

(2010) 08 CAL CK 0094

Calcutta High Court

Case No: C.O. No. 145 of 2006

Kolkata Municipal Corporation

APPELLANT

Vs

Monojit Saha

RESPONDENT

Date of Decision: Aug. 3, 2010**Acts Referred:**

- Calcutta Municipal Corporation (Amendment) Act, 1986 - Section 174
- Calcutta Municipal Corporation Act, 1980 - Section 174, 174(1)

Citation: (2011) 2 CHN 756**Hon'ble Judges:** Kanchan Chakraborty, J**Bench:** Single Bench**Advocate:** Ashoke Das Adhikari and Sandip Kr. De, for the Appellant; Shankar Nath Dhar and S. Banerjee, for the Respondent

Judgement

Kanchan Chakraborty, J.

The challenge in this revision application is to the Judgment and order dated 8.11.2005 passed by the Ld. Municipal Assessment Tribunal Kolkata in M.A.A. No. 2285 of 2001 determining the Annual Valuation in respect of the premises No. 473/1 Lake Gardens Kolkata at Rs. 1,02,960/- w.e.f. January/2000-01 thereby allowing the appeal and modifying order dated 25.7.2001 passed by the Hearing Officer, KMC determining the Annual Valuation at Rs. 1,71,070/-.

2. The opposite party Monojit Saha being dissatisfied with and aggrieved by the order dated 25.7.2001 of the Hearing Officer determining the Annual Valuation at Rs. 1,71,070/-, preferred an appeal before the Ld. Municipal Assessment Tribunal. The appeal was registered as M.A.A. 2285 of 2001. By judgment dated 14.10.2003 the Ld. Municipal Assessment Tribunal Kolkata allowed the appeal and fixed the Annual Valuation of the said premises for the aforesaid period at Rs. 93312/-.

3. Being dissatisfied with the said determination by the Ld. Tribunal The Kolkata Municipal Corporation (the petitioner herein) preferred a revisional application

being No. C.O. 861 of 2004 in this Court. By order dated 2.3.2005 in C.O. No. 86 of 2004, the said order passed in the appeal was set aside. This Court remitted the matter to the Ld. Municipal Assessment Tribunal Kolkata to assess the valuation afresh after taking into consideration of all the facts which were required to be taken in terms of the procedure laid down in Section 174 of the Kolkata Municipal Corporation Act, 1986. This Court also directed the Municipal Assessment Tribunal Kolkata to give opportunity of hearing of both the parties and adduce further evidence, if so required and considered the materials already on record afresh. The Ld. Municipal Assessment Tribunal Kolkata, on receiving the order of this Court, heard the matter afresh and passed the order the order impugned dated 8.9.2005 whereby determined the Annual Valuation of the property at Rs. 102960/-.

4. The Kolkata Municipal Corporation Authority decided to challenge the impugned order and filed this revision application on the following grounds:

a) that the order passed by the Tribunal suffers from serious illegality and irregularity;

b) that the Tribunal failed to consider evidence already on record as directed by this Court;

c) that the Tribunal failed to consider the other charges together with rent at the time of determining the Annual Valuation;

d) that the Tribunal did not consider all the factors of Section 174 of the Act and most arbitrarily fixed the rental valuation at Rs. 5000/- per occasion without any basis.

5. The point sought to be considered in this revision application is whether the order dated 8.9.2005 passed by the Municipal Assessment Tribunal Kolkata, suffers from incorrectness, irregularity and impropriety.

6. Mr. Ashoke Das Adhikari, the learned Advocate appeared on behalf of the petitioner Kolkata Municipal Corporation contended that the learned Tribunal jumped into the conclusion by fixing the rental valuation of the property at Rs. 5000/- per occasion without any basis. He contended that while the Tribunal came to a findings that the monthly rental value of the premises for commercial and residential can not exceed more than 7000/- per month and while there is no dispute about a rate of rent at per month for the residential portion, the rental valuation of the commercial portion per month ought to have been fixed at Rs. 5500/- per occasion. Mr. Das Adhikari also contended that the other charges which are usually received by the owner of the premises at the time of letting out for the purpose of ceremonies, have not been considered by the Tribunal while calculating the rental valuation of the premises. Finally, he submitted that the Tribunal failed to comply with the directions of this Court in latter and spirit.

7. Mr. Shankar Nath Dhar, the learned Advocate appeared on behalf of the opposite party contended that the annual rental valuation fixed by the Tribunal at Rs. 5000/- is excessive according to him. However, he contended, considering the harassment his client is suffering from he accepted the annual rental valuation determined by the Tribunal. His submission in short is that there is no illegality, incorrectness and impropriety in the order passed by the learned Tribunal justifying any interference in this revision application. The learned Tribunal, according to him, has taken everything in the consideration together with the evidence adduced by the parties, oral and documentary, as directed by this Court. The decision of the Tribunal is based on factual aspects and it is not desirable for this Court to interfere with that order while exercising its revisional jurisdiction.

8. Having heard the learned Counsels for the parties and having considered the materials placed before this Court, it is found that the Hearing Officer KMC determined the annual valuation of the property at Rs. 1701070/- with effect from January, 2000-01. The appeal was preferred by the opposite party Monojit Saha before the learned Tribunal and the learned Tribunal fixed the annual valuation for the aforesaid period at Rs. 93312. The petitioner KMC preferred revisional application against that order of the learned Tribunal in C.O. 861 of 2004. This Court remitted the matter to the learned Tribunal to assess the valuation afresh after taking into consideration all the facts which were required to be taken in terms of the procedure laid down in Section 174 of the Kolkata Municipal Act, 1986. This Court also directed the learned Tribunal to give the parties an opportunity to be heard and adduce further evidence. The learned Tribunal finally heard the matter afresh and by impugned order dated 8.9.2005 fixed the valuation at Rs. 102960/-.

9. On perusal of the order impugned it is found that the learned Tribunal had given opportunities to both the parties to adduce evidence, oral and documentary, considered the evidence so adduced by the parties, considered the trade license and other documents placed before it and assessed valuation of the commercial unit as well as residential unit separately. The learned Tribunal felt it reasonable, upon consideration of the location of the premises and the amenities available to the premises, that such a premises if let out for commercial purpose may fetch rent not below Rs. 5000/- per occasion.

10. The main thrust of argument of Sri Das Adhikari is that the Tribunal came to such a finding most arbitrarily because it had taken into consideration the fact that the receipt for the trade license issued by the license department KMC indicated clearly that monthly rent of the premises was taken at Rs. 7000/- and as such, the monthly rental value of the premises can not exceed Rs. 7000/- per month.

11. I do not find much force in the submission. The receipt for trade license indicated that the monthly rent has been taken at Rs. 7000/- for both commercial and residential unit of the premises. The rate of rent at Rs. 1200/- per month for residential portion unit has not been disputed. The commercial unit admittedly used

for ceremonies and owners gets hiring charge by letting out that commercial unit for the purpose of ceremonies according to the demand.

12. It has never been pointed out that the owner lets out the commercial unit for the purpose of the ceremonies on each and every date. The learned Tribunal upon consideration of the submission of both the parties found that 15 to 20 ceremonies take place in the premises. Therefore, it can be taken for granted that valuation of the commercial unit is to be assessed on average basis taking into account the number of ceremonies take place in the premises. Learned Tribunal after deducting the rate of rent for the residential unit at Rs. 1200/- from the monthly rent of Rs. 7000/- according to the receipt of trade license, found it reasonable to hold that if the commercial unit is let out that might fetch rent not below 5000/- per occasion. For taking to that conclusion the learned Tribunal considered all the amenities available in the premises, the location of the premises as well as the numbers of occasions take place in the premises. Learned Tribunal, in fact, had gone deep into the matter and appreciated the evidence available to it rigorously.

13. It has also considered service charge which has to be included in gross annual rent. The learned Tribunal came to the conclusion basing on facts and evidence available to it. The learned Tribunal considered what rent the landlord might release if the building (commercial unit) was let out. The Tribunal was not oblivious of the fact that the building in question (commercial unit) is not let out continuously for each date and landlord might get a fixed rent therefrom. So the learned Tribunal assessed the valuation on the rent which the landlord might reasonably expect to receive from the person who takes the commercial unit on hiring basis only for the purpose of holding ceremonies. I do not find any impropriety and incorrectness in the order passed by the learned Tribunal. It can not be said that the learned Tribunal did not apply his mind while assessing the valuation at Rs. 5000/- per occasion. Section 174(1) of the Kolkata Municipal Corporation Act 1980 deals with the determination of annual valuation. The detailed guidelines have been given in the said provision. The learned Tribunal after having the matter received by virtue of the order passed by this Court in C.O. No. 861 of 2004, reconsidered the entire aspects, factual and legal, and arrived at a rational amount of valuation. Therefore, I do not concede to the proposition of Mr. Das Adhikari that the learned Tribunal jumped into a conclusion without any basis and arbitrarily. On the contrary, in my estimate, I find that the learned Tribunal have taken all the factual aspects into consideration including the fact of receipt for monthly license of the premises as well as the rate of rent the landlord expects to get per day in case he lets out the commercial unit for occasion.

14. Therefore, I do not find any reason to interfere with the order passed by the learned Tribunal.

15. The revision application fails and the same is disposed of.

16. Stay order, if any, is vacated.

17. No order as to costs is passed.