**(2024) 03 BOM CK 0022**

**In the Bombay High Court**

**Case No :** Writ Petition No. 1765 Of 1996

Pune Municipal Corporation APPELLANT

Vs

M/S. Deval Electroplators RESPONDENT

**Date of Decision :** 08-03-2024

**Acts Referred:**

Constitution Of India, 1950 — Article 227
Bombay Provincial Municipal Corporations Act, 1949 — Section 99, 129, 127(1), 137, 150, 406, 406(1)

**Citation :** (2024) 03 BOM CK 0022

**Hon'ble Judges :** Amit Borkar, J

**Bench :** Single Bench

**Advocate :** Abhijit P. Kulkarni, Gaurav Shahanem, Krushna Jaybhay, Mandar Limaye

**Final Decision :** Allowed

# Judgement

Amit Borkar, J

1. By this petitioner under Article 227 of the Constitution of India, the petitioner is challenging judgment and order passed by the 9th Additional District Judge Pune in Civil Appeal No.343 of 1991 dated 12 September 1995 dismissing the appeal arising out of judgment and order dated 25 April 1990 passed by the Principal Judge of the Small Causes Court, Pune in Municipal Appeal No.52 of 1989 challenging bill dated 21 April 1989 and the assessment order.

2. The respondent is the owner of Plot No.41 in Survey No.44 Electronic Cooperative Society Pune-Satara Road, Pune. Respondent constructed ground plus two floors building admeasuring 3600 sq. ft. from 1980 to 1985.

3. The petitioner corporation on 8 March 1986 issued a special Notice bearing No.7248 proposing a rateable value of Rs.54,800/-. Based on such notice, the respondent filed a complaint on 17 March 1986. On 11 July 1986, the Assessor and Collector of Tax adjudicated a total estimated rent of Rs.2,945/- and based

on its fixed rateable value at Rs.30,050/-. According to the petitioner, while fixing such rateable value the Assessor took into consideration the area of construction, quality of construction and other facts. The rateable value was fixed with effect from 1 February 1986. The respondent paid the bills based on the rateable value fixed on 11 July 1986 up to the assessment year 1988 to 1989.

4. On 5 June 1989, the respondent challenged the bill and rateable value by filing Municipal Appeal No.52 of 1989 under Section 406 of the said Act. The petitioner contested the appeal by filing a reply and examined witnesses. By order dated 25 April 1990, the Small Causes Court allowed the appeal and set aside the rateable value of Rs.30,050/- fixed by the petitioner and adjudicated the rateable value for the respondent's property at Rs.11,400/-. The Small Causes Court directed the petitioner to refund the excess tax collected based on the bill dated 21 April 1989.

5. Aggrieved thereby, the petitioner filed Civil Appeal No.343 of 1991 before the District Judge, Pune. The District Judge, Pune by the impugned judgment and order dated 12 September 1995 confirmed the judgment and order passed by the Principal Judge Small Causes Court Pune. Hence, the petitioner has filed a present writ petition.

6. The learned counsel for the Petitioner Corporation submitted that the respondent accepted adjudication of rateable value by the Assessor and Collector by order dated 11 July 1986. He paid bills based on rateable value fixed at Rs.30,050/- in two subsequent assessment years, i.e. the assessment year 1987-1988 and 1988-1989. He submitted that a challenge to rateable value needs to be raised in an appeal challenging bill immediately after fixation of rateable value in which appeal the issue of ratable value can be gone into. However, once the respondent accepts such rateable value by paying a bill based on the same rateable value, his appeal which is essentially disputes fixation of rateable value was not maintainable. In support of his submission, he relied on the Division Bench judgment of this Court in Ashok Srichand Kewalramani Vs. Municipal Corporation of City of Pune and Anr. reported in 1980 Mh.L.J. 534.

7. He also invited my attention to sub-section (2) of Section 406 which mandates filing of an appeal within fifteen days after the accrual of the complaint. He, therefore, submitted that in the absence of a challenge to the rateable value fixed on 11 July 1986 which had been accepted by the respondent having made payment till the assessment year 1989, the respondent's appeal was not maintainable. He submitted that the Principal Judge, Small Causes Court was not justified in equating construction in the same society completed in the year 1980 with the construction of the respondent completed in the year 1985-1986. According to him, based on the rateable value of such construction in the society, the Court below could not have accepted the respondent's contention that a similar rateable value ought to have been fixed by the petitioner. In support of his submission, he placed reliance on the judgment of this Court in Trilok Baburao Deshpande v. Municipal Corporation of Greater City of Pune reported in

 

2013 (1) Mh.L.J. 794.

8. Per contra, learned advocate for the respondent submitted that the petitioner was under statutory obligation to assess the property for municipal tax every year and, therefore, the cause of action for challenging rateable value accrues independently every year irrespective of the fact as to whether the same rateable value is continued by the Taxing Authority. He submitted that the order passed by the Assessing Officer indicates no application of mind. No reasons are assigned while fixing the rateable value. Therefore, the Courts below have rightly reduced the rateable value of similar construction in the nearby area of the same society. He, therefore, submitted that the writ petition deserves to be dismissed.

9. I have heard both sides and given anxious consideration to the submissions made on behalf of both sides.

10. For adjudicating the issue involved, it is necessary to set out Section 406 of the Bombay Provincial Municipal Corporations Act, 1949 as stood in the year 1986 which is as under:

"406. (1) Subject to the provisions hereinafter contained, appeals against any rateable value or tax fixed or charged under this Act shall be heard and determined by the Judge.

(2) No such appeal shall be heard unless— (a) it is brought within fifteen days after the accrual of the cause of complaint;

(b) in the case of an appeal against a rateable value a complaint has previously been made to the Commissioner as provided under this Act and such complaint has been disposed of;

(c) in the case of an appeal against any tax in respect of which provision exists under this Act for a complaint to be made to the Commissioner against the demand, such complaint has previously been made and disposed of;

(d) in the case of an appeal against any amendment made in the assessment book for property taxes during the official year, a complaint has been made by the person aggrieved within fifteen days after he first received notice of such amendment, and his complaint has been disposed of;

(e) in the case of an appeal against a tax, or in the case of an appeal made against a rateable value after a bill for any property tax assessed upon such value has been presented to the appellant, the amount claimed from the appellant has been deposited by him with the Commissioner."

11. Section 406(1) provides for an appeal against the rateable value and/or tax fixed or charged under the said Act to be heard by the Judge of the Small Causes Court. Sub-section 2(a) provides for a limitation of fifteen days from accrual of cause of complaint. Clause (b) deals with a case where an appeal has been filed against the rejection of the complaint regarding the determination of rateable value after the bill of demand demanding property tax is received by the

 

appellant. There cannot be a dispute that property tax is assessed based on the rateable value determined by the Municipal Corporation.

12. Section 129 as existed in the year 1986 reads thus:

"129. Property taxes of what to consist and at what rate leviable.— For the purposes of sub-section (1) of section 127 property taxes shall comprise the following taxes which shall, subject to the exceptions, limitations and conditions hereinafter provided, be levied on buildings and lands in the city.—

(a) a water tax at such percentage of their rateable value as the Corporation shall deem reasonable, for providing a water supply for the City;

(b) a conservancy tax at such percentage of their rateable value as will in the opinion of the Corporation suffice to provide for the collection, removal and disposal, by municipal agency, of all excrementitious and polluted matter from privies, urinals and cess-pools and for efficiently maintaining and repairing the municipal drains construected or used for the receipt or conveyance of such matter, subject however to the provisos that the minimum amount of such tax to be levied in respect of any one separate holding of land or of any one building or of any one portioin of a building which is let as a separate holding shall be eight annas per mensem and that the amount of such tax to be levied in respect of any hotel, club, industrial premises or other large premises may be specially fixed under section 137 :

Provided that when determining under section 99 or section 150 the rate at which conservancy tax shall be levied for any official year or part of an official year, the Corporation may determine different rates for different classes of properties.

(c) a general tax of not less than twelve per cent but not more than thirty per cent of their rateable value, which may be levied, if the Corporation so determines on a graduated scale;

(d) betterment charges leviable under Chapter XVI.

Explanation.— Where any portion of a building or land is liable to a higher rate of the general tax such portion shall be deemed to be a separate property for the purpose of municipal taxation."

13. Based on the scheme of the Act and taxation Rules, it appears that the commissioner needs to adopt or alter entries in the assessment book every year. It is an obligation of the Municipal Commissioner to publish public notice required under the Taxation Rules every year and, therefore, the right accrues to the person every year to raise an objection. Therefore, every year there is a fresh cause of action in the matter of assessment of property tax. Therefore, a party cannot be estopped from challenging assessment on the grounds that the matter became final in the earlier year. If a property is liable to be taxed under a statute which is the law of the land, it must be so taxed without having regard to the

 

fact that earlier year's basis of taxation was not challenged.

14. The Apex Court in the case of Commissioner of Income Tax, West Bengal v. Durga Prasad More reported in AIR 1971 SC 2439 has held that neither the principle of res judicata nor rule of estoppel is applicable to assessment proceedings.

15. In M.M. Ipoh & Ors. v. Commissioner of Income-tax, Madras reported in AIR 1968 SC 317, it is held that the doctrine of res judicata does not apply so as to make a decision on a question of fact or law in a proceeding for assessment in one year binding in another year. The assessment and the facts found are conclusive only in the year of assessment and such finding on facts may be good evidence for subsequent years. But if such a question falls for adjudication in another year, such adjudication is not binding.

16. The Apex Court in paragraph 8 of Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy reported in (1970) 1 SCC 613 held as under:

“8. In a case relation to levy of tax a decision valuing property or determining liability to tax in a different taxable period or event is building only in that period or event, and is not binding in the subsequent years, and therefore the rule of res judicata has no application : See Brokan Hill Proprietory Company Ltd. v. Municipal Council of Broken Hill. [(1926 AC 94].”

17. It is now well settled that the decision on the question of property tax, income tax and rating assessment constitutes an explanation of the principle of res judicata and the decisions given regarding tax of a particular year or assessment adjudication do not give rise to binding estoppel on the parties in respect of subsequent assessment of tax. The rationale for such a principle appears to be that the question of liability of the taxpayer for subsequent years tax cannot be regarded as the same question of his liability for the assessment year. If a property is liable to be taxed under a statute, it must be taxed without having regard to the fact that for earlier year it successfully escaped taxation on an erroneous view of fact or law.

18. I am, therefore, of the opinion that the appeal challenging rateable value out of assessment for a particular year is maintainable in the absence of challenge to the same rateable value in the earlier assessment years.

19. The next question that arises for consideration is the basis adopted by the Judge of the Small Causes Court to be a building constructed in the year 1980 for reducing the rateable value of a building constructed by the respondent in the years 1985-1986. The record indicates that the Assessing Officer fixed rateable value based on the location of the property on the Pune-Satara Highway having constructed using the best quality material. Based on such factors, the Assessing Officer fixed reasonable estimated rent at Rs.2,430/- in respect of first and second floor ad-measuring 1,620 sq. ft. and maintained rateable value in respect of workshop ad-measuring 855 sq. ft. The total estimated rent calculated was

 

Rs.2,945/- and accordingly rateable value wax fixed at Rs.30,050/-.

20. The Small Causes Court based on the construction of the ground and first floor by the owner of a nearby property in the same society reduced the rateable value equating it with the construction completed in the year 1980. The Appellate Court recorded a finding that the rateable value of similar construction in the vicinity ought to have been the basis of fixing the rateable value of the respondent's property. However, the Appellate Court has not assigned reasons while recording a finding that the construction based on which rateable value of the respondent’s property was reduced, was held to be similar on what basis.

21. It needs to be noted that ordinarily, it is not possible that two premises having similar nature of construction and accommodation are available. However, the Assessing Authority is not equipped with machinery that would enable it to collect such evidence as it is not expected that the Authority would go out searching and collecting evidence to bring on record material which would enable the Assessing Authority to apply the principle of parity as is done by the Appellate Court. For the purpose of finding reasonable rent, the Assessing Authority has to keep in view principles of standard rent as deductible from Rent Control Law which permits the cost of construction to be adopted as the basis for calculating rateable value in case of self-occupied properties. It is permissible if the Assessing Authority works out the cost of land by reference to the date of commencement of construction and the reasonable amount spent on construction. The tax is to be levied on the rateable value of any land or building which is determined by finding out the only rent at which such land or building may reasonably be expected to be let out from year to year by deducting a sum equal to ten per cent of such annual rent. Such annual rent at which a building may reasonably be expected to let would be higher in case of building construction which is recent as compared to construction of the building which is older. There is nothing wrong if a property having recent construction is required to pay more tax than older construction based on the quality of material used for construction.

22. Therefore, in my opinion, it was necessary for the Appellate Authority to consider the material on record as to whether the material used for construction by the respondent was similar to the material used by the owner of the structure in the vicinity. The factor of the gap of five years in construction is also relevant for deciding the cost of construction having an effect on reasonable rent. Therefore, in my opinion, the Courts below were not justified in setting aside rateable value fixed by the petitioner by substituting it based on construction in the vicinity completed five years back. Hence, following order:

23. Rule is made absolute in terms of prayer clause (b).

24. No costs.

 