
(1994) 07 BOM CK 0055
In the Bombay High Court
Case No : First Appeal No. 450 of 1979

Rambai Laxminarayan Kothari	Vs	APPELLANT
Municipal Commissioner and others		RESPONDENT

Date of Decision : 21-07-1994

Acts Referred:

Bombay Municipal Corporation Act, 1888 — Section 154, 217, 218D(1)

Citation : AIR 1995 Bom 411 : (1995) 1 BomCR 97 : (1994) 96 BOMLR 102 : (1995) 2 MhLj 923

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Advocate : S.N.Nayak and M.D. Gangakhedkar, for the Appellant; N.V. Walawalkar, for the Respondent

Judgement

1. One Rambhai Laxminarayan Kothari has preferred this appeal against order dated 23rd August, 1978 passed by the learned Additional Chief Judge of Court of Small Causes at Bombay in Municipal Appeal No. M/324 of 1977. The said municipal appeal was filed by La"Builds Corporation as well as Shri Rambhai L. Kothari as the appellants. This appeal is filed u/s 218D(1)(d) of the Bombay Municipal Corporation Act, 1888. Section 218D(1)(d) of the Act provides that an appeal shall lie to the High Court from any decision of the Chief Judge in an appeal u/s 217 upon a question of law or usage i having force of law or the construction of a document. By the order under appeal, the learned Additional Chief Judge of Court of Small Causes at Bombay dismissed the above referred Municipal Appeal No. M/324 of 1977. By the said order, the trial Court confirmed the rateable value of the property in question fixed by the Investigating Officer at Rs. 82,070/-. The relevant facts are briefly summarised hereinafter.

2. Somewhere in the month of July/ August, 1975 the construction of the building known as "Silver Gold Apartment" was completed. By about December, 1975, large number of flats in the said building were occupied by the flat purchasers. The appellant in this appeal was the Secretary of Silver Gold

Apartment ad hoc committee at all material time. The appellant was duly authorised by majority of the flat purchasers to represent them in connection with the matters pertaining to fixation of rateable value of the said property. On or about 8th January, 1976, water connection was released for the said property. On or about 10th May, 1976, the Municipal Corporation issued the necessary completion certificate in respect of the said building.

3. On or about 18th March, 1976, the authorised officer of Municipal Corporation issued special notice No. TWR-1209 of 1975-76 proposing that the rateable value of the said property including the said building be fixed at Rs. 91,090/-. The said notice was pasted on the property. The builder concerned as well as the appellant before this Court filed their necessary objections/complaint before the prescribed authority. The objections were duly considered. By an order dated 17th August, 1976, the Investigating Officer fixed the rateable value of the said property at Rs. 82,070/-. The Investigating Officer fixed the rateable value of the said building on the footing of rate for the ground floor of the said building being taken at Rs. 31/- per 10 sq. metres, Rs. 32/- for the first floor, Rs. 33/- for the 2nd floor, Rs. 34/- for the 3rd floor and Rs. 35/- for the 4th and 5th floors respectively. While fixing the rateable value of the said property the Investigating Officer took into consideration the rateable value fixed by the Municipal Corporation in respect of other buildings in the neighbourhood which were constructed about two years prior to the construction of the building known as Silver Gold Apartment. It emerges from the record that in case of Nimush Building the rateable value of the property was assessed on the footing of the rate being Rs. 31/- to Rs. 34/- per 10 sq. mtrs. from ground floor to third floor for the year 1974-75. It emerges from the record that building Shailesh Apartment was assessed at the rate of Rs. 30/- for the ground floor and at the rate of Rs. 31/- for the first floor and so forth. It also emerges from the record that in case of another building in the locality known as Sanjay, the rateable value thereof was assessed on the footing of rateable value at the rate of Rs. 29/- per 10 sq. metres for the first floor, Rs. 30/- for the second floor and Rs. 31/- for the third floor respectively. The said notice dated 18th March, 1976 was issued by the officer concerned proposing fixation of rateable value of the building known as Silver Gold Apartment by adopting the rate of Rs. 33/- per 10 sq. mtrs. for the ground floor. The Investigating Officer reduced the said rate to Rs. 31/- while passing the order on 17th August, 1976. The Investigating Officer granted deduction from the rateable value computed on the said footing in sum of Rs. 9,000/- in the aggregate i.e. at the rate of Rs. 750/- per month.

4. Being aggrieved by the order of the Investigating Officer dated 17th August, 1976, the builders concerned as well as ? Rambhai Kothari filed Municipal Appeal No. M/324 of 1977 as permissible u/s 217 of the Bombay Municipal Act. At the hearing of the said appeal, parties led oral as well as documentary evidence.

5. The learned Additional Chief Judge reached the conclusion that there was no infirmity in the order passed by the Investigating Officer on 17th August, 1976.

The learned Additional Chief Judge recorded it as a fact in his judgment that all the three buildings Neemesh, Shailesh and Sanjay were constructed earlier to the construction of the building "Silver Gold Apartment". It is not disputed that there are shops on the ground floor of the above referred three buildings while there are no shops in the building "Silver Gold Apartment". With all this, the learned Chief Judge reached the conclusion that the rate adopted by the Investigating Officer was a comparable rate and the rateable value fixed by him by his order dated 17th August, 1976 was fair and reasonable. In the order under appeal, the learned Additional Chief Judge also stated as a fact that 56 flat buyers had paid in all a sum of Rupees 21,38,800/- for purchase of the flats. If the rateable value is to be fixed at about 9% of the said amount, the rateable value of the building may have to be fixed much higher than at the figure of Rs. 82,070/-. It appears that normally the profit basis method is not adopted in such cases as far as possible. It appears that as far as possible comparative method is adopted by the assessing authority while fixing the rateable value.

6. At the hearing of the appeal before the learned Additional Chief Judge, it was submitted by the learned Counsel for the appellants that the Investigating Officer was in error while granting deduction from the gross rateable value fixed only at the rate of Rs. 750/- per month, towards the maintenance expenses. The learned Counsel for the appellants submitted before the learned Additional Chief Judge that the Investigating Officer ought to have granted such deductions in sum of Rs. 21,000/- as the said amounts were actually incurred as lawful expenses towards the operation of the pumps and the lifts. The learned Additional Chief Judge reached the conclusion that the appeal was not maintainable because it was not filed by the "assesses" and the appellant No. 2 who had filed the appeal had no locus standi to file the appeal. The learned Additional Chief Judge also reached the conclusion that even on merits, it could not be held that the rateable value fixed by the Investigating Officer was excessive.

7. Having regard to the facts and circumstances of the case emerging from the record, I accept the submission of the learned Counsel for the appellant in this appeal to the effect that Rambhai Laxminarayan Kothari had the necessary locus standi to file the said appeal. In my opinion, any person lawfully and genuinely aggrieved by an order fixing the rateable value of the property has the necessary locus standi to file the appeal. The flat purchasers had the necessary locus standi to challenge the valuation fixed by the Investigating Officer. Rambhai Kothari was not merely a fiat purchaser but was also the Secretary of Ad Hoc Committee formed by the flat purchasers who had occupied the flats in the said building by December, 1975. Rambhai was also authorised by most of the flat purchasers to represent them in the proceedings concerning rateable value. I have therefore no hesitation in reversing the finding of the learned Additional Chief Judge on this aspect.

8. For the reasons referred to hereinafter, I have no hesitation to conclude that this appeal must fail on merits. In my opinion, the rateable value fixed by the

Investigating Officer by his order dated 17th August, 1976 cannot be characterised as excessive. In any event, this appeal does not raise any question of law worth its name and the impugned order does not suffer from any error of law.

9. In *Municipal Corporation of Greater Bombay v. Royal Western India Turf Club Ltd.*, AIR 1968 SC 475, the Supreme Court held that Section 154 of the Bombay Municipal Corporation Act did not provide for any particular method of rating being followed. The Apex Court held that there were several well known methods usually followed in such cases such as the comparative method, the contractor's method, the unit method and the profit basis method i.e. profit making capacity or valuation by reference to receipts and expenditure. In this case, the Apex Court further observed that if the profit basis method is to be applied, profit earning capacity of the premises shall have to be properly ascertained by first ascertaining the gross receipts from the premises and then providing for the expenses concerning earning of such receipts.

10. In this case, the Investigating Officer, applied comparative method and not the profit basis method. The appellant can have no reasonable grievance regarding the method adopted by the Investigating Officer for fixation of rateable value. If the profit basis method is to be applied in this case, perhaps the appellant would be the loser.

11. The learned Counsel for the appellant submitted that the learned Additional Chief Judge ought not to have adopted the rate of Rs. 31/- per 10 sq. meters for the ground floor of the building "Silver Gold Apartment". The learned Counsel for the appellant has submitted that the said method was not correctly applied by the Investigating Officer and that his order suffers from obvious and patent errors. The learned Counsel for the appellant invited the attention of the Court to the relevant evidence of witness Sahadeo Daulat Dalvi examined on behalf of the Municipal Corporation wherein the witness has admitted that commercial buildings were rated at higher rates than residential buildings. The learned Counsel also invited specific attention of the Court to the evidence of the said witness to the effect that there were shops on the ground floor of all the three buildings Neemesh, Shailesh and Sanjay. This appeal is not a regular first appeal where the first appellate Court can decide the questions of fact. The learned Additional Chief Judge had to balance the situation by taking the above-referred evidence of witness Dalvi into consideration coupled with the fact that these buildings were constructed prior to the construction of the building "Silver Gold Apartment". It is common knowledge that the prices of new constructions are increasing. I have therefore no hesitation in upholding the conclusion arrived at by the learned Additional Chief Judge on this aspect of the matter. I have not been able to discover any obvious or patent error in the order under appeal. While applying the comparable rates, the prescribed authority is entitled to make certain adjustments having regard to the situation concerning the property in respect whereof the rateable value is to be fixed. The question as to whether the

rate adopted for fixation of rateable value should have been lower by Re. 1/- or Rs. 2/- per 10 sq. metres is not a question of law.

12. The learned Counsel for the appellant then submitted that the learned Additional Chief Judge was in error while not accepting the case of the appellant that a sum of Rs. 21,000/- should be deducted from the rateable value computed by the Investigating Officer in lieu of the expenses incurred on operation of lift and on operation of pumps. The learned Counsel for the appellant made a valiant attempt to convince the Court that the expenses incurred were reasonable and there was no reason as to why the Investigating Officer should have allowed the said deduction at the rate of Rs. 750/- per month only. I must now scrutinise this submission of the learned Counsel for the appellant. Section 154(1) of the Bombay Municipal Corporation Act provides for statutory deduction of 10% of the annual rent in lieu of allowances for repairs or on any other account whatsoever. In my opinion, it was open to the Investigating Officer to limit the deduction from the annual rateable value fixed by him to 10% of the annual hypothetical rent assessed by him. If this provision were literally followed, the amount of such deduction would have been worked out at the figure of less than Rs. 9,000/-. Instead of following the statutory formula prescribed by Section 154(1) of the Act, the Investigating Officer allowed deduction to the extent of Rs. 9000/- from the rateable value fixed by him. The alleged error of the Investigating Officer, if any, has benefited the appellant and the appellant can have no reasonable grievance on this account also. The learned Counsel for the appellant has invited the attention of the Court to the observations made by the Supreme Court in para 5 and para 7 of its judgment in the case of Municipal Corporation of Greater Bombay Vs. Royal Western India Turf Club, . I have carefully considered the submission made by the learned Counsel for the appellant across the bar on this aspect also. In that case, the profit basis method was applied. If profit basis method is to be applied, the annual rent which a hypothetical tenant is expected to pay reasonably cannot be computed without first ascertaining the gross receipt from the premises and then deducting therefrom the expenses incurred relatable to earning such gross receipts. In my opinion, this case has no relevance at all to the problem under consideration before this Court in this appeal, where the comparative method is applied.

13. The learned Counsel for the appellant also relied on certain observations made by the Supreme Court in the case of Motichand Hirachand and Others Vs. Bombay Municipal Corporation, . In this case, the Apex Court observed that while fixing the hypothetical rent for the purpose of ascertaining the rateable value of the premises, the prescribed authority is bound to take into consideration the amenities available for the occupants in the building in respect whereof the rateable value was to be fixed. In the same context, the Apex Court further observed that the lack of amenities at the premises in question shall have also to be taken into consideration while fixing the rateable value of the premises. There can be no quarrel with the propositions laid down by the Apex Court in the above referred case. The question which arises for consideration of the Court is that

once the rateable value is fixed by applying the comparative method what deductions are permissible from the annual rateable value fixed by applying the comparable method. This judgment does not deal with this aspect of the matter. With respect, the reliance on this judgment by the learned Counsel for the appellant therefore appears to be misconceived. In such a situation, the permissible deductions are restricted to 10% of the annual rent.

14. The learned Counsel for the appellant then submitted that order dated 17th August, 1976 fixing the rateable value of the property at Rs. 82,070/- could not be made operative for the period commencing from December, 1975. The learned Counsel for appellant submitted that no order fixing the rateable value of the property could operate from retrospective effect. The learned Counsel submitted that the said order dated 17th August, 1976 must operate with effect from 1st of April, 1977 or in any event from 17th August, 1976. In alternative, the learned Counsel for the appellant submitted that the said order must operate with effect from 10th May, 1976 when the completion certificate in respect of the building was issued. The learned Counsel submitted that mere physical occupation of the property by the flat purchasers was not enough. Since the completion certificate in respect of the said building was granted by Municipal Corporation on 10th May, 1976, the rateable value of the said building as fixed by the Investigating Officer could not be made operative for the period prior to 10th May, 1976. I am not convinced with this submission of the learned Counsel for the appellant. It is well settled law that even in case of unauthorised occupation the taxes are payable and the rateable value can be fixed. On this aspect, the learned Counsel for the appellant relied on certain observations made by the Supreme Court in the case of *The Municipal Corporation of Greater Bombay Vs. Polychem Ltd.*, . In this case, it was a case of assessment of land under construction. This was not a case of assessment of building factually constructed and actually occupied. In my opinion, this case has no applicability whatsoever to the problem under consideration in this appeal. The learned Counsel for the appellant then relied upon the judgment of the Supreme Court in the case of *Municipal Corporation of City of Hubli Vs. Subha Rao Hanumatharao Prayag and Others*, . In this case, while construing the provisions of the Bombay Municipal Boroughs Act, 1925 the Apex Court held that the assessment list must be authenticated before expiry of official year for which it was prepared. In this case it was further held by the Court that in absence of such authentication, the assessment list shall be void and inoperative. Such a question does not arise in this case as such a question was not argued before the trial Court. In my opinion, the above referred decision is also not relevant for the purpose of determining the question as to whether the rateable value fixed by the Investigating Officer was excessive or not. Once a special notice is issued by the prescribed authority proposing the enhanced rateable value and the objections are filed and determined, the order passed by the Investigating Officer must necessarily relate to the relevant period referred to in the said special notice. In the special notice No. TWR-1209 of 1975-76 dated 18th March, 1976 it was

clearly stated that the rateable value in respect of the building was proposed to be enhanced to Rs. 91,090/- with effect from December, 1975. It is not disputed that most of the flats were actually occupied by December, 1975. If any of the flats were not occupied, it was for the owner to claim vacancy benefit as permissible under the Bombay Municipal Corporation Act. Thus, I see no error in the view taken by the Investigating Officer as well as by the learned Additional Chief Judge to the effect that the order fixing the rateable value of the said property must be made applicable for the period commencing from December, 1975. The impugned order is factually just and legally correct.

15. In the result the appeal fails. The appeal is dismissed.

16. Having regard to the facts and cir cumstances of the case, there shall be no order as to costs.

17. At this stage, the learned Counsel for the appellant applies for continuation of stay granted by this Court on 13th December, 1979. The interim order passed by this Court on 13th December, 1979 to continue for a period of four weeks from today.

18. Issue of certified copy expedited.

19. Appeal dismissed.