

The Kolkata Municipal Corporation Vs Smt. Tanika Roy and Another

Court: Calcutta High Court

Date of Decision: Dec. 12, 2013

Hon'ble Judges: Subal Baidya, J

Bench: Single Bench

Advocate: Biswajit Mukherjee and Mr. Fazlul Haque, for the Appellant; Koyeli Bhattacharya, for the Respondent

Final Decision: Dismissed

Judgement

Subal Baidya, J.

Four Civil Order applications filed on March 12, 2004 under Article 227 of the Constitution of India by the petitioner,

Kolkata Municipal Corporation are directed against the order dated 23.09.2003 passed in M.A. Appeal No. 3340 of 2001, the order dated

December 9, 2003 passed in M.A. Appeal No. 3342 of 2001, the order dated December 12, 2003 passed in M.A. Appeal No. 3343 of 2001

and the order dated December 9, 2003 passed in M.A. Appeal No. 3344 of 2001 in respect of the Flat No. 4, 2nd Floor, A/63A/4, Prince

Golam Hossain Shah Road, Ward No. 95, Kolkata-32, Flat No. 1, 1st Floor, A/63A/2, Prince Golam Hossain Shah Road, Ward No. 95,

Kolkata-32, Flat No. 3, 2nd Floor, A/63A/5, Prince Golam Hossain Shah Road, Ward No. 95, Kolkata-32 and Flat No. 5, 3rd Floor A/63A/2,

Prince Golam Hossain Saha Road, Ward No. 95, Kolkata-32 respectively whereby the learned Judge of the Municipal Assessment Tribunal,

K.M.C. has been pleased to assess the annual valuation of the flats and the car parking spaces and fix rent at the rate of Re. 0.50 paise per sq.ft.

per month for covering area of the flats and at the rate of Re. 0.25 paise per sq.ft. per month for car parking spaces. It has been stated in the

application that the petitioner is a statutory body constituted under the provisions of the Kolkata Municipal Corporation Act, 1980 and the

opposite party No. 1 of each of the above-mentioned four proceedings is an assessee under the Kolkata Municipal Corporation and the owner of

each flat mentioned above and the opposite party No. 2 is the Municipal Assessment Tribunal. It has also been stated that the Hearing Officer of

the Kolkata Municipal Corporation determined the annual value of each flat with effect from 4/2000-2001 upon hearing the assessee and upon

considering the materials available on record. But being aggrieved by and dissatisfied with the said determination of annual valuation the opposite

party No. 1 preferred statutory appeals before the opposite party No. 2 who has been pleased to pass the order in all the four M.A. appeals

mentioned above without following the rules and procedure for determination of annual valuation. That the petitioner moved this Court by filing four

separate applications challenging the orders passed in four M.A. appeals by the opposite party No. 2 on the grounds that the tribunal acted

mechanically and absolutely without applying its mind in determining the annual valuation for the relevant period without appreciating the

practicability of such determination and that the tribunal failed to appreciate that the assesseees are obliged to prove as to why the valuation of flats

as assessed by the Hearing Officer is not correct, but the Tribunal have wrongly proceeded and shifted the onus on the petitioner and hence four

separate applications have been filed for seeking setting aside the orders passed separately in all the four M.A. appeals mentioned earlier.

2. At the time of hearing the learned advocate of the petitioner and opposite party No. 1 of all the four proceedings submitted that all the four flats

are either in the same building premises or in the building of the adjoining premises and as such the rate of rent for the covered area of each flat and

also the rate of rent for the car parking space should be same according to the covered area of each flat as also the area of the car parking space.

Learned lawyer for the opposite party No. 1 further submitted that being aggrieved by the orders passed by the Hearing Officer the opposite party

No. 1 of each case preferred the M.A. appeals before the opposite party No. 2 who after considering all materials and the evidence on record

was pleased to pass the impugned orders separately in four M.A. appeals which being proper, justified and in accordance with law should be

affirmed and the above-mentioned four C.O. proceedings should be dismissed.

3. The learned advocate for the opposite party No. 1 further submitted by producing a property tax bill 2012-2013 in respect of the flat and the

car parking space of the opposite party No. 1 of C.O. 712 of 2004 that the petitioner Kolkata Municipal Corporation following the order passed

by the Municipal Assessment Tribunal in M.A. Appeal No. 3340 of 2001 sent the bill demanding tax which clearly speaks that the impugned order

passed by the Municipal Assessment Tribunal has already been acted upon. She further submitted that similarly, the opposite party No. 1 of other

three C.O. applications received property tax bills which have been sent pursuant to the order passed by the Municipal Assessment Tribunal in

three other M.A. appeals.

4. She also submitted when the impugned orders have already been implemented by the petitioner, it goes to establish that the petitioner Kolkata

Municipal Corporation is no longer aggrieved by the impugned orders and as such the applications of the petitioner in all the four C.O. have no

merit at all and should be dismissed.

5. On the other hand, the learned advocate for the Kolkata Municipal Corporation (petitioner) admitted that the orders under challenge passed by

the Municipal Assessment Tribunal have been acted upon and pursuant to the same the property tax bills have been issued to the four assessees

separately demanding Corporation Tax. He further submitted that in view of the position this Court may dispose of all the four proceedings

accordingly.

6. Perusing all the impugned orders passed in all the four M.A. Appeals it is evident that the Municipal Assessment Tribunal considered the

materials produced before it and being satisfied assessed the annual value of the each flat as well as the car parking space at the rate of Re. 0.50

paise per sq.ft. per month for the covered area of each flat and also at the rate of Re. 0.25 paise per sq.ft. per month for car parking space. So,

this Court finds no illegality or infirmity in the impugned orders and as such the same require no interference by this Court and therefore, the

impugned orders are affirmed and all the four C.O. applications having no merit stand dismissed.

7. This judgment will also govern the C.O. 714 of 2004, C.O. 715 of 2004 and C.O. 716 of 2004.

8. All the four civil order applications are, thus, disposed of. The urgent photostat certified copy of the order be supplied, if applied for, as per

rules.