(2010) 09 GUJ CK 0157

In the Gujarat High Court

Case No : First Appeal No. 2456 of 1993

Ahmedabad Municipal Corpn. APPELLANT

Vs

Bank of India RESPONDENT

Date of Decision : 17-09-2010

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 406, 411

Citation : (2010) 09 GUJ CK 0157

Hon'ble Judges : J.C. Upadhyaya, J;A.M. Kapadia, J

Bench : Division Bench

Advocate : M.G. Nagarkar, for the Appellant;

Final Decision : Allowed

Judgement

A.M. Kapadia, J.—Challenge in this appeal filed u/s 411 of the Bombay Provincial Municipal Corporations Act, 1949 [for short "the Act"] is to the correctness of the judgment and order dated 16/7/1990 rendered in M.V.A. No. 8280/1986 by the Ld. Judge, Small Causes Court, Ahmedabad, by which appeal filed by the respondent - Bank of India, tenant of the premises in question, came to be partly allowed and thereby Gross Rateable Value [for short "GRV"] of the premises under appeal was fixed at Rs. 1,20,816/- for the assessment year 1986-87.

2. The respondent is the tenant of the premises bearing Survey No. 488/2/A/FP of Ward Ellisbridge-B, at the relevant time and the opponent Corporation has fixed GRV of the said premises at Rs. 1,96,286/- for the assessment year 1986-87. Aggrieved thereby, the respondent tenant preferred appeal u/s 406 of the Act before the Ld. Judge, Small Causes Court, Ahmedabad. The Ld. Judge, after considering the material placed before him and considering the premises in question as a commercial unit and the receipts, fixed the GRV at Rs. 1,20,816/- instead of Rs. 1,96,286/- fixed by the appellant, which has given rise to the instant appeal u/s 411 of the Act at the instance of the Municipal Corporation of the City of Ahmedabad

3. We have considered submissions advanced by Mr. M G Nagarkar, Ld. Advocate for the appellant. Though the respondent served with the notice, respondent has elected not to appear in the matter. We have perused the impugned judgment and order and record and proceedings of the M.V.A. No. 8280/1986. We have also considered the decision rendered in the case of Municipal Corporation of Ahmedabad v. Canara Bank reported in 1992 (2) G.L.R. 1086, wherein a Full Bench of this Court has laid down that where municipal taxes are paid by the tenant directly to the Corporation, the tenant cannot contend that amount cannot be included in the annual letting value.

4. Applying the principle laid down by the Full Bench of this Court to the facts of the instant case, the Ld. Judge has erroneously reduced the GRV on the basis that the tenant has paid the tax, which has resulted into miscarriage of justice. Therefore, matter is required to be remanded by restoring the same to the file of the Ld. Judge, Small Causes Court, Ahmedabad, for deciding the issue afresh after giving opportunity of hearing to both the parties and in accordance with law.

5. Seen in the above context, instant appeal deserves to be allowed by remanding and restoring M.V.A. No. 8280/1986, to the Ld. Judge, Small Causes Court, Ahmedabad, for deciding the issue afresh.

6. For the foregoing reasons, the appeal is allowed. The M.V.A. No. 8280/1986 is remanded and restored to file of the Ld. Judge, Small Causes Court, Ahmedabad, for deciding the issue afresh after giving opportunity of hearing to both the parties and in accordance with law.

7. Record and proceedings of M.V.A. No. 8280/1986 be sent to the Ld. Judge, Small Causes Court, Ahmedabad, forthwith.

No order as to costs.