(2011) 12 GUJ CK 0011

In the Gujarat High Court

Case No : Special Civil Application No. 208 of 2000

Bina K Baxi and Others APPELLANT

Vs

Municipal Commissioner and Others RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 140, 406
Bombay Provincial Municipal Corporations Rules, 1949 — Rule 15(1), 15(2)
Constitution of India, 1950 — Article 14, 226

Citation : (2011) 12 GUJ CK 0011

Hon'ble Judges : R.M. Chhaya, J;Harsha Devani, J

Bench : Division Bench

Advocate : Kh Baxi for Petitioner - 2, for the Appellant; Jirga D Jhaveri for Respondent : 1 - 2, for the Respondent

Judgement

Honourable Mr. Justice R.M. Chhaya

1. By way of this petition, under Article 226 of the Constitution of India, the petitioners have challenged the notice dated 16.12.1999 issued by the respondent - Corporation (Annexure- I to the petition) whereby the respondent - Corporation has called upon the petitioners to pay the outstanding amount of Rs. 1,10,127.32 of the property tax with in a period of three days based upon the bill dated 03.01.1998 issued by the respondent - Corporation under the provisions of the Bombay Provincial Municipal Corporations Act, 1949 (the Act) and the Rules framed thereunder for the years between April 1997 to March 1998, along with outstanding dues and interest thereon.

2. The brief facts are summarized as under

3. The petitioners are the members of the Simandhar Shopping Center Owners'' Association, which is incorporated under the Bombay Non- Trading Act, 1959 vide Registration No.NTC/G/870 dated 10.12.1982, and are the owners and occupiers of one office premise bearing Office No. 104 on the First Floor of the building of the aforesaid association known as "Ratnadeep " at Old Gujarat High Court Road,

Ahmedabad. That they were allotted the said premises admeasuring 220 sq. ft. by the said association vide resolution dated 14.09.1990. That the petitioners have been occupying the said premise since 09.06.1990 and since then they are having their office on the said premise as practicing advocates. That on their occupation of the said premise as the owners, the respondent - Corporation issued bill dated 16.08.1990 for the first time where by Gross Rental Value (GRV) was fixed at Rs. 7,488 / - for the yea r 1990- 91. Aggrieved by the said GRV, the petitioners had preferred an appeal u/s 406 of the Act before Small Causes Court, Ahmedabad being Municipal Valuation Appeal No. 12324 of 1990, which appeal came to be partly allowed vide order dated 05.01.1993 and GRV of the premise was fixed at Rs. 1,860/- for the year 1990-91. That the petitioners also received another bill for the next year i.e. 1991- 92 wherein also the GRV was fixed at Rs. 7,488/-. Aggrieved by the same, the petitioners preferred Municipal Valuation Appeal No. 18890 of 1991 before Small Causes Court, Ahmedabad.

4. That it was on record of the respondent -Corporation that the petitioners are the owners and occupiers of the premise in question still, however, a bill was sent by the respondent -Corporation in the year 1995 whereby petitioner No.2 was shown as the occupier of the premise and the GRV was unilaterally enhanced to Rs. 25,296/-. That in response to the said appeal the petitioners made a representation dated 26.12.1995 and ultimately the same was credited by the respondent -Corporation. That even though the same was so credited the petitioners were again sent a bill dated 03.01.1998 whereby again petitioner No.2 was shown as the occupier and GRV was fixed at Rs. 7,488/-. That thereafter on 16.12.1999 the impugned notice was served upon the petitioners whereby directing them to pay the outstanding amount of Rs. 1,10,127.32 of the property tax within a period of three days based upon the aforesaid bill dated 03.01.1998.

5. That adjoining office being Office No. 105, which has a common wall with the petitioners'' office, was initially assessed having GRV of Rs. 4,572/-for the year 1989-90. The occupier of the said office, which is area of 15 sq. mtrs., also preferred an appeal before Small Causes Court, Ahmedabad being Municipal Valuation Appeal No. 15829 of 1990, which was allowed vide judgment and order dated 25.01.1994 and the GRV of the said premise was fixed at Rs. 1,260/- for the year 1989-90. That for the premise of the same area i.e. 20.80 sq. mtrs. situated at the Second Floor being Office No. 204 is assessed by the respondent - Corporation by fixing GRV at Rs. 1,320/-. That in case of the office of the owner and occupier of Office No. 105, the respondent - Corporation has implemented the order of Small Causes Court, Ahmedabad and has continued to assess the said Office No. 105 at Rs. 1,260/- even for the subsequent years. Hence, being aggrieved by the aforesaid notice of recovery dated 16.12.1999 the petitioners prefer the present petition.

6. Heard petitioner No.2, Mr. K.H. Baxi, learned advocate appearing as person as well as on behalf of petitioner No. 1 and Ms. Jirga Jhaveri, learned advocate for

the respondent - Corporation.

7. Mr. Baxi urged that the respondent - Corporation has meted out discrimination in fixing GRV of the premise belonging to the petitioners. It was pointed out that even though it has come on record of the respondent - Corporation that the petitioners are the owners and occupiers of the premise in question the respondent - Corporation has unilaterally, without following any due process of law, has not only changed the status of the petitioners by wrongly showing petitioner No.2 as the occupier, but has enhanced the GRV again to Rs. 7,488/-. It was further argued that even though the respondent - Corporation has power and authority to review the GRV it is required to follow the procedure as prescribed under the Act as well as the Taxation Rules. It was further argued that as prescribed under the Rules for first time assessment as well as for re-assessment a special notice, contemplated under Rule 15(2) of the Rules is mandatory and without issuance of such notice the respondent-Corporation has no right to enhance the GRV. It was further pointed out that the building occupied by the occupier of Office No. 204 is constructed in the same area and in the same manner. That the are a of the office of the petitioners i.e. Office No. 102 and 204 are same, the quality of construction and the facility are same still, however, by wrongly showing petitioner No.2 as the occupier, as if it is a rented premise, the respondent - Corporation has wrongly fixed the GRV of the petitioners'' premise at Rs. 7,488/-. It was also urged that the respondent - Corporation is duty bound to implement the orders of Small Causes Court, Ahmedabad as it has been done in case of other premises of the same building. It was further pointed out that re- fixing of GRV at Rs. 7,488/- is done without following due procedure of law and without giving opportunity of being heard to the petitioners. It was therefore, submitted that the GRV so fixed arbitrarily and the bill issued on 03.01.1998 is illegal and hence, the notice issued on the basis of the said bill is bad and illegal and the same deserves to be quashed and set aside and the petition deserves to be allowed.

8. Mr. Baxi further pointed out that during pendency of the petition stay was granted by this Court directing the respondent- Corporation not to take any coercive steps to recover the amount of tax. It was also submitted that the petitioners have paid an amount of Rs. 1,07,176/- on 30.03.2005.

9. As against this, Ms. Jhaveri submitted that the present petition is not maintainable under Article 226 of the Constitution of India as the petitioners have an alternative remedy by way of an appeal as contemplated u/s 406 of the Act. It was further pointed out that as decided by this Court in the case of Municipal Corporation of the City of Ahmedabad Vs. Oriental Fire and General Insurance Co. Ltd., the GRV fixed by the Small Causes Court, Ahmedabad u/s 406 of the Act would be applicable only for the year for which an appeal is preferred.

During the course of final hearing an affidavit-in- reply has been filed by the respondent-Corporation where in a contention has been raised that on spot verification for the Assessment Year 1993- 94 requisition form was issued which was not filled in by the petitioners and, therefore, the assessment was considered on occupier basis and not on ownership basis. Resultantly, therefore, the GRV was fixed at Rs. 25,296/ - instead of Rs. 7, 488/- and on consideration of the application filed by the petitioners, the GRV from 01.04.1993 to 1997 was reduced as Rs. 7,488/-. It has been stated in the said affidavit - in-reply that special notice is not traceable.

10. We have examined the matter on merits. From the record it transpires that the petitioners purchased the said premise in the year 1990. The area of the premise occupied by the petitioners is 220 sq. ft. From the record it also transpires that earlier the respondent - Corporation had fixed the GRV of the premise in question at Rs. 7,488/-for the year 1990-91 and in appeal preferred by the petitioners, the same was reduced and fixed at Rs. 1,860/-. From the record it also transpires that the said order has been implemented by the respondent - Corporation. This fact is also stated by Ms. Jhaveri, learned advocate appearing on behalf of the respondent - Corporation.

11. However, it appears that in the bill dated 03.01.1998 the respondent - Corporation has shown petitioner No.2 as the occupier of the premise in question. Further, the respondent - Corporation has fixed the GRV at Rs. 7,488/-. However, from the record it is clear that no procedure as prescribed under the Rules, more particularly no notice as contemplated under Rule 15(2) of the Rules has been is sued by the respondent-Corporation to the petitioners.

12. It is true that the GRV fixed in the appeal would apply only for the year for which the said appeal has been preferred. However, as prescribed u/s 140 of the Act the respondent-Corporation has to revise the GRV of a premise every four years. However, in the instant case, the respondent - Corporation has not brought anything on record to show that such procedure has been followed by the respondent - Corporation for re- fixing and re- assessing GRV for the premise in question. The respondent - Corporation has not brought on record any special notice having been issued under Rule 15(2) of the Rules. It is, therefore, an admitted position that the respondent - Corporation while fixing GRV for the premise at Rs. 7,488/- has not issued special notice as contemplated under Rule 15(2) of the Rules. In such an event fixing of GRV at Rs. 7,488/- is bad and illegal.

13. Even though the GRV fixed for a similar premise is not always comparable and the respondent -Corporation can fix different GRV for adjoining premise. However, in the instant case, for Office Nos. 204 and 104, which are of the same area, situated in same building and are constructed by the same association, the respondent - Corporation has wrongly fixed the GRV of the petitioners premise being Office No. 104, which is having same area, at Rs. 7,488/- instead of Rs. 1,260/- and on this count also, the action of the respondent-Corporation is illegal. Thus, unilaterally fixing of GRV at Rs. 3,488/- upto Assessment Year 1996-97 even though the very adjoining premises of the same area with same

facility occupied by the owner is being assessed differently and the GRV is much less than the case of the petitioners would render the decision impugned in the present petition discriminatory and violative of Article 14 of of the Constitution of India.

14. The contention raised by Ms. Jhaveri that the present petition is not maintainable against the impugned notice and alternative remedy by way of an appeal is available is incorrect in law and facts. Firstly, it has been averred in the petition that no bill or a notice under Rule 15(1) of the Rules or a special notice under Rule 15(2) of the Rules has been issued by the respondent - Corporation. The respondent-Corporation has not filed any rebuttal to the said contention of the petitioners, save and except making a statement in the affidavit - in-reply that the record is not available. As held by this Court in the case of Municipal Corporation of the City of Ahmedabad (supra), a petition under Article 226 of the Constitution of India would be maintainable against a bill and hence, a notice of recovery issued by the respondent - Corporation in pursuance to the bill can be challenged by way of a petition under Article 226 of the Constitution of India.

15. The notice impugned in the present petition is issued without giving any opportunity of being heard to the petitioners. The respondent-Corporation has not been able to even assert and/or prove that the notice as contemplated under Rule 15(1) of the Rules and/or a special notice u/s 15(2) of the Rules has been issued and that the same has been received by the petitioners. The respondent-Corporation was well aware that the GRV fixed for the premises in the same building having same area is much lower still, however, the impugned notice is issued without even observance of principles of natural justice as aforesaid. Hence, the impugned notice dated 16.12.1999 of recovery deserves to be quashed and set aside and is hereby quashed and set aside. The respondent - Corporation shall give an opportunity of being heard to the petitioners before making any recovery, if any. The respondent - Corporation after hearing the petitioners shall take appropriate decision in accordance with law. The respondent - Corporation is further directed to refund the excess amount of tax, if any, collected from the petitioners.

16. Rule is made absolute accordingly. There shall be no order as to costs.