

(2012) 12 BOM CK 0106

In the Bombay High Court

Case No : Writ Petition No. 4108 of 1994

Pune Municipal Corporation

APPELLANT

Vs

Dhanraj Tarachand Sankala and Sons

RESPONDENT

Date of Decision : 19-12-2012

Acts Referred:

Citation : (2013) 3 BomCR 347 : (2013) 2 MhLj 407

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : Abhijit Kulkarni, for the Appellant; Hemant Ghadigaonkar, for the Respondent

Judgement

B.P. Dharmadhikari, J.—The Municipal Corporation has questioned the Judgment and order dated 30-11-1993 passed by the Small Causes Court, Pune in Municipal Appeal No. 221 of 1991. Contention of the learned counsel for the Petitioner is that the Appeal has been decided only after appreciation of evidence adduced by the Respondent-landlord and without finding any fault with the process of assessment adopted by the Petitioner. He is seeking support from the Judgment dated 18-1-2011 in Writ Petition No. 5279 of 1993 to urge that the rateable value can be worked out by taking into account the market value of the property i.e. by capital value method. Similarly, Judgment dated 23-11-2012 delivered in Writ Petition No. 133 of 1996 is relied upon to urge that without calling for records and proceedings of Municipal corporation in relation to the impugned assessment appeal could not have been decided.

2. Mr. Ghadigaonkar for Respondents supports the impugned order. He points out that the Petitioner was given due opportunity and has been heard before delivering the impugned judgment. He has invited attention of the Court to show as to how there is apparent contradiction in the rateable value of the property situated in close proximity. He therefore prays for dismissal of the Writ Petition.

3. A perusal of the impugned judgment reveals that by assessment order dated

5-7-1991 the rateable value of the Respondent's property was fixed at Rs. 8950/- and that order was questioned in Municipal Appeal No. 221 of 1991 u/s 406 of the Pune Municipal Corporation Act, 1959. The Respondents adduced evidence and pointed out that the adjacent property i.e. plot No. 271 was also assessed by the same Municipal Corporation and its rateable was fixed at Rs. 2600/-. The total construction on the said plot was 1500 sq feet. The Court has noted that construction on the appellant's plot before it was only 720 sq.ft. It is therefore found in such situation determination of rateable value at Rs. 8950 was exorbitant and RV of present plot of appellant ought to have been fixed proportionately. It fixed it at Rs. 1300/- with effect from 1-4-1991. What was wrong with the process followed by the present Petitioner while determining the rateable value of Respondent's property is also not disclosed. The Judgment does not show that R and P of the Municipal Corporation in relation to exercise of assessment of property on plot No. 145 was not called for. Merely because two properties are situated adjacent to each other, their assessment need not be the same.

4. In this situation, in the light of the Judgments cited by learned counsel for the Petitioner, I find that the said Judgment unsustainable. The Judgment dated 30-11-1993 in Municipal Appeal No. 221 of 1991 is set aside and Appeal is restored back to the file of the Small Causes Court, Pune for its fresh trial in accordance with law.

5. Parties are directed to appear before the Small Causes Court, Pune on 11-2-2013 and to abide by its further instructions in the matter. Petition is thus partly allowed and disposed of.