(2010) 09 GUJ CK 0037

In the Gujarat High Court

Case No : First Appeal No. 5876 of 1995

Ahmedabad Municipal Corporation APPELLANT

Vs

Divyang Rolling Mills RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 411

Citation : (2010) 09 GUJ CK 0037

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

Bench : Division Bench

Advocate : Bhaskar P. Tanna and Bhavdutt H. Bhatt, for Tanna Associates, for the Appellant; Served, for the Respondent

Final Decision : Allowed

Judgement

A.M. Kapadia, J.—Challenge in this Appeal filed u/s 411 of the Bombay Provincial Municipal Corporations Act, 1949 (''BPMC Act'', for short) is to the correctness of the judgment and order dated 16th August 1993 rendered in Municipal Valuation Appeal No. 4512/1990 by the learned Judge of the Small Causes Court, Ahmedabad by which the Municipal Valuation Appeal filed by the respondent came to be allowed and thereby the Gross Rateable Value fixed by the appellant at the rate of Rs. 6,156/- in respect of the premises bearing Final Plot No. 144/26FP/TPS3 of Ward Special Property for the year 1989-90 has been quashed.

2. Mr. Bhaskar Tanna, learned senior Counsel for the appellant submitted that by the impugned order the learned Judge of the Small Causes Court has fixed ''zero'' value of the premises in question, which is not permissible in law.

3. To buttress the aforesaid submission, Mr. Bhaskar Tanna, learned senior Counsel has pressed into service the reported decision of a Division Bench of this Court in the case of Municipal Corporation of the City of Ahmedabad Vs. Oriental Fire and General Insurance Co. Ltd., and also the reported decision of the Hon''ble Supreme Court in the case of Assistant General Manager, Asstt. General

Manager, Central Bank of India and Others Vs. Commissioner, Municipal Corporation for the City of Ahmedabad and Others, He, therefore, submitted that the impugned judgment and order deserves to be quashed and set-aside by allowing this Appeal and thereby remanding the Municipal Valuation Appeal to the learned Judge of the Small Causes Court, Ahmedabad for deciding the same afresh after giving opportunity of hearing to both the parties in accordance with law and in light of the aforesaid two decisions.

4. Though the respondent is duly served, he elected not to remain present before the Court.

5. We have considered the submissions advanced by Mr. Bhaskar Tanna, learned senior Counsel for the appellant. We have perused the impugned judgment and order, the decisions cited at the bar and so also the records and proceedings of the Municipal Valuation Appeal No. 4512/1990.

6. In the case of Municipal Corporation of Ahmedabad (supra), in paragraph 67 of the judgment, the Division Bench of this Court has held as under:

It would mean that even if the assessment is held to be not in accordance with law, whether because of the wrong method followed with regard to determining the rateable value or because of any irregularity or illegality in procedure or because of violation of the principles of natural justice or because notice under Rule 15(2) had not been issued, then the Small Causes Court would itself have the jurisdiction to examine evidence and determine the correct rateable value. It would be wholly inappropriate for the Small Causes Court to merely quash the assessment, which would have the effect that for the official years in question, the entire tax would be lost to the Corporation. In effect, the ratio decidendi of the decision in Anant Mills case is that the Small Causes Court exercises the same power and will have the same jurisdiction, which is exercised by the Commissioner for the purposes of determining what should be the correct rateable value.

7. The judgment delivered by the Division Bench in the case of Municipal Corporation of Ahmedabad (supra) has been carried in appeal before the Hon''ble Supreme Court in the case of Assistant General Manager, Central Bank of India (supra). The Hon''ble Supreme Court has upheld the principles enunciated by this Court in the case of Municipal Corporation of Ahmedabad (supra). In sum and substance, the finding of ''zero'' assessment has not been approved by this Court in the case of Municipal Corporation of Ahmedabad (supra), which has been affirmed by the Hon''ble Supreme Court in the case of Assistant General Manager, Central Bank of India (supra).

8. Seen in the above context, the impugned judgment and order under appeal deserves to be quashed and set-aside by restoring and remanding the Municipal Valuation Appeal No. 4512/1990 to the files of the learned Small Causes Judge, Ahmedabad for deciding the same afresh after giving ample opportunity of leading the evidence to both the parties strictly in accordance with law.

9. For the foregoing reasons, the Appeal succeeds and accordingly it is allowed. The impugned judgment and order dated 16th August 1993 passed by the learned Judge, Small Causes Court, Ahmedabad in Municipal Valuation Appeal No. 4512/1990 is quashed and set-aside. The Municipal Valuation Appeal No. 4512/1990 is restored and remanded to the Small Causes Court, Ahmedabad to be decided afresh after giving ample opportunity of leading evidence to both the parties in accordance with law. No order as to cost.

10. Registry is directed to send the records and proceedings to the Court below forthwith.

