

(1945) 11 BOM CK 0019
In the Bombay High Court

Globe Theatres Ltd.

APPELLANT

Vs

Judge of Small Cause Court

RESPONDENT

Date of Decision : 13-11-1945

Acts Referred:

City of Bombay Municipal Council Act, 1988 — Section 217

Citation : AIR 1947 Bom 108

Hon'ble Judges : Kania, J

Bench : Division Bench

Judgement

Kania, J.—The petitioners are a private limited company and carry on the business of exhibiting cinema films in the property known as Regal Cinema in Fort, Bombay. They are also the owners of the property. As such, under the City of Bombay Municipal Act they have to pay, amongst other things, property taxes, on the rateable value fixed by the Municipality from time to time. Up to the official year 1942-43 the rateable value was fixed at Rs. 30,550. For the year 1943-44 the Municipality raised the rateable value to Rs. 50,470. This was arrived at on the footing of the estimated gross takings having regard to the sitting capacity of the theatre. Several other cinemas were similarly assessed. The petitioners being dissatisfied with the assessment made by the Municipality appealed to the Chief Judge of the Small Cause Court u/s 217, City of Bombay Municipal Act. Other cinema owners, who were the proprietors of the buildings in which their cinemas were run, also filed similar appeals and all of them were disposed of by the Chief Judge by one judgment. The petitioners' contention was that in arriving at the rateable value the Municipality had acted contrary to law as found in the Municipal Act and in disregard of other laws for the time being in force. It is contended in the petition that any other method of assessment is illegal and results in an arbitrary tax not sanctioned by the law. The petition is filed for obtaining from the Court a writ of certiorari to quash the order of the Chief Judge of the Small Cause Court who confirmed the rateable value fixed by the Municipality.

2. In considering the prayer for the writ of certiorari it has to be remembered that this is a high prerogative writ issued by a superior Court in respect of the exercise of judicial or quasi-judicial functions by another authority, when the contention is that the exercising authority had no jurisdiction or had exceeded its jurisdiction. This general principle is admitted to be correct. The contentions of the petitioners, as found in the petition and submitted in detail by the learned Counsel for them give rise to three questions: (1) Is it right for the Municipality and the Chief Judge to fix a rateable value by proceeding on the basis of the sitting accommodation of the theatre? (2) Is it right to take 53 per cent, as a proper basis for calculations? (3) Is seven and a half per cent. proper to be taken? Is there any evidence to fix that percentage? u/s 154, City of Bombay Municipal Act it is obligatory to deduct ten per cent of the annual letting value to arrive at the rateable value. In the present case there is nothing to show that the Chief Judge has acted according to Section 154. It is contended on behalf of the petitioners that if the answer to any of these three questions is in their favour, a case for the issue of the writ of certiorari is made out.

3. It is therefore first necessary to consider in what cases the writ of certiorari may issue. The general statement that it is issued when there is want of jurisdiction or excess of jurisdiction cannot be disputed. But what does that exactly mean? This question was considered in (1874) L.R. 5 P, c. 417 The relevant discussion in respect of the Court's jurisdiction to issue a writ of certiorari is found at pp. 442 to 444. At p. 442 the Board observed as follows:

In order to determine the first it is necessary to have a clear apprehension of what is meant by the term "want of jurisdiction". There must, of course, be certain conditions on which the right of every tribunal of limited jurisdiction to exercise that jurisdiction depends. But those conditions may be founded either on the character and constitution of the tribunal, or upon the nature of the subject-matter of the inquiry, or upon certain proceedings which have been made essential preliminaries to the inquiry, or upon facts or a, fact to be adjudicated upon in the course of the inquiry. It is obvious that conditions of the last differ materially from those of the three other classes. Objections founded on the personal incompetency of the Judge, or on the nature of the subject-matter, or on the absence of some essential preliminary, must obviously, in most cases, depend upon matters which, whether apparent on the face of the proceedings or brought before the superior Court by affidavit, are extrinsic to the adjudication impeached. But an objection that the Judge has erroneously found a fact which, though essential to the validity of his order, he was competent to try, assumes that, having general jurisdiction over the subject-matter, he properly entered upon the inquiry, but miscarried in the course of it. The superior Court cannot quash an adjudication upon such an objection without assuming the functions of a Court of appeal, and the power to re-try a question which the fudge was competent to decide.

The Board then considered the two classes of cases falling on each side of the

dividing line. They noticed (1841) 1 Q.B. 762 They also noticed (1848) 12 Q.B. 9604 and (1850) 14 Q.B. 710.5 The Board approved of a passage from the judgment of Blackburn J. in (1863) 3 B. & Section 620.6 The passage runs as follows (p. 640):

It is a general rule, that no Court of limited jurisdiction can give itself jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limit to its jurisdiction depends; and however its decision may be final on all particulars, making up together that subject-matter which, if true, is within its jurisdiction, and, however necessary in many cases it may be for it to make a preliminary inquiry, whether some collateral matter be or be not within the limits, yet, upon this preliminary question, its decision must always be open to inquiry in the superior Court.

It was observed that all those cases noticed later on left untouched the authority of and the class of cases n(1841) 1 Q.B. 762oticed in the first instance.

4. This principle was reaffirmed and followed in (1906) 2 K.B. 501 The two passages quoted above from (1874) L.R. 5 P.C. 417,1 and from (1863) 3 B. & Section 6206, were considered binding authority and were followed. Those authorities show that the question whether the Court has jurisdiction or not depends on a decision of a matter which is not the subject of adjudication but on some extrinsic material. On behalf of the petitioners, 38 Bom. 2938 was relied upon. That was not a case of writ of certiorari. In that case the Magistrate was clothed with the authority to fix the estimated gross annual rent at which the houses, buildings and lands of the Turf Club at Poona liable to property rates may reasonably be expected to be let from year to year. Instead of proceeding to do so, the Magistrate took the total source of gross income at Rs. 2,50,000. He considered the net profits to average about Rs. 30,000 a year. He fixed the gross annual letting value, within the meaning of the Regulation, at four per cent, of Rs. 2,50,000. When the payment of the tax so made out was attempted to be enforced, the payment was made under protest, and a suit was filed to recover back the amount. When the matter reached the High Court on appeal it was first noticed that the time of three days given to the Turf Club to show cause against the rate imposed was obviously quite inadequate and on that ground alone the action of the Magistrate was considered unwarranted by the Regulation. It was stated that was sufficient to make the levy of the tax illegal. The High Court further considered that the method adopted by the Magistrate was obviously wrong because no hypothetical tenant could be expected to offer the two and a half lacs of rupees as the rent for the property, which was taken as the annual letting value for the purpose, because if he did so he would be carrying on the business at a loss. Even if they were let for Rs. 30,000, the man would make no profit. The Court therefore considered the act of the Magistrate illegal.

5. 11 Cal. 2759 was relied upon to show that when the assessment was made without jurisdiction a writ of certiorari could be granted. In that case the Municipality had assessed a family dwelling house not on the footing of its annual

letting value but on the following basis (p. 280):

In assessing the said premises.... I estimated the total expenditure on the building and land at Rs. 1,80,000 and I assessed the gross annual rent at which the said house and premises might reasonably be expected to let from year to year at Rs. 4,800, being at the rate of 2½ per cent, on the said sum Rs. 1,80,000.

It was considered that a comparison should have been made in respect of the premises in the adjoining locality and the method of taking the cost of land and building and fixing a certain percentage as the return expected upon the land and building was not the method authorised by the Act. In view of 71 I.A. 11310 the correctness of this may be hereafter questioned. I am not concerned in the present case with this method of arriving at the annual letting value. In the course of argument several decisions of English Courts were also cited and it was observed that this method of valuation, which is described as the contractor's method, is one of the recognised methods of valuation. The important point to be noticed only is that the Court having found that the obligation of the assessing authority being to assess the annual letting value, calculation of the annual letting value, on the footing of two and three-fourths per cent, on the cost of the land and building was not the method permitted by law. Apart from that the case does not help the petitioners in the present discussion.

6. In 41 Bom. L.R. 98411 the question of the issue of the writ of certiorari came to be considered by a Bench of our Court. In that case in direct conflict with the express provision of Section 154(2) of the Act the Municipality and the Chief Judge had taken the value of the machinery, which consisted of three lifts and one water pump, in arriving at the rateable value. It was obviously a case where the Chief Judge had exercised jurisdiction in respect of the assessment, which was not in him by reason of Section 154(2), and the High Court had therefore jurisdiction to interfere in the matter.

7. The effect of these authorities, therefore, is that when an unauthorised arbitrary method is adopted or jurisdiction is exercised in express contravention of a section of the Act and the taxation is made on that footing, the Court has considered it to be a case of want of or exceeding jurisdiction. But it must be noticed that in all those cases what excluded the jurisdiction was extrinsic to the adjudication involved in the matter.

8. Having regard to these decisions it is next necessary to consider the provisions of the City of Bombay Municipal Act. Section 140(omitting the immaterial portions) is in these terms:

The following taxes shall be levied on buildings and lands in the city, and shall be called "property taxes", namely:

(c) a general tax of not less than eight and not more than seventeen per centum of their rateable value together with not less than one-eighth... etc.

Section 114(1) is in these terms:

In order to fix the rateable value of any building or land assessable to a property-tax, there shall be deducted from the amount of the annual rent for which such land or building might reasonably be expected to let from year to year a sum equal to ten per centum of the said annual rent and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever.

9. Reading these two provisions together the scheme appears to be that in order to get the rateable value required by Section 140(c) the Municipality must first take into consideration at what amount the land or building might reasonably be expected to let from year to year. The next point to consider is the argument of the landlord that the tenant might be willing to pay the rent but he himself would have to incur expenses for repairs, insurance, etc. For this, instead of allowing discussion and proof of various items, the Legislature has fixed a ten per cent, reduction. This having been done, the rateable value within the meaning of Section 140(c) is arrived at. It is therefore first necessary for the Municipality or the Chief Judge to consider for what amount the land or building may reasonably be expected to let from year to year. The expression "annual letting value" was construed by Lord Halsbury in (1899) 1 Q.B. 66712 in these terms (p. 673):

The problem is to ascertain, according to the statute, what a tenant from year to year might reasonably be expected to give as rent. For the solution of that problem it appears to me that apart from the decisions,... all that could reasonably affect the mind of the intending tenant ought to be considered.

It is recognised that in the case of land or building which is let to a tenant the actual rent is not necessarily the criterion. In the same way, if premises were occupied by the owner himself, that does not prevent the property from having an annual letting value. In the normal course where instances are available and there is no great diversity in the character and user of the premises, a comparison of the rents of adjoining buildings is accepted as a useful guide, but when such evidence is either not available or considered unreliable, the problem for the taxing authorities has to be faced and solved otherwise. In such a case the question arises what alternative method can be relied upon as a guide. If a tenant takes the premises peculiarly suited to him for a particular business, it is recognised in England that the profits which the tenant expects to make is a feature which may be taken into consideration. While the Court must be cautious in accepting observation found in cases decided in England, which are based on numerous Rating and Taxing Acts, the general principles about fixing the annual letting value are useful guides, if they are stated as principles irrespective of the wording of the particular statute. In (1926) A.C. 33113 the question of rating a water undertaking extending over several parishes came for consideration. The Court considered that the actual profits made by the occupants for the time being was a useful and relevant factor to determine what a tenant would be willing or likely to pay for hiring the premises. In the same way in (1899) 1 Q.B. 667,12 where the question of rateable value of a public house came to be

considered, the Court of Appeal held that the amount of weekly takings, the largeness of the business actually done, etc., were relevant facts on which evidence could be led. These factors are relevant for considering what expectations a hypothetical tenant would have in carrying on business at that particular place and what he would be willing to pay for running the same. This view of the Court of Appeal was confirmed by the House of Lords in 1900 A.C. 150.¹⁴ If the profits are higher, that will induce the tenant to pay a higher rent and therefore that factor is important to be taken into account,

9a. Now, if the profits of a tenant are a recognised method and point to be considered in arriving at the annual letting value, how are they to be ascertained? In the ordinary course the tenant or landlord is not obliged to produce his books of account. In fact it has been recognised that they are generally reluctant to allow a roving inquiry into their business, when the point to be determined is only the rateable value of the premises. In cases where the books are either not produced or not available or not considered reliable, by what method the rating authority can fix the annual letting value? In the case of a cinema, a percentage of the sitting accommodation, according to the text books, is a recognised method. In *Witton Booth on Valuation for Rating*, Edn. 3, Chap. 19 deals with the valuation of theatres, cinemas, and other rendezvous of pleasure and entertainment. At p. 387 there is an example of working out the rateable value on the footing of the sitting accommodation of different classes of seats in the theatre. The days of the week during which a certain percentage of different classes of seats may be reasonably expected to be occupied are calculated and a distinction is made in respect of the summer and the winter seasons. The total takings of the capacity house per annum and the expected occupation was worked out and the gross value which was fixed was found to work out at 3.87 per cent. It was considered that the gross valuation was not improper. This is an illustration given in a text book. As regards decided cases I shall refer only to one, the case in (1939) 31 *Rate & Inc-Tax. Rep.* 120.¹⁵ It was a rating appeal in the matter of a cinema. The decision was given at Burneley Quarter Sessions. In that case the assessment was made on the actual takings estimated by the Committee. The assessment Committee argued that the annual gross takings ought not to be less than £10,200 as that was the actual figure shown by the documents. The Committee had fixed the assessment on £8,200. The valuer for the Committee stated that his valuation of £1,675 was based on eight per cent, of the receipts. The appellants contended that the adoption of eight per cent, of the gross annual takings as the amount of the annual letting value of the cinema was high. The appeal was dismissed. This case shows that in England in the matter of rating cinemas the percentage on the estimated gross takings is considered recognised method to arrive at the annual letting value. This also shows that under the circumstances of that case eight per cent, was not considered a high rate.

10. It is thus clear that the method adopted in the present case, of fixing seven and a half per cent, on fifty-three per cent, of the sitting capacity of the theatre,

is a recognised method in cases where the cinema concern is run by the owner of the building. If this is a recognised method of arriving at the annual letting value, the Chief Judge has not acted without jurisdiction. The method adopted by him is not arbitrary and is not one which is not recognised by law. The contention therefore that he had acted without jurisdiction, in accepting this method fails. At one time it was suggested in the course of argument that the Municipality and the Chief Judge should have acted on the footing of rent fetched by certain cinemas. As the judgment shows evidence in respect of only three cinemas was given. The Chief Judge has dealt with the same and considered that method unsatisfactory under the circumstances of the case. I must point out that I am not sitting here in appeal over the judgment of the Chief Judge. The jurisdiction of the Court in the matter of issuing a writ of certiorari is limited to cases where the authority whose action is questioned has acted without jurisdiction or in excess of jurisdiction only. If he has interpreted the law erroneously, he has still the jurisdiction to apply the law, and this Court cannot interfere with his conclusion. After taking all evidence which was tendered before him, he considered that in the particular case the method of fixing a percentage on the accepted occupation capacity of the theatre was the right method and he had jurisdiction to act on that footing.

11. The second question is about seven and a half per cent. This is a question of quantum. There is and can be no appeal on the question of quantum to this Court. It is a matter within the jurisdiction of the learned Chief Judge. On the face of the record it is not such a grossly exaggerated rate that the Court can come to the conclusion that the assessing authority had missed the point altogether and in contravention of the law had acted in a wayward or arbitrary method. It is only in such cases that want of jurisdiction may have to be considered. On the materials before me he had jurisdiction to fix the percentage. Exhibit K, which is the balance sheet and profit and loss account of the petitioner company for the year in question, was tendered by the petitioners. The judgment of the learned Chief Judge shows that he had compared the estimated capacity of the theatre with the actual occupation during the year in question by going through the figures found in the document. He has noticed the net profits of the company, and having taken all that into consideration if he has fixed seven and a half per cent, as the proper rate, he had jurisdiction to do so. I may notice in passing that in the rating appeal case mentioned above eight per cent, was not considered high so as to justify an interference. The contention of the petitioners on this point therefore fails.

12. The third question is in respect of Section 154, Municipal Act. It was argued that on a true construction of the section, it must be shown that the assessing authority and the Chief Judge had worked out two processes: (1) they had arrived at the figure of the annual letting value of the land and buildings, and (2) allowed a reduction of ten per cent, on the said annual rent as allowance for repairs, etc. It was contended that the decision of the Chief Judge does not show that he had done the second thing at all. In this connection it should be pointed

out that the duty of the Chief Judge is to fix the rateable value for the purpose of Section 140(c) of the Act. When the Municipality fixed the rateable value, the petitioners appealed. In that memo of appeal it was not contended that the Municipality in fixing the rateable value had not given the ten per cent. reduction. In the same way in the present petition it has nowhere been stated that in fixing the rateable value the deduction of ten per cent is not given. In order that the Court may interfere with the conclusion of the Chief Judge the burden of proving the essential facts is on the petitioners. By merely pointing out that there is no express reference in the judgment of the Chief Judge to the ten per cent, reduction, this burden, in my opinion, is not discharged. Section 154 does not state that the deduction should be expressly shown to be made to support the rateable value which is fixed for the purposes of Section 140(c) of the Act. That process could equally be done mentally. In the present case the only thing relied upon is that in the judgment of the Chief Judge it is not stated that he had allowed the ten per cent, reduction out of the annual letting value at which the tenant may reasonably be expected to hire the premises before he arrived at the rateable value for the purpose of Section 140(c). As I have pointed out, the law does not require him to say so in express words. The mere absence to show the deduction which is not required to be shown in the document does not therefore result in the petitioners proving that there was an omission to make this deduction. I also doubt if this is a question which will affect the jurisdiction of the Chief Judge. To put it at its highest, he had committed an error in omitting to give a deduction, which he was obliged to do in law. I doubt if such a mistaken construction can be called want of jurisdiction or exceeding his jurisdiction in the matter of fixing the rateable value. The point is not extrinsic to the adjudication which is involved. It is a part of the adjudication itself. In my opinion therefore on this point also the petitioners' contention is not substantiated and there is no proof of want of jurisdiction or excess of jurisdiction. The result is that the petition fails. The rule is discharged with costs to be taxed on a long cause scale but with one counsel only.