
(2000) 04 BOM CK 0024

In the Bombay High Court

Case No : Writ Petition No. 4235 with 6416 of 1998

Kantilal Dharsi Desai

APPELLANT

Vs

Karmala Nagar Palika and Others

RESPONDENT

Date of Decision : 26-04-2000

Acts Referred:

Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 105, 114

Citation : AIR 2000 Bom 484 : (2000) 4 ALLMR 806 : (2003) 2 BomCR 851

Hon'ble Judges : D.Y. Chandrachud, J;A.P. Shah, J

Bench : Division Bench

Advocate : R.N. Sanghavi, for the Appellant; S.S. Patwardhan, for the Respondent

Judgement

Dr. Chandrachud, J.—Rule, returnable forthwith. Respondents waive service. By consent, taken up for final hearing.

2. These two petitions under Article 226 of the Constitution of India involve similar issues and are hence being disposed of by a common judgment.

3. In Writ Petition No. 4235 of 1998, a petrol pump, is conducted at premises bearing House No. 1442, situated at Karmala. The property falls within the jurisdiction of the Karmala Nagar Pallka, which is a Municipal Council established under the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act 1965 ("the Act"). The petitioner has stated in paragraph 2 of the petition that the petrol pump has been in existence on the properties since long and in paragraph 7 it has been stated that no addition has been made to or in the property. In ground (C) at paragraph 11 it has similarly been stated that there has been no change in the structure, no new construction and alteration in respect of the property. For the year 1991 a bill for property tax was issued to the petitioner in the total amount of Rs. 39,50 p. In 1992-93 the assessment list was revised and the petitioner was called upon to pay tax in the amount of Rs. 1997 in respect of the property. For the year 1997-98 the

Municipal Council issued a demand in the amount of Rs. 1,57,946.

4. The petitioner is also the owner of another property bearing House No. 473 at Karmala, for which until 1996-97, the total property tax payable was in the amount of Rs. 411. In 1997-98, the rateable value was increased and upon revision, tax in the amount of Rs. 2390 came to be claimed from the petitioner. The case of the petitioner is that the revision in rateable value came to be effected without giving an opportunity to him of being heard. By letters dated 1-12-1997 and 10-2-1998 the petitioner submitted the representations to the authorities in regard to the enhancement of the rateable value. The petitioner filed an appeal before the Appellate Committee of Property Taxes of the Karmala Nagar Palika on 29-1-1998. As regards the property bearing House No. 1442 on which a petrol pump is being conducted it has been stated in the petition that the property has been let out on a yearly rent of Rs. 600 since 1995.

5. In Writ Petition No. 6416 of 1998 the petitioner is running a petrol pump on property bearing House No. 333, Ward No. 4 situated within the jurisdiction of the Kurduwadi Nagar Palika, in the district of Sholapur. In 1991, a bill for property tax in the amount of Rs. 527 was issued to the petitioner. In 1992 the demand of tax was enhanced to Rs. 3499 and this was continued until 1996-97. The property taxes for the year 1996-97 are said to have been paid by the petitioner. On 29th October, 1997, a notice of revised assessment was issued to the petitioner by which rateable value was sought to be enhanced to Rs. 29,753 and tax at the rate of 22 per cent, of the rateable value was sought to be demanded in the amount of Rs. 6546. By another notice also dated 29th October, 1997 the rateable value of the same property for the year 1996-97 was sought to be revised to Rs. 3,01,420 and tax in the amount of Rs. 66312 was proposed to be levied. The petitioner is aggrieved by the fact that by two notices both of the same date and in respect of the same property, the rateable value is sought to be enhanced in the first notice to Rs. 29,753 and in the second to Rs. 3,01,420. The petitioner has submitted representations dated 23rd December, 1997 and 11th February, 1998 to the Chief Officer of the Nagar Palika, the Valuation Officer and Collector, Solapur. The petitioner has also filed an appeal before the Secretary of the Appellate Committee on 13th February, 1998. After the appeal was filed, a demand notice has been issued on 20th February, 1998, for the year 1997-98 under which a demand in the amount of Rs. 1,25,250 has been raised on the petitioner. The grievance of the petitioner is similar to the grievance in the first petition, in that it is submitted (i) the rateable value has been determined arbitrarily without following the procedure established by law; (ii) no notice has been given to the petitioner; (iii) since the property continues to be in the same condition as before and there has been no new construction or alteration in the structure, there was no reason to revise the assessment. In addition it has been stated that the issuance of different notices on the same date in respect of the same property for the same period reveals non-application of mind on the part of the authorities.

6. An affidavit has been filed in reply to Writ Petition No. 6416 of 1998, on behalf of the Municipal Council. Reliance has been placed on Section 169 of the Act under which an appeal against the assessment of tax on buildings lies first to the Property Tax Appellate Committee and directly to the Judicial Magistrate. The appeal can be entertained only if the full amount of tax demanded has been paid in the Municipal Office for the last preceding assessment year. As regards the method of assessment it has been stated as follows :--

"On the fact of assessment, the petitioner has imported oil/petrol for petrol pump during last year worth Rs. 55,66,203 whereas the sale was Rs. 62,51,670. If the purchase amount is deducted from the sale, the balance remains to be Rs. 6,85,467. An amount of Rs. 1,27,283 is deducted towards loss. The balance, therefore, would be Rs. 5,58,184. 40% amount of this viz. Rs. 2,23,273 is deducted as expenses and the balance will be Rs. 3,34,911. From this, 10% building rebate of an amount of Rs. 33,491 has to be deducted and the balance amount of Rs. 3,01,420 remains and on this amount, which is assessable, 22% tax is levied which comes to Rs. 66,312. This assessment is in respect of the petrol pump situate on the plot of House No. 333. One more building is situate on the said plot, which is subjected to assessment. The value of the said building is Rs. 29,753. The original value of this building is made as per the provisions of Section 114 of the Act. The assessment is levied at 22% which comes to Rs. 6546. Thus taking into consideration of the rateable value of the petrol pump Rs. 3,01,420 plus the building Rs. 29,753, the total comes to Rs. 3,31,173. On this 22% tax levied comes to Rs. 72,858 on which 12% Education cess is levied and the amount of Education cess and Employment Guarantee Scheme goes directly to the Government."

7. Ordinarily, in view of the petitioners having filed appeals before the Property Tax Appellate Committees u/s 169 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, we would not have been inclined to interfere in the present petitions and would have relegated the petitioners to the alternate remedy of an appeal as provided under the Act. However, during the course of the submissions urged at the Bar it has emerged that the rateable value of the properties involved in these petitions on which petrol pumps are being conducted has been determined on the basis of the "profit method." Having considered the affidavit which has been filed by the Municipal Council in Writ Petition No. 6416 of 1998, and upon hearing the learned counsel for the parties, we are satisfied that the methodology adopted by the Municipal Councils in these cases for computing rateable values on the basis of the profit method is ex facie contrary to the law laid down by this Court and by the Supreme Court. Having regard to the importance of the question involved and the recurring nature of the issue, we have considered it in the interest of justice to hear the petitions finally at this stage and to permit the respondents to recompute the assessments in accordance with law.

8. In Royal Western India Turf Club Ltd. Vs. The Municipal Commissioner, a

Division Bench of this Court enunciated the principles on the basis of which the rateable value could be determined by applying the profit method. The judgment of this Court was affirmed in appeal by the Supreme Court in the *Municipal Corporation of Greater Bombay Vs. Royal Western India Turf Club*, . In view of the aforesaid decisions and considering the fact that the issue involved is of a recurring nature affecting similar assessments in this and other Municipal Councils we suggested to the learned counsel appearing for the respondents that it would be in the interests of justice for this Court to reiterate and formulate the principles which have been accepted for the purpose of computing rateable value on the basis of the profit method. The rateable value may thereafter be determined by the Municipal Councils concerned in these petitions after following the procedure established under the provisions of the Act. In fairness, learned counsel appearing for the respondents was not averse to this course of action being adopted so that a recurrence of litigation on these issues can be avoided.

9. A reference may at the outset be made to the relevant provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. u/s 105 of the Act the Municipal Council is allowed to impose a consolidated property tax on lands or buildings or both situated within the Municipal area, based on their rateable value as determined in accordance with Section 114. Section 114 of the Act provides as follows :--

(1) 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 rent for which such building or land might reasonably be expected to let, or for which it is actually from year to year, whichever is greater, a sum equal to the said annual rent, and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever.

Provided that, the State Government may prescribe the manner to determine the amount of rent for which any building or land might reasonably be expected to let, in order to fix the rateable value of any such building or land assessable to a property tax.

(2) The value of any machinery contained or situate in or upon any building or land shall not be included in the rateable value of such building or land.

10. Property taxes are levied on the basis of rateable value of property. By a long line of decisions of the Supreme Court, it is now a settled principle of law that rateable value or the annual value is to be determined on the basis of the rent which hypothetical tenant would pay to the hypothetical landlord in respect of the property. Where the area in question is subject to the restraints of rent control legislation, the annual value cannot exceed the standard rent of the premises though in a given case the circumstances relating to the property may lead to the rateable value being lower than the standard rent. The standard rent, however, is the ceiling because when rent control legislation is applicable, the hypothetical landlord cannot expect to receive from his tenant more than the

standard rent permissible under the law. This principle has been well settled by several decisions of the Supreme Court and reference may only be made to the judgment in *Dr. Balbir Singh and Others Vs. M.C.D. and Others*, , Mr. Justice Bhagwati, who delivered the judgment of the Supreme Court in that case and laid down the following principles in paragraph 6 of the judgment (at page 346) :--

"..... .the rateable value of a building, whether tenanted or self-occupied, is limited by the measure of standard rent arrived at by the assessing authority by applying the principles laid down in the Rent Act and cannot exceed the figure of the standard rent so arrived at by the assessing authority."

11. In a recent judgment reported in *East India Commercial Co. Pvt. Ltd. Vs. Corporation of Calcutta*, ; Mr. Justice Dr. A. S. Anand (as the learned Chief Justice then was) held thus while delivering the judgment of the Supreme Court (at page 1794) :

"From the aforesaid decisions the principle which is deducible is that when the Municipal Act requires the determination of the annual value, that Act has to be read along with the Rent Restriction Act which provides for the determination of fair rent or standard rent. Reading the two acts together the rateable value cannot be more than the fair or standard rent which can be fixed under the Rent Control Act. The exception to this Rule is that whenever any Municipal Act itself provides the mode of determination of the annual letting value like the Central Bank of India's case (*supra*) relating to Ahmedabad or contains a non obstante clause as in *Municipal Corporation, Indore and Others Vs. Smt. Ratnaprabha and Others*, , then the determination of the annual letting value has to be according to the terms of the Municipal Act. In the present case, Section 168 of the Municipal Act does not contain any non obstante clause so as to make the Tenancy Act inapplicable and nor does the Act itself provide the method or basis for determining the annual value. This Act has, therefore, to be read along with the Tenancy Act of 1956 and it is the fair rent determinable u/s 8(1)(d) which alone can be the annual value for the purpose of property tax."

12. The position in law, therefore, is that unless the Municipal Act governing the situation contains a non obstante clause by which the legislation prescribes its own method for determining the rateable value, the rateable value cannot exceed the standard rent of the premises. Unless there are specific words in the legislation to exclude the application of the provisions of Rent Control Legislation in determining the rateable value, regard must be had to legislation by which the landlord is restricted in the amount of rent which he can demand. In such a case, where rent control legislation is in place, the standard rent constitutes the ceiling for the determination of rateable value. The provisions of Section 114 would reveal that some departure has been made therein from the usual provisions to be found in Municipal Acts for the determination of the rateable value. Many other Municipal enactments provide that the rateable value shall be the amount of rent for which a building or land might reasonably be expected to let. This

provision is found in Sub-section (1) of Section 114. However, Sub-section (1) also permits the Municipal Council to fix the rateable value on the basis of the rent for which the property is actually let from year to year, in the alternate to what it might reasonably be expected to let, whichever is higher. To this extent the statutory provisions makes a departure from what is stated in many Municipal laws.

13. Rateable value can be computed on the basis of alternative methods such as the "competitive or comparative method" the "profit basis" "contractor"s method" and the "unit method." These methods of computation have been explained in Faraday on Rating. 5th Edn. at p. 24 and an extract from the said treatise was referred to in the judgment of this Court in R.W.I.T.C. (supra) which reads thus : ,

"The competitive or comparative method," consists of finding out rents actually paid for the hereditament in question and/or others of a similar kind, adjusting them to bring them into line with the statutory conditions, and thus arriving directly at an estimate of rent. Whenever such comparison is possible, this method is preferred.

The "profit basis" i.e. calculation by reference to receipts and expenditure and finding from the profits earned what a tenant would pay for premises to earn those profits as rent.

The "contractor"s method" where the estimated rent is determined by finding the figure for which a contractor would provide him with premises similar to the one in question for a purpose for which they are let.

The "unit method" where the valuation is made by so much per head etc.

14. The profit method of determining the rateable value has been considered in several English authorities. In Port of London Authority v. Assessment Committee of Orsett Union (1920) AC 273, Lord Birkenhead placed the matter in the following words :

"..... .By this reckoning the amount of the gross receipts is ascertained, and from such amount are deducted the expense of earning such receipts, the deductions provided for by statute, interest on tenant"s capital and the estimated amount of tenant"s profit. The figure so ascertained would give the rating authority a valuable indication as to the rent which the hypothetical tenant would be likely to give for the right to occupy the hereditament in question and, therefore, would enable them to form an opinion as to the correct amount of the "net annual value" for the purpose of rating."

In Kingston Union v. Metropolitan Water Board (1926) AC 331, Lord Atkinson explained the profit methods as follows :

"In my view there is only one method by which the rateable value of a hereditament, the occupation of which is valuable, can be legally ascertained,

and that is by the method prescribed by Section 1 of the Parochial Assessments Act of 1836 - namely, by the ascertainment of the rent at which the hereditament might reasonably be expected to be left from year to year to a hypothetical tenant, free from the rates and charges, etc. "rebus sic stantibus." By these three latter words I mean to express the considerations which are expounded in the following passage in the judgment of Lord Buckmaster in the case of Port of London Authority v. Assessment Committee of Orsett Union. He said that the hereditament the reasonable rent of which is to be ascertained must be that hereditament as it stands, with all its privileges, opportunities and disabilities created or imposed either by its natural position or by the artificial conditions of an Act of Parliament."

Lord Atkin in *St. James' and Pall Mall Electric Light Co. v. Westminster Assessment Committee* (1934) AC 33 held as follows :--

"..... The system roughly speaking is that the gross receipts of the undertaker are taken for the year of calculation; from them are deducted the expenses of earning those receipts; from the residue a tenant's share is subtracted, a hypothetical sum which represents what the tenant might reasonably be satisfied with for his "profits," which will include interest on capital and remuneration for his Industry and compensation for risk; and the residue will be the landlord's share of rent."

15. These authorities were referred to in the Judgment of this Court in *Royal Western India Turf Club Ltd.* (supra) wherein the Division Bench held that "such expenses as are necessary to be incurred for earning the gross receipts must be deducted therefrom to arrive at the annual letting value."

16. The judgment of this Court, as stated earlier was carried in appeal to the Supreme Court in *Municipal Corporation of Greater Bombay Vs. Royal Western India Turf Club*, , wherein the Supreme Court laid down the following principles in regard to the adoption of the profit method (at pages 428-429 of AIR) :

"The profit basis method which the assessing authority has adopted in the present case consists in ascertaining the net annual value of the premises which has to be worked out from the profits which are made or which are capable of being made out of the premises. The gross receipts from the starting point of the calculation and they are those shown in the assessee's accounts for the account year concluded last before the making of the proposal. When these have been ascertained, the next step is to deduct therefrom the expenses of earning those receipts, the cost of repairs, insurance and other expenses necessary to maintain the premises in a state to command the hypothetical rent. The remaining balance is divisible between the tenant, that is, the tenant's share, the landlord, that is, the hypothetical rent or net annual value and rates. The tenant's share is often estimated by applying a percentage to the tenant's capital or it may be directly as a proportion of the divisible balance or by applying a percentage to the receipts. (See Halsbury's Laws of England (3rd Edn., Vol. 32, 87-88)). It must be

remembered that it is not the profits which are rateable; they serve to indicate the rent at which the premises might reasonably be expected to let, particularly where profit is the motive of the hypothetical tenant in taking the hereditament. This method at one stage used to be adopted in the case of public utilities only. But there are a number of decisions which show that at a later stage it began to be employed to other premises also such as football stadia, markets, race-courses, etc.

17. The aforesaid judgment makes it abundantly clear that the profit earning method is an acceptable method on the basis of which rateable value can be computed. It must, however, be remembered, as was held by the Supreme Court, that it is not the profits which are rateable. Profits merely postulate the rent at which the premises can reasonably be expected to let particularly where profit is the motive of the hypothetical tenant in taking the hereditament. In computing the profit method and gross receipts are the starting point of the calculation. From these receipts, the expenses of earning them have to be deducted including the cost of repairs, insurance and other expenses necessary to maintain the premises. What remains is divisible between the tenant and the landlord. The tenant's share is often estimated by applying a percentage to the tenant's capital or by directly taking a proportion of the divisible balance or by applying a percentage to the receipts.

18. In the present case the Municipal Council has ex facie not applied the principles which have been formulated by the Supreme Court in computing the rateable value on the basis of the profit method. The Municipal Council deducted from the net sale proceeds an amount towards loss, 40 per cent, towards expenses and 10 per cent, towards building rebate. On the balance, which was taken as rateable value, tax at the rate of 22 per cent, was demanded. For one thing, we are of the view that before the competent authority arrived at these figures it was necessary to furnish the petitioner with an opportunity to produce all relevant information and documents that would establish the total receipts and total expenditure incurred by the petitioners including, towards the upkeep of the premises. Furthermore, from the judgment of the Supreme Court it is evident that after the deduction of expenses and rebates, the balance amount has to be apportioned between the share of the tenant and the share of the landlord, that is, the hypothetical rent or the net annual value. In the present case, the net sale proceeds after making the deductions as aforesaid were all appropriated towards the rateable value or the annual value. This, in our view, was clearly impermissible.

19. Thus, in the facts and circumstances of the case, we set aside the determination of the rateable value in respect of the premises in question which have been used for the purpose of conducting petrol pumps, in respect of which, as stated earlier, the rateable value was determined on the basis of the profit method. We do not interfere with the determination of the rateable value in so far as the other properties are concerned and leave the petitioners to pursue

their remedies in appeal. We, however, make it clear that we are not deciding as to what method the Municipal Council may adopt for determining rateable value since this is a matter which has to be decided by the Municipal Council. Our judgment should not be construed as requiring the Municipal Council to compute the rateable values of the properties used for running petrol pumps on the basis of the profit method. We have clarified in our Judgment the basis on which the profit method is to be applied, should the Municipal Council decide to fix rateable value on the basis of the profit method. It would be open to the Municipal Councils in this case to refix the rateable value of the properties in question which had been used for the purpose of conducting petrol pumps, in accordance with law.

20. Rule is made absolute in the aforestated terms with no order as to costs.