IN THE HIGH COURT AT CALCUTTA

CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble Justice Dinesh Kumar Sharma

CO 1002 of 2022

The Kolkata Municipal Corporation

Vs.

Bikash Banerjee & Anr.

For the petitioner:	**Mr. Aloke Kr. Ghosh, Adv.,**
	Mr. Fazul Haque, Adv.
For the opposite parties:	**Mr. Sagar Bandopadhyay, Adv.,**
	Mr. Bebdatta Saha, Adv.,
	Mr. Diprav Deb, Adv.
Reserved on:	**24.06.2025**
Judgment on:	**08.08.2025**

Dinesh Kumar Sharma, J.:

1. Present petition has been filed challenging the order dated March 10, 2021 passed by Municipal Assessment Tribunal, Second Bench, Kolkata Municipal Corporation whereby the MAA 597 of 2016 was allowed in part and the order dated February 6, 2016 of hearing Officer No. XIII of the Kolkata Municipal Corporation was modified and the annual valuation of Flat No. 3A and B entire third floor of the Premises No. 26 FT.LT. Tapan Chowdhury Avenue, Kolkata-

700026 having Assessee No. 11087080 w.e.f. 1/2014-2015 was fixed at Rs.61,280/-. The petitioner Kolkata Municipal Corporation in the petition challenging the impugned order has submitted that hearing Officer No.XIII on February 6, 2016 fixed the annual valuation of the said flat at Rs. 1,12,640/- taking into consideration reasonable rent of the said flat at Rs. 3.70 per sq. ft. and the car parking space at the rate Rs.1.60 per sq.ft. for 1/2014-2015. The petitioner has stated that the Learned Tribunal has not given any cogent reason for the modification of the order of hearing officer and failed to discharge the duty of quasi judicial appellant body. The petitioner stated that the Learned Tribunal is duty bound to function in accordance with the provisions laid down in the Kolkata Municipal Corporation, 1980 and the Rules framed thereof.

2. The petitioner has further submitted that learned counsel for the opposite parties relied upon a judgment passed by the Learned Tribunal being MAA 248 of 2010 relating to different premises and apparently the Learned Tribunal has relied upon the said judgment without giving any reasons. The petitioner stated that merely because property in the said referred judgment is situated under the same ward of the Kolkata Municipal or within the same locality, where the flat in question situated, cannot be the sole yardstick of assessment of the annual valuation of the said flats.

3. The petitioner submitted that the impugned order is erroneous, unwarranted and unsustainable both in law and facts and liable to be set aside. It has

further been submitted that the learned tribunal did not consider the cost price of the premises and the increase in the rent. The petitioner further submitted that hearing officer had correctly assessed the rent at the rate of 3.70 per sq.ft. of the premises and open car parking at the rate of 1.60 per sq.ft. to assess the annual valuation, which has wrongly been interferred by the learned tribunal.

4. It is further been submitted that in MAA 248 of 2010 the annual valuation of particular premises was fixed w.e.f. 3/1996-1997 and it should not have been compared with the determination of annual valuation of the premises in question w.e.f. 3/2007-2008 as there was a gap of more than 10 years. The petitioner further stated that the impugned order is devoid of any reasons and thus, against the principles of natural justice. It was stated that the revision petition could not be filed earlier on account of pandemic.

5. Learned senior counsel for the petitioner submitted that the learned tribunal has fallen into error by fixing the reasonable rent at Rs. 2 sq.ft. for covered area and Rs. 1 per sq.ft. per month for car parking without any disclosing any reason. Learned senior counsel submitted that the impugned order is unsustainable in law and facts and, therefore, this Court must exercise its jurisdiction under Article 227 of Constitution of India despite there being some delay in filing the revision petition. Learned senior counsel further submitted that there is no time limit provided in Article 227 of Constitution of India for filing the revision petition. It has further been submitted that the learned tribunal was duty bound to follow the rules and procedures under the Kolkata

Municipal Corporation (Taxation) Rules, 1987 for fixing the reasonable rate of rent. Learned senior counsel for the petitioner submitted that power of review under Section 189 (10A) of Kolkata Municipal Corporation Act, 1980 cannot curtail the constitutional power of the Court under Article 227.

6. In support of his contention learned senior counsel has placed reliance upon the Kolkata Municipal Corporation vs. Smt. Surama Singh, C.O. No. 1468 of 2015, wherein the Coordinate Bench of this Court vide its judgment dated May 14, 2024, while dealing with the objection as to the delay in filing of the petition, inter alia, noted that though there is a justification in the submission of the opposite party, but the issue involved is of a larger public interest as property tax is to be paid by the owner of the property to the concerned Municipal Authorities under the statutes, and if there are procedural lapse of the department in preferring appeal within stipulated period of time, then the Court should take a lenient view and condone the delay to allow the matter to be decided on merits.

7. Learned senior counsel for the petitioner has further placed reliance upon the Kolkata Municipal Corporation vs. Susanta Das , No. 1815 of 2015 wherein the Coordinate Bench of this Court vide its judgment dated April 10, 2024 set aside the order of the Tribunal as the Tribunal did not give any supportive reasons for acceptance of the orders passed in different cases in case of assessment of valuation of the flat though situated in the same premises. Learned senior counsel submitted that it was further, inter alia, held that

merely because the property in the said referred judgments are situated at the same locality, the same cannot be a sole yardstick of assessment for computing annual valuation of the case flat.

8. Learned senior counsel submitted that Kolkata Municipal Corporation vs. Susanta Das ,the Coordinate Bench of this Court while setting aside the order of the learned Tribunal, inter alia, held that the detailed procedure as enshrined in the act and the rule is to be followed by the tribunal at the time of discharging its duty as being a quasi judicial authority. It was further, inter alia, held that if the order of the tribunal is devoid of any reason for modification that cannot survive. It was further, inter alia, held that merely on the basis of earlier judgment the order of hearing officer should not be modified and it is a bounden duty of the tribunal to state the relevancy of the said judgment.

9. Learned senior counsel submitted that the Coordinate Bench of this Court relegated the matter back to the tribunal to hear the matter afresh in compliance of the provisions of the Kolkata Municipal Corporation Act, 1980 and the Kolkata Municipal Corporation (Taxation) Rules, 1987.

10. Per contra, learned Senior Counsel for the opposite party took a preliminary objection that the present petition has been filed at a belated stage without any explanation of the delay and, therefore, is liable to be rejected outrightly. Learned senior counsel submitted that in the entire petition the petitioner had only stated that revisional application could not be filed earlier due to

pandemic COVID-19 situation. Learned senior counsel submitted that in Kolkata Municipal Corporation vs. Shibani Mukherjee, 2017 SCC Online Cal 5136 it was, inter alia, held that if the explanation for the delay is vague and lacks resonableness and fairness it should not be accepted. Learned senior counsel further submitted that in K. Chinnammal (Dead) Thr. Lrs. vs. L.R. Eknath & Anr., 2023 SCC Online SC 611, the Apex Court, inter alia, held that the extension of limitation by virtue of suo moto writ petition (c) no.3 of 2020 relates to extension of the limitation period for filing petitions/applications/suits/appeals/all other judicial or quasi judicial proceedings where the period of limitation is prescribed under the general law of limitation or under any special laws both Central or State.

11. Learned Senior Counsel further submitted that the jurisdiction of this Court under Article 227 is not unlimited. Learned Senior Counsel submitted that in Astrella Rubber vs. Dass Estate Pvt. Ltd., 2001 (8) SCC 97 and M/S. Garment Craft vs. Prakash Chand Goel, (2022) 4 SCC 11, it was, inter alia, held that such power can only be exercised in cases of serious dereliction of duties and fragment violation of fundamental principles of law or justice. Learned senior counsel submitted that it was further, inter alia, held that such power cannot be exercised to correct hardships or wrong decisions made within the limits of the jurisdiction of the sub-ordinate court or tribunals. Learned Senior Counsel submitted that it is a settled proposition that jurisdiction under Article 227 cannot be exercised as an Appellate Court.

12. Learned Senior Counsel for the opposite party has further submitted that Section 189 (10A) of the Kolkata Municipal Corporation Act specifically provides that the Municipal Commissioner within 90 days from the date of the order by the Municipal Assessment Tribunal may prefer a petition before the Municipal Assessment Tribunal for review of the order. Learned senior counsel submitted that since the legislature has provided an alternative remedy, the present petition on the face of it is not maintainable. Reliance has been placed upon Commissioner of Income Tax & Ors. vs. Chhabil Dass Agarwal, (2014) 1 SCC 603. Learned senior counsel submitted that the Apex Court has specifically held that the High Court should refrain from entertaining petition under Article 226 of Constitution, if an effective alternative remedy is available to the aggrieved person or the statute, under which the action complained of has been taken itself contains a mechanism for redressal of grievances, except in the exceptional circumstances for invoking special jurisdiction.

13. Learned senior counsel submitted that in the entire petition there are no grounds for invoking the special jurisdiction and, therefore, in view of the mechanism for remedy of review available, the present petition is liable to be dismissed on the face of it.

14. Learned senior counsel further submitted that the present application is also liable to be dismissed as the limitation for filing the review petition had also expired at the time of the filling of the present petition. Reliance has been placed upon Calcutta Electricity Supply Corporation Limited & Anr. vs.

Kalavanti Doshi Trust & Ors., 2010 SCC Online Cal 2278.

15. Thus, before proceeding further it is necessary to examine whether the present writ petition should be entertained in view of the remedy of review provided under the concerned statute. It is no longer re integra that the High Court while exercising supervisory jurisdiction under Article 227 does not act as a Court of appeal to re-appreciate evidence or facts, upon which the determination under challenge is based. The High Court cannot substitute its own opinion on facts and conclusion. The power under Article 227 is to be exercised sparingly in appropriate case, where the finding is so perverse that no reasonable person can possibly come to a conclusion that the Court or tribunal has come to. It has repeatedly been held that such a jurisdiction must be exercised to ensure that there is no miscarriage of justice. Reliance can be placed upon Ahmedabad Manufacturing and Cailco Ptg. Co. Ltd. vs. Ramtahel Ramanand, AIR 1972 SC 1598.

16. There is a substance in the contention of the learned senior counsel for the opposite party that even when the limitation for filing the review had expired, the maintainability of the present petition comes under cloud. In Calcutta Electricity Supply Corporation Limited & Anr. vs. Kalavanti Doshi Trust & Ors., the division bench of this Court, inter alia, held as under:

> *"12. After hearing the learned Counsel for the parties and after going through the aforesaid materials on record, we are of the view that apart from the aforesaid illegalities committed by the writ-petitioners in obtaining the interim order by giving wrong information about the moving of application, His Lordship should not have entertained the*

writ application at all in view of the fact that efficacious alternative remedy prescribed under taw had become barred and there is no provision of even condonation of delay for preferring any appeal against such order of final assessment. (emphasis supplied)

13. As pointed out by the Supreme Court in the case of Chattrisgarh State Electricity Board v. Central Electricity Regulatory Commission, 2010 (5) SCC page 23), in this type of cases, there is even no scope of application of section 5 of the Limitation Act by taking aid of section 29(2) of the Limitation Act and as such, it is apparent that on the date of presentation of the writ-application, the remedy of the writ petitioners was totally barred. It is now settled law that a Writ Court should not by invoking jurisdiction under Article 226 of the Constitution of India revive a barred remedy".

17. In Assitant Commissioner (CT) LTU. Kakinada & Ors. vs. Glaxo Smith Kline Consumer Health Care Ltd., (2020) 19 SCC 681 it was, inter alia, held as under:

14. In the backdrop of these facts, the central question is: Whether the High Court ought to have entertained the writ petition filed by the respondent? As regards the power of the High Court to issue directions, orders or writs in exercise of its jurisdiction under Article 226 of the Constitution of India, the same is no more res integra. Even though the High Court-can-entertain a writ petition against any order or direction passed/action taken by the State under Article 226 of the Constitution, it ought not to do so as a matter of course when the aggrieved person could have availed of an effective alternative remedy in the manner prescribed by law (see Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad and also Nivedita Sharma v. COA). In Thansingh Nathmal v. Supt. of Taxes, the Constitution Bench of this Court made it amply clear that although the power of the High Court under Article 226 of the Constitution is very wide, the Court must exercise self-imposed restraint and not entertain the writ petition, if an alternative effective remedy is available to the aggrieved person. In para 7, the Court observed thus: (Thansingh Nathmal case, AIR p. 1423)

> *"7. Against the order of the Commissioner an order for reference could have been claimed if the appellants satisfied the Commissioner or the "High Court that a question of taw arose out of the order. But the procedure provided by the Act to invoke the*

jurisdiction of the High Court was bypassed, the appellants moved the High Court challenging the competence of the Provincial Legislature to extend the concept of sale, and invoked the extraordinary jurisdiction of the High Court under Article 226 and sought to reopen the decision of the taxing-authorities on question of fact. The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

(emphasis supplied)

15. We may usefully refer to the exposition of this Court in Titaghur Paper Mills Co. Ltd. v. State of Orissa, wherein it is observed that where a right or liability is created by a statute, which gives a special remedy for enforcing it. the remedy provided by that statute must only be availed of. In para 11, the Court observed thus: (SCC pp. 440-41)

"71. Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the Prescribed Authority under sub-section (1) of Section 23 of the Act. If the petitioners are

dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-section (3) of Section 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under Section 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognized that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesfords in the following passage:

> *'There are three classes of cases in which a liability may be established founded upon statute. But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it.... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.'*
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> *The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspaper Ltd. and has been reaffirmed by the Privy Council in Attorney General of Trinidad & Tobago v. Gordon Grant & Co. Ltd. 10 and Secy, of State v. Mask & Co.11 It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine."*
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> *(emphasis supplied)*
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> *In the subsequent decision in Mafallal Industries Ltd. v. Union of India, this Court went on to observe that an Act cannot bar and curtail remedy-under Article 226 or 32 of the Constitution. The Court, however, added a word of caution and expounded that the Constitutional Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise its jurisdiction consistent with the provisions of the enactment. To put it differently, the fact that the High Court has wide jurisdiction under Article 226 of the Constitution, does not mean that it can disregard the*

substantive provisions of a statute and pass orders which can be settled only through a mechanism prescribed by the statute.

18. It may also be mentioned that there is distinction between being maintainable and entertainble. The petition may be maintainable, but whether it is to entertained or not should be guided by sound principles of law. Even it may be reiterated at the cost of brevity that the power of the High Court under Article 226 is to be exercised with circumspection taking into account the intention of the legislature. The Court while exercising its power under Article 226 cannot disregard the substantive provision of the statute and can allow the party to do indirectly what it could not do directly. It is correct that in the matter of House Tax, it relates to the public exchequer but merely on this ground the mechanism provided under the act cannot be waived. The Court is under duty bound to balance the right and interest of the parties. The court while exercising such jurisdiction cannot give an unnecessary advantage to the state at the cost of right and interest of an individual citizen. Every citizen of this country is entitled to equal protection of the law. It has been repeatedly been held that the public bodies or the statutory authorities cannot be given a special treatment to cover up their negligence.

19. The petition in the present case has admittedly been filed after a considerable delay and that too after the expiry of the limitation for filling of review as provided under Section 189(10A). The Court had already expressed its opinion that the government authorities cannot be given any special treatment. The Apex Court in the State of Madhya Pradesh & Ors. vs. Bherulal in Special

Leave Petition (C) No. 9217 of 2020, inter alia, observed as under:

> *"2. We are constrained to pen down a detailed order as it appears that all our counseling to Government and Government authorities have fallen on deaf ears i.e., the Supreme Court of India cannot be a place for the Governments to walk in when they choose ignoring the period of limitation prescribed. We have raised the issue that if the Government machinery is so inefficient and incapable of filing appeals/petitions in time, the solution may lie in requesting the Legislature to expand the time period for filing limitation for Government authorities because of their gross incompetence. That is not so. Till the Statute subsists, the appeals/petitions have to be filed as per the Statues prescribed.*
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> *3. No doubt, some leeway is given for the Government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government (Collector, Land Acquisition, Anantnag & Anr vs. Mst. Katiji & Ors. (1987) 2 SCC 107). This position is more than elucidated by the judgment of this Court in Office of the Chief Post Master General & Ors. v. Living Media India Ltd. & Anr. (2012) 3 SCC 563 where the Court observed as under:*
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> > *"12) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.*
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> > *Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.*

> *13) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural redtape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay."*
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> *Eight years hence the judgment is still unheeded!*
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> *4. A reading of the aforesaid application shows that the reason for such an inordinate delay is stated to be only "due to unavailability of the documents and the process of arranging the documents". In paragraph 4 a reference has been made to "bureaucratic process works, it is inadvertent that delay occurs".*

20. Recently also the Apex Court in State of Madhya Pradesh vs. Ramkumar Choudhary, 2024 SCC OnLine SC 3612 was dealing with a petition which was filed after an inordinate delay and no satsifactory reason was adduced for the same. The Apex Court, inter alia, expressed its anguish as under:

> *"**6.** At the same time, we cannot simply brush aside the delay occurred in preferring the second appeal, due to callous and lackadaisical attitude on the part of the officials functioning in the State machinery. Though the Government adopts systematic approach in handling the legal and preferring the petitions/applications/appeals well within the time, due to the fault on the part of the officials in merely communicating the information on time, huge revenue loss will be caused to the Government exchequer. The present case is one such case, wherein, enormous delay of 1788 days occasioned in preferring the second appeal due to the lapses on the part of the officials functioning under the State, though valuable Government lands were involved. Therefore, we direct the State to streamline the machinery touching the legal issues, offering legal opinion, filing of cases before*

the Tribunal/Courts, etc., fix the responsibility on the officer(s) concerned, and penalize the officer(s), who is/are responsible for delay, deviation, lapses, etc., if any, to the value of the loss caused to the Government. Such direction will have to be followed by all the States scrupulously".

21. It is pertinent to mention here that in the present case also the petitioner has not given any sufficient reason for the delay. The present case simply demonstrates the casual manner in which the Kolkata Municipal Corporation has invoked the jurisdiction of this Court, without any cogent or plausible ground for condonation of delay, and that too where these was alternative equally effacious remedy available under the law. The Courts have time and again reminded the authorities that they cannot walk into the Courts at their pleasure ignoring the period of limitation. Though Article 226 does not provide any limitation, but at the same time, inordinate delay without any “sufficient cause” has always been discouraged by the Courts. It is also a settled proposition that the term "sufficient cause" as used in Section 5 of the Act cannot be construed liberally, merely because the party is an instrumentality of the Government. Reliance is placed upon Postmaster General vs. Living Media India Ltd., (2012) 3 SCC 563. Thus, the Court cannot treat the Government Agencies differently. Rather there is an added obligation on the Government Agencies to ensure that law is strictly adhered to.

22. In case the Municipal Commissioner was aggrieved of an order passed by the Municipal Assessment Tribunal, the legislature provided an alternative effacious remedy for filing of a review of the order passed by the said Municipal Assessment Tribunal within 90 days.

23. In view of the discussion made herein above, it is an established position that the revision petition should not be entertained, if there is an efficacious alternative remedy prescribed under law had become time barred. In the present case also the revision petition had been moved much beyond 90 days of the impugned order. The reason given by the petitioner in the revision petition is hardly any reason. The petitioner seems to have acted in most casual and negligent manner. This Court cannot grant concession to the petitioner merely because it happens to be the Kolkata Municipal Corporation. Thus, in view of the discussion made herein above the revision petition is dismissed.

(Dinesh Kumar Sharma, J.)