

**(1983) 08 GUJ CK 0019**  
**In the Gujarat High Court**

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| H.U.F. Bai Nani and Another  | Vs | APPELLANT  |
| Baroda Municipal Corporation |    | RESPONDENT |

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**Date of Decision :** 30-08-1983

**Acts Referred:**

Bombay Provincial Municipal Corporations Act, 1949 — Section 2(1A)  
Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 11, 2(1A)  
(ii)

**Citation :** (1984) 1 GLR 526

**Hon'ble Judges :** S.A. Shah, J;N.H. Bhatt, J

**Bench :** Division Bench

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**Judgement**

S.A. Shah, J.—This group of fourteen petitions raises a common question regarding the legality of the annual rateable value of the property known as "Navrang Talkies" situated in the city of Baroda. It is an admitted position that the Baroda Municipal Corporation, hereinafter referred to as "the Corporation", revised the annual rateable value which was Rs. 20,760/- upto 1972-73 and in 1973-74 the same was revised and increased to Rs. 83,602/- per year. The owners of the Navrang Talkies have not accepted the said valuation and filed appeals and being dissatisfied with the findings thereon had filed writ petitions being Special Civil Application Nos. 1186/80, 1263/80, 1264/80 1265/80, 1266/80, 1267/80 and 1268/80 (seven petitions) against the decision of the Second Extra Assistant Judge, Baroda. Similarly, as against this, the Corporation had filed petitions being Special Civil Application Nos. 490/80, 491/80, 492/80, 493/80, 494/80, 495/80 and 2166/80.

2. Since all the petitions are concerned with the assessment of the annual rateable value of the same property, namely, Navrang Talkies and are raising common contentions and challenges, we are disposing of all the petitions by this common judgment. We are taking the facts from Special Civil Application No. 1186 of 1980 for the sake of convenience, since there is no difference in facts and averments in other petitions except the period. In para 4 of the petition the petitioners admit that the rateable value of the property prior to 1973 was fixed

at Rs. 28,769/-. However, it is alleged that on 1-4-1973 the rateable value of property (Navrang Cinema) was revised and increased to Rs. 83,602/- by the Corporation arbitrarily and without any basis.

3. According to the owners-petitioners of Special Civil Application No. 1186 of 1980 - the revision was made from the year 1973-74 in rateable value and they had filed objections and complaint before the Municipal Commissioner against the arbitrary increase of rateable value resulting into substantial increase in the property tax. However, the Commissioner confirmed the rateable value fixed by the Corporation and bills in respect thereof were served upon the petitioners on the basis that the rateable value of the property was Rs. 83,602/-.

4. The petitioners-owners filed Tax Appeal No. 736 of 1974 in the Court of Civil Judge (Senior Division), Baroda, which was partly allowed by the learned Judge by his order dated 10-10-1978 and the rateable value was reduced to Rs. 20,760/-. The petitioners had also raised contentions that the "Navrang Talkies" was rented at the annual rent of Rs. 5,400/- by the rent-note executed on or about 26-3-1964 and the rent agreed to by the parties in the rent-note was Rs. 5,400/- payable from April 1, 1964. The petitioners, therefore, contended that the rateable value must be fixed at Rs. 5,400/- per year which was rejected by the learned Civil Judge (Senior Division). Appeals of the petitioners viz., Tax Appeal Nos. 638 of 1974 and 29 of 1976 in respect of subsequent years were also decided accordingly but Tax Appeals Nos. 106 of 1975, 181 of 1975, and 45 of 1977 were dismissed on technical ground, and therefore, the petitioners filed further appeals (in all seven) in the District Court at Baroda which were heard by the 2nd Extra Assistant Judge at Baroda. The Baroda Municipal Corporation also, being aggrieved by the judgment of the Civil Judge (Senior Division), Baroda, reducing the rateable value of the property from Rs. 83,602/- to Rs. 20,760/- filed seven counter-appeals in the District Court at Baroda. The learned 2nd Extra Assistant Judge at Baroda who heard all the fourteen appeals dismissed the same by a common judgment dated 21st August, 1979. The petitioners-owners as well as the Baroda Municipal Corporation, being aggrieved by the said judgment, filed these writ petitions in this Court.

5. Mr. K.S. Nanavati, learned Advocate, appearing on behalf of the petitioners-property holders has raised three contentions, namely:

(1) that the judgment of both the Courts below suffered from one vice, namely, while fixing the rateable value at Rs. 20,760/- the Courts have failed to apply the principles of standard rent method provided by Section 2(1A) of the Bombay Provincial Municipal Corporations Act, 1949;

(2) that the Courts below have not given reasons for arriving at the figure of Rs. 20,760/- as rateable value; and

(3) that both the Courts below have committed error in holding that the filing of objections is a condition precedent for maintainability of the appeals and, therefore, three tax appeals bearing Nos. 160 of 1975, 181 of 1975 and 45 of

1977 were wrongly rejected.

6. Mr. N.R. Oza, learned Counsel appearing on behalf of the Corporation who had also filed substantive appeals has contended that under proviso (c) to Section 2(1A)(ii) of the Bombay Provincial Municipal Corporations Act, 1949 the valuation of Rs. 83,602/- has been properly fixed, by the Commissioner and the same being legal the rateable value ought to have been maintained, and the three tax appeals as stated above have been rightly dismissed by both the Courts below since the owners had not filed any complaints (objection) before the Commissioner which is a condition precedent for the maintainability of the appeal before the Court.

7. Before we examine the respective contentions and submissions of the parties, it would be necessary to examine the scheme of the Bombay Provincial Municipal Corporations Act, 1949, hereinafter referred to as "the Act". Section 2(1A) defines only "annual letting value", which is reproduced below for the sake of convenience:

2. In this Act, unless there be something repugnant in the subject or context, -  
(1A) "annual letting value" means,-

(i) in relation to any period prior to 1st April, 1970, the annual rent for which any building or land or premises, exclusive of furniture or machinery contained or situate therein or thereon, might, if the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 were not in force, reasonably be expected to let from year to year with reference to its use;

(ii) in relation to any other period, the annual rent for which any building or land or premises, exclusive of furniture or machinery contained or situate therein or thereon, might reasonably be expected to let from year to year with reference to its use;

and shall include all payments made or agreed to be made to the owner by a person (other than the owner) occupying the building or land or premises on account of occupation, taxes, insurance or other charges incidental thereto:

Provided that, for the purpose of Sub-clause (ii)-

(a) in respect of any building or land or premises the standard rent of which has been fixed u/s 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 the annual rent thereof shall not exceed the annual amount of the standard rent so fixed;

(b) in the case of any land of a class not ordinarily let the annual rent of which cannot in the opinion of the Commissioner be easily estimated, the annual rent shall be deemed to be six per cent of the estimated market value of the land at the time of assessment;

(c) in the case of any building of a class not ordinarily let, or in the case of any industrial or other premises of a class not ordinarily let, or in the case of a class

of such premises the building or buildings in which are not ordinarily let. if the annual rent thereof cannot in the opinion of the Commissioner be easily estimated, the annual rent shall be deemed to be six per cent of the total of the estimated market value, at the time of the assessment, of the land on which such building or buildings stand or as the case may be, of the land which is comprised in such premises, and the estimated cost at the time of the assessment, of erecting the building or, as the case may be, the building or buildings comprised in such premises;

8. Section 2(1A)(i) concerns the period prior to 1st April, 1970 and therefore that provision is not material for the purpose of these petitions. Sub-clause (ii) defines the annual letting rent for subsequent periods as "annual rent for which any building or land or premises, exclusive of furniture or machinery contained or situate therein or thereon, might reasonably be expected to let from year to year with reference to its use", (emphasis added). It is, therefore, clear that in order to arrive at the annual letting value, one has to ascertain or assess the annual rent which reasonably can be expected from the property in question. It is not in dispute that Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, hereinafter referred to as "Bombay Rent Act" was in force at the relevant time in Baroda. Therefore, in cases where the standard rent is fixed u/s 11 of the Bombay Rent Act, the said premises will be governed by the rent so fixed u/s 11 of the Bombay Rent Act. The question, therefore, arises, in cases whose standard rent of the premises is not fixed u/s 11 of the Bombay Rent Act, whether the assessing authority has to assess the rent, in consonance with the provisions of the Bombay Rent Act, or after the rent which the property might fetch at the relevant date or year for which the tax is to be computed. This question requires serious consideration and, therefore, we will deal with this question in detail hereinafter. Proviso (b) is applicable only to the land. Therefore, that proviso is not attracted. The Corporation relies upon the proviso (c). Opening words of proviso (c) are: "in the case of any building of a class not ordinarily let, or in the case of any industrial or other premises of a class not ordinarily let, or in the case of a class of such premises the building or buildings in which are not ordinarily let, if the annual rent thereof cannot in the opinion of the Commissioner be easily estimated...."

9. It is, therefore, clear that this proviso can be pressed into service firstly, if the building or industrial premises or any class of premises which are not ordinarily let and, secondly, the annual rent thereof cannot in the opinion of the Commissioner be easily estimated. The premises in question is a cinema theatre. It has been let since many years. It is an admitted position that the rateable value of the said premises was fixed at Rs. 20,760/- without objections upto 1973. Not only that, but it is a matter of common knowledge that there is accute scarcity of building including theatres in the city of Baroda and by no stretch of imagination it can be said that such type of premises are not ordinarily let or its rent cannot be easily estimated. In that view of the matter it is not possible for the Corporation to rely upon the proviso (c) to fix the annual rateable value at 6

per cent of the estimated market value of the premises. Nothing has been shown by the Corporation that such premises was not and ordinarily capable of being leased or that its annual letting value according to the provisions of Section 2(1A)(ii) main part was not capable of being estimated. The method adopted by the Corporation, therefore, to assess the annual letting value or the rateable value in accordance with proviso (c) cannot be accepted. The assessing authority, therefore, was enjoined to fix the annual letting value in accordance with the provisions of Section 2(1A)(ii) main part of the Act, and not under its proviso.

10. Before we go to the main interpretation of Clause (ii) of Section 2(1A) we will dispose of the arguments of Mr. K.S. Nanavati that both the courts below have wrongly rejected the evidence of rent-note, produced at Annexure-A to the petition and that the annual letting value of the premises should not exceed Rs. 5,400/- as fixed in the said rent-note. It is admitted by the petitioners-owners themselves in para 4 of the petition that the rateable value of the property was fixed at Rs. 20,760/- prior to 1973 and they were paying the property tax on the basis of the said rateable value of Rs. 20,760/- without any grievance. If the said value is assessed by the Corporation prior to 1973 in accordance with Section 2(1A)(ii) and if the same is not objected by the petitioners-owners, and they were actually paying the tax on the basis of the said value, unless it is shown by cogent and positive evidence that the valuation arrived at by the Corporation was arbitrary or illegal, by merely raising objections or making some allegations, it is not possible to accept their contentions. The only evidence which is pressed into service by the petitioners-owners, is the rent-note dated 26-3-1964 executed by one Dilip Thakorlal Mehta, partner of Navrang Cinema in favour of Kannaialal Takorlal as Karta of his HUF. It is not disputed that some of the members of the HUF are also partners of the firm "Navrang Cinema". The rent-note appears to have been executed by Dilip Takorlal Mehta, as partner in favour of his own brother Kannaialal Takorlal Mehta, alleged to be partner of Navrang Cinema. The city of Baroda is fast developing. In the year 1964, i.e. after the State of Gujarat came into existence there was accute shortage of buildings. In a city like Baroda where the rent is exhorbitent it is not possible to accept the contention that the annual rent of Rs. 5,400/- was reasonable or genuine for a theatre situated in the heart of the city. The rent-note is in favour of the partnership in which some of the members of the HUF are the partners. It is, therefore, not possible to accept the contention that the rent which was fixed was reasonable or that the premises were rented at the rate prevailing in the market. Either the said rent was concessional or it is possible that the same might have been fixed with some ulterior purpose in view. However, when both the appellate authorities have arrived at a conclusion that the said rent was not genuine and that the rent was fixed by the consent of the parties, for the purpose of low fixation of annual letting value of the property, we in exercise of our extraordinary jurisdiction under Articles 226 & 227 of the Constitution or in our Certiorary writ jurisdiction, cannot reverse the said findings of facts unless the same is shown to be perverse. No other material evidence has been shown to us to enable us to

reverse the findings. We are, therefore, of the opinion that the rent-note Annexure-A has no evidentiary value and it cannot be taken into consideration for the purpose of fixing the annual rental value of the said premises. If the rent-note is out of consideration, then there is no other evidence or averments to show that the rateable value fixed by the Corporation till 1973 was arbitrary or illegal. As a matter of fact the petitioners have accepted this rateable value fixed by the Corporation and had paid the taxes on the basis of that without any objection for years. The real dispute arose because the Corporation revised the same and increased the rateable value of Rs. 83,602/- from Rs. 20,760/- Mr. K.S. Nanavati, learned Advocate appearing for the petitioners did not press the matter any further. Therefore, the petitioners have failed to prove that the rateable value of Rs. 20,760/- was arbitrary or illegal.

11. Mr. N.R. Oza learned Counsel appearing for the Corporation vehemently argued that the rateable value assessed by the Corporation at Rs. 83,602/- is legal and valid. Mr. Oza has taken us through various provisions of the Act in order to understand the scheme of the Act. He has invited our attention to provisions of Chapter VIII which contains taxation rules. Our particular attention was drawn to Rule 7 of the said Chapter which reads as under:

7.(1) In respect of industrial premises and in respect of any other premises, which the Commissioner may decide to treat as one property having regard to the nature of the premises and the use or uses to which they are put or are capable of being put the rateable value of the buildings and land comprised in such premises shall be determined premises-wise.

He, therefore, submitted that so far as industrial premises and other premises are concerned the rateable value can be assessed considering the use to which they are put or are capable of being put to such use, and Navrang Theatre being a class of premises used for commercial purposes the Commissioner was justified in assessing the rateable value in accordance with proviso (c) to Section 2(1A)(ii) of the Act. Mr. Oza relied upon the decision in the case of *The Anant Mills Co. Ltd. and Ors. v. State of Gujarat* and Ors. 14 G.L.R. 826 . The said decision will not help Mr. Oza because we are not concerned with the vires of proviso (c). It is nobody's case that the Commissioner cannot exercise power under proviso (c), in respect of premises which is not ordinarily capable of letting or whose rental value cannot be easily assessed. The real question which arises for our consideration is the rateable value of the building whose standard rent is not fixed under the provisions of Section 11 of the Bombay Rent Act, whether the rent should be fixed at the rates prevailing in the market at the relevant time or whether the Commissioner has to assess the standard rent of the premises in accordance with the Bombay Rent Act and thereafter to decide the rateable value of the premises. Mr. K.S. Nanavati contended that before the annual letting value of the premises is assessed the Commissioner has to first assess the standard rent of the building in accordance with the provisions of the Bombay Rent Act and having ascertained the standard rent the assessing authority has to fix the

rateable value in accordance with the standard rent. In support of the said proposition Mr. Nanavati relied on the case of *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, . In the aforesaid case Section 3(1)(b) of the Punjab Municipal Act (III of 1911) defining the annual value of the building came up for consideration before the Supreme Court. Section 3(1)(b) of the Punjab Municipal Act defines the annual value to mean, in the case of any house or building "the gross annual rent at which such house or building... may reasonably be expected to let from year to year" (emphasis by us) subject to certain specified deductions. The Supreme Court after considering three previous judgments, namely, (1) *The Corporation of Calcutta Vs. Sm. Padma Debi and Others*, *Corporation of Calcutta Vs. Life Insurance Corporation of India*, ; and (3) *The Guntur Municipal Council Vs. The Guntur Town Rate Payers' Association etc.*, , has observed in relation to the Delhi Rent Control Act, 1958, as under:

...The view taken was that there was no material distinction between buildings fair rent of which has been actually fixed by the Controller and those in respect of which no such rent has been fixed and even if the fair rent has not been fixed by the Controller, the upper limit of the fair rent payable in accordance with the principles laid down in the Act is bound to enter into the determination of the rent which the landlord could reasonably expect to receive from a hypothetical tenant. The principle of this decision applies wholly and completely in the present case and following that principle it must be held that the annual value of a building governed by the Delhi Rent Control Act, 1958 must be limited by the measure of standard rent determinable under the Act. The landlord cannot reasonably expect to get more rent than the standard rent payable in accordance with the principles laid down in the Delhi Rent Control Act, 1958. It is true that the standard rent of the building not having been fixed by the Controller, the assessing authority would have to arrive at its own figure of standard rent by applying the principles laid down in the Delhi Rent Control Act, 1958 for determination of standard rent but that is a task which the assessing authority would have to perform as a part of the process of assessment and in the *Guntur Municipal Council's* case, this Court has said that it is not a task foreign to the function of assessment and has to be carried out by the assessing authority. When the assessing authority arrives at its own figure of standard rent by applying the principles laid down in the Act, it does not, in any way usurp the function of the Controller, because it does not fix the standard rent which would be binding on the landlord and the tenant, which can be done only by the Controller under the Act, but it merely arrives at its own estimate of standard rent for the purpose of determining the annual value of the building. That is a perfectly legitimate function within the scope of the jurisdiction of the assessing authority.

12. There is no doubt that the rateable value of buildings or premises where Rent Act is in force must necessarily be co-related with the standard rent assessable to such premises. In Baroda, the Bombay Rent Act was in force, and therefore the

rateable value for the primises must be rent which the landlord can reasonably expect from the tenant and the reasonable expectation of the landlord cannot be more than the standard rent of the said premises, because under the provisions of the Bombay Rent Act the rent accepted exceeding the standard rent is not permissible and is illegal. The very question arose in the case of Devan Daulat Rai Kapoor (supra) where the Supreme Court has observed that:

We are, therefore, of the view that even if the standard rent has not been fixed by the Controller, the landlord cannot reasonably expect to receive from a hypothetical tenant anything more than the standard rent determinable under the Act and this would be so equally whether the building has been let out to a tenant who has lost his right to apply for fixation of the standard rent or the building is self-occupied by the owner. The assessing authority would, in either case, have to arrive at its own figure of the standard rent by applying principles laid down in the Delhi Rent Control Act, 1958 for determination of standard rent and determine the annual value of the building on the basis of such figure of standard rent.

13. In view of the aforesaid settled legal position there is no merits in the contention of Mr. Oza. The assessing authority first has to arrive at his own figure of standard rent for the purpose of determining the rental value of the building, in accordance with the provisions of the Bombay Rent Act, and after having arrived at the rental value he has to determine the annual letting value in accordance with Section 2(1A)(ii) by including the payments made or agreed to be made to the owner by the person occupying the building on account of occupation tax, insurance or other charges incidental thereto, unless the case falls within the purview of proviso (c) as interpreted by us above.

14. The next contention of Mr. Nanavati was that his three tax appeals have been dismissed by the Courts below on the ground that the owners had not filed their complaints (objections) against the proposed rates in value fixed by the authorities. Mr. Nanavati submitted that the decision of the Courts below are contrary to the provisions contained in Section 406 of the Act. Mr. Nanavati submitted that he has a right to file appeal under the provisions of Section 406(2) (e) against the rateable value after the bill of tax for the said property is presented to him. He had filed the appeal within the time after the presentation of the bill and, therefore, his appeals have been wrongly rejected. It is, therefore, necessary to examine the provisions of Section 406 as it stood at the relevant time, which is reproduced below:

406.(1) Subject to the provisions hereinafter contained appeals against any rateable value or tax fixed or charged under this Act shall be heard and determined by the Judge.

(2) No such appeal shall be entertained unless-

(a) it is brought within fifteen days after the accrual of the case of complaint;

(b) in the case of an appeal against a rateable value a complaint has previously been made to the Commissioner as provided under this Act and such complaint has been disposed of;

(c) in the case of an appeal against any tax in respect of which provision exists under this Act for a complaint to be made to the Commissioner against the demand, such complaint has previously been made and disposed of;

(d) in the case of an appeal against any amendment made in the assessment book for property taxes during the official year, a complaint has been made by the person aggrieved within fifteen days after he first received notice of such amendment and his complaint has been disposed of;

(e) in the case of an appeal against a tax, or in the case of an appeal made against a rateable value after a bill for any property tax assessed upon such value has been presented to the appellant, the amount claimed from the appellant has been deposited by him with the Commissioner:

Provided that where in any particular case the Judge is of opinion that the deposit of the amount by the appellant will cause undue hardship to him, the Judge may in his discretion dispense with such deposit or part thereof, either unconditionally or subject to such conditions as he may deem fit.

15. Section 405 provides appeals against the rateable value or tax fixed or charged under the Act. Sub-section (2) provides that appeal should be filed within 15 days after the accrual of cause of the complaint. Clause (b) of Sub-section (2) provides that an appeal against the rateable value can be filed after a complaint is previously made to the Commissioner and after such complaint has been disposed of by him. It is not disputed that so far as those dismissed appeals are concerned no complaint was filed by the petitioners-owners. However, Mr. Nanavati relies upon Clause (e) of Sub-section (2), which gives right to appeal against the rateable value after a bill for any property tax assessed has been presented to the appellant with a condition that the appellant had deposited the amount of tax assessed as shown in the bill.

16. Mr. Nanavati, therefore, submits that as soon as the tax is demanded on the rateable value of the property or when the bill is served upon him he gets the right to file an appeal u/s 406(2)(e). Mr. Nanavati argued that the difference between an appeal filed against the rateable value under Sections 406(2)(b) and (se) is that, in the former case he can file the appeal without payment of tax while under Clause (e) if he waits till the arrival of the bill he can file the appeal only on payment of tax. Mr. Oza has tried to meet the said contention by showing the provisions of Section 413 and stated that if the complaint is not made to the Commissioner the rateable value will become automatically final. We are afraid, Mr. Oza is not right in his submission because Sub-section (1) of Section 413 makes the valuation final if complaint is not made and also appeal is not filed against the demand of tax. It is, therefore, not possible to read the provision of Section 413 in the manner in which it is interpreted by Mr. Oza. Clause (e) of

Sub-section (2) of Section 406 must be given same meaning. Sub-clause (e) in terms provides the right of appeal both against the tax and rateable value after the bill for the property tax is presented to the intended appellant. Not only it provides a right to appeal but also provides the condition of depositing the amount of tax before such appeal is filed. Mr. Oza was not able to show as to which is the appeal against the rateable value as provided under Clause (e) of Sub-section (2) of Section 406. We are, therefore, of the opinion that a right has been conferred upon the taxpayers to file appeal even against the rateable value of the property within fifteen days after the presentation of the bill to the taxpayer.

17. It is not disputed that the petitioners have filed Tax Appeals Nos. 160 of 1975, 181 of 1975, and 45 of 1977 within 15 days of the receipt of the bill. Therefore, the Courts below were not right in dismissing the appeals on the ground that petitioners had not filed the complaint within fifteen days and, therefore, the appeals were incompetent.

17.1. In view of the aforesaid findings it follows that the revision made by the Municipal Corporation in annual letting value of Navrang Theatre for the year 1973-74 to 1977-78 is not in accordance with law and have no legal effect. The revision being illegal and unenforceable, the original assessment of rateable value of Rs. 20,760/- shall continue till altered according to law and the petitioners-owners are liable to pay property tax on the basis of the said rateable value in accordance with the provisions of Act and Rules.

18. In the result the judgment of the learned 2nd Extra Assistant Judge at Baroda, fixing the rateable value of the suit premises at Rs. 20,760/- per year is confirmed. So far as the orders passed by the learned 2nd Extra Assistant Judge at Baroda in Misc. Appeal Nos. 49/79, 50/79 and 51/79 filed by the owners are concerned, they are set aside and in consequence thereof Special Civil Application Nos. 1265/80, 1266/80 and 1268/80 are allowed and the rateable value for the relevant period is declared to be Rs. 20,760/-. Rule is made absolute in these three petitions, with no order as to costs. All the other petitions, namely, 1186/80, 1263/ 80, 1264/80 and 1267 of 1980 filed by the owners and Spl. Civil Application Nos. 490/80, 491/80, 492/80, 493/80, 494/80, 495/80 and 2166/ 80 filed by the Corporation are dismissed. Rule is discharged with no order as to costs. Interim orders are vacated.

Orders accordingly.

SPEAKING TO MINUTES (September 30, 1983)

19. Mr. N.R. Oza, learned advocate appearing on behalf of the Corporation has filed this note and urged that during the course of his argument in the aforesaid writ petitions, he had relied upon the Supreme Court judgment in the case of Municipal Corporation of Greater Bombay Vs. Royal Western India Turf Club, , in support of his contention that the rateable value of the property can be determined also on profit basis and, therefore, the Corporation has fixed the

rateable value at Rs. 83,602/-.

20. This argument of Mr. Oza was not considered because, firstly, the decision relied upon by Mr. Oza was of 1968 i.e., prior to the amendment introduced by Gujarat Act No. 5 of 1970 whereby Clause (1A) of Section 2 of the Act has been substituted and, secondly, the Bombay Rent Act was applicable to the suit premises and, therefore, the rateable value has to be fixed in accordance with Section 2(1A) of the Act. The issue regarding such valuation where Bombay Rent Act is in force has been decided in three Supreme Court cases which have been discussed by the Supreme Court in the last case of *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, . Since we have followed the decision of the Supreme Court in the case of *Devan Daulat Rai Kapoor (Supra)* the aforesaid argument of Mr. Oza has been rejected without referring the ratio of the decision cited by him *Municipal Corporation of Greater Bombay Vs. Royal Western India Turf Club*, as the same was not applicable in the present case.