impugned order that the aforesaid order lacks discussion which resulted in the conclusion delivered by the impugned order.

16. In *Kripendra Lal Dey (supra)* a co-ordinate bench has observed as follows:-

“12. Here the Tribunal by the order impugned has modified Annual Valuation of the said Flat on the basis of judgment passed by the self same Tribunal in MAA 108/2015 and Mayor's report. Merely because property in the said referred judgment is situated under the same ward of the Kolkata Municipal Corporation or may be within the same locality where the said Flats are situated, cannot be the yardstick of assessment for computing the Annual Valuation of the present Flats, in a newly constructed premises. The Tribunal being the Quasi Judicial authority is bound to follow the procedure while discharging its duty.

13. That apart the order under challenge is not supported by reason though the requirement of recording adequate reason by a quasi judicial authority is must under Rule 21 of the Rule of 1987. Learned Tribunal though referred India Automobiles Limited Case (supra) but did not consider the Apex Court's observation in Paragraph 25 where it has been clearly stated that the Appellate Tribunal shall consider the appeals in the light of the judgment by

keeping in mind all the circumstances including the rent actually received by the owner of the building and the rent being paid to the tenant by his subtenant. The Appellate Tribunals are also directed to keep in mind the peculiar circumstances of the case, if any, for determining the gross Annual rent at which the building in controversy at the time of assessment is reasonably expected to let from year to year, less the allowance and other considerations referred to in section 174 of the Act of 1980. The court has also framed a guideline to this context in paragraph 23 of the judgment.

14. *Accordingly it is apparent, while modifying order of the Hearing Officer, the learned Tribunal had not given any cogent reason for such modification in violation of the principle of Natural Justice and also in violation of statutory obligations as stated above, which is casted upon the Tribunal for assessment of Annual Valuation.”*

17. Similarly in Sri Vivek Kumar Agarwal (supra) it was observed that:-

“16.*The Tribunal before relying on it’s said judgment must come into the conclusion regarding the relevancy of the said judgment in the facts and circumstances of the appeal before it. Merely because the property in the said referred judgment is situated under the same ward of the Kolkata Municipal Corporation or within the same locality where the said flat is situated cannot be the sole yardstick of assessment of the annual valuation of the said flat.”*

18. It was also held in Sri Vivek Kumar Agarwal (supra)that:-

“22. *That apart the order under challenge, supplies no reason to modify the order of the hearing officer.*

*The requirement of recording adequate reason by a quasi judicial authority is must. In this context it is profitable to quote paragraph 47(n) of the decision of the Hon'ble Apex Court in the case of **KRANTI ASSOCIATES PRIVATE LIMITED AND OTHER – Versus- MASOOD AHMED KHAN AND OTHERS** reported in (2010) 9 Supreme Court Cases 496.*

“(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence.”

23. *In review of the discussion made above the order impugned is set aside. The Municipal Assessment Tribunal 2nd Bench, Kolkata Municipal Corporation is directed to decide the M.A Appeal No. 1819 of 2012 afresh in strict compliance of the provisions of the said Act and the said Rule.”*

19. In the light of the discussions made herein above, the impugned order being devoid of sufficient reasons for arriving at the decision set forth in the judgment is liable to be set aside.

20. Accordingly the impugned order dated October 12, 2017 is hereby set aside. Learned Tribunal is directed to decide the appeal afresh in the light of observations made in the body of this judgment and taking into consideration all the relevant materials as well as in consonance with the statutes and rules thereunder in accordance with law. The Tribunal is expected to

dispose of the appeal as early as possible preferably within a period of 6 months from the date of communication of the order.

21. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]