
(1991) 09 BOM CK 0043
In the Bombay High Court
Case No : First Appeal No. 330 of 1978

Municipal Commissioner and Another	Vs	APPELLANT
Empire Estate		RESPONDENT

Date of Decision : 06-09-1991

Acts Referred:

Bombay Municipal Corporation Act, 1888 — Section 217

Citation : (1991) 4 BomCR 60

Hon'ble Judges : D.J. Moharir, J

Bench : Single Bench

Advocate : V.T. Walawalkar and B.S. Bhor, for the Appellant; C.R. Dalvi, instructed by Bhaishankar Kanga and Girdharlal, for the Respondent

Final Decision : Dismissed

Judgement

D.J. Moharir, J.—This is an appeal directed against the decision of the Additional Chief Judge, Small Causes Court, Bombay, u/s 217 of the Bombay Municipal Corporation Act reducing the rateable value and assessment for tax of the property held by the respondent.

2. The respondent Empire Estate is a private limited firm which was constituted in the year 1967 and of which the three partners initially were Mrs. Ellen Keki Modi, Rustom Keki Modi and one minor Miss Maneck Keki Modi was to join the partnership upon her attaining majority. The business of the partnership was exhibition, distribution and production of cinematography films, buying and selling lands and properties as also development thereof. After the partnership was constituted by a registered deed dated 22nd December, 1966, the partnership entered into agreement for purchase of a property "The Empire Cinema Building" which is the subject matter of the present dispute. A certain trust known as Messrs. Narayanan Investment Limited was the owner of this property. A proper sale deed in favour of the respondent firm came to be executed on 20th October, 1970. Prior to the acquisition of this property, and in particular in respect of the cinema house portion of the property there had been

transactions of lease and possibly some kind of a special lease also. The transaction which is the earliest dated one is of the year 1944 was between the Modis and the Western India Theatres Limited. This was an agreement for lease of the Cinema house by Modis to the said Western India Theatres Limited. In 1950 there was a further agreement of lease of the cinema house property and the last one in the line was the agreement of lease dated 29th January, 1954 between The Narayanan Investment Trust Ltd. and Modi. Thereunder the property was to stand leased to Modis from 1st June, 1954 till 31st May, 1961 for a monthly rent of Rs. 5501/- out of which a sum of Rs. 3001/- was to be the rent for the cinema house property and Rs. 2500/- for the furniture, machinery, etc. For the period 1st June 1961 onwards, rent was agreed to be Rs. 12,000/- per month out of which Rs. 6545/- was to be the rent of the cinema house property and Rs. 5455/- for the furniture and the machinery etc.

3. For the year 1972-73, the Bombay Municipal Corporation served a notice on the respondents in connection with the fixing of the rateable value of the entire Empire Cinema house and thereafter the rateable value of the theatre was refixed at Rs. 1,26,820/- in that year. After receipt of the notice proposing that increase in the rateable value, the respondent lodged a complaint. The grievance raised was that the Corporation authorities had worked out the rateable value on the basis of the annual income from the conduct of the cinema business as such i.e. on the takings and that as the basis ought not to have been accepted in view of the fact that the cinema house or the theatre as such had been actually let out. It is upon the rejection of these contentions that the Municipal Appeal No. M/181 of 1972 came to be filed.

4. At the hearing of that appeal witnesses were examined both by the Corporation as also the assessee. The gist of the reasoning of the learned Additional Chief Judge, who allowed the appeal, was that it had no doubt been a different method for the assessment of the annual rateable value which had come to be adopted by the assessing authorities of the Municipal Corporation. That was the basis known as the profit basis method. While the learned Additional Chief Judge accepted that this was no doubt an approved method, all the same the said method which he noted had come to apply in the case of certain other cinema houses while fixing their annual rateable value, was to be employed in order to fix the amount at which the property could be reasonably expected to be mentally valued from year to year. In view of the provisions of section 154 of the Bombay Municipal Corporation Act, if there was available a reliable basis on which to fix the actual amount of rent is payable in respect of the property, then, according to the learned Additional Chief Justice, there was no reason or basis for adopting any other method for fixing the annual rateable value. The method as was adopted by the assessing authorities was, therefore, not accepted.

5. The learned Additional Chief Judge, therefore, on the basis of the evidence of actual letting with reference to various transactions of lease to which I have

adverted earlier, held that the rateable value of the property would have to be fixed on the basis of the monthly rent of Rs. 6,885/-. On that basis of annual rateable value would come to Rs. 82,620/- and after allowing the statutory deduction of 10 per cent, the net rateable value would be Rs. 74,360/-. It is this deduction which is now challenged by the Municipal Corporation by this First Appeal.

6. The first submission of learned Counsel Shri Walawalkar appearing for the appellants is that the method for arriving at the annual letting value of any property was to be a matter of the sole discretion of the said authorities and the only criterion was that the method should give a fair result on the determination of the annual letting value. The learned Additional Chief Judge of the Small Causes Court, it was contended, had committed an error in holding that the profit basis, for fixation of the annual letting value as had come to be valued by the assessing authorities of the Municipal Corporation, had come to be wrongly rejected by the lower Court and the assessment as made by the Corporation's authorities deserved to be confirmed. The second submission of learned Counsel is that where the alternative method was suggested and adopted, it was for the assessee to pose a challenge and to show how in the adoption of that method, any error or illegality had come to enter, for setting aside the said assessment.

7. Now, on the facts as they became clear from the evidence of the respondents two witnesses Mr. Mistry and Shri Pai and Shri Swami for the appellant, the registered lease deed of 1954 in particular, as the most relevant one, will show that the rent for the said premises had come to be fixed at Rs. 12,000/- per month out of which Rs. 6,545/- was to be kept for the cinema house building proper and that until the year 1972-73 the annual letting value for the purposes of levy of the general taxes had been the same. In this connection, my attention was drawn to the reasoning of the concerned assessing (investigating) officer passed on 21st February, 1972. He noted the contention that the property, viz., the cinema theatre had been previously let out by the former owners at Rs. 5,501/- per month which included Rs. 2,500/- for fixtures, machinery and other equipments. It was urged before me that the property being the rented one, the method of assessing this annual rateable value would be on the basis of the rent as being charged per month. However, the income from the show of films in the cinema house was recorded which has come to be estimated at Rs. 84,000/- in the proposal for enhancement of the annual rateable value. The figures of income from the exhibition of cinema slides was considered for the three previous years and the average was Rs. 74,3000/- which the assessor was, therefore, pressed to accept, as contended by the Corporation Counsel. The rent adopted for the booking office was ignored being the part and parcel of the said cinema house itself. The main ground why the agreements of lease fixing the amounts of rent were not accepted by the assessing authority would be only usefully reproduced here.

"As regards cinema threats we find few properties of this type. In majority of

cases they are owned and occupied by the same person. Sometimes the owners and occupiers are so allied that the rent can hardly be taken into account as evidence. There are hardly cases available for comparison to form the basis of valuation, owing to these difficulties, the method in which the actual profit earning capacity of the her advisement is taken into account is adopted and the same is considered as a fair and reliable method of assessing cinema thereaters. This is the method which is usually adopted for the assessment of threats as decided by Courts.

In view of the above reasoning, I discard the parties contention of adopting rent as the basis of assessment of the cinema theatre and fix the R.V. as under :

....."

Learned Counsel Shri Walawalkar for the appellant had endeavoured to substantiate this reasoning by referring to the decision of the Supreme Court in the case of The Corporation of Calcutta Vs. Sm. Padma Debi and Others, . While dealing with the question, the reasonable letting value, and in particular the meaning of the word "Reasonably" in the section. Their Lordships noted that the word "Reasonably" which was not capable of a precise definition, signifies " in accordance with reason". Their Lordships also held that in the ultimate analysis it is a question for decision whether a particular Act is reasonable or not depends on the circumstances in a given situation. A bargain between a willing lessor and a willing lessee, uninfluenced by any extraneous circumstances, may afford a guiding test of reasonableness. An inflated or deflated rate of rent based upon fraud, emergency, relationship, and such other considerations may take it out of the bounds of reasonableness". Stress is, therefore, laid by the learned Counsel on the facts that a careful perusal of the transactions of lease of the years 1944, 1951 and 1954 would indicate that these were transactions as between relations viz., Modis, it would appear, had interest in the Western India Theatres Limited and as such it was this element of relationship in the transaction, the rents agreed to be paid and which were sought to be relied upon by the respondent here, could not actually be so relied as influenced in some way or the other. This is, as I find from the evidence, in spite of an awareness that none of Modis has entered the witness box, that there is indeed no real foundation for harbouring any suspicion that there must have been any intentional suppression of the amount of consideration actually charged and an intention to show a lesser amount as being charged. The very submission of the learned Counsel, as I must therefore note, is founded upon an assumption. It is not possible to accept the premises that even as per Exhibit 2 on which some further reliance was placed, the transactions of leases of 1944, 1951 and 1954 were between any allied parties or that there was a want of comparable instances and that for these two reasons of the allied parties being involved in the lease transaction or comparable instances as being not available that the profit basis method had to be adopted and deserved to have been fully and properly up held by the learned Additional Chief Judge hearing the Municipal Appeal. I learned Counsel also

sought to refer to another unreported decision of the Division Bench of this Court in *M/s. Photograyurs (India) Private Limited v. The Municipal Commissioner for Greater Bombay & another*, First Appeal No. 855 of 1973, decided on 21st October, 1980. The matter can indeed be clearly distinguished on facts. In the said unreported decision it was found and conceded on behalf of the respondent Municipal Corporation that the appellants *M/s. Photograyurs (India) Private Limited* and *M/s. Photograyurs* which was a proprietary firm of R.C. Jhaveri were actually one and the same entity for the reasons that the directors of *M/s. Photograyurs (India) Private Limited* consisted of R.C. Jhaveri and other members of his family as the proprietors of *M/s. Photograyurs (India) Private Limited*. The contention advanced was that the agreement of lease between the two, dated 5th July, 1967 was a fraudulent document executed only for the purposes of avoiding payment of taxes. In the present case as I have already noted, any such endeavour at showing that in the matter of lease granted by Modis to the Western India Theatres Limited also the transactions was influenced by any such factors of fraud or intention to avoid property tax is hardly discernible.

8. As already noted, the main thrust of Shri Walawalkar's argument is that the method which has been followed by the Bombay Municipal Corporation, is fully within its own discretion and that before it could be so challenged and rejected it must be shown to have been wrong in itself or alternatively, even if assumed to be correct and applicable at the discretion of the Corporation authorities, not yet applied correctly. It is also his argument that even accepting the premise that the profit basis as the method for determination of the annual letting value had been, only for the first time in the year 1972-73, decided to be adopted and not before, the challenge to the adoption of the present different method could not per se be said to be a matter for any criticism.

9. This is, in my opinion, precisely where the learned Chief Judge has refused to fallen into the error of accepting the fallacy. According to him, the method for determining the annual letting value has to be one which is provided by section 154 of the Bombay Municipal Corporation Act, and so long as there is material available for observance of this method, any occasion for the employment of any other method must become entirely irrelevant and unnecessary unless the need for the employment of any such alternative method such as the profit basis method here is shown to have become indispensable. That in the present case does not appear to be the position. In my opinion, the learned Judge was, therefore, right in holding that with a total absence of anything to establish what transaction the parties has. Furthermore, the annual letting value prior to 1970 had also come to be determined and ought to have been followed in the year 1972-73 when the order dated 21st February, 1972 was passed. For the respondents, learned Counsel Shri Dalvi specifically pointed out that in the appeal as was preferred, a contention was very specifically raised that the method of calculating rateable value on the annual letting was not the proper method and was contrary to the requirements as also the directions provided by

section 154 of the Bombay Municipalities Act; that for this purpose the standard rent as compared to that of the market rent was the only method to be accepted for the annual letting; that the comparison could be had from the case of the Strand Cinema where also the standard rent was fixed in the Courts of law. A further contention was specifically raised that the method of calculating the rateable value on the annual letting was only a very poor method and could be adopted only when there was no other reliable method available. The last of the contentions raised was that in Bombay where the Rent Act is enforced, even for calculating the rateable value it would be illegal to accept any other basis. The appellants denial in its written statement is to be found, relevantly enough, in paragraph 10, 13 and 15. It was submitted that all these submissions had been urged before and heard by the Investigating Officer and it was only thereafter that the impugned order fixing the rateable value at Rs. 1,25,070/- with effect from 1st April, 1972 had come to be passed. In paragraph 13 it was asserted that the method of profit basis was rightly adopted being a well recognised method in the law of rating and also upheld by Courts. The specific contention raised in para 15 of the written statement with reference to the plea that the annual letting value could not under any circumstances exceed the standard rent where the Rent Act applied was that even on the basis of standard rent the rateable value would not be less than the one which came to be fixed by the Investigating Officer of the Municipal Corporation. Of these contentions, I will first advert to the one about standard rent. No doubt, the Bombay Rent Act is applicable to the premises in question. There is no indication anywhere that standard rent for the property had come to be fixed before the same was acquired by the present respondents in October 1970, under the registered sale deed executed between the respondent and Narayanan Investment Trust Pvt. Ltd. As such, it is the reply of Shri Walawalkar that in the absence of what was the standard rent of the premises, no exception, could be taken to the annual letting value as came to be fixed by the appellants office. Shri Dalvi, however points out that under the provisions of section 5(1) of the Bombay Rent Act so long as standard rent is not fixed for any premises, the contractual rent would be the standard rent again so long as the contractual rent is the one which was being charged on 1st September, 1940 or was the rent which was charged when the premises were for the first time let out on 1st September, 1940. In the present case, with reference to the leases of 1944, 1951 and 1954 it would appear that in the absence of any evidence about the property in question having been let out prior even to the year 1944, the rent as was charged under these agreements, having been accepted for the purposes of fixing of the annual letting value for the years prior to the assessment year 1972-73, there would indeed appear no basis of foundation for making a departure and proceeding to rely upon the other method of profit as the basis. It is pertinent to note that in paragraph 15 of the reply before the Additional Chief Judge, the present appellants had contended that even on the basis of profit as such, the annual letting value would not be any different from what it would be if determined on the basis of standard rent. This, as would appear from the judgment of the lower

Court, was not even attempted to be demonstrated. On the other hand, the difference between the annual letting value as based on the previous rents at Rs. 74,358/- (rounded to Rs. 74,360/-) and Rs. 1,26,820/- is much too obvious. The contention that the two methods would lead to entirely identical results is, therefore, without any foundation.

10. If, therefore, the rateable value for the property in question could be fixed with reference to evidence as to the rent charged, then, indeed no other method could have been followed, provided of course, the basis for arriving at the rateable value was a reliable basis as such. The possibility of the element of reliability being absent by reason of the parties to the lease deeds of 1944, 1951 and 1954 being allied parties related or interested in each other, has already been eliminated and is, therefore, only an assumed one. It cannot be accepted. In the circumstances, the reasoning adopted or the crux of it as this Court must find in paragraph 5 of the judgment of the lower Court, would only have to be confirmed. Shri Dalvi for the respondent also raised yet another contention. He proceeded to compare the action of the Municipal Corporation in taking into consideration the income from the cinema theatre with the income earned by a lodging house owner who lets out rooms in his premises to lodgers on specific room rents, for each of the days of occupation. In the latter case, a Division Bench of this Court has held in *Khadya Peya Vikreta Sangh and others v. Municipal Council, Akola* 1989 Mh.L.J. 291 as under :

"In cases of self-occupied buildings governed by the House Rent Control Order, the rateable value will have to be limited by the upper limit of fair rent fixed under the House Rent Control Order. Thus annual letting value of such buildings cannot be determined without keeping in view the outer limit of the rent which a landlord of a house legally recover from a hypothetical tenant. Where the landlord used the premises as a lodging house, the charges for lodging having included facilities like furnishing, services, etc., the room rent factor cannot determine the annual letting value of the building for the purposes of assessment of the consolidated property tax u/s 114 of the Act. Average rate per room could not be taken to be the basis for every lodger in the town irrespective of the situation of the building, the time of its construction and the standard of the facilities and services provided. For determination of rateable value for the purposes of assessing the property tax on self-occupied building, what is relevant is the rateable value of that building based on rent from a hypothetical tenant which is cases where the House Rent Control Order applies cannot exceed the maximum provided thereunder."

Indeed, this decision would appear as a fair parallel to the present case where the income is sought to be made the basis and the income being on the sitting arrangements in the cinema house, a certain fee being charged for occupation of each of the seats in cinema house to view cinematographic performances. When it is clear that the rateable value can be determined with reliable evidence available, in respect of previous year from 1944 onwards, the adoption of this

method of profit basis for determining the annual rateable value was not correct. The learned Judge of the appellate Court was, therefore, right in holding that the assessing authorities had adopted a method which could not recommend itself as correct in law.

In the result, this appeal must fail. It is accordingly dismissed with costs as incurred.