IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

Present:

The Hon'ble Justice Rai Chattopadhyay

WPO 593 of 2018

Tapati Bose & Anr.
Vs.
Kolkata Municipal Corporation & Ors.

For the Petitioners	: Ms. Piyali Sengupta, Adv. : Mr. Orijit Chatterjee, Adv. : Ms. Sabarni Mukherjee, Adv.
For the KMC	: Mr. Ranajit Chatterjee, Adv. : Ms. Manisha Nath, Adv.
Judgment on	**: 25/07/2025**

Rai Chattopadhyay, J. :-

(1) An order of the Hearing Officer X, Kolkata Municipal Corporation, dated **September 1, 2017**, along with the property tax bill 2018-'19 (being Annexures- P.12 and P.13 respectively in the writ petition), are under challenge, in the instant case. Vide the impugned order dated September 1, 2017, the Hearing Officer X, KMC has confirmed the revised annual valuation of the property concerned to the tune of Rs. 2,89,550/-, with effect from the 1st quarter of 2010-11, for the Assessee No. 11-069-43-0787-5, that are the instant writ petitioners.

(2) While challenging as above, the petitioners have prayed for relief inter alia that, the alleged illegal revised assessment of annual valuation of the property concerned, to the tune of Rs. 2,89,550/- from the 1st quarter of 2010-11, be cancelled and revoked immediately, that the impugned order dated September 1, 2017 be set aside, that the periodic property tax bill for 2018-'19 being Annexure - P.13 with the writ petition be set-aside, that the rate-card being Annexure - P.6, supplementary bills dated October 1, 2017 being Annexure - P.8 and the demand notice dated May 24, 2018 being Annexure - P.10 with the writ petition, which are allegedly the offshoots of the said alleged illegal revised valuation of the property concerned, may also be set aside.

(3) The property is the 2nd and 3rd floors of the building in Block - A, at the frontal portion of premises No. 26, Sarat Bose Road, Kolkata - 700020. The premises as above comprises with two blocks, 'A' and 'B', 'A' being the building at the front portion and 'B' being that at the rear portion of the property. After being engaged in litigation for several years, the parties came to an amicable settlement and a compromise decree was drawn by this Court, in terms of the settlement between the parties, on **November 30, 2009**. Vide the terms of settlement and the decree as above the petitioner with Amitava Bose (now deceased), became the joint owners of the 2nd and 3rd floors of Block-A, in the said premises, Block-A being a ground plus three storied building at the front portion of the premises.

(4) After owning and obtaining exclusive possession of the property as above, the petitioners had applied for mutation cum apportionment of the property against a separate assessee number, vide their letter dated **May 26, 2017**.

(5) The petitioner No.1, one of the joint owners received a notice of hearing dated **July 7, 2017**, under sections 184(3) & 184(4) of the Kolkata Municipal Corporation Act, 1980, allegedly purporting to communicate the proposed enhanced assessment of annual valuation of the apportioned share of the property, of the petitioners, pertaining to Assessee No. 11-069-43-0787-5 at Rs. 2,89,550/-, with effect from 1st quarter of 2010-11. According to the clauses mentioned in the said notice of hearing dated July 7, 2017, the revision of annual valuation of the apportioned property as proposed was on account of the ground mentioned in the said notice of hearing, that is, as follows:-

> ***"New valuation on Separation/Apportionment/Amalgamation on estimated annual rent less statutory allowance for repairs."***

The petitioner is aggrieved that apportionment of the property, not being a taxable event under the law, cannot be the basis of upward revision of the annual valuation of the property, that, the proposed valuation was ex-facie in violation of the statutory provision.

(6) The petitioners are also aggrieved that proposed annual valuation of the property is exorbitant and disproportionate with the valuation of the other portion of the same premises. That the petitioner No. 2 has been sent a separate notice of hearing dated **August 12, 2017**. In both the notices addressed to the two petitioners, the date of hearing was mentioned as **September 1, 2017**. That, on the said date, the petitioner no. 1 did attend the hearing and submitted her written objection vide letter dated **August 31, 2017**. The petitioners have stated that neither receipt of the said written objection was acknowledged by the Hearing Officer nor the same was considered by the said Authority. That, she did not receive any co-operation but was subjected to bias and malice. Allegedly, no copy of the order of hearing dated September 1, 2017, was supplied to the petitioner No. 1 on the said date. Instead a rate-card was handed over to her. The petitioners have stated that in accordance with the statutory provision, the Hearing Officer was duty bound to supply a copy of order of hearing, which he did not. That, such inaction tantamounts to gross violation of law. That, in such circumstances the respondent municipal authorities could not have lawfully enforced any demand based on an enhanced annual valuation, which is also illegal and not maintainable in the eye of law.

(7) On the next date, that is, **September 2, 2017**, the petitioner No. 1 submitted a representation to the respondent No. 3/The Chief Manager (Revenue) (South), expressing her grievances as to the non-consideration of her written objection by the Hearing Officer. Allegedly, the said letter has also not drawn any consideration of the respondent Authorities. According to the petitioners, hearing before the Hearing Officer has been only an empty formality and no meaningful exercise was ever undertaken by the Authority. That they have acted with closed mind and biased manner.

(8) That, pursuant to the hearing dated September 1, 2017 and without supplying any copy of order of the Hearing Officer, the petitioners were supplied with the supplementary bills for the period from 1st quarter of 2010 to 4th quarter of 2016, as per the alleged illegal enhanced property annual valuation. According to the petitioners, the same is de hors the law and the respondent Authority cannot lawfully enforce the enhanced property valuation, that too retrospectively, without supply of copy of the order passed in this regard by the Hearing Officer. Hence, according to the petitioners, the purported action of the respondent Corporation, not only violates the statutory provisions but also offends the rights guaranteed to the petitioners, by the Constitution of India. A notice demanding justice issued by the learned advocate for the petitioners vide letter dated **May 8, 2018**, has also remained unattended. Instead, a notice of demand, dated **May 24, 2018**, under section 220 of the Kolkata Municipal Corporation Act, 1980, was issued against the petitioners, raising and making demands of property tax, based on the impugned annual valuation, the validity, legality and propriety of which has been challenged by the writ petitioners.

(9) A further demand justice letter was sent by the learned advocate dated **September 22, 2018**, to the respondent, seeking cancellation of the demand notice under Section 220 of the Kolkata Municipal Corporation Act

1980, but in vain. It has been submitted by the petitioners that, a copy of the assessment order of the Hearing Officer was handed over to them, only on **December 11, 2018**, during course of hearing of this writ petition. According to the petitioners, the order of the Hearing Officer impugned in this writ petition is an unreasoned and non-speaking one. It is mechanical and only an empty formality, as the objection raised by the letter submitted by the writ petitioner No.1, has not been considered therein. That, the said impugned order is baseless being silent as to on what basis such enhanced annual valuation of the property has been arrived at, over and above the fact that apportionment of the property being not a taxable event as per provision under Section 180 of the Kolkata Municipal Corporation Act, 1980, the entire process which started with initiation and service of notice of hearing, till the assessment and service of supplementary bills to the petitioners, on the basis of the revised valuation, is bad in the eye of law. The petitioners thus have prayed for the reliefs as mentioned above.

(10) The Kolkata Municipal Corporation has contested by raising challenge to the contentions and prayers of the writ petitioners. Its first contention is with regard to the non-maintainability of the instant writ petition for the reason of unexplained delay in filing the same by the petitioners. It has been stated that the writ petition is filed after more than 15 months after revision of annual valuation of the property, which was determined vide order dated September 1, 2017, that is, even after the statutory period of appeal being over. That due to such inordinate and unexplained delay, the writ petition should be dismissed. The other point as regards non-maintainability of this writ petition is stated to be availability of the statutory alternative remedy to the writ petitioners, which they have wilfully avoided. According to the said respondent an efficacious alternative remedy may prompt this Court to be slow and circumspect to entertain the instant writ petition. That the factual questions involved in the dispute, cannot be gone into by this Court but only by the Tribunal.

(11) According to the said respondent, neither there is any illegality nor any impropriety, regarding upward revision of the annual valuation of the property concerned. It has denied that there is any procedural lapse in arriving at a new enhanced annual valuation of the property. It has also been denied that the petitioner's objection to the proposed valuation, has not been considered in hearing or that the action of the said respondent has in any way violated the petitioner's right of audience. Contrarily, it has been stated that by raising frivolous objections, the petitioners have virtually enjoyed tax holidays. In the affidavit-in-opposition affirmed on January 24, 2023, the respondent Corporation has calculated and mentioned the amount of outstanding tax payable by the petitioners (Assessee No. 11-069-43-0787-5) to be Rs. 20,08,797/-. The said respondent has also stood by its decision to impose the enhanced property valuation and tax in accordance with the same, with respect to the concerned property, with effect from 1st quarter of the year 2010-11. Challenges as to the period of taxation along with the rate thereof, have been vehemently objected to.

(12) The respondent/KMC has denied and disputed the fact alleged that the revised valuation has been arrived at without any basis and it has merely been an empty formality. It states that the petitioner no. 1 has inspected the register namely "Inspection Book" (in short "IB"), which contains all details of computation of the proposed annual valuation and having taken an inspection of IB, the petitioner No. 1 is well acquainted as to how the new enhanced valuation has been arrived at. The respondent has given in the affidavit-in-opposition, the detailed calculation, as is available in the I.B., which will be discussed later in this judgment, if necessary. Also that the petitioner No. 1, upon inspection of I.B., has recorded her objection there and put her signature.

(13) According to the respondent, its record does not reveal that the petitioner No. 1 has ever submitted any written objection before the Hearing Officer, as claimed. Also that it would not be correct to say that the respondent's action has violated the statutory provision, it having not handed over the copy of the order of the Hearing Officer to the petitioners. It is stated that a rate-card was immediately handed over to the petitioner No. 1, on the date of order itself, that is, September 1, 2017. According to the respondent, for the purpose of filing of a statutory appeal under Section 188 (3) of the Kolkata Municipal Corporation Act 1980, the rate-card may sufficiently satisfy the condition as provided thereunder. It has controverted the allegation of non-consideration of objection of the petitioner No. 1 by the Hearing Officer, by stating that, in absence of any written objection, there was nothing before the Hearing Officer to consider and determine. The allegation of bias has also been denied.

(14) Ms. Piyali Sengupta, learned advocate appearing for the writ petitioners has submitted that the respondent Authority though is empowered to revise the annual valuation of the property, but it has to do the exercise within the precincts of the statute and not otherwise. In that event such imposition would only be de hors the law, as it has been done in case of the writ petitioners here. She says that apportionment of the property has not been provided in the statute to be a taxable event. In that case the process undertaken by the respondent/Corporation to revise the annual valuation of the property is arbitrary and illegal. A judgment in ***Reeta Basu vs Kolkata Municipal Corporation and others*** reported in ***2014 SCC OnLine Cal 18791,*** has been referred to in this regard, wherein the court has held that:-

> ***"Section 180(2) of the Kolkata Municipal Corporation Act, 1980 empowers the authority to revise the annual valuation provided the conditions laid down therein are fulfilled.***
>
> ***The Corporation is bestowed with the power to make an assessment under the said Act with further power to revise but such power of assessment should be exercised within the precinct of the Act and any action to bring an incident or assessment or property tax de hors the provisions thereto cannot be sustained."***

(15) In her argument, Ms. Sengupta has also put forth, several alleged procedural latches which according to her, has jeopardised the procedure adopted by the respondent and thereby rendered it to be invalid and illegal. She submits that the only ground mentioned in the notice of hearing for proposed revision of annual valuation of the property (as quoted above) is not a legally tenable ground, being de hors the provisions under Section 180 of the Kolkata Municipal Corporation Act, 1980. Hence, the notice itself is bad in law. Secondly, that the Hearing Officer acted in a mechanical and biased manner, in not considering the objections raised by the petitioner No. 1. He has acted in a premeditated manner and his order does not bear any reason at all. That only arbitrary exercise of power by the Hearing Officer is manifested through the said one-liner order, which does not stand the test of law. According to the petitioners, the Hearing Officer has not even heard the petitioner No. 1 and also refused to accept the written objection submitted by her. That, it is virtually forcefully the petitioner No. 1 was able to write her remark 'objected', in the objection docket. Hence, the petitioners have alleged biasness. Ms. Piyali Sengupta has mentioned thereafter that further illegality has been committed by the respondent Authority, by not supplying a copy of the order of the Hearing Officer dated September 1, 2017, to the petitioners. She says that supply of copy of the order of the Hearing Officer is a statutory mandate and the respondent Authority has, therefore, flouted the same. Here she refers to a judgment of this court in ***Turner Morrison & Co. Ltd. & Anr. Vs. State of West Bengal & Ors.*** reported in ***2006 SCC OnLine Cal 461***, where it has been held that

> ***"It is the mandate of the legislature upon the corporation to provide for a copy of the order passed by the Hearing Officer to the objector. So long, such communication is not made, it would not be proper for the Corporation to raise supplementary bill and compel the objector to pay the same without exercising his right under the Statute to have an appeal preferred before the Tribunal."***

(16) Ms. Sengupta has also referred to a judgment of this court in ***Narendra Dev Narayan Vs. Calcutta Municipal Corporation and Others*** reported in ***2002 SCC OnLine Cal 312*** in which the court has held that

> ***"The right to prefer appeal in reality be accrue only on service of copy of the order when the period of limitation for preferring appeal will start running and thus, before service of the copy of the order, no demand can be made on the basis of the determination."***

She says that in accordance with the ratio decided therein, the alleged action of the respondent has jeopardised the petitioner's statutory right to prefer an appeal before the Tribunal.

(17) Ms. Piyali Sengupta has submitted that not only by not affording opportunity of hearing to the petitioners, but also by issuance of an order which is devoid of any reason whatsoever, the principles of natural justice has largely been violated. She says that an unreasoned order is a nullity in the eye of law and assignment of reason is one of the important limbs of principles of natural justice. That in such view of the fact, the writ court would be justified to interfere with that and set it aside. In support of her submissions as above, Ms. Piyali Sengupta has referred to the judgments of ***The Calcutta Municipal Corporation & Ors. Vs. Paresh R. Kampani & Ors.*** reported in ***(1998) 2 Cal LJ 87***.

(18) On the similar proposition, another judgment has been referred to, in ***Sri Nemai Chand Dutt Vs. Kolkata Municipal Corporation and Others*** reported in ***(2017) 3 CAL LT 342 (HC)*** in which the court has held that

> ***"It is imperative on the part of the authority to record the reason before determining and/or deciding the disputes or the objections raised before it. The reason is the heart and soul of the order without which it cannot survive, the importance of providing the reasons becomes more necessary when such order is amenable to be challenged before the higher forum. If the reason is recorded, it would assist and help the higher authority to decide the cause and to ascertain the state of mind of the authority."***

(19) Lastly, it has been submitted that, supplementary bills cannot be raised without supplying the copy of the order of assessment made by the Hearing Officer in contravention of the law settled by the Hon'ble High Court at Calcutta to the extent that no demand can be enforced without service of such copy of the exact order of assessment upon the assesse.

(20) Mr. Ranajit Chatterjee, Learned advocate, while representing the respondent Kolkata Municipal Corporation, has firstly contended that the petitioner's conduct has not been bona fide and they have caused intentional delay, not only in filing the writ petition, but also in applying before the said respondent for mutation of the property. It is stated that the petitioners have submitted their application for mutation of the property, nearly eight (08) years after they have entered into possession of the property, pursuant to the compromise decree of the High Court dated November 30, 2009. The date of their application for mutation of the property is May 26, 2017. Also that the instant writ petition has been filed by them after more than 15 months, after revision of annual valuation of the property. He says on either occasion, neither any reason for such delay is shown nor is deductible from the records or circumstances. Hence, virtually the petitioners have allowed themselves unauthorised tax holidays, he says.

The delay occurred should render the writ petition as not maintainable, he submits.

(21) He has submitted further that the present writ petition would not be maintainable due to availability of efficacious, alternative statutory remedy to the writ petitioners. He submits that Municipal Tribunal is the creature under the statute, which is empowered to adjudicate the petitioner's grievances, if any, against the property valuation. Also, that since the same would involve various questions related to the factual aspects of the matter, the Tribunal would be the only Authority to go into those factual issues by allowing parties to adduce evidence. That the writ Court would not determine the questions of fact. Hence, for all these reasons the writ petition should stand as not maintainable and be dismissed, he says.

(22) Mr. Ranajit Chatterjee has submitted further that the allegation of the notice having not been served upon the petitioner No. 2 is only frivolous, in so far as the petitioners are related as mother and son and stay together. Hence, notice being served on any one of them would constitute knowledge of the other. Even then, he says, notice of hearing has been served by the respondent/Corporation, upon both the petitioners. That the petitioner No. 1 has taken part in hearing before the Hearing Officer She has taken inspection of the I.B. maintained by the Kolkata Municipal Corporation. Hence, she has got personal knowledge about the details of computation on the basis of which annual valuation of the property, has been arrived at by the Corporation. She has endorsed her signature and objection therein. It has been submitted that copy of order is only to be provided to the objector. The petitioners having not submitted any written objection, cannot therefore be considered as 'objectors', in accordance with the law. That, they are not entitled to receive a copy of order of the Hearing Officer as per law. Even then, the petitioners have been served with a rate-card, on the date of the order itself and a copy of the order, at a later stage. Hence, allegations raised by the petitioners regarding violation of principles of natural justice in their case, has been objected to and denied by the respondent/Kolkata Municipal Corporation. Instead, Mr. Ranajit Chatterjee for the respondent/Kolkata Municipal Corporation has prayed for dismissal of the writ petition.

(23) Mr. Chatterjee, learned advocate has relied on the following judgments in support of his argument: -

(i) ***Institute of Hotel Management And Anr. Vs. Union of India And Others*** reported in ***(2017) 11 SCC 72***

(ii) ***Salvation Army & Anr. Vs. Calcutta Municipal Corporation & Ors.*** reported in ***(2011) (1) CHN (CAL) 782***

(iii) ***Power Tools & Appliances Co. Pvt. Ltd. Vs. Kolkata Municipal Corporation & Ors.*** in ***(MAT 153 of 2017)*** dated ***01.03.2017***

In the case of ***Institute of Hotel Management (supra)***, the Hon'ble Supreme Court has held in view of alternative remedy being available and that being not exhausted, the High Court's decision refusing to interfere, was proper.

In ***Salvation Army (supra)*** the Hon'ble Division Bench of this Court has held that mere breach of natural justice will not suffice for quashing any order on such breach unless and until a party who alleges breach of natural justice satisfies the point that he was prejudiced by such breach.

In ***Power Tools case (supra)*** a Division Bench of this Court has upheld the judgment of a Single Judge, where the Hon'ble Single Judge has held as below : -

> ***"The Writ Court should not enter into such question of fact and it is open to the petitioner to ventilate such point before the appellate forum provided under the statute.***
>
> ***This Court does not find that the petitioner has been able to make out any case of violation of principle of natural justice and if the order suffers from illegality and/or infirmity, it is open to the appellate forum to interfere with such order and the Writ Court should not act as an appellate authority under Article 226 of the Constitution of India.***
>
> ***I am conscious of the proposition of law that mere existence of alternative efficacious remedy cannot act as a deterrent to the High Court in exercising the powers conferred under Article 226 of the Constitution of India but the Court has imposed self-restraint in entertaining the writ petition where the party has an alternative efficacious remedy provided under the statute.***
>
> ***There are well-known principles when the High Court should interfere with the decision of the authority and one of the grounds are when the authority has acted without following the principle of natural justice.***
>
> ***Since this Court does not find that case of such nature has been made out by the petitioner, this Court, therefore, refuses to exercise such power and relegate the petitioner to agitate all points available to it before the statutory forum.***
>
> ***The writ petitions are, accordingly, dismissed."***

(24) Since in this case, a point of maintainability of the writ petition has been taken up by the respondent/ KMC, the Court finds it proper to take up that point for discussion at the threshold.

(25) According to the said respondent, since a statutory alternative remedy is available which may be espoused by the writ petitioners to redress their grievances if any as regards the revision in annual valuation of the property, the Court may find the writ petition not to be maintainable. In this regard the respondent has relied on the judgment of ***Institute of Hotel Management (supra)*** of the Supreme Court to submit that in spite of there being a question raised by the appellants regarding validity of imposition of property tax on the appellants the same being an educational institution, the Supreme Court has upheld the decision of the High Court, which has earlier declined to go into the question as above, in view of the alternative remedy available to the appellants under section 93 of the Cantonments Act, 2006. Relying on the ratio thereof, it has been submitted that even on the question of law, leaving aside any disputed question on fact which the High Court, sitting in writ jurisdiction would not be empowered to determine, the Supreme Court has upheld non-maintainability of the writ petition, for the only reason that the statute has provided an alternative remedy for the appellants to place grievances. Similarly, in the instant case, the Court may not interfere, it has been urged.

(26) Maintainability is about the legal validity of bringing a case to Court. A case is maintainable if it adheres to legal rules and procedures, and the Court has the Authority to hear it. Entertainability is about the Court's discretion to actually hear and decide a case. Even if a case is maintainable, a Court might choose not to entertain it due to factors like the availability of an alternative remedy or if it doesn't serve the public interest. In the context of writ petitions under Article 226 of the Indian Constitution, a writ petition might be maintainable if the petitioner's fundamental rights are violated and they approach the High Court. However, the High Court may not entertain the petition if an equally effective alternative remedy exists, and the petitioner has not made out an exceptional case for interference under Article 226.

(27) It is the settled law that "entertainability" and "maintainability" of a writ petition are distinct concepts. The law is well settled that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition. The rule which requires a party to pursue the alternative remedy provided by a statute is a rule of policy, convenience and discretion rather than a rule of law.

(28) In the case of ***Whirlpool Corporation vs Registrar of Trade Marks, Mumbai & Ors.*** reported in ***(1998) 8 SCC 1*** the Supreme Court has carved out exceptions when a writ Court would be justified in entertaining a writ petition despite the party not having availed the alternative remedy provided by the statute. The same are as follows:

- where the writ petition seeks enforcement of any of the fundamental rights,
- where there is a violation of principles of natural justice,
- where the order or the proceedings are wholly without jurisdiction; or
- where the vires of an Act is challenged.

The same principles were reiterated in the case of ***Assistant Commissioner of State Tax and Others Vs. Commercial Steel Limited*** reported in ***2021 SCC Online SC 884***. The Supreme Court has held that a controversy related with the question of law may not be discarded at the threshold for the reason of alternative statutory remedy being available [***Union of India and Anr. Vs. State of Haryana and Anr.*** reported in ***(2000) 10 SCC 482***].

(29) The Kolkata Municipal Corporation (KMC) Act, 1980 provides for appeal mechanisms, primarily in cases of building violations and property tax assessments. Specifically, Section 415 of the KMC Act, 1980 allows appeals to the Municipal Building Tribunal against orders passed by the Special Officer (Buildings). Similarly, Section 189 outlines provisions for appealing property tax assessments to the Municipal Assessment Tribunal, with the crucial condition that disputed taxes and penalties, along with any interest, must be deposited for the appeal to be entertained. Let the relevant provision be quoted as herein below:

"189. Appeal before the Municipal Assessment Tribunal.

(1)There shall be a Municipal Assessment Tribunal for hearing and disposal of an appeal against an order passed under section 188.

** ** ** ** **

(5) Any owner or person liable to payment of [property tax] [Substituted by section 2 of the Calcutta Municipal Corporation (Amendment) Act, 2001 (West Bengal Act VIII of 2001), w.e.f. 23.3.2001, for the words "consolidated rate"] may, if dissatisfied with the determination of objection under section 188 appeal to the Tribunal.

Provided that such appeal shall be presented to the Tribunal within forty-five days from the date of service of [a copy of the order] [Substituted by section 17(1) of the Calcutta Municipal Corporation (Second Amendment) Act, 1984 (West Bengal Act 13 of 1984), w.e.f. 15.5.1984, for the words "the order".] under section 188 and shall be accompanied by a copy of the said order.

** ** ** ** ** ”

(30) The question is since availability of the alternative remedy is not an absolute bar to entertain a writ petition, whether having regard to the dispute between the parties in the present writ petition, this Court would be justified in entertaining this writ petition or not. As discussed earlier, the petitioners have alleged about violation of their right of audience before the Authority and violation of the principles of natural justice not only in this way but also for the reason that the Authority/Hearing Officer has passed an order which is a nonspeaking one, devoid of any reason therefor. Also, there are other legal questions involved like whether the Authority was obliged to supply copy of an order of the Hearing Officer to the petitioners, immediately after completion of hearing or that if apportionment of the property is at all a taxable event as per law to attract an exercise by the Authority like upward revision of annual valuation of the property in question. Therefore, in such a circumstance, when there are various questions of law stand for adjudication by the Court, it would not be prudent to discard the writ petition at the very threshold for the reason that the statute has also provided for the remedy of appeal before the Municipal Assessment Tribunal.

(31) On the premise as mentioned above, the Court holds both the points of maintainability as well as entertainability of this petition, in favour of the writ petitioner.

(32) The petitioners have challenged maintainability of the notice dated July 7, 2017 under Sections 184(3) and 184(4) of the Kolkata Municipal Corporation Act, 1980, for the reason that the incident of assessment of property tax of the portion of the building, is something extraneous to the incidents of taxation as provided in the statute. According to the petitioner, apportionment of the property is not a taxable event as per the provisions under the Kolkata Municipal Corporation Act, 1980. Petitioners have accepted that as per Section 180 (2) of the Act of 1980, the respondent/Corporation is empowered to revise the annual valuation of the property for upward change thereof. They say that the action of the respondent would only be justified and lawful provided the conditions laid down in the statute for such revision of annual valuation are fulfilled.

(33) In this regard, one may have regard to the provisions under Section 180 of the Kolkata Municipal Corporation Act, 1980. According to Section 180 (2) of the said Act, revisions of annual valuation of any land or building can be caused to be made by the Municipal Commissioner. For that, under the Clauses thereof, certain incidents have been provided, fulfilment of which would empower or entitle the Authority for revision of the annual valuation of the property, for the purpose of taxation thereon. Those may be quoted as hereinbelow: -

> ***"180. Revision of Assessment-***
>
> ***(1) ……***
>
> ***(2) …….***
>
> ***(i) * * ****
>
> ***(ii) when the nature or the financial terms of occupancy changes; or***
>
> ***(iii) when the nature of its use changes; or***
>
> ***(iv) when a new building is erected or an existing building is redeveloped or substantially altered or improved during the period the annual valuation remains in force; or***
>
> ***(v) when, on the application made in writing by the owner or the person liable to pay its property tax, it is established that during the period of the annual valuation remaining in force its value has been reduced by reason of any substantial demolition or has suffered depreciation from any accident or any calamity proved to the satisfaction of the Municipal Commissioner to have been beyond the control of such owner or such person; or***
>
> ***(vi) when any land or building or portion thereof is acquired by purchase or otherwise by the State Government or the Corporation or any statutory body mentioned in clause (a) of sub-section (8) of section 171 during the period of the annual valuation remaining in force; or***
>
> ***(vii) when any land or building, or portion thereof, is sold or otherwise transferred by the State Government or the Corporation or any statutory body mentioned in clause (a) of sub-section (8) of section 171:***
>
> ***Provided that all land for roads and other public purposes shall be excluded from such revaluation; or***

> ***(viii) when, upon the acquisition or transfer of any land or building in part, a residual portion remains; or***
>
> ***(ix) when it becomes necessary so to do for any other reason to be recorded in writing."***

Clause (i) under Section 180 (2) of the said Act was omitted vide the Kolkata Municipal Corporation (Amendment) Act, 2006 [(West Bengal Act XXXII of 2006), with effect from May 1, 2007]. The omitted provision was as follows: - "2….

i) When there is a transfer, inter vivos, of its ownership, or".

(34) It appears that the incident of transfer of ownership of property inter vivos has been omitted to be cogent incident for the Corporation to revise annual valuation of the land or building. In this regard, the Court may mention the judgment of ***Shree Mahamaya Mining and Industries Private Limited Vs. The Calcutta Municipal Corporation*** reported in ***1995 (II) CHN 125***, in which Section 180(2)(i) has been held to be ultra vires to the Constitution. The following paragraph is to be noted:

> ***"121. For the reasons indicated hereinabove, the provisions of clause (i) of subs. (2) of s. 180 of the Calcutta Municipal Corporation Act, 1980 are held to be ultra vires the provisions of the Constitution and are struck down."***

(35) Save and except the same, the other eight conditions which are now prevalent under the law, have been mentioned as above. In this case, admittedly, the petitioners have obtained ownership of the 2nd or 3rd Floor of the Block-A at Premises 26, Sarat Bose Road at frontal portion by dint of a settlement decree passed by this Court on November 30, 2009. There is no material on record to either suggest that nature of occupancy in or usage of the same has changed or any new construction or redevelopment substantially altering or improving the structure has been made during the period, for which the revision of annual valuation was proposed. Also that, on careful reading of the provisions made under Section 180 (2) of the Kolkata Municipal Corporation Act, 1980, one can find that the taxable incidents as provided therein are not in fact satisfied in case of the present writ petitioners. A somewhat general term has been incorporated under Section 180 (2) Clause (ix) that the Authority can do so when it becomes necessary so to do for any specific reason recorded in writing. The Court has however found that it is not a case here that any special reason has been shown by the respondent Authority requiring upward revision of the annual valuation of the concerned property, particularly when there is no change in the nature of its usage or the financial terms of occupancy therein. As a matter of fact, the reason for revision of the property valuation has been noted in the notice of hearing dated July 7, 2017 as "New valuation on Separation/Apportionment/Amalgamation on estimated annual rent less statutory allowance for repairs."

(36) In this regard, the Court may beneficially refer to the portion of the judgment in ***Reeta Basu's case (Supra)*** which is as follows: -

> ***"Clause (i) which permits the revision of assessment on change of ownership or transfer inter vivos of the ownership having been declared ultra vires to the constitution and subsequently was omitted and deleted from the said subsection it logically and necessarily follows that the aforesaid ground cannot***

> ***be pressed in action while invoking or exercising the power under clause (ix) of subsection 2 of section 180 of the said Act. The incident of partition amongst the recorded co-owners or admitted co-owners of the single holding is neither covered under clauses (ii) to (viii) nor can be brought under clause (ix) of sub section 2 of section 180 of the said Act. The corporation is bestowed with the power to make an assessment under the said act with further power to revise but such power of assessment should be exercised within the precinct of the Act and any action to bring an incident or assessment of property tax de hors the provisions thereto cannot be sustained. The Chief Manager (Revenue), the delegate of the Municipal Commissioner lacks jurisdiction to issue the notice and subsequent order passed thereupon cannot be sustained.***
>
> ***This Court, therefore, quashed and set aside the impugned notices as well as the assessment of the periodic tax as communicated in the form of the rate card. It is informed that the mutation has already been effected and, therefore, rejection of those notices as well as the rate card shall not have any impact on the mutation effected by the corporation."***

(37) Therefore, in view of the fact that transfer of property inter vivos having been declared as ultra vires to the Constitution and the petitioner's case having not been covered under the other Clauses under Section 180 (2) of the Act of 1980 and also following the ratio in the case of ***Reeta Basu (Supra)*** this Court finds that the impugned notice of hearing, proposing upward revision of the property valuation of the petitioner from the 1st quarter of 2010-2011, would not be in compliance with the statutory prescriptions. In such circumstances, the Court is constrained to hold that the notice of hearing as above, dated July 7, 2017 should not stand as valid in the eye of law. That, the same is not maintainable being unlawful and de hors the statute.

(38) The other point agitated by the petitioners is regarding violation of their right of audience and they having been subjected to an unreasoned order passed by the Hearing Officer as regards the revised valuation of property. According to the petitioners, firstly, on the date of hearing, though a written objection in terms of Section 186 of the Act of 1980 was desired and tried to be submitted by the petitioner No. 1 to the Hearing Officer, the same was not accepted, acknowledged and recorded and eventually not considered by the Hearing Officer. Contrary statement has been made by the respondent/Corporation, that no written objection has been submitted by the petitioner No. 1. Hence, according to the respondent, the petitioners were not "objectors" in terms of law and the respondent was not under any legal obligation to allow the petitioners any opportunity of hearing, they not being "objectors" in terms of law. The Court notices that while inspecting the IB, the petitioner No. 1 has recorded her objection therein. The presence of the petitioner No. 1 before the Hearing Officer on the particular date has also not been challenged. There is no convincing material available on record as to construe that in spite of being physically present and raising objection by making endorsement in the IB, the petitioner No. 1 would not have made an endeavour to submit her written objection before the Hearing Officer. Also that, once having said that the petitioner would not be "an objector" as per law and would not thus be entitled for the order of the Hearing Officer, it can be noted that ultimately, the respondent has served the order of the Hearing Officer dated September 1, 2017 to the petitioners during course of hearing of this writ petition, on December 11, 2018. It appears that, the respondent itself has considered the petitioners as the objectors by serving copy of the order of the Hearing Officer to them. Be that as it may, fact remains that the order of the Hearing Officer September 1, 2017 is an one-liner which was passed without hearing the writ petitioner No. 1, present before the Hearing Officer on the date of hearing. Had it been otherwise, the Hearing Officer would have noted her contentions and his reasons and grounds for declining her contentions.

(39) Having taken into consideration the ground for revision as mentioned in the notice of hearing dated July 7, 2017 which is, “New valuation on Separation/Apportionment/Amalgamation on estimated annual rent less statutory allowance for repairs” and the order of the Hearing Officer dated September 1, 2017 which says that the proposed enhanced annual valuation of the property to the tune of Rs. 2,89,550/- is confirmed, it appears that the ground for proposing change in annual valuation as above, has been approved and confirmed by the Hearing Officer. However, as stated earlier, the said ground cannot be construed to be a statutory ground not being enlisted as a ground for revision of annual valuation of the property as enumerated under Section 180(2) of the Kolkata Municipal Corporation Act, 1980.

(40) According to the petitioners, the Corporation would not be eligible to raise any bill to compel the objector to pay property tax without serving copy of the order passed by the Hearing Officer to the objector. As a matter of fact, the objector in receipt of copy of the order of the Hearing Officer, would only be eligible to espouse if required, the statutory provision of appeal to challenge the same and not otherwise. In the case of ***Turner Morrison and Co. Ltd. (Supra)***, this Court has held as below: -

> ***"It is the mandate of the legislature upon the corporation to provide for a copy of the order passed by the Hearing Officer to the objector. So long, such communication is not made, it would not be proper for the Corporation to raise supplementary bill and compel the objector to pay the same without exercising his right under the Statute to have an appeal preferred before the Tribunal."***

(41) Also, in case of ***Narendra Dev Narayan (supra),*** this Court has held that:-

> ***"The right to prefer appeal in reality be accrue only on service of copy of the order when the period of limitation for preferring appeal will start running and thus, before service of the copy of the order, no demand can be made on the basis of the determination."***

(42) In this regard, the contention of the respondent is that, on the date of hearing that is, September 1, 2017, the petitioner No. 1 has been provided with the rate-card then and there and thus she cannot plead no knowledge about the order of the Hearing Officer. This contention is though not seriously challenged by the petitioner, even if considering that the petitioner No. 1 was in receipt of rate-card on the date of Hearing itself, the Court finds that the same would definitely fall short of due compliance with the statutory provision, as regards supply of copy of order passed by the Hearing Officer to the objectors, writ petitioner No. 1 in this case. It is because of the fact that the rate-card is the follow up document after the Hearing Officer passes his order containing his reasons and decision. The order of the Hearing Officer always precedes the rate-card and to justify the property valuation contained in the rate-card, the reasons for the decision of the Hearing Officer would be imperative. For the petitioners/objectors, knowing the new property valuation but not knowing the reason therefor, would amount to part knowledge of the decision of the Hearing Officer and not the order of him in its entirety. Thus, even if the rate-card has been provided to the petitioner No. 1 after conclusion of the hearing, that would not suffice the specific requirement under law that the objector should be provided with the copy of the order passed by the Hearing Officer.

(43) So far as the order dated September 1, 2017 of the Hearing Officer being unreasoned and thus being not maintainable in the eye of law, would also find support from finding of the Court in the case of ***Sri Nemai Chand Dutt (supra)***, the relevant paragraph thereof may be quoted as herein below:-

> ***"It is imperative on the part of the authority to record the reason before determining and/or deciding the disputes or the objections raised before it. The reason is the heart and soul of the order without which it cannot survive, the importance of providing the reasons becomes more necessary when such order is amenable to be challenged before the higher forum. If the reason is recorded, it would assist and help the higher authority to decide the cause and to ascertain the state of mind of the authority."***

There is statutory mandate for providing reasons by the Hearing Officer in his order. Section 188(4) of the Kolkata Municipal Corporation Act, 1980 explicitly requires the Hearing Officer to consider objections and pass an order that is, "speaking and reasoned". By referring to the judgment of this Court in ***Manoshi Moholanobish Vs. Kolkata Municipal Corporation & Ors.*** reported in ***2007 SCC OnLine Cal 285*** has held that the provision mandates that the order of the Hearing Officer must be “reasoned”, implying that the order should contain the grounds and the reasons for the decision, ensuring transparency and accountability.

This court again in ***Nandu K Belani Vs. Kolkata Municipal Corporation*** reported in ***2017 SCC OnLine Cal 21516*** has held that the order passed by a quasi-judicial Authority, such as the Hearing Officer under the Kolkata Municipal Corporation Act must be supported by reasons that, this is essential for the order to be valid and for the parties to understand the basis of the decision, though the Court ultimately remanded the matter to the statutory appellate forum, finding the same to be a proper forum.

In ***Narendra Dev Narayan (Supra)***, the Court has clarified that the communication of the order must include the reasons and mere mention of the decision without reasons, would be contrary to the statutory requirement.

(44) Keeping in mind the law as settled by the Court in this regard this Court finds that even if for the argument’s sake it is held that the petitioner No. 1 could not have been termed as an “objector”, in terms of the statutory provision (this point has been dealt with by the Court earlier), the Hearing Officer was obliged under law to provide reasons on the basis of which he might have come to a finding as enumerated in his order dated September 1, 2017. Since reasons are for the purpose of maintaining transparency and to let the applicant (in this case the present petitioners) to have sufficient knowledge about those, providing reasons supporting the finding by the Hearing Officer is a mandatory, inescapable and compulsory compliance to be made by him. Evidently, in this case, the order of the Hearing Officer does not contain any reason whatsoever. Therefore, none is able to ascertain as to the reason for the Hearing Officer to come to the said conclusion. The Court is constrained to hold that an unreasoned order is not maintainable in accordance with the law.

(45) For all the reasons discussed as above, the Court is constrained to find in the present case that the impugned order passed by the Hearing Officer dated September 1, 2017 as well as the supplementary bills raised by the respondent/Corporation dated October 1, 2017 for the period from 1st quarter of 2010-2011 for the property comprised at 26, Sarat Bose Road, Block-A, 2nd and 3rd Floor, at the frontal portion would be arbitrary and unlawful being de hors the statutory provisions and thus liable to be set aside.

(46) In such circumstances, the present writ petition being WPO 593 of 2018 is allowed with the following directions: -

i) The notice of hearing dated July 7, 2017 and the supplementary bills dated October 1, 2017 for the period from 1st quarter of 2010 to 4th quarter of 2016 as against the property comprised at 26, Sarat Bose Road, Block-A, 2nd and 3rd Floor, at the frontal portion are set aside.

ii) In case the respondent/Corporation thinks it proper to enhance the annual valuation of the concerned property, the exercise thereof as provided under the statute may be done by it with due compliance with the statutory provisions and in accordance with law.

iii) In the meantime, the respondent/Corporation shall be at liberty to raise property tax bill as to the proportionate portion of property, which is now owned by the petitioners, at the rate prevalent prior to the date from which an enhancement in the annual valuation of the said portion of property, has been proposed, without prejudice to rights and contentions of both the parties.

iv) Let exercise as above, if any, be initiated by the respondent/Corporation within a period of four (04) weeks from the date of receipt of copy of this judgment and completed within a reasonable period of time, in accordance with law.

(47) With the findings and directions as above, the writ petition no. WPO 593 of 2018 is disposed of.

(48) Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)