**(2008) 09 GUJ CK 0040**

**In the Gujarat High Court**

**Case No :** First Appeal No. 3371 of 2001

Ahmedabad Municipal Corp. APPELLANT

Vs

Taxel Platic Ltd. RESPONDENT

**Date of Decision :** 30-09-2008

**Acts Referred:**

Bombay Provincial Municipal Corporations Act, 1949 — Section 418
Municipal Appeals Rules, 1976 — Rule 11, 12, 13

**Citation :** (2008) 09 GUJ CK 0040

**Hon'ble Judges :** K.M. Thaker, J;C.K. Buch, J

**Bench :** Division Bench

**Advocate :** M.G. Nagarkar and Kirit I. Patel, for the Appellant; Avani S. Mehta, for the Respondent

**Final Decision :** Allowed

## Judgement

C.K. Buch, J.—This First Appeal is filed by Ahmedabad Municipal Corporation through the Municipal Commissioner against the respondent company having its office at Law Garden Area, Ahmedabad, whereby the appellant Municipal Corporation has challenged the judgment and order passed by the Presiding Judge of Small Causes Court, Ahmedabad in Municipal Valuation Appeal bearing No. 809 of 1998. The respondent had preferred appeal before the Small Causes Court, Ahmedabad, challenging the legality and validity of fixation of GRV of the premises occupied by the company of the respondent. Reliance was placed on an earlier judgment of Small Causes Court rendered in earlier Municipal Valuation Appeals. The learned Judge, Small Causes Court, decided to calculate the GRV on the strength of the percentage on the value of the premises. The learned Judge, Small Causes Court, Ahmedabad has reduced the GRV of the premises and fixed at Rs. 13,269.

2. Mr. Nagarkar, learned Counsel appearing for the appellant- Ahmedabad Municipal Corporation, has submitted that the finding under challenge by present First Appeal is not sustainable because while fixing the annual letting value for

the purpose of property tax assessment the criteria adopted by the learned Judge of the Small Causes Court is not legal. According to Mr. Nagarkar, the order under challenge and the appeal preferred by the Ahmedabad Municipal Corporation can be dealt with by saying that the dispute is covered by the decision of this Court in A''Bad Municipal Corporation Vs. Dena Bank, Mr. Nagarkar has taken us through the Head Note (D) in para 18 of the judgment. The judgment under challenge is a short judgment. It emerges clearly that the formula of percentage adopted by the learned Judge of Small Causes Court is without application of mind. It is not necessary to reproduce the entire paragraph 18 of the judgment relied on by Mr. Nagarkar. It is possible for this Court to observe that the observations made and finding recorded by this Court in the above cited decision takes care of the contingency placed by the Municipal Corporation in the present appeals. It is rightly submitted by Mr. Nagarkar that by the above cited judgment this Court decided a number of appeals and remanded all the matters to the Small Causes Court issuing direction to reconsider the legitimacy of the GRV decided by the Ahmedabad Municipal Corporation in light of the discussions made in the judgment. At that relevant point of time the present appeal was left out. Otherwise this appeal could have also been decided along with the appeals disposed of by the above cited decision.

3. On careful scrutiny of various number of appeals decided by the Division Bench of this Court, we are in agreement with the say of Mr. Nagarkar. The judgment and order under challenge in this appeal therefore requires to be quashed and the matter is required to be remanded to the Small Causes Court, Ahmedabad to hear and decide it afresh keeping in mind the direction given by this Court in the above cited decision in Dena Bank (supra) and allied appeals.

4. In an earlier judgment of this Court in Municipal Corporation of the City of Ahmedabad Vs. Oriental Fire and General Insurance Co. Ltd., also would also help the Ahmedabad Municipal Corporation more particularly the observations made by the Court in paragraph 62 of the judgment because this Court ultimately has held in the group of matters decided by the second judgment that the orders of Small causes Court are required to be set aside and the case be remanded to the Small causes Court, Ahmedabad with a direction to decide the matters de-novo for fresh fixation of ratable value in light of the observations made in the judgment.

5. We have heard Ms. Avani Mehta, learned advocate appearing for the respondent. She could not point as to why the matter should not be remanded to the Small causes Court, Ahmedabad, for deciding it afresh because of the above cited two decisions. Therefore, according to us, there is no need to enter into any further discussion.

6. The judgment and order under challenge in this appeal is hereby quashed and set aside. The case is remanded to the Small causes Court, Ahmedabad to hear an decide it de-novo in light of the discussions made by this Court in above referred to two decisions.

7. The learned Presiding Judge, Small Causes Court, Ahmedabad, has considered the valuation report for total cost of the premises and according to the learned Judge, the cost of the premises was Rs. 1,83,000/- Unless the Valuer''s report is found proved keeping in mind the relevant provisions of Rules 11, 12 and 13 of the Municipal Appeals Rules, 1976 more particularly as per Rule 11 or Section 418 of the Bombay Provincial Municipal Corporations Act, 1949, valuer''s report cannot be made a base even while fixing GRV. There is no reference in the judgment under challenge as to who produced the valuer''s report, when the same was produced and who proved the report relied upon by the learned Judge. So, according to us, the GRV in the present case has been decided erroneously. The ratio of the observations made by this Court in Dena Bank''s case (supra) (para 15.2 and 17.1.) runs contrary to the method adopted by the learned Judge in deciding the GRV. In the present case, the judgment and order therefore is required got be quashed and the matter is required to be remanded to the Small Causes Court on this count also.

8. The appeal is accordingly allowed. No order as to costs. Order and direction accordingly.