
(2004) 12 AP CK 0041
In the Andhra Pradesh High Court
Case No : Appeal Suit No. 1205 of 1994

Municipal Council

APPELLANT

Vs

Central Warehousing Corporation

RESPONDENT

Date of Decision : 15-12-2004

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 4
Andhra Pradesh Municipalities (Amendment) Act, 1975 — Section 87, 87(2), 87(3), 87(4)
Andhra Pradesh Municipalities Act, 1965 — Section 376

Citation : (2005) 2 ALD 264 : (2005) 2 ALT 162

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Gopal Govind Naik, for the Appellant; G. Ramachandra Rao, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—Municipal Council, Nizamabad, is the appellant. The respondent, namely, Central Warehousing Corporation, Nizamabad, instituted a suit on the file of the Court of Subordinate Judge, Nizamabad, for declaration that the property tax assessed and levied by appellant in the godowns of respondent with effect from 1.10.1984 is illegal, arbitrary and capricious and for perpetual injunction restraining the appellant from collecting property tax for the godowns with effect from 1.10.1984. By the impugned judgment dt.28.8.1992 in O.S.No. 61 of 1988, the trial Court decreed the suit as prayed for restraining the appellant from collecting the property tax from 1984 to 1992, till a proper assessment is made.

2. The fact of the matter is not much in dispute. The respondent, a fully owned undertaking of Government of India, had constructed two godowns in 1983- 84. The appellant issued notice demanding an amount of Rs. 69,076.80 ps. for one godown and Rs. 31,337.30 ps. for the other godown towards half-yearly tax treating the annual rental value (ARV) of these two godowns as Rs. 2,64,000/-

and Rs. 1,20,000/- respectively. The respondent preferred a revision before the Commissioner which was dismissed on 24.5.1985 against which the respondent unsuccessfully filed appeal which was dismissed on 25.3.1988. Therefore, the suit was filed inter alia contending that the method of assessment of property tax is not in accordance with the provisions of A.P. Municipalities Act, 1965 (for short, the Act) that Section 87(2) of the Act as amended by A.P. Municipalities (Amendment) Act No. 23 of 1975, ARV has to be determined on the basis of gross annual rent reasonably expected from the property, that fixing ARV on assumed rent is illegal and that municipality has to determine ARV taking into consideration the fair rent as per the provisions of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (Rent Control Act, for brevity). The appellant opposed the suit contending that the Municipality has taken into consideration storing capacity and expected rent from the godowns and that monthly rental value at Rs. 13,500/- was fixed taking into consideration the fact that the godown would not be utilized for its full storing capacity. The trial Court framed relevant issues and came to the conclusion that the appellant fixed ARV taking into consideration the information furnished by the respondent and that no effort was made to enquire as to how much the godown might fetch. The trial Court also came to the conclusion that the appellant fixed ARV in a mechanical and hypothetical basis without properly considering legal aspects. As noticed earlier, the suit was decreed.

3. In this appeal, learned counsel for the appellant submits that u/s 376 of the Act the suit is barred and therefore, the impugned judgment is unsustainable. Secondly, he would submit that the lower Court failed to prove the evidence, especially Ex.B.2 based on which assessment was made. According to the learned counsel at the relevant time as per the provisions of Section 87 of the Act ARV can be assessed based on the reasonable rent that the building might fetch as well as income or profit derived by the owner of the building from such building. He relied on *Bojjala Ganga Subbarami Reddy Vs. Srikalahasthi Municipality*, .

4. Learned counsel for respondent/plaintiff submits that a suit u/s 376 of the Act is not barred and that the method of calculating ARV adopted by the appellant is totally illegal. He placed reliance on *Khammam Municipality v. A.P. State Warehousing Corporation*, Hyderabad 1973 (1) APLJ 70 (NRC) *Shantilal Bazaz and Another Vs. Municipal Council, Visakhapatnam*, and *Tirumala Tirupati Devasthanams Vs. Tirupathi Municipality*, in support of the contention that ARV cannot be determined based on the profit derived from out of the building.

5. The only point that arises for consideration is whether the appellant was not correct in fixing ARV for the purpose of property tax taking into consideration the storage capacity and charges levied by the respondent for storage? Section 87 and Schedule II of the Act deal with assessment of tax on property. At the relevant time Section 87 reads as under.

87. Method of assessment of property.

(1) Every building shall be assessed together with its site and other adjacent premises occupied as an appurtenance thereto unless the owner of the building is a different person from the owner of such site or premises.

(2) (a) The capital value of lands and buildings shall be determined in such manner as may be prescribed having due regard to the prevailing market value of the building and the land on which it stands.

(b) The annual rental value of lands or buildings shall be determined in such manner as may be prescribed having due regard to the rent received in respect thereof:

Provided that in respect of any building and the land appurtenant thereto, the rent of which has been fixed u/s 4 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, the annual rental value determined under this clause shall not exceed the annual amount of the rent so fixed. (3) All furniture and all plants and machinery contained or situated in or upon any building or land shall be included in determining the valuation under this section.

As per sub-section (2)(a) of Section 87, monthly rental value of the lands and buildings shall be determined in the manner prescribed having regard to prevailing market value of the building and the land on which it stands. Clause (b) of sub-section (2) of Section 87, however, provides that ARV of building shall be determined having regard to rent received in respect thereof. A further limitation on the exercise of power u/s 87 (2) did not impose, in that if a rent has been fixed u/s 4 of the Rent Control Act, ARV determinable by the Municipality shall not exceed the rent fixed under the Rent Control Act. A plain reading would show that Municipality is empowered to determine ARV having regard to rent received in respect thereof and not anything else.

6. Section 87 was amended by A.P. Municipalities (Amendment) Act, 1994 with effect from 1.3.1994. After amendment, Section 87 in its entirety read as under.

Sec.87 : Method of assessment of property:

(1) Every building shall be assessed together with its site and other adjacent premises occupied as an appurtenance thereto unless the owner of the building is a different person from the owner of such site or premises.

(2) The annual rental value of lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to be let from month to month or from year to year with reference to its location, type of construction, plinth area, age of the building, nature of use to which it is put and such other criteria as may be prescribed.

(3) Notwithstanding anything in the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, the gross annual rent at which the lands and buildings might reasonably be expected to be let from month to month or from year to year, shall be determined by the Commissioner, with reference to its

location, type of construction, plinth area, age of the building, nature of use to which it is put and such other criteria as may be prescribed:

Provided that in the case of any Government or railway building or any building or a class of buildings not ordinarily let, the gross annual rent of which cannot in the opinion of the Commissioner be estimated, the annual rental value of the premises shall be deemed to be nine percent of the estimated value of the land and the present cost of erecting the building after deduction a reasonable amount towards depreciation which shall in no case be less than ten percent of such cost.

(4) The annual rental value of lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to let from month to month or from year to year, less a deduction at the rate of ten per cent for buildings upto the age of 25 years and twenty percent for buildings above the age of 25 years and thirty percent for buildings above the age of 40 years of that portion of such gross annual rent which is attributable to the building apart from their sites and adjacent lands occupied as an appurtenance thereto and the said deduction shall be in lieu of all allowances for repairs or on any other account whatsoever:

Provided that a rebate of forty per cent of the annual rental value shall be allowed in respect of the residential buildings occupied by the owner inclusive of the deduction permissible under this sub-section. Provided further that in respect of such municipalities on the seashore as may be specified by notification from time to time, a rebate of five percent of the annual rental value shall be allowed in addition to the rebates allowed under the other provisions of the Act in respect of all the buildings.

Sub-section (2) read with sub-section (4) of Section 87 stipulates that ARV of the buildings shall be deemed the gross annual rent on which they might reasonably expected to get from month to month or year to year. Such reasonably expected amount is not matter of conjecture, it is with reference to location, type of construction, plinth area, the age of the building, and nature of use. Therefore, on a true construction of Section 87(2) read with sub-section (4) it must be held that with effect from 1.3.1994 it is competent for the municipality to assess ARV for the purpose of property tax having regard to various factors mentioned in sub-section (2) of Section 87, including nature of use. This only means that the Legislature is aware that in the same area or in the same location, similar type of buildings with same plinth area might fetch different reasonable rents depending on the use of such building. Be that as it is, by sub-section (3) of Section 87 after amendment fair rent or standard rent under Rent Control Act is of no consequence and in the clause u/s 87(3) makes it abundantly clear. To my mind the appellant certainly committed irregularity in arriving at ARV depending on the use of the building. It is no doubt true that the appellant placed reliance on Ex.B.2, which is communication from Warehouse Corporation Manager (examined as P.W.1) in which it is stated that the respondent is charging 0.54 ps. per quintal

as storing charges. This clear admission by the appellant in the written statement as well as in the evidence of D.W.1 would show that the method followed by Municipality was not contemplated under the un-amended provision.

7. The scope of un-amended provision has come up before this Court on many occasions. But, a reference to a Division Bench judgment in *Shantilal Bazaz v. Visakhapatnam Municipality* (supra) would suffice in this regard. The Division Bench after considering Section 87 of the Act as it stood prior to Amendment Act No. 23 of 1975 as well as thereafter, and after referring to various judgments in AIR 1943 164 (Privy Council); *The Lokmanya Mills Vs. The Barsi Borough Municipality*; *The Corporation of Calcutta Vs. Sm. Padma Debi and Others*; *The Mysore State Electricity Board Vs. Bangalore Woollen, Cotton and Silk Mills Ltd. and Others*; *The Guntur Municipal Council Vs. The Guntur Town Rate Payers' Association etc.*; *The Vizianagaram Municipality Vs. Puvvada Bhaskara Rao and Others*; *Guntur Municipality v. Gadde Subba Rao*, (1968) 2 AnWR 94, *The Sattenapalli Panchayat Board Vs. Yekkala Lakshmi Kantam and Others*, and *Guntur Town Ratepayers' Association v. Guntur Municipal Council* (1978) 1 APLJ (HC) 356 : (1978) 2 AnWR 201 laid down as under. S.87(2)(b) at the relevant time made a department from the analogous provision of S. 82(2) under the District Municipalities Act of 1920 and thereafter this provision is again amended by Act No. XXIII of 1975 and by this amendment the original tenor of the provision is restored. By Act No. XXIII of 1975 "reasonably expected to be received" has been substituted for the expression "having regard to the rent received in respect thereof". The expression "reasonably expected to be received" is in the realm of estimation on a consideration of several factors and this expression was substituted by "having regard to the rent received" with an obvious intention of the basis of annual rent to be in close proximity to the actual receipt of rent if not equal to the rent fetched. The difference in the language employed and the subsequent reversion to the original expression clearly indicates that different connotation was sought to be credited to as otherwise, there is no necessity for the latest amendment. The receipt of either rent or profit or otherwise by the lessee in the building let out cannot be the basis for levy of tax on the owner. The owner is not concerned with the amount that the lessee manages to get by dint of his ability or resources or otherwise; and the owner cannot be mulcted with the liability to pay the tax on the basis of the rents or profits received by the lessee. This approach lead to an incongruous result and a situation can be visualized wherein the lessee can get more rent or return in the event of subletting or doing business and if levy on the basis of the said amount is done the rent realized will not be sufficient to meet the liability of tax.

8. The judgment relied on by the learned counsel for the appellant in *Bojjala Ganga Subbarami Reddy v. Srikalahasthi Municipality* (supra) was rendered by learned Single Judge of this Court. After, perusing the judgment, I am not able to countenance the submission of the learned Counsel that the tax levied by the Municipality is in accordance with Section 87 of the Act. Learned Judge after considering Section 87 of the Act prior to its amendment observed as under. The

procedure for assessment and levy of property tax in respect of buildings situated within a Municipality is laid down in Schedule-II of the Act. Rule 6 of Schedule-II lays down that the value of any land or building, for the purpose of property tax, shall be determined by the Commissioner after giving an opportunity of making representation to the owner of the land or building. As per Section 87 of the Act, a building in the Municipality shall be assessed to tax on its annual rental value. The annual rental value of buildings in the Municipality shall be deemed to be the gross annual rent at which they may reasonably be expected to let from month to month or from year to year with reference to their location, type of construction, plinth area, age of the building, nature of use to which they are put, and such other criteria as may be prescribed. Since construction of the building was completed in 1980, at the time when it was assessed to tax for the first time in the second half year of 1980-81, it was a new construction and so the provisions of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 do not apply to it and so it has to be assessed to tax on the basis of rent which it is reasonably expected to fetch, as contemplated by Section 87 of the Act.

9. The above observations would not be of any assistance to the appellant and on the contrary they would also support the view taken by me as above. The submission that the suit is barred or is not maintainable as was raised before the trial Court is not seriously made before this Court. In any view of the matter, having regard to the judgments of this Court cited hereinabove, suit u/s 376 of the Act is not bar as the Municipality did not disclose any method of assessment nor followed the principles which govern assessment of ARV.

10. The appeal is devoid of merit and is accordingly dismissed with costs throughout.