

(1999) 04 GUJ CK 0057

In the Gujarat High Court

Case No : Special Civil Application No's. 4161, 4162, 4368, 4372, 4373, 4374, 4396, 4409, 4414, 4416, and 4418 of 1983

A"Bad Muni. Corporation

APPELLANT

Vs

A"Bad Dist. Co-op. Bank Ltd.

RESPONDENT

Date of Decision : 05-04-1999

Acts Referred:

Citation : (1999) 04 GUJ CK 0057

Hon'ble Judges : R.P. Dholakia, J;M.R. Calla, J

Bench : Division Bench

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

Final Decision : Allowed

Judgement

1. All these 11 Special Civil Applications are directed against the orders passed by the Small Causes Court at Ahmedabad in different Municipal Valuation Appeals. Although the factual aspects with regard to the premises and the fact relating to rent and the Gross Rateable Value (hereinafter referred to as "GRV") are different in different cases, all these Special Civil Applications involve identical question of law and, therefore, we propose to decide all these 11 Special Civil Applications by this common judgment and order. The respondent in all these matters is Ahmedabad District Co-operative Bank Ltd., and the orders, which have been passed in the matter of fixing the GRV in Appeals by the Small Causes Court at Ahmedabad, have been challenged by the Municipal Corporation of the City of Ahmedabad.

Special Civil Application No.4161/83

Area of premises is 31.96 sq.mts. and is situated at Limbda Pole, Near Saraspur Char Rasta, Ahmedabad, Survey No.1406+1407+1412 and the agreed rent was Rs.200 per month with effect from 5.7.77. The GRV was assessed at Rs.3091/- for the year 1981-82 and the Small Causes Court fixed the GRV at Rs.576/- in M.V.Appeal No.568/81 on 3.3.83.

Special Civil Application No.4162/83

Area of premises is 375 sq.mts. each on the first floor and a portion of the second floor. The portion of the second floor was surrendered with effect from 1.3.68 and it is situated at Limbda Pole, Near Saraspur Char Rasta, Ahmedabad and the Survey No.1406+1407+1412 and the agreed rent was Rs.451/- per month with effect from 6.11.67. The GRV was assessed at Rs.14591/- for the year 1981-82 and the Small Causes Court fixed the GRV at Rs.1650/- in M.V.Appeal No.567/81 on 3.3.83.

Special Civil Application No.4368/83

Area is situated at Jamalpur Ward No.1/B, Ahmedabad, bearing Survey No.6146/5 to 12/2 and bearing M.C.No.492/2/2 and the agreed rent was Rs.401/- per month. The GRV was assessed at Rs.6588/- + municipal tax for the year 1980-81 and 1981-82 and the Small Causes Court fixed the GRV at Rs.1200/- in M.V.Appeal No.2017/81 on 2.2.83.

Special Civil Application No.4372/83

Area of premises is 375 sq.mts. each on the first floor and a portion of the second floor and surrendered the portion of the second floor with effect from 1.3.68. It is situated at Limbda Pole, Near Saraspur Char Rasta, Ahmedabad bearing Survey No.1406+1407+1412 and the agreed rent was Rs.451 per month with effect from 6.11.67. The GRV was assessed at Rs.601/- for the year 1981-82, which was subsequently increased to Rs.900/- with effect from 1.12.76 and the Small Causes Court fixed the GRV at Rs.1650/- for the year 1980-81 and 1981-82 in M.V.Appeal No.567/81 and M.V.Appeal No.3115/81 on 3.3.83.

Special Civil Application No.4373/83

Area of premises is 31.96 sq.mts. on the the second floor. It is situated at Limbda Pole, Near Saraspur Char Rasta, Ahmedabad, bearing Survey No.1406+1407+1412 and the agreed rent was Rs.200/- per month with effect from 5.7.77. The GRV was assessed at Rs.3091/- for the year 1980-81, and the Small Causes Court fixed the GRV at Rs.576/- for the year 1980-81 and 1981-82 in M.V.Appeal No.568/81 and M.V.Appeal No.3116/81 on 3.3.83.

Special Civil Application No.4374/83

Area of premises is 61.74 sq.mts. It is situated near Khamasa Gate, Dasha Nagar Gnati Vadi, Ahmedabad bearing Survey No.6146/5 to 12/2 and bearing M.C.No.4492/2/2 in Jamalpur Ward No.1/B and the agreed rent was Rs.401/- per month with effect from 15.4.67. The GRV was assessed at Rs.6503/- for the year 1980-81 and 1981-82, and the Small Causes Court fixed the GRV at Rs.1200/- for the year 1980-81 and 1981-82 in M.V.Appeal No.3100/80 and M.V.Appeal No.2017/81 on 2.2.83.

Special Civil Application No.4396/83

Area of premises is 675 sq.mts.on the first floor. It is situated at Agarwal building, Opposite Rohit Mills, Khokhra Mehmedabad, Ahmedabad, bearing final plot No.193/2/2 in Khokhra Mehmdabad Ward and the agreed rent was Rs.200/- per month with effect from 13.10.69 and Rs.360/- + Municipal Tax since 1.1.75. The GRV was assessed at Rs.4320/- for the year 1980-81 and 1981-82, and the Small Causes Court fixed the GRV at Rs.1512/- for the year 1980-81 and 1981-82 in M.V.Appeal No.219/81 and M.V.Appeal No.278/82 on 16.2.83.

Special Civil Application No.4409/83

Area of premises is 40.29 sq.mts. on the ground floor of a residential bungalow converted into banking premises. It is situated at 1, New Commercial Mills staff Co-operative Society, Opposite Rajhans Society, Behind Lal Bungalow, Ahmedabad, bearing Final Plot No.67-73-74/1/3 in Ellisbridge Ward No.A/3 in T.P.S.20 and the agreed rent was Rs.550/- per month with effect from 1.4.79. The GRV was assessed at Rs.8917/- for the year 1980-81 and 1981-82, and the Small Causes Court fixed the GRV at Rs.1440/- for the year 1980-81 and 1981-82 in M.V.Appeal No.343/81 and M.V.Appeal No.44/82 on 16.2.82.

Special Civil Application No.4414/83

Area of premises is 40.29 sq.mts. on the ground floor of a residential bungalow converted into banking premises. It is situated at 1, New Commercial Mills Staff Co-operative Society, Opposite Rajhans Society, Behind Lal Bungalow, Ahmedabad, bearing Final Plot No.67-73-74/1/3 in Ellisbridge Ward No.A/3 in T.P.S.20 and the agreed rent was Rs.550/- per month with effect from 1.4.79. The GRV was assessed at Rs.8917/- for the year 1980-81 and 1981-82, and the Small Causes Court fixed the GRV at Rs.1440/- for the year 1980-81 and 1981-82 in M.V.Appeal No.343/81 and M.V.Appeal No.44/82 on 16.2.82.

Special Civil Application No.4416/83

Area of premises is 675 sq.mts.on the first floor. It is situated at Agarwal building, Opposite Rohit Mills, Khokhra Mehmedabad, Ahmedabad, bearing final plot No.193/2/2 in Khokhra Mehmdabad Ward and the agreed rent was Rs.200/- per month with effect from 13.10.69 and Rs.360/- + Municipal Tax since 1.1.75. The GRV was assessed at Rs.4320/- for the year 1980-81 and 1981-82, and the Small Causes Court fixed the GRV at Rs.1512/- for the year 1980-81 and 1981-82 in M.V.Appeal No.219/81 and M.V.Appeal No.278/82 on 16.2.83.

Special Civil Application No.4418/83

Area of premises is 61.74 sq.mts. It is situated near Khamasa Gate, Dasha Nagar Gnati Vadi, Ahmedabad, Survey No.6146/5 to 12/2 and bearing M.C.No.4492/2/2 in Jamalpur Ward No.1/B and the agreed rent was Rs.401 per month with effect from 15.4.67. The GRV was assessed at Rs.6503/for the year 1980-81 and 1981-82, and the Small Causes Court fixed the GRV at Rs.1200/- for the year 1980-81 and 1981-82 in M.V.Appeal No.3100/80 and M.V.Appeal No.2017/81 on 2.2.83.

2. From the reading of the impugned orders and the grounds on which the impugned orders in all these Appeals have been assailed, it appears that the learned Small Causes Court decided the Appeals under S. 406 of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as "the B.P.M.C.Act") because the assessments made by the Municipal Corporation has not approached the question of fixing the Rateable Value in accordance with the principles and norms decided in this regard. He has referred to the decision of the Supreme Court in the case of Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others, and reference has also been made to some unreported decisions of this Court. Devan Daulat Rai Kapoor's case (Supra), as was decided by the Supreme Court, was a case in which the Supreme Court considered the definition of annual value as had occurred in S. 3(1)(b) of the Punjab Municipal Act. It has been held by the Supreme Court that annual value of a building would be the gross annual rent at which the building may reasonably be expected to let from year to year. It was also observed that unlike the English Law where the value of occupation by a tenant is the criterion for fixing annual value of the building for rating purposes, here it is the value of the property to the owner which is taken as the standard for making assessment of annual value. Criterion is the rent realisable by the landlord and not the value of the holding in the hands of the tenant. The rent which the landlord might realise if the building were let is made the basis for fixing the annual value of the building and what the landlord might reasonably expect to get from a hypothetical tenant, if the building were let from year to year, affords the statutory yardstick for determining the annual value. It has been further observed that there would ordinarily be in a free market close approximation between the actual rent received by the landlord and the rent which he might reasonably expect to receive from hypothetical tenant. But where the rent of the building is subject to rent control legislation, this approximation may and often does get displaced. Cases in which standard rent has not been fixed within the prescribed period of limitation and the tenant is precluded from making an application for fixation of standard rent, the landlord is lawfully entitled to continue to receive the contractual rent and the annual value must be limited to the measure of standard rent determinable under the Rent Act and even if the standard rent has not been fixed by the Controller, the landlord cannot reasonably expect to receive from a hypothetical tenant anything more than the standard rent determinable under the Act and this would be so equally whether the building has been let out to a tenant who has lost his right to apply for fixation of the standard rent or the building is self occupied by the owner. The Supreme Court has held that the assessing authority would, in either case, have to arrive at its own figure of the standard rent and determine the annual value of the building. All these observations, which have been made by the Supreme Court, have no application whatsoever so far as the present case is concerned. The Municipality had assessed the GRV on the basis of the actual annual rent which was being paid by the respondent - Bank. Nothing has been pointed out as to how the amount of contractual rent, which was being paid by the Bank in any

of these cases was excessive and on what basis the appellate Court arrived at the reduced amount of the Rateable value in each of these cases.

3. Mr. Soni appearing for the respondent - Bank in all these matters has submitted that all these matters are required to be remanded inasmuch as no evidence was recorded and without recording evidence, the assessment orders have been passed and, therefore, opportunity to lead evidence has to be given to the respondent - Bank. It has been submitted that such remands have been ordered in several cases as a matter of fact. However, Mr. Soni has not even produced the uncertified copy of such orders before this Court.

4. So far as the facts of the present case are concerned, we find that no attempt was made whatsoever before the Assessing Authority by the respondent - Bank and it is not the case of the respondent - Bank that they wanted to lead any sort of evidence before the Assessing Authority and despite their demand, such an opportunity was denied by the Assessing Authority. In this view of the matter, we do not find it to be a fit case for remanding the matter, merely for asking. The Bank had the opportunity of leading evidence before the Assessing Authority and if it had not availed such an opportunity, it has to thank itself. All these petitions are pending since 1983. Now we are hearing these petitions in the year 1999 after a period of nearly 16 years and at this stage to ask for the remand of the matters on such a technical ground, that too when the fact situation is admitted before us that no attempt was made to lead evidence and it is not the case of the respondent Bank that it wanted to lead the evidence and it was not allowed to do so, the request for remanding the matter is not at all reasonable and the same is rejected. Further we also find that the Division Bench in the case of Municipal Corporation of the City of Ahmedabad v. Oriental Fire and General Insurance Co. Ltd., reported in 1994(2) GLH 433 has considered several points including the question with regard to the determination of annual rateable value of a tenanted premises and while doing so the Division Bench has also considered the question with regard to the burden of proof. The Division Bench has observed that when the gross rateable value has been determined by the Assessing Authority and an Appeal is filed contending that the contractual 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. 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 GRV, it will be for the appellant to show that the rateable value fixed by the Corporation is not in accordance with law. 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. In the

case at hand, the Municipality had assessed the Rateable Value taking into account the rent which was in fact paid by the respondent - Bank for the premises which had been taken by it on rent. No material whatsoever was placed by the respondent Bank before the Municipal Corporation to show that the rent, which was being paid by it was excessive and that the same should not be made the basis for determining the GRV. In such a situation, when the Ahmedabad District Co-operative Bank Ltd. preferred Appeals before the Small Causes Court, Ahmedabad, the Small Causes Court has simply reduced the GRV to a considerable extent, in some cases it has been reduced even down to 1/6th by making a bald reference to the aforesaid decision in the case of Devan Daulat Rai Kapoor (Supra) without considering that the principles laid down in the case of Devan Daulat Rai Kapoor (Supra) had no application whatsoever to the controversy involved in the case. A bald reference has also been made to an unreported decision of this Court and without giving details of such an unreported decision and without even saying that the land in question was identical or in the neighbourhood of the land, which was concerned in such unreported decision, it has determined the rent at the rate of Rs.1.50 per sq.mt. and in one of the cases it has come to the conclusion that the rent comes out to be Rs.48/- per month instead of Rs.200/- per month and on that ground the GRV has been reduced from Rs.5776/- to Rs.3091/-. Identical reasoning had been applied in all these cases and on that basis alone the GRV has been reduced to a considerable extent. We find that there was no material before the authority to reduce the GRV in the manner in which it has been reduced. The Division Bench decision in the case of Municipal Corporation of Ahmedabad v. Oriental Insurance (Supra) has laid down in no uncertain terms that in case of a tenanted premises for the period prior to 1.4.84, the principles of Devan Daulat Rai Kapoor's case (Supra) and Dr.Balbir Sing v. M/s.M.C.D., reported in AIR 1985 SC 33 would not apply and further that in view of the proviso (aa) to S. 2(1A), the contractual rent received by the owner will be the annual rent. In the instant case the period is certainly a period prior to 1.4.84 and what has been made the basis is the contractual rent but that does not mean that prior to 1.4.84 the contractual rent could not be considered as a relevant factor. In the instant case, looking to the location where the premises in question is situated and looking to the area concerned in each of these cases and the amount of the contractual rent, which was being paid by the respondent - Bank, it cannot be said that the amount of contractual rent was excessive. Not an iota of material was placed on record to show that it was excessive. Despite this, the Small Causes Court has held without any basis, by making bald reference to the decisions, that the contractual rent was excessive. In this view of the matter, we find that the orders, which have been passed by the Small Causes Court in all these Appeals, details of which have been given herein-before, cannot be sustained in the eye of law and the same deserve to be quashed and set aside.

5. Accordingly all these 11 Special Civil Applications succeed and the same are allowed. The impugned orders in each of these 11 matters are hereby quashed

and set side. Rule is made absolute in all these matters. No order as to costs.