

(2012) 03 CAL CK 0010

Calcutta High Court

Case No: Writ Petition 2823 (W) of 2012

Hotelier and Associates

APPELLANT

Vs

Kolkata Municipal Corporation

RESPONDENT

Date of Decision: March 6, 2012

Acts Referred:

- Calcutta Municipal Corporation Act, 1980 - Section 181, 182, 184, 185, 186

Citation: (2012) 3 CALLT 528 : (2012) 3 CHN 48 : (2013) 1 WBLR 844

Hon'ble Judges: Soumitra Pal, J

Bench: Single Bench

Advocate: Aloke Ghosh, Sandip Ghosh and Swapan Kumar Dutta, for the Appellant;
Sandip De and Sanatan Chatterjee for the Kolkata Municipal Corporation, for the
Respondent

Final Decision: Dismissed

Judgement

Soumitra Pal, J.

In the writ petition, the petitioners have challenged the order dated 30th August, 2011 passed by the Hearing Officer-II, Kolkata Municipal Corporation, the respondent No. 3, determining the annual valuation of the premises in question with effect from 4th quarter 2007-2008 on the ground that it is excessive, it does not disclose the particulars and the basis of computation with regard to the rise in rent since the last valuation and the approach is mechanical as the assessment does not take note of the written objections filed. Moreover, the order is discriminatory, unreasonable, non-speaking and as there was improper exercise of jurisdiction, it is a nullity. Mr. Aloke Ghosh, learned advocate for the petitioners, reiterating the statements in the writ petition submits since the impugned order does not take note of the two written objections filed and lacks clarity, it cannot be sustained. The learned advocate for the petitioner has relied on the judgments of the Supreme Court in [Union of India \(UOI\) and Others Vs. Jai Prakash Singh and Another](#), ; [Sant Lal Gupta and Others Vs. Modern Co-operative Group Housing Society Ltd. and](#)

Others, ; ORYX Fisheries Private Limited Vs. Union of India (UOI) and Others, and Karnataka Industrial Areas Development Board and Another Vs. Prakash Dal Mill and Others, in support of his submission.

2. Mr. Sandip De, learned advocate appearing on behalf of the Kolkata Municipal Corporation, submits that there is no challenge to the notice of hearing pursuant to which the petitioners had appeared. Since the written objections do not disclose any ground of challenge to the proposed valuation and as the written objections were far from adequate, as evident from a comparison with the statements made in paragraphs 19 and 20 of the writ petition wherein details have been given regarding the occupancy of the premises in question which were not before the Hearing Officer, the Officer had no option but to proceed on the basis of such objections. As in this petition there is no challenge to the jurisdiction of the Officer passing the impugned order and since the impugned order is an appealable order u/s 189 of the Kolkata Municipal Corporation Act, 1980, (for short the "Act") the writ petition is not maintainable. In support of his submission, Mr. De has relied on the judgment of the Apex Court in Star Paper Mills Ltd. Vs. State of U.P. and Others,

3. Admittedly, the petitioners were served with the notice regarding the proposed enhancement of the annual valuation. The petitioners had submitted two written objections. As evident from the order-sheet annexed to the writ petition, the petitioners were heard and the impugned order dated 30th August, 2011 was passed. The question is whether the impugned order takes note of the contents in the written objections and is adequate and reasonable. In this context it is appropriate to refer to section 186 and the relevant portion of section 188 of the Act. section 186 is as under :-

Subject to the provisions of section 181 or section 182, any objection to the annual value of a land or building as entered in the assessment list shall be made by the owner or the person liable to pay the [property tax], in writing, to the Municipal Commissioner before the date fixed in the notice u/s 184 [or section 185] and shall state in what respect the annual value is disputed.

4. Relevant portion of section 188 is extracted hereunder:-

188(1) Objections filed u/s 186 shall be entered in a register maintained for the purpose in such manner as may be prescribed;

(2) On that date, time and place specified under sub-section;

(3) or sub-section;

(4) of section 184 and after giving the person filing the objections an opportunity of being heard, either in person or through an authorised agent, the officer appointed u/s 187 shall determine the objections.

5. As noted, u/s 186 of the Act, a Hearing Officer has to consider "any objection to the annual value of a land or building" made "in writing" by the objector wherein it shall be stated "in what respect the annual value is disputed". Thereafter, u/s 188 at a given date, time and place and after giving an opportunity of hearing the officer "shall determine the objections" filed. Perusing the written objections, I find that those were bald in nature. That the petitioners are quite aware that the written objections filed before the Hearing Officer were bereft of details is evident if those are compared with the statements made in paragraphs 19 and 20 of the writ petition wherein details regarding the occupancy and/or business carried on by the different persons in the premises have been furnished. Those facts, which have now been stated in the writ petition were not before the Hearing Officer who had to consider the grounds pleaded in the written objections. So far as the judgments referred to on behalf of the petitioner are concerned, there cannot be any dispute with regard to the propositions of law that "Reasons introduce clarity in an order" (paragraph 7-Union of India vs. Jai Prakash Singh (supra) or "Reasons substitute subjectivity with objectivity" (paragraph 27- Sant Lal Gupta (supra) or a reference to the settled principles of law that "A quasi judicial authority must record reasons in support of its conclusions" (paragraph 40- Oryx Fisheries Private Limited (supra) and even undefined power "have to be exercised in accordance with the principle of rationality and reasonableness" (paragraph 25-Karnataka Industrial Areas Development Board (supra). However, as already noted, as the written objections filed did not contain particulars which the petitioners now seek to introduce in paragraphs 19 and 20 of the writ petition, the Hearing Officer had no other alternative but to pass the order under challenge on the basis of the materials available on record. it is to be kept in mind that u/s 186 an assessee has a statutory right to file an objection "in writing" which is the foundation of challenge to the proposed assessment. Hence, in order to challenge a proposed amendment such objection should have substantial grounds. Therefore, in a written objection grounds which are the foundations of challenge should be adequate. This is because a sufficiently reasoned order passed by an authority cannot be expected unless grounds are substantial. In the instant case, the objections before Hearing Officer lacked particulars. In such background and in view of the law laid down in the judgment in Star Paper Mills (supra), since factual adjudication is the only remedy on the basis of the written objections filed, the writ jurisdiction is not the proper forum for ventilating the grievances. Thus, as the petitioners were given opportunity of hearing and the Hearing Officer had the jurisdiction to decide the issue and the impugned order is an appealable order, the writ petition is not maintainable and is, hence, dismissed.

6. No order as to costs. Urgent Photostat certified copy of this order, if applied for, be furnished to the parties on priority basis.