

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.O. No.941 of 2024

SHASHI KANT TAPURIAH

-VERSUS-

THE KOLKATA MUNICIPAL CORPORATION AND OTHERS

For the petitioner : Mr. Raghunath Chakraborty, Adv.,
Ms. Amrita De, Adv.

For the K.M.C. : Mr. Biswajit Mukherjee, Adv.,
Ms. Piyali Sengupta, Adv.,
Mr. Swapan Kumar Debnath, Adv.

Hearing concluded on : 19.03.2025

Judgment on : 20.05.2025

Kausik Chanda, J.:-

The petitioner has challenged the order dated August 16, 2024, passed by the Hearing Officer, Assessment Collection (South), KMC, whereby the proposed Annual Valuation (A.V.) of Rs.8,26,090/- with effect from the second quarter of 2007-2008 in respect of premises at 1, Alipore Park Palace, Kolkata-700027, was confirmed.

2. The petitioner also challenges the fixation of annual valuation increased from Rs.26,410/- to Rs.3,24,000/- with effect from the first quarter of 2007-2008 based on a presumption of tenancy. He accordingly, prays for setting aside of all supplementary bills issued under the said two assessment orders.

3. It is submitted that there has been no tenant in occupation of the said premises for nearly six decades, a fact consistently asserted by the petitioner and supported by documents including an affidavit affirmed before the Learned Metropolitan Magistrate on July 9, 2024. Despite such stand, the Corporation proceeded to assess the property as if it were tenanted at Rs.30,000/- per month, without any supporting materials. The petitioner relies on the records of the Corporation, which in the hearing dated October 12, 2023 observed that there was no evidence of a tenant's existence during the relevant quarter.

4. Further, the petitioner submits that the valuation from the first quarter of 2007-2008 was itself reopened by the Corporation, as admitted in its proceedings and recorded orders. The objection docket of the hearing

dated April 23, 2013, itself required an affidavit from a 1st Class Magistrate, recognising the necessity of reviewing the earlier annual valuation in light of the non-existence of tenancy.

5. It is contended that even if it is assumed, without admission, that the valuation of the first quarter of 2007-2008 was not reopened, such order was passed ex parte, without representation of the petitioner and contrary to settled legal principles. The same was also devoid of reasoning, and the valuation imposed was arbitrary in nature.

6. It is further argued that the insertion of Section 180(2)(ix) of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to “the KMC Act”), in the Inspection Book (IB) entry for the second quarter of 2007-2008 was done surreptitiously and during the course of hearing, indicating mala fide intention. The initial notice of hearing failed to disclose any grounds of revision and was vague. The invocation of Section 180(2)(ix), which contemplates revision only under certain specific conditions, was unjustified. No new taxable event had occurred, and there was no basis for separating the valuation of land and building as distinct entities in the present case.

7. The petitioner submits that the comparison made by the Corporation with properties such as those situated at 2 and 3 Penn Road, 4 Alipore Park Palace Road, and 4 Hastings Park Road, is wholly misplaced. These properties are not only situated at significant distances but also differ

fundamentally in character—being new constructions, multi-storied towers or commercial premises—unlike the petitioner’s old, owner-occupied residential building.

8. It is pointed out that the sudden inclusion of the appurtenant garden land into the scope of assessment is unwarranted and contrary to established practice. The lawn existed at all material times and its sudden valuation by the Hearing Officer under the guise of undervaluation amounts to an overreach of jurisdiction, particularly under Section 188 of the KMC Act. Such conduct is without authority and contrary to the ratio of the judgment reported at **AIR Online 2018 Cal 676 (*Sahujain Charitable Society vs. KMC*)**.

9. Reliance is placed on the Hon’ble Supreme Court’s decision reported at **(2017) 9 SCC 418 (*Harbanslal Malhotra & Sons Ltd. vs. K.M.C.*)**, which held that the land and building should be assessed as a single unit where the land is appurtenant to the building. It was contended that separating the two for independent assessment is legally untenable and unsupported by the statutory framework of Section 174 of the KMC Act.

10. The petitioner further relies upon the Mayor’s Guidelines, which state that in the absence of any addition or improvement to the property, valuation of old owner-occupied residential buildings may only be revised by 10% over the previous valuation, unless gross undervaluation is evident.

Even in such cases, proper methodology and comparison must be adopted, none of which was followed in the present case.

11. It is contended that neither the petitioner's written objections nor representations were considered, including the objections specifically raised in relation to valuation for the periods of the first quarter of 2007-2008 and the second quarter of 2007-2008.

12. On behalf of the Corporation, it is submitted that W.P. No. 1321 of 2023, previously filed by the petitioner, was disposed of by a Coordinate Bench of this Court by an order dated June 28, 2023. In that order, this Court directed the Assessor-Collector (South), Kolkata Municipal Corporation, to provide the petitioner with relevant documents within four weeks from the date of communication of the order, and granted liberty to the petitioner to file a further representation within two weeks thereafter. The hearing officer was directed to dispose of the petitioner's objection to the proposed valuation for the second quarter of 2007-2008 in accordance with law, by passing a reasoned order within twelve weeks.

13. It is further submitted that although the petitioner raised an issue concerning the valuation for the first quarter of 2007-2008, this Court did not entertain that issue in the said order. The scope of adjudication was confined to the objection relating to the second quarter of 2007-2008 alone. As neither party preferred any appeal against the said order, it attained finality. Consequently, the petitioner is now barred by the principle of res

judicata, as provided under Section 11 of the Code of Civil Procedure read with Order II Rule 2, from re-agitating the issue concerning the valuation for the first quarter of 2007–2008 in the present writ petition.

14. Pursuant to the aforesaid directions of this Court, the relevant documents were duly forwarded to the petitioner by the Corporation. It is submitted that the petitioner thereafter filed a detailed objection, following which hearings were held from time to time, culminating in the issuance of a reasoned order passed by the hearing officer on August 16, 2024.

15. The documents and evidences relied upon by the Corporation in support of the annual valuation proposed from the second quarter of 2007–2008 were also supplied to the petitioner.

16. The annual valuation has been determined strictly in accordance with Section 174(1) read with Section 180(2)(ix) of the KMC Act.

17. It was submitted on behalf of the Corporation that reliance upon *Harbanslal Malhotra* case is wholly misplaced. The petitioner's contention that the building and the land have been valued separately is factually incorrect. The Corporation relied on the same judgment, particularly paragraphs 8, 13, 14, 18, 20, 22, and 26, to demonstrate that the valuation in the present case was composite—i.e., inclusive of both land and building—at the rate of ₹3.30 per sq. ft., in strict conformity with Section 174(1) of the Act of 1980.

18. The scope of unamended Section 174 as applicable in this case read with Section 178 of the KMC Act, has been explained by the Hon'ble Supreme Court in **Harbanslal Malotra** case as follows:

“**13.** Reading of Section 174 shows that it deals with two types of assessment for determining the annual value of land or building. One is in relation to the “land on which the building is built” and the other is in relation to the “open land” i.e. the “land on which no building is built”. So far as former is concerned i.e. land on which building is built, it is governed by sub-section (1) of Section 174 whereas so far as the latter is concerned i.e. open land on which no building is built, it is governed by sub-section (2) of Section 174.

14. In the case of former, the assessing authority is required to take land and building as “single unit” for determination of its gross annual rent which is reasonably expected to fetch at the time of assessment from year to year. To illustrate, if the building has some appurtenant land which is exclusively used by the owner for garden or/and parking the vehicles, such building or/and land may fetch more rentals as compared to a building, which does not have these facilities or has very small land appurtenant to the building. In any case, such building and the land cannot be separated for determining their gross annual rent. Such case, therefore, would fall in sub-section (1) of Section 174. The annual value and gross annual rent of such premises have to be, therefore, determined as per the procedure prescribed in sub-section (1) of Section 174 of the Act.”

19. Interestingly, while the petitioner argues that the hearing officer has not followed **Harbanslal Malhotra** in making the impugned order of

assessment, the Corporation submits that the order of assessment is in conformity with the said judgment.

20. To appreciate the controversy, the relevant segment of the impugned assessment order dated August 16, 2024, is quoted below:

“...

Records of K.M.C. reveals that Annual Valuation has been determined as follows:-

Land area: 20160 sft (28 cottah) (as per deed)

Plinth area: 4532 sft (22.48%)

Vacant land area: 15628 sft

It is found that K.M.C. has proposed Rs.3.30/sft per month for calculation of Annual Valuation. In support of this rate, K.M.C. has referred the following in the same locality to determining the Annual Valuation.

Sl	Premises no.	w.e.f.	Rate/sft (in Rs.)
1.	4 Alipore Park Place	01/2007	3.30/-
2.	2 Penn Road	01/2014	4/-
3.	3 Penn Road	01/2013	3.90/-
4.	4 Hastings Park Road	01/2013	2.76/-

Now on an average Rs.3.30/- sft has been proposed for Valuation by KMC.

On scrutiny of the documents it appears that rate @ Rs.3.30/- sft as proposed for Valuation is fare and justified as the same has been arrived at by taking mean value of all other nearby similar premises as mentioned here in above.

So, R.R. @3.30/ sft for total covered area 7551 sft =
7551x3.30=24918/-

R.R. @3.30/ sft for vacant land (total land area-plinth area)
=(20160-4532)
= 15628x3.30 =51572/-

Total R.R. =76490/-

Proposed Annual Valuation= 76490x12 =917880/-

Less: 10% for maintenance = 91788/-

=826092/-

8,26,090/-(rounded off)

This proposed Annual Valuation of Rs.8,26,090/- is accepted at this stage on scrutiny of records and documents etc.”

21. It is evident from the order of the hearing officer that he has applied a uniform rate of Rs.3.30/- per sq. ft. rent per month to the land as well as the built structure of the concerned premises. This does not align with ***Harbanslal Malhotra***.

22. ***Harbanslal Malhotra*** clarifies that in cases involving land with building are governed by Section 174(1). In such cases, the hearing officer is required to treat the land and the building as a “single unit” for determination of gross annual rent which is reasonably expected from year to year.

23. In my view, for the properties covered under Section 174(1), per square feet monthly rent should be applied to the constructed building area. It should not to be applied to the vacant land.

24. The existing vacant land may, however, serve as a factor that enhances the per sq. ft. rent of the constructed part of the property when compared to other properties without such land. A building with land should be treated as a single unit, it does not follow that the building and

also the land should be valued at the same rate for the purpose Section 174(1).

25. In the present case, the hearing officer clearly erred in applying Rs.3.30/- per sq. ft. as a uniform rate to the constructed area and the vacant land. The proper approach would have been to assess the constructed portion (covered area) of the building by applying an appropriate per sq. ft. monthly rent, factoring in market conditions and use and to consider the presence of vacant land as an enhancement factor to determine a higher rate for the constructed portion. There was no scope to assess the land additionally or separately.

26. The computation undertaken by the hearing officer is beyond the scope of Section 174(1) of the KMC Act, and therefore, liable to be set aside.

27. Moving to the next question—whether the valuation fixed at Rs.3,24,000/- with effect from the first quarter of 2007-2008 was the subject matter of challenge before the hearing officer, I find that in the earlier round of writ petition, the Coordinate Bench in the order dated June 28, 2023, observed, inter alia, as follows:

“The proposed annual valuation which is disputed is from the first quarter of 2007-2008. A fresh hearing notice has been issued fixing on 21.06.2023 for hearing the objection relating to the second quarter of 2007-2008. The petitioner raised an objection to the same. The objection is yet to be considered.”

28. The writ petition was disposed of with the following orders.

“According to the petitioner, he requires certain documents for effective hearing. The Assessor-Collector (South), Kolkata Municipal Corporation is, accordingly, directed to forward all documents to the petitioner at the earliest but positively within a period of four weeks from the date of communication of this order.

It will be open for the petitioner to submit further representation objecting to the proposed annual valuation within a period of two weeks from the date of receipt of the documents forwarded by the Assessor-Collector.

The Hearing Officer is directed to take steps to consider and dispose of the objection filed by the petitioner in accordance with law at the earliest, but positively within a period of twelve weeks from the date of communication of this order. A reasoned order shall be passed and communicated to the petitioner.”

29. Subsequent to the said order, the hearing officer took up the matter on October 12, 2023, and heard the objection of the petitioner both for the first and the second quarter of 2007-2008. The order of the hearing officer dated April 25, 2024, also confirms that the ex-parte fixation of the first quarter of 2007-2008 was also the subject matter of hearing.

30. It was the specific case of the petitioner before the hearing officer that there was no tenant inducted into the premises and, therefore, revision of annual valuation from Rs.26,400/- to Rs.3,24,000/- with effect from first quarter of 2007-2008 was illegal.

31. The impugned order of assessment dated August 16, 2024, however, does not contain any adjudication regarding the annual valuation revised with effect from first quarter of 2007-2008.

32. In my view, the hearing officer should have duly considered the challenge to the annual valuation revised with effect from first quarter of 2007-2008 on the ground that the premises was never tenanted.

33. In view of the aforesaid discussion, this writ petition is disposed of with the following directions upon the concerned hearing officer, respondent no.4:-

- a. The order dated August 16, 2024, passed by respondent no.4 is set aside. The annual valuation revised at Rs.3,24,000/- with effect from first quarter of 2007-2008 is also set aside. All the supplementary bills issued under the said two assessment orders are also hereby set aside.
- b. The hearing officer shall provide a fresh opportunity of hearing to the petitioner and revisit the annual valuation of the first and also the second quarter of 2007-2008.
- c. In computing the annual valuation for the first quarter of 2007-2008, the hearing officer shall afford an opportunity to the petitioner to adduce evidence in support of his claim that the property was never tenanted.
- d. With regard to the valuation of the property with effect from second quarter of 2007-2008, the hearing officer shall assess the constructed portion (covered area) of the building by applying an appropriate per sq. ft. monthly rent, factoring in

market conditions and use. He shall consider the presence of vacant land as an enhancement factor to determine a higher rate for the constructed portion. He shall not assess the land additionally or separately.

- e. The hearing officer, however, shall not be precluded from taking into consideration any additional relevant factors for determining the annual valuation for the first and the second quarter of 2007-2008.
- f. The entire exercise shall be completed within a period of three months from date.
- g. Based on the revised assessment, the Corporation shall be at liberty to raise the arrear as well as current tax bills, payable by the petitioner.

34. Accordingly, W.P.O. No.941 of 2024 is, accordingly, disposed of.

35. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)