

(1999) 03 AHC CK 0037
In the Allahabad High Court
Case No : C.M.W.P. No. 307 of 1979

Nagar Mahapalika, Varanasi

APPELLANT

Vs

Addl. District and Sessions Judge, Varanasi and others

RESPONDENT

Date of Decision : 22-03-1999

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 140

Uttar Pradesh Nagar Mahapalika Act, 1959 — Section 174, 20, 54

Citation : AIR 1999 All 253 : (1999) 2 AWC 1389

Hon'ble Judges : S.L. Saraf, J

Bench : Single Bench

Advocate : Gyan Chandra Dwivedi, for the Appellant; S.C. and B.D. Mandhyan, for the Respondent

Judgement

S.L. Saraf, J.—By this writ petition, the petitioner Nagar Mahapalika, Varanasi has sought a direction against respondent No. 3 to pay the annual value of the building as assessed in accordance with Section 174 (b) of U.P. Nagar Mahapalika Adhiniyam, 1959 and has further sought the quashing of the judgment and orders dated 24.2.1978 and 18.4.1979 passed by Judge Small Causes Court and 2nd Additional District and Sessions Judge, Varanasi respectively.

2. The case of the petitioner is that respondent is a five star hotel and is situated at S 20/54 Secrol Ward Mauza Arazi Line, Varanasi. The said hotel was assessed for annual value of Rs. 15,000 from 1.4.1967. Thereafter the same was assessed at Rs. 11,81,000 on and from 1.4.1974. On an appeal filed by respondent No. 3 before the Judge Small Cause Court, Varanasi, the said appeal was dismissed vide order dated 25.5.1974 passed by the Judge Small Causes Court. Respondent No. 3 filed second appeal before the District Judge, Varanasi and took the plea that the petitioner had illegally assessed the annual value of the aforesaid premises u/s 174 (b) of U.P. Nagar Mahapalika Adhiniyam, 1959 (hereinafter referred to as "the Act of 1959") whereas the assessment should have been made in accordance with the provisions of Section 174 (a) of the

aforesaid Act. The District Judge by his Judgment and order dated 30.1.1975 remanded the case back to the Nagar Mahapalika, Varanasi for fresh assessment of the annual value of the aforesaid premises after taking sufficient evidence. As against the said judgment and order, respondent filed a review application, which was, however, dismissed as not pressed. On remand, the Nagar Mahapalika was to make fresh assessment of the annual value. The Tax Valuer of the Nagar Mahapalika, however, made the assessment of the annual value of the aforesaid premises u/s 174 (a) of the 1959 Act. When the said fact was brought to the notice of the Administrator, Nagar Mahapalika, the order passed on 24.7.1976 was cancelled and a fresh notice was issued to respondent No. 3 to file objection, if any. Thereafter, it is alleged in the petition that respondent No. 3 was given proper notice and sufficient opportunity to put forward his case before petitioner No. 3 and the assessment of the aforesaid premises was at Rs. 10,17,804 from 1.4.1974. As against the said order dated 6.6.1977, an appeal was filed before the Judge Small Causes Court, Varanasi, who allowed the appeal on 24.2.1978. The property was assessed under the provisions of Section 174 (a) of 1959 Act. As against the said Judgment, Nagar Mahapalika filed an appeal before the District Judge Varanasi. District Judge Varanasi, however, dismissed the appeal by his judgment and order dated 14.2.1978 and upheld the decision of the Judge Small Causes Court.

3. Presently, the petitioner by the instant petition is challenging the judgment and order of the District Judge dated 18.4.1979, inter alia on the ground (a) that Section 174 (b) of U. P. Nagar Mahapalika Adhiniyam, 1959 and not u/s 174 (a) of the said Act. The annual valuation should have been made on the basis of the rental income and not on the land, and building method, and secondly as the word "hotel" has been excluded under the provisions of Section 174 (a) of the Act of 1959 whereas the said word "hotel" was present in Section 140 of the U. P. Municipalities Act, 1916 (hereinafter referred to as the Act of 1916], the annual value of the hotel is to be assessed u/s 174 (b) of the Act of 1959. It was submitted that Hotel Clarks is a five star hotel and is being run purely for profit making motive and its valuation is to be taken on the basis of Section 174 (b) of 1959 Act and not u/s 174 (a) of the said Act.

4. Mr. B.D. Mandhyan appearing for respondent No. 3 submits that "hotel" or "hospitals" are buildings for public utility and are run for public use. The buildings are not normally let out nor in the present case they have been let out. Providing facilities for stay at the hotel is a part of amenities, which does not create any tenancy right in the said property by the occupant in the said premises. Since the hotel is not ordinarily let out, the principle enunciated u/s 174 (b) cannot be attracted. The said provisions will only be attracted if a building or land is actually let or building or land is not let or in the opinion of the assessing authority is let for a sum not less than its fair letting value, might reasonably be expected to be let from year to year. As such, Mr. Mandhyan argued, the property of respondent No. 3 would only be assessed under the provisions of Section 174 (a), of the Act.

5. To appreciate the submissions of the petitioner as well as respondent No. 3, I set out Section 140 of Municipalities Act, 1916 and Section 174 of the U.P. Nagar Mahapalika Adhiniyam, 1959 which read as follows :

"140. Definition of annual value. --(1) "Annual value" means :

(a) In the case of railway stations, hotels, colleges, schools, hospitals, factories, and other such buildings, a proportion not exceeding five per centum, to be fixed by rule made in this behalf of the sum, obtained by adding the estimated present cost of erecting the building to the estimated value of the land appurtenant thereto, and

(b) in the case of a building or land not falling within the provisions of clause (a), the gross annual rent for which such building, exclusive of furniture or machinery therein, or such land is actually let, or, where the building or land is not let or in the opinion of the board is let for a sum less than its fair letting value, might reasonably be expected to from year to year.

"174. Definition of annual value.--"Annual value" means :

(a) in the case of railway stations, colleges, schools, hostels, factories, commercial buildings, and other non-residential buildings, a proportion not below 5 per cent, to be fixed by rule made in this behalf of the sum obtained by adding the estimated present cost of erecting the building less depreciation at a rate to be fixed by rules, to the estimated value of the land appurtenant thereto ; and

(b) in the case of a building or a land not falling within the provisions of clause (a) the gross annual rent for which such building, exclusive of furniture or machinery therein, or such land is actually let, or where the building or land is not let or in the opinion of the assessing authority is let for a sum less than its fair letting value, might reasonably be expected to be let from year to year :

Provided that where the annual value of any building, by reason of exceptional circumstances, in the opinion of the Corporation, be excessive if calculated in the aforesaid manner, the Corporation may fix the annual value at any less amount which appears to it equitable :

Provided further that where the Corporation so resolves, the annual value in the case of owner occupied building and land shall for the purposes of assessment of taxes be deemed to be 25 per cent less than the annual value otherwise determined under this Section."

6. The Court has considered the submission of the learned counsel for the petitioner as also the respondent No. 3 very carefully.

7. It is true that under the old Act of 1916 the words "hotels" and "hospitals" were used in the definition of Annual Value u/s 140 (a) of the said Act. By the use of these words, "hotels" and "hospitals" no ambiguity or lacuna was left out and it did not require any strain in interpreting the provisions of the Act. However, subsequently, it appears that by the 1959 Act, the words "hotels" and

"hospitals" have been left out from the definition of sub-section (a) of Section 174, of the new Act. The issue for consideration is whether in that view of the matter, annual value of the hotels or hospitals can be treated in a different way or whether the same can still be assessed under the provisions of Section 174 (a) of the Act.

8. There was a further amendment of the provisions of Section 174 (a), of the 1959 Act in the year 1987 which amended the said definition of Section 174 (a) by adding the words "commercial buildings" and "non residential buildings" by deleting the words "and other such buildings". The aforesaid two Acts of 1916 and 1959 only provide two methods of valuation, i.e., the land and building method as provided u/s 140 (a) of the 1916 Act corresponding to Section 174 (a) of 1959 Act and secondly, the rental method as provided u/s 140 (b) of the old Act corresponding to Section 174(b), of the 1959 Act. There is no any other method provided for calculating the annual value under the provisions of the Act.

9. A Division Bench of this Court in a Judgment in Godraj Dhanji Shah Gandhi v. Municipal Board and another 1973 ALJ 476, held as follows :

"The assessing authority and the appellate authority interpreted the clauses (a) and (b) and held that clause (a) applied to such buildings which are seldom or never let out and clause (b) applied to buildings which are usually let out or may be let out if so desired by the owner. The learned single Judge observed that clause (b) covers buildings which are often let out so as to yield rent and clause (a) deals with buildings which are seldom or never let out. We are in agreement with the view taken by the learned single Judge. The purpose of determining the annual valuation of buildings is the levy of taxes under the Act. Clause (b) in our opinion, is the clause, which applies to all " buildings except those, which are covered by clause (a), Clause (a) deals with a special category of buildings, which neither can nor normally are let out. Railway stations, colleges, schools and hospitals cannot be let out. Hotels and factories can only seldom be let out."

10. I may also refer to another decision reported in 1981 UPTC 1118, which while relying on the aforesaid decision of the Division Bench has observed as under :

"The principle of determining annual valuation of the buildings has been elaborated in G.D.S. Gandhi v. Municipal Board 1973 ALJ 476 by a Division Bench of this Court. It has been laid down that clause (b) covers buildings which are often let out so as to yield rent and clause (a) deals with buildings which are seldom or never let out. The purpose of determining the annual value of buildings is the levy of taxes under the Act. Clause (b) is the clause, which applies to all buildings except those which are covered by clause (a). Clause (a) deals with a special category of building which neither can nor normally are let out. Railway Stations, colleges, schools and hospitals cannot be let out. Hotels and factories can only seldom be let out. All other buildings are thus covered by clause (b).

In the present case, it being admitted that the disputed building has been let out, the same will be covered by clause (b) and not clause (a). The expression "other such buildings" occurring in clause (a) refers to those buildings which neither can nor normally are let out on rent. Such is not the case in regard to the disputed building. The view taken by the appellate court, therefore, is erroneous in law."

11. The aforesaid two decisions were in relation to Section 140 (a) and Section 140 (b) of 1916 Act. While interpreting the provisions of Section 140 (a) and Section 140 b), the Division Bench of this Court has held that hotels or hospitals can hardly be let out. Prior to the Act of 1959, the words enumerated under the provisions of Section 140(a), of the old Act were "railway stations, hotels, colleges, schools, hospitals, factories and other such buildings" and the words "other such buildings" were construed as ejusdem generis to include all such buildings as by that rule are related in kind to railway stations, hotels, colleges etc., which precede that phrase. One quality common to all of them was that they refer to use, which cater to a public need. In all these cases, one conceives of a building applied to a purpose impregnated with the element of public utility. Whether it is a railway station, hotel, college, school, hospital or factory, it is the element of public utility, public welfare, public use or in other words, that, which is related to a public need or commonweal which runs through clause (a) in common emphasis. The phrase "other such buildings" must therefore, refer to buildings whose user at the relevant time bears a character partaking of the same emphasis. See Municipal Board Vs. District Magistrate and Another, If that be so, then in my view of the matter, deletion of two words from the phraseology of Section 174 (a) of 1959 Act would have made no difference in applying the principle of ejusdem generis. Hotels and hospitals were and still are buildings impregnated with the element of public utility and use. They cater for public need and can only be taxed in accordance with the principle laid down in Section 174 (a) of the Act.

12. In any event, the provisions of Section 174 (b), cannot be applied in the case of the hotel in view of the fact that the hotel building as such, is not to let out nor the same is expected to be let out. No rental value of the said hotel can be arrived at by following any method of calculation. The charges paid by the occupant of the hotel for a temporary period does not make such occupant as a tenant and the said occupant do not have any right or any vested interest in the said hotel. However, the occupants not only get stay at the hotel but so many other facilities are made available to them, which form the entire package to the " hotel occupants. There can be no estimation of the annual value on the rental basis. The method sought to be applied for by the petitioner is uncalled for and is not warranted in law.

13. The sole question for consideration is whether a hotel can be assessed u/s 174 (b), of the Act of 1959. Mr. Justice R. S. Pathak (as his Lordship then was), was pleased to hold in Municipal Board Vs. District Magistrate and Another, , as

under:

"It must be remembered that the tax imposed is a tax on the annual value of a building. It is not a tax on the annual value of a railway station or a hotel or a college, etc. The building may be used as a railway station, hotel, college, etc., and the character of the user determines the basis on which the annual value of the building will be determined. If it is a building which is used as a railway station, hotel, college etc., its annual value will be determined on the basis provided in clause (a), If it is a building, which is not being used as a railway station, hotel, college, etc. falling within the provisions of clause (a) its annual value must be determined with reference to clause (b).Accordingly, while the incidence of the tax is made dependent on the existence of a building, what should be the amount of that tax is determined by the use to which the building is applied at the time of the levy."

His Lordship was pleased to observe further in paragraph 6 as under:

"The distinction which divides clause (a) from clause (b) is reflected in the basis for computing the annual value. In clause (a) annual value is determined by reference to the present cost of constructing the building added to the estimated value of the appurtenant land. The quantum of the annual value being dependent on the use to which the building is put, this and not letting value is the basis adopted by the statute because it is difficult to conceive of a building when used as a railway station, hotel, college, school, hospital or factory being ordinarily open to letting out. All other buildings are covered by clause (b) where the letting value provides the referential basis for calculating the annual value."

14. Following the aforesaid principle. I find that the word "hotel" or "hospital" though excluded under the provisions of Section 174 (a) of the 1959 Act, the "hotel" will still be assessed or valued u/s 174 (a) and not u/s 174 (b) of the Act of 1959. The incidence and characteristic of valuing a property such as letting out or fair market value of letting out, is not available to the assessing authority in the case of a hotel. The same can only be assessed under the provisions of Section 174 (a) of the new Act. The hotel and hospital though deleted from the provisions of Section 174 (a) of the 1959 Act, still one common characteristic running through "hotel", "hospital" and other buildings enumerated in the said sub-section (a) of Section 174, remains the same, namely, the catering to the public need and there is an element of public utility, public welfare and public use in all the aforesaid buildings.

15. On the contrary Mr. C. K. Parekh was unable to controvert the proposition aforesaid that the hotel has not been let out. His sole argument was that there had been deletion of the words "hotel" and "hospital" in the 1959 Act, as such, the hotel is taxable u/s 174 (b). I find no substance in the submission of the petitioner.

16. In view of the above discussion, there is no merit in the present writ petition and the same is dismissed. There shall be no order as to costs.