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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/1066/2021
with
CO/2033/2021

ALPHA STITCH ART PRIVATE LIMITED
vs
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE PARTHA SARATHI SEN

Date : 17th January, 2025.

For the petitioner appearing in WPO 1066/2021:

*Ms. Sutapa Sanyal, Adv.
Mr. R.N. Ghosh, Adv.
Ms. Tonoya Ghosh, Adv.*

For the respondent/ opposite party appearing in WPO 1066/2021: *Mr. Alope Kumar Ghosh, Adv.,
Ms. Tanushree Das, Adv.
Ms. Manisha Nath, Adv.*

For the petitioner/ KMC appearing in CO/2033/2021: *Mr. Alope Kumar Ghosh, Adv.,
Ms. Tanushree Das, Adv.
Ms. Manisha Nath, Adv.*

For the respondent appearing in CO/2033/2021: *Ms. Sutapa Sanyal, Adv.
Mr. R.N. Ghosh, Adv.
Ms. Tonoya Ghosh, Adv.*

1. The Court:- In WPO 1066 of 2021 as filed by the writ petitioner and in CO/2033/2021 as filed by the Kolkata Municipal Corporation (hereinafter referred to as KMC in short), the subject matter is identical, i.e. the judgment and order dated November 08, 2017 as passed by the Municipal

Assessment Tribunal, the Kolkata Municipal Corporation, 2nd Bench, (hereinafter referred to as the said Tribunal in short).

2. In WPO 1066 of 2021, the writ petitioner has prayed for issuance of appropriate writ against KMC as well as against its functionaries for implementation of the aforesaid order as passed by the said Tribunal, whereas in CO/2033/2021, the KMC has challenged the legality, validity and correctness of the aforesaid order as passed by the said Tribunal.
3. Since in the aforementioned writ petition and in the civil revisional application, the subject matter is identical, both the matters have been tagged together by an earlier order. Hearing of both the matters was also taken up analogously and this Court thus proposes to dispose of the instant writ petition as well as the revisional application by a common order and judgment.
4. While passing the impugned order and judgment dated November 08, 2017, the said Tribunal allowed the appeal being appeal no. MAA- 315 of 2013 as preferred by the Writ Petitioner being an assessee. By the impugned judgment and order, the said Tribunal while allowing the said appeal reduced the annual valuation of the premises in question. As indicated hereinbefore, KMC felt aggrieved and preferred the instant Revisional Application. Since, the said order, which is under challenge before this Court, has not been given effect to, the writ petitioner by filing WPO 1066 of 2021 has prayed for implementation of the said order of the Tribunal.

5. In support of the instant revisional Application and against the writ petition, Mr. Ghosh, learned advocate appearing on behalf of the KMC, at the very outset, draws attention of this Court to the certified copy of the order which is under challenge before this Court. It is submitted by Mr. Ghosh that from the impugned order, it would reveal that the subject property is a vacant plot of land at premises no. 21, Pottery Road, Kolkata-700015, and the same was leased out to the writ petitioner/ opposite party in the civil revisional Application by West Bengal Small Industries Development Corporation Limited by executing two separate deeds of lease. It is argued by Mr. Ghosh that the said leased out property is a vacant land.
6. Mr. Ghosh, in his next fold of submission, contends before this Court in the impugned judgment, the said Tribunal while assessing the annual valuation of the property of the writ petitioner wrongly placed reliance upon the unamended Section 174(3) of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as 'the said Act of 1980'). It is further submitted by Mr. Ghosh that the said Tribunal also misdirected itself in placing its reliance upon a circular of the KMC being circular no. 35 of 2010-2011 dated 5th October, 2010.
7. In course of his submission, Mr. Ghosh draws attention of this Court to the provision of unamended Section 174(2) of the said Act of 1980. It is submitted by him that while assessing the annual value of the property-in-question, the Hearing Officer rightly placed his reliance upon the unamended of Section 174(2), the Act of 1980 and thus the said Tribunal

ought to have considered that the applicability of the unamended Section 174(2) of the said Act of 1980 is not at all faulty.

8. It is further submitted by Mr. Ghosh that the said Tribunal committed a serious error of fact as well as of law in holding that since there lies a five storied building in premises no. 21, Pottery Road, Kolkata 700015, Ward no. 56, the basis of assessment of annual valuation of the property in question would be governed under the aforementioned circular. In course of his argument, Mr. Ghosh, learned Advocate appearing for the KMC submits that the Hearing Officer, while assessing the annual valuation of the property in question, obtained the valuation of the land from the office of the Inspector General of Registration and Commissioner of Stamp Revenue, Government of West Bengal and thus the said Tribunal ought not to have overlooked the valuation as assessed by the Hearing Officer. Mr. Ghosh thus submits that it is a fit case for allowing the instant Revisional Application by setting aside the impugned order. It is further submitted by Mr. Ghosh that the writ petition as filed by the writ petitioner/ opposite party in the civil revisional application may be dismissed.
9. Drawing attention to the page Nos. 11, 12 and 13 of the instant revisional application, Mr. Ghosh, also submits before this Court that proper explanation has been given on the part of the revisionist for delayed filing of the civil revisional application since the higher authorities of the KMC were not aware of the order as passed by the said Tribunal as the

impugned order has not been placed from the concerned department in proper time.

10. Per contra, Ms. Sanyal, learned advocate appearing for the writ petitioner/ opposite party in the Civil Revisional case at the very outset submits before this Court that delay in filing the instant Revisional Application may not be condoned since there was no proper explanation on the part of the KMC Authority as to what prevented the KMC to approach this Court within the shortest possible time. Drawing attention to Section 190 of the said Act of 1980, it is contended that the impugned order as passed by the said Tribunal has attained its finality since no review was preferred under Section 180(10A) of the said Act of 1980. It is further submitted by Ms. Sanyal that by not preferring the review and on account of attaining finality of the impugned order, a valuable right has accrued in favour of the writ petitioner, which cannot be taken away by altering and/or by interfering with the order impugned. Ms. Sanyal in support of her submission placed her reliance upon the celebrated decision of **Nazir Ahmad Vs. Emperor** reported in **AIR 1936 PC 253**. It is thus argued by Mr. Sanyal that since the KMC authority had not availed the statutory remedy as provided in the said Act of 1980, the instant Revisional Application may be dismissed.
11. In her next fold of submission, Ms. Sanyal also draws attention of this Court to the impugned order vis-a-vis to the order as passed by the First Bench of the self-same Tribunal in MAA 2851 of 2009. It is submitted by Ms. Sanyal that on conjoint perusal of the impugned judgment and the

judgment as passed in MAA 2851 of 2009, which has been relied upon by the said Tribunal in the impugned judgment, it would reveal that in both the appeals, the subject premises are identical being premises no. 21 Pottery Road, Kolkata-700015. It is argued that the judgment as passed in MAA 2851 of 2009 has attained its finality since neither any review nor any Revisional Application has been preferred challenging the said judgment as passed in MAA 2851 of 2009.

12. Drawing further attention of this Court to the certified copy of the impugned judgment as well as to the photocopy of the judgment as passed in MAA 2851 of 2009 as available at page no. 156 to page no. 160 of the affidavit-in-opposition as filed in the instant revisional application, it is contended that the First Bench of the said Tribunal assessed the annual valuation of a five storied building at premises no. 21, Pottery Road, Kolkata-700015 at the rate of Rs. 1.65/- per square feet in respect of the covered area/ built-up area. It is argued that while passing the impugned order, the said Tribunal relied upon the assessment as observed in the said appeal and thus came to a finding that appropriate annual valuation of the vacant land in question would be Rs.0.50 per square feet and thus assessed the annual valuation of the premises in question to the tune of Rs. 36,470/-, however in the penultimate paragraph of the said judgment, the said Tribunal kept the annual valuation of the said property in question to the tune of Rs. 73,000/- as has been offered by the writ petitioner.

13. It is thus contended that in absence of any perversity in the order impugned, there cannot be any justification to interfere with the same. It is further argued on behalf of the writ petitioner/ opposite party in the civil revisional application that the applicability of the circular dated 5th October, 2010 by the said Tribunal cannot be questioned since the premises in question and the premises which was the subject matter of MA Appeal No. 2851 of 2009 are same i.e. 21 Pottery Road, Kolkata-700015 over which a five storied building is standing and, therefore, the vacant land of the self-same premises is to be assessed on the basis of the said circular dated 5th October, 2010 and not under unamended Section 174 (2) of Act of 1980.

14. This Court has perused the entire materials as placed before this Court. This Court has given its due consideration over the submissions of the learned Advocates for the contending parties. For effective adjudication of the instant *lis*, unamended Section 174(2) of the said Act of 1980 is required to be looked into and the same is reproduced hereunder as verbatim:-

“174. Determination of annual valuation.-(1)

(2) The annual value of any land which is not built upon shall be fixed at seven per cent. of the estimated market value of the land.

(3)

(4).....

(4A)

(5).....

15. Since at the time of hearing, learned Advocate for the writ petitioner/ opposite party in the revisional application heavily relied upon the

Municipal Commissioner circular's no. 35 of 2010-11 dated 5th October, 2010, this Court proposes to have a glance at the said circular and the relevant part of the said circular is also quoted below in verbatim:

“Assessment of building with land appurtenant thereto [Section 174(1) to be read with 178(2) (i)]- If any residential or non-residential premises includes land as well as construction, then the appurtenant land, excluding the area equivalent to the covered area at the ground level of the construction, will be treated as vacant land (as per Notarized declaration submitted by the owner and/or applicant) for the purpose of assessment of property tax. The base/prevaling respective RR in that area at the relevant quarter of assessment may be considered as the RR for the building. For appurtenant left out land the RR/sft. will be taken as 50% of the RR/sft., so taken for the constructed area.”

16. Coming to the factual aspects of this case, it appears that it is undisputed that the order impugned was passed by the said Tribunal on 08.11.2017 and as rightly pointed out by Ms. Sanyal, there was inordinate delay in filing the instant Revisional Application since the instant Revisional Application was filed on 25.11.2021 i.e. almost after four years of passing the impugned order.
17. On perusal of the instant Revisional Application, it further appears to this Court that the KMC Authority had made averments with regard to the cause of delay due to lack of knowledge of the higher authority of the KMC with regard to the contents of the order impugned.
18. As discussed hereinabove on behalf of the writ petitioner/ opposite party in the civil revisional application, it was argued that since no review

petition was filed challenging the order passed by the said Tribunal, the said order has reached its finality.

19. In considered view of this Court, this Court sitting in Revisional Jurisdiction under Section 227 of the Constitution of India has the power of superintendence over the orders passed by the Courts and Tribunal which are situated within the territorial jurisdiction of this High Court. This Court thus considers that the order impugned, which is under challenge in the instant Revisional Application, is still amenable to the superintendence jurisdiction of this High Court even if there occurs some delay in filing the instant Revisional Application.
20. Keeping in mind the aforementioned legislative provisions as quoted in the foregoing paragraphs if I once again look into the factual aspect of this case, it appears to this Court that there cannot be any justification on the part of the said Tribunal to place its reliance upon unamended Section 174(3) of the Act of 1980 since the same deals with the building which has been extensively used for hospital and educational purpose.
21. As discussed (supra), the said Tribunal while allowing the appeal as preferred by the writ petitioner and while passing the impugned judgment also placed its reliance upon the said circular which deals with the mode of assessment of property tax in respect of the residential and non-residential premises, which includes land as well as the construction and the said circular clearly prescribes as to how the Reasonable Rent (RR) of the building and the appurtenant left out land are to be assessed. On perusal of the judgment and order dated August 25, 2015 as passed in MA

Appeal No. 2851 of 2009 by the First Bench of the said Tribunal, it reveals that in the self-same premises i.e. the premises no. 21 Pottery Road, Kolkata-700015, the First Bench of the said Tribunal noticed that the subject matter of the appeal is a premises which is a five storied building and thus the said Bench of the said Tribunal applied the aforementioned circular.

22. While scrutinizing the impugned judgment and order, it appears to this Court that the said Tribunal while passing the impugned order was practically persuaded with the earlier observation of the First Bench and came to a finding that the property in question as involved in MA Appeal No. 315 of 2013 would come under the purview of building with land appurtenant thereto.
23. In considered view of this Court, the finding as arrived by the said Tribunal while passing the impugned judgment is not justified since the said Tribunal has overlooked that the property which is the subject matter of MA Appeal No. 2851 of 2009 and the property which is the subject matter of the impugned judgment and order do not bear the same assessment number and both the properties do not belong to the same assessee and both the properties were not conveyed by a common lease deed.
24. In considered view of this Court, the said Tribunal also overlooked that premises in question as involved in MA Appeal no. 2851 of 2009 is a five storied buildings while the property in MA Appeal no. 315 of 2013 is a vacant land.

25. In considered view of this Court, the said Tribunal thus misdirected itself in applying the provision of the said circular while allowing MA appeal no. 315 of 2013 overlooking unamended Section 174(2) of the Act of 1980, which clearly prescribes the mode of fixing annual valuation of a land which is not built upon. In the affidavit-in-opposition, the two lease deeds of the assessee/ writ petitioner have been annexed and on perusal of the schedule of the said two lease deeds, it reveals that in the said premises no. 21 Pottery Road, Kolkata – 700015, 2.45 katthas vacant land and 6.93 katthas of vacant land were transferred to the assessee who is the writ petitioner before this Court.
26. This Court thus finds sufficient merit in the instant Revisional Application. Accordingly, the instant Revisional Application is hereby allowed.
27. Consequently, the impugned judgment and order dated November 08, 2017 as passed in MAA 315 of 2013 by the Municipal Assessment Tribunal, the Kolkata Municipal Corporation, 2nd Bench is hereby set aside.
28. The entire matter is remanded back to the said Tribunal for hearing afresh on the basis of the unamended provision of 174(2) of the Kolkata Municipal Corporation Act, 1980 with a further direction to dispose of the said appeal after remand positively within three months from the date of communication of this judgment.
29. The said Tribunal is directed to act on the server copy of the judgment.
30. Liberty to communicate.

31. CO/2033/2021 is thus disposed of with observation as indicated hereinabove.
32. In view of the aforementioned observation, WPO /1066/2021 has become infructuous and is thus dismissed.
33. There shall be no order as to costs.
34. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

(PARTHA SARATHI SEN, J.)

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