

**(2012) 04 CAL CK 0075**

**Calcutta High Court**

**Case No:** G.A. No. 609 of 2012 and W.P. No. 1083 of 2009

PS Group Reality Ltd. 62, Another

APPELLANT

Vs

The Kolkata Municipal  
Corporation and Others

RESPONDENT

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**Date of Decision:** April 19, 2012

**Acts Referred:**

- Calcutta Municipal Corporation Act, 1980 - Section 171, 174, 180, 190
- Constitution of India, 1950 - Article 265

**Citation:** (2012) 3 CALLT 245

**Hon'ble Judges:** Debasish Kar Gupta, J

**Bench:** Single Bench

**Advocate:** Saktinath Mukherjee, Mr. Sanjay Kumar Nag and Mr. Sandip De, for the Appellant; Biswajit Mukherjee, for the Respondent

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### **Judgement**

Debasish Kar Gupta, J.

This writ application is filed by the petitioners assailing the annual valuation of premises No.48 Matheswartala Road, Police Station Tangra, Kolkata-700046 for the period from 2/2008-09. The backdrop of the case is as follows:-

The petitioners Nos. 1 to 8 are companies registered under the Companies Act. 1956 having their respective registered offices at the addresses given in the cause title of this writ application. The petitioner No.9 is the authorised signatory of the petitioner Nos. 1 to 8.

2. The petitioner Nos. 1 to 8 purchased premises No.48 Matheswartala Road. P.S. Tangra, Kolkata- 700046 (hereinafter referred to as the said premises), being land with structures for consideration of Res. 15,06,00,000/- and 1,73,38,358/- by registered deed of conveyance dated July 23, 2008.

3. The petitioners submitted an application dated September 23, 2008 before the competent authority of the respondent No. 1 for mutation of the names of the petitioners Nos. 1 to 8 in the assessment book of the respondent No. 1. By a communication dated September 24, 2008 the respondent No. 1 informed the petitioner Nos. 1 to 8 that the annual valuation for the said premises was proposed as follows:

3/1984-85	Rs. 5,56,320/-
3/1990-91	Rs. 6,68,300/-
3/1996-97	Rs. 8.02,680/-
3/2002-03	Rs. 9.62,540/-
2/2008-09	Rs. 1,09,73,900/-

4. The petitioner Nos.1 to 8 were further informed by the above communication to meet the respondent No.4 within seven days from the date of receipt of the above letter with a declaration on a Non-judicial Stamp Paper of Rs. 10/- to the effect that they were agreed to accept the above valuation and failing which the respondent No.4 would process the case for hearing of the proposed valuation.

5. The petitioners submitted a declaration on a Stamp Paper of Rs. 10/- accepting the above assessments of valuation of the said premises for the periods mentioned herein above. On September 25, 2008 supplementary bills were issued by the competent officer of the respondent No. 1 on the basis of the aforesaid assessments of annual valuation of the said premises. Upon payment of those supplementary bills, the names of the petitioner Nos. 1 to 8 were mutated in the assessment book of the respondent No. 1. Ultimately, the petitioners submitted a demand notice dated August 24, 2009 to the competent authority of the respondent No. 1 for cancellation of the annual valuation of the said premises for the period from 2/2008-09.

6. It is submitted by Mr. Saktinath Mukherjee, learned senior advocate appearing on behalf of the petitioners, that the supplementary bills for property tax in respect of the said premises for the period from 2/2008-09 on the basis of the annual valuation of Rs. 1,09,73,900/- were not raised by the respondent authority in accordance with law. According to him, the property tax of the said premises was re-assessed for the period from 2/2008-09 taking into consideration the fact of change of ownership of the said premises. According to him, it was not permissible under law. It is also submitted by him that the respondent authority was also in error of law in assessing the valuation of the said premises from the aforesaid period on the market value of the land only without taking into consideration the reasonable annual rent following the procedure prescribed in sub-section (1) of section 174 of the Kolkata Municipal Corporation Act, 1980. It is further submitted by him that the respondent authority erroneously assessed the annual valuation of the said premises from the aforesaid

period in accordance with the provisions of sub-section(2) of section 174 of the Kolkata Municipal Corporation Act, 1980. According to Mr. Mukherjee, the petitioners were compelled to accept the annual valuation of the said premises for the aforesaid period under duress and threat of rejecting the application for mutation of their names in the assessment registrar of the respondent No. 1. According to him the petitioner were in hurry to incorporate their names in the assessment registrar of the respondent No. 1 in respect of the said premises because the vendors were about to leave the country for ever within a very short period. It is submitted by Mr. Mukherjee that the declaration of the petitioners accepting proposed annual valuation of the said premises for the period in question should not stand in the way of challenging the action of the respondent authority.

7. Mr. Mukherjee relies upon the decision of Prosad Kumar Mondal & ORs. v. The Commissioner of Krishnanagore Municipality & ORs. , reported in 1978(1) CLJ 276 and Shree Mahamaya Mining v. CMC, reported in (1995)2 CHN 125 in support of his above submissions.

8. On the hand, it is submitted by Mr. Biswajit Mukherjee learned advocate appearing on behalf of the respondents, that by virtue of the notice dated September 24, 2008 the respondent No.4 asked the petitioner Nos. 1 to 8 to submit a declaration on a Nonjudicial Stamp Paper of Rs. 10/- in case they agreed to accept the proposed annual valuation of the said premises. According to him, it was open for the petitioner Nos. 1 to 8 to raise their objections against the aforesaid proposed annual valuation of the said premises and in that event the respondent authority would proceed in accordance with the provisions of section 174 of the Kolkata Municipal Corporation Act, 1980 to determine the annual valuation of the said premises under reference. It is also submitted by Mr. B. Mukherjee that in view of the provisions of section 190 of the Kolkata Municipal Corporation Act, 1980 the annual valuation under reference of the said premises became final having no scope of reopening the same. It is further submitted by Mr. Mukherjee that the petitioners approached this court after waiving their right by accepting the proposed valuation. In the event objection was raised against the notice impugned, the provisions of sections 171 and 174 would have been followed.

He relies upon the decision of State of Punjab v. Gurdeb Singh, reported in AIR 1991 SC 2219.

9. Having heard the learned counsel appearing for the respective parties and after giving thoughtful consideration to the facts and circumstances of the case I find that it appears from the materials on record that the petitioner Nos. 1 to 8 purchased the land with structure thereupon by virtue of deed of conveyance dated July 23, 2008 (annexure P-1 at pages 32 to 79 of the writ application). It further appears from the inspection book of lands and buildings of the respondent No. 1 that the respondent authority considered the land value of the said premises on the basis of the consideration money paid by the petitioner Nos.1 to 8 for purchasing the said

premises (Annexure R-3 from pages 21 to 25 of the affidavit-in-opposition affirmed on behalf of the respondent Nos. 1 to 4).

10. Article 265 of the Constitution of India prohibits levy or collection of a tax except by an authority of law. Section 171 and 174 authorises the respondent No. 1 to collect property tax on land and buildings in Kolkata following the procedure of assessing annual valuation and property tax as provided therein. For adjudication of the issue involved in this case the provisions of section 174 of the Kolkata Municipal Corporation Act, 1980 are quoted below:

174. Determination of annual valuation.-(1) Notwithstanding anything contained in the West Bengal Premises Tenancy Act, 1956 (West Ben. Act XII of 1956) or in any other law for the time being in force, for the purpose of assessment to the property tax, the annual value of any land or building shall be deemed to be the gross annual rent including service charges, if any, at which such land or building might at the time of assessment be reasonably expected to let from year to year, less an allowance of ten per cent for the cost of repairs and other expenses necessary to maintain such land or building in a state to command such gross rent:

Provided that while determining the annual value in the case of any land or building or portion thereof exclusively used by the owner for his residential purpose, the gross annual rent of such land or building or portion, as the case may be, shall be reduced,-

(a) where the gross annual rent does not exceed six hundred rupees, by thirty per cent.;

(b) where the gross annual rent exceeds six hundred rupees but does not exceed eighteen thousand rupees, by such percentage of the gross annual rent as is worked out by dividing the gross annual rent by six hundred and ten from thirty-one, the difference being rounded off to the nearest place of decimal.

Provided further that no such reduction in gross annual rent shall be made-(a) in case the total covered area in any land or building under occupation for residential purpose by the owner exceeds one hundred and fifty square metres, or

(b) where a person owns or occupies for residential purpose more than one plot of land or building or portions thereof within the municipal limit of Kolkata.

(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) If the gross annual rent of any class or classes of lands or buildings used exclusively for hospital or educational purposes or for the purposes of sports or as a place of worship or as a place for disposal of the dead cannot be easily estimated, the gross annual rent of such building shall be deemed to be five per cent of the value of the building obtained by adding the estimated cost of erecting the building

at the time of assessment less a reasonable amount to be deducted on account of depreciation, if any, to be estimated present market value of the land valued with the building as part of the same premises.

(4) In the case of any land or building or part thereof used for public cinema shows or theatrical performance or as a place of similar public recreation, amusement or entertainment, the gross annual rent of such land or building or part thereof, as the case may be, shall be deemed to be seven and a half per cent of the gross annual receipts in respect of such cinema shows or theatrical performances or place of public recreation, amusement or entertainment, including receipts from rent and advertisements and sale of admission tickets but excluding taxes on the sale of such tickets:

Provided that the provisions of this sub-section shall not apply in the case of temporary fairs, circuses, and casual shows or performances.

(4A) If the gross annual rent of any land or building or part thereof cannot be easily estimated, the gross annual rent of such land or building for the purposes of sub-section(1) shall be deemed to be seven and half per cent of the value of the building obtained by adding the estimated present cost of erecting the building at the time of assessment less a reasonable amount to be deducted on account of depreciation, if any, to the estimated present market value of the land:

Provided that the estimated present cost shall not include the cost of any plant or machinery, excepting those enumerated in Schedule VIII, on the land or the building as aforesaid.

(5) The annual value as determined under this Chapter shall be rounded off to the nearest ten rupees.

11. It is pertinent to mention here that by virtue of the provisions of section 4 of the Kolkata Municipal Corporation(Amendment) Act, 2011 the provisions of sub-section(1) of section 174, amongst others, which were in force immediately prior to commencement of the Kolkata Municipal Corporation (Amendment) Act, 2006 continued to be in force until final publication of the scheme under sub-section(1) of section 174 of the Act as amended by the Kolkata Municipal Corporation (Amendment) Act, 2006.

12. It is not in dispute as appears from the inspection book of lands and buildings of the respondent No. 1 that the annual value of the land only was taken into consideration on the basis of the consideration money paid by the petitioner Nos. 1 to 8 for purchasing the said premises. Admittedly the value of the structure thereon was not taken into consideration. The above procedure was contrary to law for the following reasons:

(i) Change of ownership of the said premises did not empower the respondent authority to make an interim assessment in view of the settled principles of law after

declaration of clause (i) of sub-section(II) of Section 180 of the Kolkata Municipal Corporation Act, 1980 ultra vires the Constitution of India.

(ii) The respondent authority acted on the basis of the provisions of sub-section(2) of section 174 in assessing the annual valuation of the said premises for the period from 2/2008-09 without taking into consideration the value of structure lying and situated at the said premises. Necessary to point out that inspite of having a building lying and situated on a plot of land at the said premises, no attempt was made by the respondent authority to take into consideration the gross annual rent/reasonable rent of that land or building or part thereof for determination of annual valuation in question for proper appreciation of the settled principles of law. The relevant portions of the decision of Shree Mahamaya Mining & Industries (P) Ltd.,(supra) are quoted below:

100. The method to be adopted for determining the Annual Valuation of a land or building, either during general revaluation or intermediate revision, is not, therefore, dependent on change of ownership, but on the change in circumstances relating primarily to the user of the land or building or the rents payable In respect thereof. The method prescribed in sub-sections (2) and (4A) of section 174 of the 1980 Act are to be resorted to in exceptional circumstances where the land has not been constructed upon or where the gross annual rent of any land or building or part thereof cannot be easily estimated. The same, in my view, has no nexus with the ground relating to change of ownership alone for the purpose of intermediate revision. In my view, change of ownership cannot by itself be a ground for intermediate revision of the Annual Valuation.

13. That apart, a natural person has the capacity to do all lawful things unless his capacity has been curtailed by some rule of law. In case of a statutory corporation, it is just the other way. A corporation has no power to do anything unless those powers are confer on it by the statutes, which creates it. Reference may be made to the decision of [Asian Leather Limited and Another Vs. Kolkata Municipal Corporation and Others](#), and the relevant portions of the above decision are quoted below:

12. At this juncture, it will be profitable to refer to the well-known proposition of law that a natural person has the capacity to do all lawful things unless his capacity has been curtailed by some rule of law. It is equally a fundamental principle that in case of a statutory corporation, it is just the other way. The Corporation has no power to do anything unless those powers are conferred on it by the statutes, which creates it.

14. I do not find any substance in the submission made on behalf of the Kolkata Municipal Corporation that the petitioners should not be allowed to avail of discretionary remedy after waiving their right by accepting the proposed annual valuation of the said premises question. When the action of the respondent authority is under consideration in the light of statutory provisions there can be no

estoppel against a statute and whether or not the petitioners accepted the annual valuation in question, if the process of assessing that annual valuation was not permissible under the provisions of section 174 and section 180 of the Kolkata Municipal Corporation Act, 1980, they should not be estopped from challenging the same. Reference may be made to the decision of [A.C. Jose Vs. Sivan Pillai and Others](#), and the relevant portions of the above decision are quoted below:

38. Lastly, it was argued by the counsel for the respondents that the appellant would be estopped from challenging the mechanical process because he did not oppose the introduction of this process although he was present in the meeting personally or through his agent. This argument is wholly untenable because when we are considering a constitutional or statutory provision there can be no estoppel against a statute and whether or not the appellant agreed or participated in the meeting which was held before introduction of the voting machines, if such a process is not permissible or authorized by law he cannot be estopped from challenging the same.

15. When assessment of annual valuation of the said premises for the period from 2/2008-09 was glaringly illegal and void, there was no question of approbation and reprobation at the same time in such a situation. Reference may be made to the decision of Bar Council of Delhi v. Surjeet Singh, reported in (1980)4 SCC 21 and the relevant portions of the above decision are quoted below:

11. The contesting respondents could not be defeated in their writ petitions on the ground of estoppel or the principle that one cannot approbate and reprobate or that they were guilty of laches. In the first instance some of the contesting respondents were merely voters. Even Shri Surjeet Singh in his writ petition claimed to be both a candidate and a voter. As a voter he could challenge the election even assuming that as a candidate after being unsuccessful he was estopped from the doing so. But to be precise, we are of the opinion that merely because he took part in the election by standing as a candidate or by exercise of his right of franchise he cannot be estopped from challenging the whole election when the election was glaringly illegal and void on the basis of the obnoxious proviso. There is no question of approbation and reprobation at the same time in such a case. A voter could come to the High Court even earlier before the election was held. But merely because he came to challenge the election after it was held it cannot be said that he was guilty of any laches and must be non-suited only on that account.

16. In the decision of Gurdeb Singh (supra) the Hon"ble Supreme Court decided the issue of declaring an order of dismissal or termination from service passed against the plaintiff dismissed employee after taking into consideration the period of limitation for approaching the court. The above decision has no manner of application in this case in view of the distinguishable facts and circumstances and the issue involved in this case.

17. In view of the discussions and observations made hereinabove the impugned assessment of annual valuation of the said premises for the periods from 2/2008-09 is quashed and set aside. The respondent authority is directed to assess the annual valuation in question afresh in the light of the observations made hereinabove expeditiously.

18. This writ application and G.A. No.609 of 2012 are also disposed of accordingly. There will be however, no order as costs.

Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.