

Deepika Developers (P) Ltd. and anr. Vs. Municipal Commissioner, Calcutta Municipal Corporation and anr.

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Court : Kolkata

Decided On : May-13-2005

Reported in : 2006(1)CHN435

Judge : Tapan Kumar Dutt, J.

Acts : Calcutta Municipal Corporation Act, 1980 - Sections 4A, 170, 174(1) and 174(2)

Appeal No. : C.O. No. 939 of 2003

Appellant : Deepika Developers (P) Ltd. and anr.

Respondent : Municipal Commissioner, Calcutta Municipal Corporation and anr.

Advocate for Def. : A.K. Das Adhikary and ;S.K. De, Advs.

Advocate for Pet/Ap. : Barin Banerjee and ;S. Ghosh, Advs.

Disposition : Application dismissed

Judgement :

Tapan Kumar Dutt, J.

1. Heard the learned Advocates for the parties.

2. The facts of the case, very briefly, are as follows:

That the petitioners claim to be the owner of municipal premises No. 40, Shakespeare Sarani, Calcutta-17 (hereinafter referred to as the said premises) and the said premises has been leased out to one Palia Devi Bhagat at Rs. 2,500/- per month. According to the petitioners the said premises is a two-storied building with vacant land and the annual valuation of the same was assessed under Section 174(1) of the Calcutta Municipal Corporation Act, 1980 at Rs. 50,000/- w.e.f. 4th quarter 1990-91 and the valuation was fixed at Rs. 25,000/- for residential portion and Rs. 25,000/- for non-residential portion. According to the petitioners the respondent authorities proposed to assess the annual valuation of the building at Rs. 1,69,000/- from the 4th quarter, 1996-97 and the petitioners filed objection. The petitioners case is that the hearing took place and by order dated 06.08.1998 the respondent authorities assessed the annual valuation of the said premises at Rs. 1,69,000/-. The respondent authorities assessed Rs. 1,39,000/- for the residential portion and Rs. 30,000/- for the non-residential portion and it appears that the respondent authorities assessed the land at Rs. 2,00,000/- per cottah. The petitioners challenged the said order dated 06.08.1998 before the Municipal Assessment Tribunal and the Municipal Assessment Tribunal by order dated 25.11.2002 assessed the annual valuation of the said premises at Rs. 1,55,560/- w.e.f. 4th quarter, 1996-97. It appears that the Municipal Assessment Tribunal found that the hearing officer concerned had assessed vacant land separately and the premises is in a posh area. The said Municipal Assessment Tribunal also found that the rent comes to Rs. 12,330/- per month for both residential and non-residential portions and such fact has not been denied by the petitioners herein. According to the said Municipal Assessment Tribunal the annual valuation of the building portion came to Rs. 1,33,164/-. It further appears that the said Municipal Assessment Tribunal took the valuation of the land at Rs. 40,000/- per cottah and the annual valuation of the land thus came to Rs. 22,400/-. According to the said Municipal Assessment Tribunal the total annual valuation of the said premises came to Rs. 1,55,564/-, which was rounded off at Rs. 1,55,560/-.

3. That challenging such order dated 25.11.2002 passed by the Municipal Assessment Tribunal, the petitioners filed the present application under Article 227

of the Constitution of India.

4. The learned Advocate for the petitioners has raised a point that in respect of the period from 4th quarter 1996-97 the municipal authorities were bound to serve notice containing the particulars on the basis of which the proposed valuation was made. The learned Advocate for the respondents submitted that question regarding service of notice and disclosure of particulars were never raised by the petitioners before the authorities below and as such the petitioners cannot be allowed to raise such disputed questions of fact before this Court. I find substance in the submission of the learned Advocate for the respondents and as such the petitioners cannot be allowed for the first time to raise such disputed questions of fact before this Court.

5. The petitioners' learned Advocate has contended that under Section 170(i)(a) of the Calcutta Municipal Corporation Act, 1980, tax has to be levied on land and in the petitioner's case the building together with the land is one unit and the Calcutta Municipal Corporation had no right to consider the land-value separately. The petitioners' learned Advocate submitted that the eight cottahs of land being part and parcel of the building the same is one unit. The respondent authority was not entitled to take into account the eight cottahs of land in determining the valuation. The petitioner's learned Advocate further submitted that the valuation for the period of 4th quarter 1990-91 was based on residential and non-residential valuation and since there was no addition, alteration and/or improvement, the respondent No. 2 was bound to assess the valuation as per 'Mayor's Guidelines' dated 08.02.1986, that is, increasing the existing valuation by 10% for residential and 20% for non-residential. The petitioners' learned Advocate also contended that the Assessment Tribunal had no jurisdiction to take into account the rent at Rs. 12,330/- per annum and the conclusion arrived at by the Assessment Tribunal is arbitrary, illegal, perverse and without jurisdiction and the lease rent of Rs. 550/- has not been increased and the learned Tribunal had no authority to interfere with and/or change the residential and non-residential valuation taking into account rent of Rs. 12, 330/- per month. The petitioners' learned Advocate contended that the earlier valuation for the period of 4th quarter 1990-91 should have been the basis for fixation of rent and that the respondent authorities had no right to consider the

land value separately.

6. The learned Advocate for the respondents contended that under Section 174(2) of the said Act of 1980 the Kolkata Municipal Corporation is entitled to assess the vacant land which is not built upon at 7% of the estimated market value of the land as has been rightly done by the respondents. In the instant case, the respondents' learned Advocate also submitted that under Section 170(i)(a) of the said Act both land and building is taxable and not only the land as contended on behalf of the petitioners. The further contention of the respondents' learned Advocate is that the vacant land in question, which has been assessed separately, is not part and parcel of the building but a separate unit and reference to earlier valuation is redundant and irrelevant since each and every valuation is independent from one another. The respondents' contention is that the petitioners' submission that the valuation should have been increased by 10% or 20% on the valuation last arrived at in terms of 'Mayor's Guidelines' has no legal basis since the 'Mayor's Guidelines' is merely a circular and cannot have the force of an enacted statute. The respondents' learned Advocate submitted that the power to assess the vacant land under Section 174(2) of the said Act cannot be taken away by the said circular. It is the further contention of the learned Advocate for the respondents that the calculation done by the Tribunal and the valuation arrived at by the Tribunal are all on the basis of records and documents available and it is not proper that this Court exercising jurisdiction under Article 227 of the Constitution of India should go into such calculations and/or valuation as has already been done by the Tribunal which is the appellate forum. The Tribunal, as contended by the respondents' learned Advocate, being the appellate forum had looked into all the factual aspects of the matter and took into consideration all relevant facts and circumstances and there is nothing to show that the Tribunal acted beyond its bounds. The learned Advocate for the respondents cited a case reported in : [2003]1SCR567 , *Sadhana Lodh v. National Insurance Company Ltd. and Anr.* and submitted that the jurisdiction under Article 227 of the Constitution of India should be exercised in cases where the Court and/or Tribunal has acted beyond its parameters while passing the order that is sought to be challenged under Article 227 of the Constitution of India but not to correct even an error apparent on the face of the record or an error of law. The respondents' learned Advocate further submitted

that this Court should not review and/or re-examine any evidence upon which the Tribunal and/or Court may pass an order, which is sought to be challenged in the proceedings under Article 227 of the Constitution of India. The learned Advocate for the respondents cited another unreported judgment delivered by a Hon'ble Single Judge of this Court in CO. No. 368 of 2004 and submitted that in the said unreported case it was held that reading Section 174(1) and 174(2) together with Section 4A it can be said that the intention of the statute was to treat vacant land as a separate unit of assessment.

7. After having considered the respective submissions of the learned Advocates for the parties it appears to this Court that there is no merit in the submissions made by the learned Advocate for the petitioners. The respondents' learned Advocate rightly submitted that under Section 170(i)(a) of the said Act both land and building is taxable. The main contention of the petitioners' learned Advocate that the land and building could not be separately assessed and that the respondents should not have taken into account the eight cottahs of land in determining the valuation cannot be accepted. In the unreported case CO. 368 of 2004, Kolkata Municipal Corporation v. Harbans Lal Malhotra & Sons Pvt. Ltd. and Anr. cited by the respondents' learned Advocate, it was held by a Hon'ble Single Bench of this Court as follows :...

8. Thus, from the above two reported decision one thing is very much clear and it cannot be disputed by either of the parties that what would be the actual meaning of the word 'and' or 'or' would certainly depend on the background and intention of the Act in force and keeping this interpretation in mind, when I look at Section 174(1) and (2) together with Section (4A), I am of the opinion that the intention of the statute was to treat vacant land as a separate unit of assessment otherwise the interpretation would take away a probable source of revenue of the municipal authority which was not the intention of the statute.

9. Thus, having regard to the submission of both sides and after giving the interpretation of the word 'or' as appearing in Section 174(1), I am inclined to accept the interpretation given by Mr. Das Adhikary on behalf of the Kolkata Municipal Corporation and for that matter, I hold that the Tribunal was not justified

in accepting the proposition that there should not be a separate assessment for the land....

10. Thus, taking the legal position into consideration, the submissions made by the petitioners' learned Advocate have no substance. The respondents' learned Advocate rightly submitted that the valuation, as decided by the Tribunal, was on the basis of records and documents available before the respondents authorities and this Court should not be re-examine and reassess such documents and records in the supervisory jurisdiction under Article 227 of the Constitution of India. The respondents' learned Advocate has also rightly submitted that there is nothing to show that the respondents in any way have acted outside its parameters and, therefore, this Court should not interfere with the decision of the Tribunal by exercising jurisdiction under Article 227 of the Constitution of India.

11. This Court is of the view that there is no merit in the present application under Article 227 of the Constitution of India, which is, accordingly, dismissed. There will, however, be no order as to costs.

12. Urgent xerox certified copy of this order, if applied for by the parties, be made available to the parties as expeditiously as possible.