

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 657 OF 2022
Swapan Kumar Ghosh

-Vs.-

The Kolkata Municipal Corporation & Ors

Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Apurba Sinha Ray

For the Appellant : Mr. Alak Kr. Ghosh, Adv.
 Mr. Purnendu Das, Adv.
 Mr. G. Mallick, Adv.
 Mr. Kinjal Kumar Baral, Adv.

For the KMC : Mr. Biswajit Mukherjee, Adv.
 Mr. Swapan Kr. Debnath, Adv.

For Judgment On : 21.02.2024

Arijit Banerjee, J. :-

1. This appeal is directed against a judgment and order dated March 8, 2022, whereby the appellant's writ petition being WPA 1139 of 2016 was disposed of by a learned Judge of this Court.

Case of the appellant:-

2. The appellant/writ petitioner is the 3/4th owner of premises no. 41/1, Chand Mohammad Road, Kolkata – 700 092, situated within the territorial

limits of Kolkata Municipal Corporation (in short 'KMC'). KMC assessed the annual valuation of the appellant's portion of the concerned building at Rs. 1,18,120/- with effect from 4th quarter of 2000-2001. The annual valuation was however reduced to Rs. 64,580/-.

3. KMC again proposed to assess the annual valuation of the appellant's portion of the building at Rs. 1,28,520/- with effect from 2nd quarter of 2001-2002. Ultimately, such annual valuation was finalised at Rs. 54,000/-.

4. With effect from the 4th quarter of 2006-07, KMC proposed annual valuation of the appellant's portion of the premises in question at Rs. 71,040/-, by a notice dated June 21, 2011. By another notice dated June 21, 2011, KMC proposed annual valuation of Rs. 1,70,690/- with effect from the 3rd quarter of 2010-11. By both the said notices, the appellant was informed that hearing under Sections 184(3)/184(4) of the KMC Act, 1980, would be held on July 20, 2011.

5. By a letter dated July 20, 2011, the appellant objected to the proposed annual valuations and sought adjournment of the hearing fixed on that date. Such adjournment was granted.

6. The appellant did not receive any further notice of hearing.

7. KMC started raising property tax bills on the basis of the proposed enhance annual valuations for the period from the 4th quarter of 2006-07 and the 3rd quarter of 2010-11 as stated above. The appellant came to know that a hearing had been fixed on August 29, 2011, and the proposed annual valuation for those periods had been confirmed ex parte at such hearing.

8. The appellant approached a learned Judge of this Court by filing WP No. 5177(W) of 2015 with the grievance that no opportunity of hearing was given to him by KMC, before confirming the proposed enhanced annual valuations for the aforesaid two periods and also complaining of a letter of intimation dated October 21, 2014, being issued by KMC showing certain paid bills as unpaid/outstanding. That writ petition was disposed of by a judgment and order dated June 3, 2015, with a direction on the Assessor-Collector (Tolley Tax), KMC, to consider and dispose of the representation of the writ petitioner by passing a reasoned order within a stipulated period of time.

9. Pursuant to such order, the Assessor-Collector (Tolley Tax) passed an order dated July 24, 2015, directing the Assistant Assessor-Collector and the Deputy Assessor-Collector to prepare a report on the point of issuance of hearing notice to the petitioner before confirming the proposed annual valuations for the aforesaid two periods. It was recorded in the order that if written notice was not given to the writ petitioner, “the matter will be placed

before appropriate authority for consideration whether the petitioner will be given another opportunity of hearing.”

10. A report was submitted to the Assessor-Collector by the Assistant Assessor-Collector through the Deputy Assessor-Collector. Having considered such report, the Assessor Collector passed an order on September 29, 2015, the relevant portion whereof reads as follows:-

“It appears from the report that Hearing Notice was duly issued by KMC u/s 184(4) of Kolkata Municipal Corporation Act 1980 for scheduled hearing on 29/08/2011 and the notice was duly received by personnel from Indian Postal Service on 27/07/2011 for delivery of the same. As per extant provisions of this Act, a written notice under this section shall be deemed to be duly served, if it is sent through any mode of service of Indian Postal Service or as may be decided by the Corporation, to the owner or any lessee, sub-lessee or occupier of any land or building and, in such case the date of sending such notice through Postal Department or through any other means shall be deemed to be the date of service of the notice to the owner or to the lessee, sub-lessee or occupier of such land or building, as the case may be.

Under such circumstances, KMC is not in a position to allow further opportunity of hearing to the petitioner. However, KMC will

comply with any direction of Hon'ble High Court in this regard.

Hearing is thus concluded.”

11. In the present round of litigation, the appellant approached the learned Single Judge with the grievance that actual service of the hearing notice is not mentioned in the report on the basis of which the Assessor-Collector passed the order dated September 29, 2015. In fact, no notice of hearing was received by him. He also raised a grievance regarding KMC making demand in respect of certain paid bills showing the same as outstanding in the letter of intimation. The appellant prayed for quashing of the Assessor-Collector's order dated September 29, 2015 and also the letter of intimation dated October 21, 2014.

12. The learned Single Judge disposed of the writ petition, by granting liberty to the petitioner to challenge the revaluation with effect from 4th quarter of 2006-07 and with effect from the 3rd quarter of 2010-11, by preferring statutory appeal. As regards the contention of the writ petitioner regarding demand being raised for paid bills, the learned Judge directed the petitioner to produce original payment receipts against the bills indicated in the letter of intimation dated October 21, 2014. It was further directed that if the writ petitioner is able to produce such receipts, the authority concerned shall waive the demand and if not, the petitioner should pay such bills.

13. Being aggrieved the writ petitioner has come up by way of this appeal.

14. Mr. Ghosh, learned Senior Counsel representing the appellant/writ petitioner, submitted that no notice of the hearing that was allegedly held on August 29, 2011, was ever delivered to the appellant. No document has been brought on record to show that any such notice was ever posted or sent by any other means to the appellant. He submitted that no document has been produced by KMC that will entitle it to take advantage of the deemed service provision in Section 184 of the KMC Act.

15. Mr. Ghosh referred to Section 184 of the KMC Act which reads as follows:-

“184. Notice for consideration of Annual Value._ (1) The Municipal Commissioner in all cases in which any land or building is for the first time assessed, or the annual value of any land or building is revised or determined under this Chapter shall give written notice thereof to the recorded owner or recorded person liable to pay property tax of such land or building, as the case may be, and shall also specify in the notice, the place, time and date, not less than one month thereafter, when he will proceed to consider such valuation.

Explanation._ A written notice under this section shall be deemed to be duly served, if it is sent through any mode of service of Indian Postal Service or as may be decided by the Corporation, to the

recorded owner or to the recorded person liable to pay property tax of any land or building, as the case may be, and, in such case the date of sending such notice through Postal Department or through any other means shall be deemed to be the date of service of the notice to the recorded owner or person liable to pay property tax of such land or building, as the case may be.”

16. Learned Senior Counsel argued that the aforesaid section is a deeming provision. As per the Explanation, if the notice of hearing was posted through any mode of service of Indian Postal Service then, irrespective of actual receipt of such notice by the appellant, it would have been deemed to have been duly served on the appellant. However, nothing has been produced to show that even the notice was posted through Indian Postal Service although the report of the Assistant Assessor-Collector relied upon by the Assessor-Collector was to that effect. Hence, this Court should proceed on the basis that no notice of the alleged hearing dated August 29, 2011, was served on the appellant. The order dated August 29, 2011, confirming proposed annual valuations for the relevant periods was passed ex parte, behind the back of the appellant. The said order suffers from the vice of breach of the principles of natural justice and is accordingly void.

17. Regarding the Explanation to Section 184 of the KMC Act, learned Counsel submitted that the same should be strictly construed. It should be held that actual service of notice of hearing on the concerned assessee, is

necessary as otherwise the principles of natural justice would stand violated. In this connection, learned Advocate referred to the decision of the Hon'ble Supreme Court in the case of ***P.T. Rajan v. T.P.M. Sahir & Ors., reported at (2003) 8 SCC 498*** and particularly to paragraphs 45 to 49 thereof, which read as follows:-

“45. A statute as is well-known must be read in the text and context thereof. Whether a statute is directory or mandatory would not be dependent on the user of the words "shall" or "may". Such a question must be posed and answered having regard to the purpose and object it seeks to achieve.

46. What is mandatory is the requirement of sub-section (3) of Section 23 of the 1950 Act and not the ministerial action of actual publication of Form 16.

47. The construction of a statute will depend on the purport and object for which the same had been used. In the instant case the 1960 Rules do not fix any time for publication of the electoral rolls. On the other hand Section 23(3) of the 1950 Act categorically mandates that direction can be issued for revision in the electoral roll by way of amendment in inclusion and deletion from the electoral roll till the date specified for filing nomination. The electoral roll as revised by reason of such directions can therefore

be amended only thereafter. On the basis of direction issued by the competent authority in relation to an application filed for inclusion of a voter's name, a nomination can be filed. The person concerned, therefore, would not be inconvenienced or in any way be prejudiced only because the revised electoral roll in Form 16 is published a few hours later. The result of filing of such nomination would become known to the parties concerned also after 3.00 p.m.

48. Furthermore, even if the statute specifies a time for publication of the electoral roll, the same by itself could not have been held to be mandatory. Such a provision would be directory in nature. It is a well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory. (See *Shiveshwar Prasad Sinha v. The District Magistrate of Monghyr, & Anr.*, AIR (1966) Patna 144, *Nomita Chowdhury v. The State of West Bengal & Ors.*, (1999) 2 CLJ 21 and *Garbari Union Co-operative Agricultural Credit Society Limited & Anr. v. Swapan Kumar Jana & Ors.*, (1997) 1 CHN 189.

49. Furthermore, a provision in a statute which is procedural in nature although employs the word "shall" may not be held to be mandatory if thereby no prejudice is caused. See *Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur* [1965] 1 SCR 970,

State Bank of Patiala v. S.K. Sharma, [1996] 3 SCC 364, Venkataswamappa v. Special Dy. Commr. (Revenue), [1997] 9 SCC 128 and Rai Vimal Krishna and Others v. State of Bihar and Others, [2003] 6 SCC 401.”

18. Mr. Ghosh next argued that the order enhancing the annual valuation was at no point of time communicated to the appellant. Hence, no statutory appeal could be preferred by the appellant against such order. The appellant is also under no obligation to pay property tax at the enhanced rate since the same was never communicated to him. In this Connection, Mr. Ghosh relied on the decisions in the following cases:-

(i) Narendra Dev Narayan v. Calcutta Municipal Corporation & Ors., reported at AIR 2003 Calcutta 31.

(ii) Turner Morrison & Co. Ltd. & Anr. v. State of West Bengal & Ors., and Calcutta Municipal Corporation & Ors. v. Anomoni Narayan & Ors., reported at (2006) 4 CHN 905.

19. Learned Senior Counsel also drew our attention to the order dated September 20, 2022, passed by us at the time of admission of the appeal. The relevant portion of that order reads as follows:-

“The appellant says that the order of the Hearing Officer has not been communicated to him. Hence, he is not obliged to make payment of the current taxes in terms of such order. We clarify that until such time that the order of the Hearing Officer is communicated to the appellant, he shall go on paying current property taxes at the earlier rate subject to raising of bills. However, once the Hearing Officer’s order is communicated to him, he will pay property taxes in accordance with such order without prejudice to its rights and contentions and subject to the result of this appeal.”

20. Referring to the first hearing notice dated June 21, 2011, fixing July 20, 2011, as the date of hearing, Mr. Ghosh pointed out that the revised Annual Valuation was proposed on the following Ground:- “Revaluation of the premises on estimated annual rent less statutory allowance for repairs or revaluation of the premises due to rise of market value of the land or building.” Mr. Ghosh submitted that the enhancement proposed and confirmed ex-parte was abnormal. Normally, the increase is by 10 per cent of the gross annual rent taken during the last general revision of valuation. In this connection learned Counsel referred to a document described as “Mayor’s Order”, dated February 8, 1986.

21. As regards the issue of KMC having raised bills for tax already paid, learned Counsel submitted that it would appear from the letter of intimation

dated October 21, 2014, that some of the bills pertained to periods before 2010-11 and some after 2010-11. The bills for the period after 2010-11 were raised at the enhanced rate and therefore are not payable since such enhancement was never communicated to the appellant.

22. Learned Counsel further submitted that in any event such bills amounting to Rs. 90,173/- were paid. "No outstanding certificate" was issued by KMC on April 25, 2012, for bills presented up to March 31, 2011. No fresh or supplementary bill was raised by KMC after issuance of the 'no outstanding certificate'.

23. Learned Counsel submitted that when demand was raised on the appellant for payment of property tax which the appellant had already paid, he approached the authorities and presented the relevant receipts. The authorities took such receipts in their custody. When the appellant requested for return of such receipts, the authorities told the appellant that the same would be required by them to update the records and the appellant will not require the same in future since he will have the 'no objection certificate', with him. This the appellant has stated in the supplementary affidavit affirmed by him on December 2, 2021, and filed before the learned Single Judge. In its affidavit-in-opposition filed before the learned Single Judge, KMC has denied such averments.

24. Mr. Ghosh submitted that till date the order of the Hearing Officer enhancing the annual valuation, has not been made available to the appellant. In this connection he referred to a letter dated October 17, 2022, written by the appellant to the Assessor Collector and the Assistant Assessor-Collector, making the aforesaid grievance. The appellant has not received any response to the said letter. The letter is a part of the supplementary paper book filed by the appellant in this appeal.

KMC's contention

25. Mr. Mukherjee, learned Advocate representing KMC submitted that the appellant availed of a waiver scheme introduced by KMC which was after enhancement of the annual valuation of the appellant's property. The payment made by the appellant under the waiver scheme was on the basis of enhanced annual valuation which he therefore accepted. He cannot now challenge the increased annual valuation.

26. Learned Counsel then submitted that the letter of intimation dated October 21, 2014, raising a claim on account of property tax for various periods between the 1st quarter of 2002 and the first quarter of 2011, was served on the appellant. Such demand was challenged by the appellant before a learned Single Judge by filing W.P. 5177(W) of 2015. That writ petition was disposed of by the learned Single Judge by a judgment and order dated June 3, 2015, by directing the Assessor-Collector to consider

and dispose of the writ petitioner's representation by passing a reasoned order. The points sought to be agitated in the present writ petition or in this appeal, were not urged in the earlier writ petition. Hence such arguments are hit by the principles of constructive res judicata. Even assuming such points were raised in the earlier writ petition, the same not having been favourably considered by the Court, the principle of actual res judicata would apply. In this connection learned Counsel relied on the decision of the Hon'ble Supreme Court in the case of ***Shiv Chander More and others v. Lieutenant Governor & Ors., reported at (2014) 11 SCC 744*** in support of his contention that the principles of constructive and actual *res judicata* apply to writ proceedings as well. In particular reliance was placed on paragraph 21 of the reported judgment which reads as follows:-

“21. We may briefly refer to some of those decisions which elaborate the principle and extend their application to proceedings before a Writ Court. But before we do so, we need to say what is trite, namely, the doctrine of res judicata being one of the most fundamental and well-settled rules of jurisprudence. The doctrine is found in all legal systems of civilized society in the world. It is founded on a two-fold logic, namely, (1) that there must be finality to adjudication by the competent Court; and (2) no man should be vexed twice for the same cause. These two principles attract the doctrine of res judicata even to inter-partes decisions that may be erroneous on a question of law. That the doctrine is applicable

even to writ jurisdiction exercised by the superior Courts in this country is settled by a Constitution Bench decision of this Court in *Amalgamated Coalfields Ltd. & Anr. v. Janpada Sabha Chhindwara & Ors.* AIR 1964 SC 1013 where this Court observed:

"17...Therefore, there can be no doubt that the general principle of res judicata applies to writ petitions filed under Article 32 or Article 226. It is necessary to emphasise that the application of the doctrine of res judicata to the petitions filed under Article 32 does not in any way impair or affect the content of the fundamental rights guaranteed to the citizens of India. It only seeks to regulate the manner in which the said rights could be successfully asserted and vindicated in courts of law."."

27. For the same proposition, reliance was also placed on the decision of the Hon'ble Supreme Court in the case of ***Ishwar Dutt v. Land Acquisition Collector and Anr., reported at (2005) 7 SCC 190.***

28. Mr. Mukherjee then placed the writ petition and submitted that no case has been made out in the writ petition that notice of the relevant hearing was not received by the appellant. The case sought to be run now by the appellant, is different from the case made out in the writ petition, which is not permissible.

29. Learned Counsel drew our attention to an application dated November 16, 2015, made by the appellant under Section 6 of the Right to Information Act, 2005 to the relevant SPIO, KMC. Learned Advocate said that the appellant did not ask for a copy of the relevant order of the Hearing Officer. This would show that the appellant has in fact received a copy of such order.

30. Mr. Mukherjee finally submitted that even without a copy of the order of the Hearing Officer, the appellant could have preferred an appeal on the basis of the rate card, once the appellant came to know that an order had been passed on August 29, 2011, confirming the proposed enhancement in annual valuation of the concerned property.

Appellant's submission in reply

31. In reply, Mr. Ghosh submitted that no new case has been made out. Learned Counsel drew our attention to paragraph 5 of the writ petition wherein it has been pleaded that no notice of the relevant hearing was received by the writ petitioner.

32. Mr. Ghosh then submitted that no question of accepting the enhanced annual valuation of Rs. 1,70,690/- can arise. No bill was raised on that basis and no payment of property tax was made by the appellant on the basis of the said enhanced annual valuation. The waiver scheme was for the period up to March 2011. The Annual valuation of Rs. 1,70,690/- was

confirmed on August 29, 2011. Therefore, the 'no objection certificate' does not correctly state that it is based on annual valuation of Rs. 1,70,690/-. Learned Counsel drew our attention to the "waiver letter of intimation" ((in short waiver LOI) dated March 26, 2012, and submitted that the same was raised on the basis of annual valuation of Rs. 54000/-.

Court's view

33. Essentially, two issues fall for determination. Firstly, whether or not the appellant was served with a notice of the hearing, that KMC claims was held on August 29, 2011, at which, the proposed enhanced annual valuation of the appellant's share in the concerned property for the period from the 4th quarter of 2006-07 and from the 3rd quarter of 2010-11, was confirmed by the hearing officer. Secondly, whether or not the demand raised by KMC on the appellant, vide letter of intimation dated October 21, 2014, is a demand for property tax already paid by the appellant.

34. Taking the first issue, Section 184 of the KMC Act read with the Explanation thereunder, is clearly a deeming provision. The Section has been extracted above. It provides in essence that, for revision of annual value of any land, an opportunity of hearing has to be afforded to the assessee. Written notice of such hearing shall be served on the assessee by the hearing officer. If the notice is sent through any mode of Indian Postal Service or in any other manner as decided by KMC, to the recorded person

liable to pay property tax, then service of such notice will be deemed to have been effected on the date of sending such notice, irrespective of whether or not the assessee actually receives such notice. In my opinion, a provision like this has to be strictly construed. The general rule is that any proceeding, the outcome whereof may adversely affect a citizen, must be conducted after serving actual notice of such proceeding on such person so that he may participate in the proceedings and present his own case. This is nothing but the elementary principle of *audi alteram partem*, which is one of the wings of the salutary principles of natural justice. Nobody can be condemned unheard. Any order passed by any Authority which is likely to adversely affect the rights of a citizen including his right to property, must be passed only after granting an opportunity of hearing to that person.

35. The Explanation to Section 184 of the KMC Act in effect waters down the aforesaid principle of natural justice. Irrespective of actual service of notice of hearing, service would be deemed to have been effected if the notice is sent through any mode of service of Indian Postal Service or in any other manner decided by KMC. The stand of KMC is that the notice was made over to the personnel of Indian Postal Service on July 27, 2011. This would appear from the report of the Assistant Assessor-Collector submitted to the Assessor-Collector, on the basis whereof the latter passed the order dated September 29, 2015, holding that notice of hearing was duly issued to the appellant and therefore no further hearing can be granted to him. However, not a scrap of paper has been disclosed by KMC showing that the notice was

received by any personnel of Indian Postal Service on July 27, 2011, or on any other date. We had on more than one occasion requested Mr. Mukherjee, learned Advocate appearing for KMC to produce some material to substantiate KMC's contention that the notice of the hearing scheduled to be held on August 29, 2011, addressed to the appellant herein, was made over to the Indian Postal Service. Mr. Mukherjee was unable to produce any material at all.

36. In that view of the matter we are of the considered opinion that KMC is not entitled to rely upon the deemed service provision in Section 184 of the KMC Act. Therefore, and also because actual service could not be established by KMC, we are constrained to hold that no notice of the alleged hearing dated August 29, 2011, was served on the appellant. Hence, the order of the hearing officer passed on August 29, 2011, confirming the proposed enhanced valuation of the concerned property, is bad, null and void and non-est in the eye of law. The relevant order of the Hearing Officer stands set aside.

37. This will not prevent the concerned hearing officer of KMC from issuing fresh notice of hearing to the appellant in respect of the proposed enhanced valuation of the concerned property for the periods from the 4th quarter of 2006-07 and the third quarter of 2010-11. The hearing officer shall pass a fresh order after granting opportunity of hearing to the

appellant in the aforesaid regard. The entire exercise should be completed within 3 months from date.

38. We are conscious that an order of the hearing officer is appealable before the Municipal Assessment Tribunal, under Section 189 of the KMC Act. Normally, the writ Court would not interfere if an efficacious alternative remedy is available to the writ petitioner. However, it is trite law that existence of an alternative remedy is not a bar to the maintainability of a writ petition.

39. There are well recognised exceptions where in spite of an alternative remedy being available to the writ petitioner, the High Court entertains an application under Article 226 of the Constitution of India and exercises its high prerogative writ jurisdiction. One such exception is when an order has been passed by an Authority in breach of the principles of natural justice, as in the present case. If any authority is necessary for this proposition, one may refer to the decision of the Hon'ble Supreme Court in the case of ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai & Ors, reported at (1998) 8 SCC 1.***

40. Now we take up the second issue of KMC making demand for the periods for which the appellant claims that he has already paid property tax. A letter of intimation dated October 21, 2014, was issued to the appellant by KMC for certain periods between 4th quarter of 2000 and 3rd quarter of 2011.

The property tax claimed in such letter of intimation was to the tune of Rs. 2,18,657/-. On account of interest, Rs. 83,247.81/- and on account of penalty Rs. 30,814.55/- was added. After adjusting the deposit in suspense account to the tune of Rs. 1672, a sum of approximately Rs. 3,32,000/-, was claimed by KMC.

41. We find from the records that another letter of intimation described as waiver LOI, dated March 26, 2012, was raised by KMC on the appellant for a total sum of Rs. 90,173/- approximately for the periods 1st quarter of 2006 to 4th quarter of 2006, 1st quarter of 2007 to 4th quarter of 2007, 2nd quarter of 2009 to 2nd quarter of 2009, 4th quarter of 2009 to 2nd quarter of 2010 and 3rd quarter of 2010 till 4th quarter of 2010. The appellant appears to have made payment of the said bill as would appear from the receipt dated April 25, 2012, issued by KMC, a copy whereof is at page 246 of the paper book.

42. What clinches the issue in favour of the appellant is a 'No Objection Certificate' dated April 25, 2012, issued by KMC in favour of the appellant, which reads as follows:-

"This is to inform you that, as per our records, there is no outstanding amount due against the above mentioned assessee no. for the bills presented upto 31/03/2011.

This NOC is based on the AV Rs. 170690 w.e.f. 3/2010.

Date : 25/04/2012

For, Assessor-Collector

Note: 1) If fresh/supplementary demands are issued after 31/03/2011 pertaining to the period prior to 31/03/2011 on account of revaluation which were pending, such demands will not contain any interest or penalty.

2) As this is a computer generated document, it does not require actual signature.”

43. It therefore appears that for the period up to March 31, 2011, there is no outstanding property tax in so far as the appellant is concerned. It is the specific case of the appellant that after issuance of the no objection certificate, no fresh or supplementary bill was raised by KMC on the appellant for the relevant period. KMC has not been able to demonstrate that any fresh/supplementary bill was in fact raised on the appellant for the period in question.

44. In view of the aforesaid, the letter of intimation dated October 21, 2014, is set aside. This will not prevent KMC from raising fresh/supplementary bills on the appellant for the relevant period, in accordance with the applicable law.

45. In so far as KMC's point of *res judicata* is concerned, we do not find any merit in the same. In the earlier round of litigation i.e., WP 5177 (W) of 2015 the writ petition was disposed of by the learned Judge by order dated June 3, 2015, by directing the Assessor-Collector to decide the writ

petitioner's representation which was received by KMC on November 7, 2014. The learned Judge specifically recorded that the Court had not entered into the merits of the case. Since the learned Judge did not decide the two issues raised in the representation and the subsequent writ petition i.e., the issues of enhancement of annual valuation being bad on the ground of breach of the principles of natural justice and the issue of demand for property tax raised by KMC pertaining to periods for which the appellant claims that he has already paid requisite tax, the application of the principle of *res judicata* cannot arise.

46. The appeal is therefore allowed. The judgment and order impugned in the appeal is set aside. FMA no. 657 of 2022 is accordingly disposed of. There will be no order as to costs.

47. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)