

(1980) 04 GUJ CK 0016
In the Gujarat High Court

Case No : Spl. Civil Application No. 2193 of 1976

Modern Bobbin Co. Private Ltd. and Others	APPELLANT
Vs	
The Billimora Municipality and Another	RESPONDENT

Date of Decision : 24-04-1980

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 8, 9, 9A, 9B, 9C
Gujarat Municipalities Act, 1963 — Section 99(1)

Citation : AIR 1981 Guj 75 : (1981) GLR 642

Hon'ble Judges : S.L. Talati, J; S.H. Sheth, J

Bench : Division Bench

Advocate : K.A. Mehta, for the Appellant; Y.V. Shah, for the Respondent

Judgement

S.H. Sheth, J.—The petitioners Nos. 2 to 5 are the owners of Survey No. 425 (Part) and Survey No. 430 (Part) of Billimora in Bulsar District. Petitioner No. 1 is the lessee in respect of those lands. It is the petitioners' case that on 20th December 1966 permission to use these lands for nonagricultural use was granted to them by the Collector.

2. For the financial years 1975-76 and 1976-77 assessment lists were prepared by Billimora Municipality for imposing house tax on lands and buildings situated within the municipal limits. Those lists were prepared under the House Tax Rules which have been continuing in force since 22nd January 1956 when they were made under the provisions of the Bombay District Municipal Act, 1901 - the forerunner of the Gujarat Municipalities Act, 1963. In terms of those rules, assessment lists were prepared and the Municipality preferred bills for house-tax. Those bills are challenged by the petitioners in this petition on the grounds with which we are now dealing.

3. The first contention which Mrs. Mehta has raised on behalf of the petitioners is that Rule 1 is ultra vires Section 99(1)(i) read with Section 2(1) of the Gujarat Municipalities Act, 1963. The challenge is based upon the argument that the rule casts a wider net than what is permitted by Section 99(1) (i) read with Section

2(1). In order to examine this contention, it is necessary to turn firstly to certain, provisions of the Bombay District Municipal Act, 1901, under which these rules were made.

4. Section 59 (1) of the Bombay District Municipal Act, 1901, inter alia, provided as follow:

"Subject to any general or special orders which the State Government may make in this behalf, any Municipality-

.....

may impose, for the purposes of this Act, any of the following taxes that is to say,

(i) a rate on buildings or lands or both, situate within the municipal district.

....."

Now, the rate on buildings or lands could be levied on the basis of "annual letting value". Section 3(11) defined the expression "annual letting value" in the following terms:

"Annual letting value" shall mean the annual rent for which any building or land, exclusive of furniture or machinery contained or situated therein or thereon, might reasonably be expected to let from year to year."

Section 3(6) defined "land" and Section 3(7) defined "building". Therefore, a rate on land and building could be levied on the annual rent which a land or building was reasonably expected to fetch. We may state that annual letting value" on which a property could be assessed was made the basis for assessing the house tax, payable on lands and buildings. With the enactment of the Gujarat Municipalities Act, 1963, Bombay District Municipal Act, 1901, was repealed, Section 279 while repealing the Bombay District Municipal Act, 1901; provides for the effect of repeal. Sub-section (2), inter alia, provides in that behalf as follows:

"Notwithstanding the repeal of the said Acts-

..... (vi) any appointment, notification, notice, tax, fee, order, scheme, licence permission, rule, by-law, or form made, issued, imposed, or granted in respect of the said boroughs or districts and in force immediately before the date of the commencement of this Act shall in so far as they are not inconsistent with the provisions of this Act be deemed to have been made, issued, imposed or granted under this Act in respect of the borough and shall continue in force until it is superseded or modified by any appointment, notification, notice, tax, fee, order, scheme, licence, permission, rule, by-law or form made, issued, imposed or granted under this Act."

The House Tax Rules framed by Billimora Municipality continue to be in force by virtue of the provisions of Section 279(2)(vi) of the Gujarat Municipalities Act, 1963. Within the meaning of that provision, we have to find out whether there is

any thing inconsistent between the House Tax Rules of Billimora Municipality and Section 99(1)(i) read with Section 2(1) of the Gujarat Municipalities Act, 1963. If there is any inconsistency, then, to the extent of that inconsistency, the concerned rule would be liable to be struck down. Section 99 of the Gujarat Municipalities Act, 1963, inter alia, provides as follows: .

"Subject to any general or special orders which the State Government may make in this behalf and to the provisions of Sections 101 and 102, a municipality may impose for the purposes of this Act any of the following taxes, namely:-

(i) a tax on buildings or lands situate within the municipal borough to be based on the annual letting value or the capital value or a percentage of capital value of the buildings or lands or both."

The concept of "capital value or a percentage of capital value of the buildings or lands or both" was absent in Bombay District Municipal Act, 1901. That, however does not render the relevant rule of Billimora Municipality inconsistent because it provides for the assessment of house-tax on "the basis of annual letting value", which is one of the modes of assessment, prescribed by Section 99(1). So far as the definition of "annual letting value" is concerned in Section 2(1) of the Gujarat Municipalities Act, 1963, it has been expanded. The definition reads as under:

"annual letting value" means the annual rent for which any building or land, exclusive of furniture or machinery contained or situate therein or thereon might reasonably be expected to let from year to year, and shall include all payments made or agreed to be made by a tenant to the owner of the building or land on account of occupation taxes under any law for the time being in force, insurance or other charges incidental to his tenancy."

The latter part of this definition which commences with the words ".....and shall include"and ends with the words "..... incidental to his tenancy" did not occur in the definition of the annual letting value" given in Bombay District Municipal Act, 1901. The impact of the expanded part of the definition will be examined later. Suffice it to say at the moment that the principal part of the definition of "annual letting value" given in Section 2(1) of the Gujarat Municipalities Act, 1963, is the same as was the definition in the Bombay District Municipal Act, 1901.

5. In Special Civil Application No. 220 of 1970 decided by a Division Bench of this Court of which I was a member on 13th and 14th February 1974, this Court has considered the definition of "annual letting value" given in Section 2(1). It is not necessary to make a detailed reference to that decision because the controversy is now governed by one of the latest decisions of the Supreme Court to which we are referring. So far as the decision of this Court in Special Civil Application No. 220 of 1970 is concerned, we may state that this Court has taken the view that standard rent furnishes the basis for determining the rent for which a building or land might reasonably be expected to let from year to year.

6. Our attention has been invited to the decision of the Supreme Court in *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, . Section 3(1)(b) of the Punjab Municipal Act, 1911, defined the expression "annual value" as the gross, annual rent at which the building may reasonably be expected to let from year to year. Whereas we find in the Gujarat Municipalities Act, 1963, the expression "annual letting value", the expression which is used in the Punjab Municipal Act, 1911, is "annual value". While defining the expression "annual value" the Punjab Municipal Act, 1911, uses the expression "gross annual rent". Section 2(1) of the Gujarat Municipalities Act, 1963, while defining the expression "annual letting value". uses the expression "annual rent". In our opinion, this verbal expression does not make much difference because the material part of the definition of the expression "annual letting value" in Section 2(1) is the same as the definition of the "annual value" given in Section 3 (1) (b) of the Punjab Municipal Act, 1911 common thread which runs between the two Acts is "annual rent at which the building may reasonably be expected to let from year to year,". While such rent under the Punjab Municipal Act. 1911, is "gross annual rent", it is "annual rent" simpliciter under the Gujarat Municipalities Act. 1963. However, Section 2(1) while using the "annual rent" simpliciter in the first part of the definition further provides that it shall "include all payments made or agreed to be made by a tenant to the owner of the building or land on account of occupation under any law for force, insurance or other charges incidental to his tenancy." It is quite probable that when these elements are included in the annual rent, it becomes the gross annual rent as contemplated by Section 3 of the Punjab Municipal Act, 1911, However, whether there is annual rent which, includes certain elements as contemplated by Section 2(1) of Gujarat Municipalities Act, 1963, or whether it is gross annual rent as contemplated by Punjab Municipal Act, 1911, it must be one at which a building may reasonably be expected, to let form year to year. The expression "may reasonably be expected to let from year to year" has been construed by the Supreme Court in, *Devan Daulat Rai Kapoor's case* (supra). The principle which the Supreme Court has laid down after having reviewed a number of decisions on the subject is that if the standard rent of a building has been fixed, it will be the annual letting value in respect of that building because no, landlord can, reasonably expect to recover more than the "standard rent". In the instant case, Bombay Rents. Hotel and Lodging House Rates Control Act 1947, applies to Billimora so far as non-agricultural lands and buildings are concerned. However, in *Devan Daulat Rai Kapoor's case* (supra) the question which arose related to the building in respect of which standard rent was not fixed. In such a case, what would be the reasonable rent at which a building would be let from year to year? The Principle which has been laid down by the Supreme Court is that in such cases the standard rent for the Purposes of the taxing statute may be determined by the taxing authority in light of the principles laid down in the Rent Control Act which governs the Premises. In that case, the Delhi Rent Control Act, 1958, was applicable to the building in respect of which assessment was made. In the instant case, the Bombay Rents, Hotel

and Lodging House Rates Control Act, 1947, applies to Billimora.

7. Section 5(10) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, defines "standard rent in the following terms:

" "standard rent" in relation to any premises means-

(a) where the standard rent is fixed by the Court and the Controller resuective1v under the Bombay Rent Restriction Act, 1939, or the Bombay Rents, Hotel Rates and Lodging House Rates (Control), Act, 1944, such standard rent; or

(b) where the standard rent is not so fixed subject to the provisions of Section 11,

(i) the rent at which the premises were let an the first day of September 1940,or

(ii) where they were not let on the first day of September 1940, the rent at which they were last let before that day, or

(iii) where there were first let after the first day of September 1940, the rent at which they were first let, or

(iv) in any of the cases specified in Section 11, the rent fixed by the Court."

8. In the light of the principles laid down by the Supreme Court in *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, , it must be held that in case of a building or a non-agricultural land where standard rent has been fixed either under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, or under the provisions of the Bombay Rent Restriction Act, 1938, or the Bombay Rents, Hotel Rates and Lodging House Rates (Control Act, 1944, it shall form the basis for fixing the annual letting value of that building. Where standard rent has not been so fixed the assessing authority shall have to determine the "standard rent" of a building or a non-agriculture land in light of the principles laid down in clause (b) of sub-section (10) of Section 5. To such rent increases which are permitted to be added under "the Provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, can be added by the assessing authority. This is what, in our opinion, the first part of the definition of "annual letting value" given in Section 2(1) means. The assessing authority can under the latter part of sub-section (1) of Section 2 add "all payments made or agreed to be made, by a tenant to the owner of the building or land on account of occupation, taxes under any law for the time being in force, insurance or other charges, incidental to his tenancy." What is presumably to be added under the latter part of sub-section (1) of Section 2 can be added both to the standard rent fixed by the Court where it has been fixed and also to, the standard rent which may be determined by the assessing authority wider the principles laid down in Section 5 (10).

9. Rule 1 and Rule 3 of the House, Tax Rules of Billimora Municipality are general in terms and they neither exclude nor embrace within their sweep the standard rent fixed by the Court where it is fixed or the standard rent determinable by the

assessing authority as stated above. Therefore, we see no reason to strike down Rules 1 and 3 of Billimora Municipal House Tax Rules. We must read those rules so far as the determination of the "annual letting value" is concerned, so as to mean what we have stated in this decision. In other words, the expression "annual letting value" used in Rule 1 and Rule 3 of the Billimora Municipal House Tax Rules means what we state below and no more:

(i) While fixing the annual letting value, the assessing authority is bound to take into consideration the "standard rent" of a land or a building where it has been fixed by the Court as contemplated by Section 5 (10) of the Bombay Rent Act. Where it is not so fixed by a Court, the assessing authority shall have to determine it on the basis of the principles laid down by clause (b) of sub-section (10) of Section 5 of the Bombay Rent Act.

(ii) To the annual letting value determined in any one of the aforesaid two manners, it is permissible for the assessing authority

(a) to add all increases which are permitted to be added under the provisions of the Bombay Rent Act; and

(b) also "all payments made or agreed to be made by a tenant to the owner of the building or land on account of occupation, taxes under any law for the time being in force, insurance or other charges incidental to his tenancy."

The total next figure which is arrived at in respect of any building on non-agricultural land as a result of the application of the aforesaid principles shall be the "annual letting value" of that land or building for the purpose of levy of house-tax.

10. We are not concerned in this case with buildings which are occupied by the owners themselves and which were never let out in the past. We are, therefore, expressing no opinion on that aspect of the case. However it would be advisable for Billimora Municipality in respect of such cases to follow the principles laid down by the Supreme Court in the decision in *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, .

11. It has next been argued by Mr. Mehta that the expression "land" used in Section 99 (1) (i) and in Section 2 (1) of the Gujarat Municipalities Ark 1963, does not include agricultural lands. The word "land" has been defined by Section 2 (11) in the following terms:

" "land" includes land which is being built upon or by built upon or covered with water, benefits to arise out of land, things attached to the earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over any street."

This is a very wide definition. It is inclusive in character. This expression not only embraces within its sweep building sites and buildings or building sites upon which buildings have been partly constructed but includes many other things,

such as benefits arising out of land and things attached and permanently fastened to the land and rights created by a legislative enactment over any street. It also includes land covered with water. Land covered with water is incapable of being used as a building site. Indeed, it may remain non-agricultural, The inclusive and all embracing character of the definition given in Section 2 (11) of the, Gujarat Municipalities Act, 1963, leads us to the conclusion that it includes agricultural lands also which are situated within the limits of a municipality. That is what Section 99 (1) (i) will also mean in so far as levy of house-tax upon "lands" is concerned.

12. What is the method of fixing the annual letting value of an agricultural land? Such a controversy did not arise before the Supreme Court in *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, or in any of the decisions to which reference has been made in that decision. So far as this State is concerned, agricultural lands are governed by the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948. Sections 8, 9, 9A, 9D and 9C lay down the principles for determining the fair rent payable in respect of an agricultural land. Recovery of any thing more is prohibited by the said enactment. In taking this view, we are extending the principle to agricultural lands. We have taken into consideration the principle laid down by the Supreme Court in, *Devan Daulat Rai Kapoor's case* (supra). The assessing authority will be under an obligation before levying house-tax upon such lands to consider the principles laid down in Sections 8, 9, 9A, 9B and 9C of the said Act. The contention raised by Mrs. Mehta that the expression "land" does not include agricultural lands is rejected.

13. Her alternative argument that if agricultural land is included within the meaning of the expression "land" given in Section 2 (11) of the Gujarat Municipalities Act, 1963, then its annual letting value can be determined only in accordance with the principles laid down by the Bombay Tenancy and Agricultural Lands Act, 1948, in Sections 8, 9, 9A, 9B and 9C is upheld.

14. It has next been argued by Mrs. Mehta that the lands in question in this petition are agricultural lands and that, therefore, in light of the view which we have taken they are liable to be assessed only on the basis of annual letting value determined in light of the principles laid down in Sections 8, 9, 9A, 9B and 9C of the Tenancy Act. It is not necessary for the purpose of this case to express an opinion whether the lands in question are agricultural lands or non agricultural lands because, in the affidavit-in-reply filed on behalf of Billimora Municipality it has been admitted that while preparing the impugned assessment lists the principles governing the fixation of standard rent or fair rent were not taken into account. Therefore, the assessment made by Billimora Municipality in respect of the two survey numbers in question in this petition is liable to be quashed. If it is open to the municipality under law to prefer fresh bills to the petitioners in respect of the lands in question, it may do so. If it proceeds to do so it shall determine whether the lands in question are agricultural lands or non-agricultural

lands and shall proceed to determine their annual letting value in terms of the principles which are applicable.

15. In the result the petition succeeds. The assessments of Survey Nos. 425 (Part) and 430 (Part) made by Billimora Municipality under its House Tax Rules for the purpose of levying house-tax for the years 1975-76 and 1976-77 are quashed. If the petitioners have paid the assessment to the municipality in respect of these two years, the municipality shall refund the amounts to the petitioners. Rule is made absolute with costs.

16. Appeal allowed.