(2011) 02 GUJ CK 0078

In the Gujarat High Court

Case No : First Appeal No''s. 1903 and 1904 of 1983 and Cross Objection No. 46 and 47

A'' bad muni. Corporation APPELLANT

Vs

A'' bad dist. Co op. Bank Ltd. RESPONDENT

Date of Decision : 24-02-2011

Acts Referred:

Citation : (2011) 02 GUJ CK 0078

Hon'ble Judges : Jayant Patel, J;B.M. Trivedi, J

Bench : Division Bench

Advocate : J.R. Nanavati, for the Appellant; Yatin Soni, for the Respondent

Final Decision : Dismissed

Judgement

B.M. Trivedi, J.—Both these appeals arise out of the common judgment and order dated 03.03.1983 passed by the learned Chief Judge, Small Causes Court, Ahmedabad in M.V. Appeal No. 783 of 1981. When these appeals were listed on the Board for final hearing on 17.02.2011, Shri J.R. Nanavati for the Appellant - Corporation was not present and after hearing the learned Advocate Shri Gaurav Chudasama for the Respondent - Bank, the matters were kept on 22.02.2011 for examining the same on merits. On 22.02.2011, the learned Advocate Shri J.R. Nanavati for the Appellant appeared and stated that the matter be examined on merit. Under the circumstances, the appeals are hereby finally disposed of.

2. The First Appeal No. 1903 of 1983 has been preferred by the Appellant - Corporation being aggrieved by the impugned order passed by the learned Chief Judge, Small Causes Courts, Ahmedabad, in M.V. Appeal No. 783 of 1981, which had arisen from the order dated 05.12.1980 passed by the Appellate Officer, whereas the First Appeal No. 1904 of 1983 has been filed by the Appellant - Corporation being aggrieved by the impugned order passed in M.V. Appeal No. 2526 of 1981, which had arisen from the order dated 05.08.1981 passed by the Appellate Officer. In both the M.V. Appeals, the learned Chief Judge, Small Causes Court (hereinafter referred to as ''the Lower Court'') had fixed the Gross

Rateable Value (G.R.V.) AT Rs. 1,68,636/- in respect of the cellar, ground floor, mezzanine floor and first floor and at Rs. 11,988/- in respect of the second floor of the premises belonging to the Respondent - Bank, situated near the Income Tax Office, Ashram Road, Ahmedabad, on the Final Plot No. 102-B and 103-B, for the years 1980-1981 and 1981-1982. The Respondent - Bank has also filed the Cross Objections in the said Appeals being aggrieved by the impugned order passed by the Lower Court

3. Before dealing with the merits of the appeals filed by the Appellant - Corporation and the cross objections filed by the Respondent - Bank, it is required to be stated that at the time of admission, these appeals were directed to be heard along with First Appeal No. 1833 of 1983 and other companion matters, as per the order dated 18.01.1984. However, it appears that the said First Appeal No. 1833 of 1983 was disposed of by the Division Bench (Coram: B.N. Kirpal, C.J. & A.N. Divecha, J.), vide oral judgment dated 14th December, 1994 after observing as under:

2. This Court in the case of Municipal Corporation of the City of Ahmedabad Vs. Oriental Fire and General Insurance Co. Ltd., held that a tenant cannot challenge the rateable value which is fixed. In view of the said judgment, this Appeal is allowed. The order of the Small Cause Court is set aside. The rateable value determined by the Appellant - Corporation is restored. No order as to cost.

4. So far as the facts of the present appeals are concerned, it transpires that the Respondent - Bank was the owner of the premises in question for which the Gross Rateable Value was fixed by the Appellate Officer of the Corporation and had challenged the assessment before the Small Causes Court by way of presenting the M.V. Appeals. The Lower Court, considering the evidence on record and the contentions raised by the learned Advocates for the parties, partly allowed the said M.V. Appeals by fixing the Gross Rateable Value for the premises as stated hereinabove. Being aggrieved by the said judgment and order, the Appellant - Municipal Corporation preferred the above mentioned First Appeals and the Respondent - Bank filed the cross objections as stated hereinabove. Though, these appeals were ordered to be heard along with the First Appeal No. 1833 of 1983, as stated hereinabove, the said appeal has been disposed of by this Court vide order dated 14.12.1994 only on the ground of non-maintainability, as in the said case the tenant of the premises had challenged the Gross Rateable Value fixed by the Corporation before the Small Cause Court, whereas in the instant case, the Respondent - Bank who was the owner had challenged the Rateable Value fixed by the Corporation. Hence, these appeals stand on different footing and could not be disposed of on the lines on which the said First Appeal was disposed of.

5. It cannot be gainsaid that as per the provisions contained in the B.P.M.C. Act, the Municipal Corporation can impose property taxes, and that the general tax at a prescribed rate is leviable on the rateable value of the property. The said expression ''rateable value'' was interpreted by various judicial pronouncements,

and the law in this regard was settled by the Division Bench of this Court in the judgment reported in Municipal Corporation of the City of Ahmedabad Vs. Oriental Fire and General Insurance Co. Ltd., The relevant portion of the said judgment is reproduced as under:

The burden must always rest on the Assessee to establish, when he files an appeal before the Small Causes Court, that the rateable value has not been properly fixed by the Commissioner. When the gross rateable value has been determined by the Assessing Authority and an appeal is filed contending that the constructual rent should not be regarded as a standard rent, as it is excessive, then it is for the person, who makes this allegation to prove his case. Onus of proof is on the person, who would fail, if a particular fact is not proved. The averment that the contractual rent charged by the owner is excessive is made by the Appellant before the Small Causes Court. It would, therefore, be for the Appellant to prove as to what should be the standard rent, which must be at a figure less than the contractual rent. In this connection, evidence will have to be led by way of cost of land and cost of construction of the premises in question or the actual rent, which is being received in the neighbourhood with regard to identical or similar premises. If no evidence in this connection is led, the gross rateable value, determined by the Municipal Authorities on the basis of first letting, must be regarded as the annual letting value under the B.P.M.C. Act. Evidence with regard to cost of construction and cost of land can best, if not only, be available with the owner of the property. Therefore, whether it be the stage of assessment or at the stage of appeal before the Small Causes Court, evidence in this regard should always be led or produced by the owner. If, on the other hand, the Corporation chooses to disregard this and purports to fix the rateable value on the basis of rents in the neighbourhood, or by applying any other method then it is only, in such cases, that the Corporation has to justify its action. When an appeal is filed, challenging the gross rateable value, it will be for the Appellant to show that the rateable value fixed by the Corporation is not in accordance with law.

6. Now, if the ratio laid down in the above mentioned judgment is applied to the facts of the case, it appears that the Lower Court, while fixing the G.R.V. of the premises in question, had taken into consideration the comparable instances of Esic Bhavan, situated on the same plot on which the building of the Respondent - Bank was situated i.e. Final Plot No. 102-B and 103-B. The Lower Court had also considered the reasonable and expected rent of the building constructed by the B.M. Institute situated in the neighbourhood of the premises of the Respondent - Bank on the Ashram Road. Thus, the Lower Court having fixed the G.R.V. Of the premises in question on the basis of the reasonable and expected rent of the premises belonging to the Corporation itself and of the premises in the neighbourhood situated on the Ashram Road, it could not be said that the Lower Court had committed any error while fixing the G.R.V. Of the suit premises.

7. The learned Advocate Shri J.R. Nanavati for the Appellant and Gaurav

Chudasama for the Respondent have also failed to point out any error committed by the Lower Court and to substantiate the submissions made by them in the appeals and the cross objections respectively. Under the circumstance, we do not find any merits in the present appeals filed by the Appellant - Corporation and the cross objections filed by the Respondent Bank.

8. In that view of the matter, the First Appeal No. 1903 of 1983 and Cross Objections No. 46 of 2010 filed in the said appeal and First Appeal No. 1904 of 1983 and Cross Objections No. 47 of 2010 filed in the said appeal being dehors the merits, deserve to be dismissed and are accordingly dismissed with no order as to costs.

