
(2004) 03 BOM CK 0131

In the Bombay High Court

Case No : Writ Petition No. 1725 of 2001

Vimochit Samaj Co-operative Housing Society Ltd. and
Another

APPELLANT

Vs

Assessor and Collector and Another

RESPONDENT

Date of Decision : 09-03-2004

Acts Referred:

Mumbai Municipal Corporation Act, 1888 — Section 162(2)

Citation : (2004) 5 BomCR 335 : (2004) 3 MhLj 869

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : Rajiv Narula, instructed by Jhanigiani Narula and Associates, for the Appellant; Sandansingh, for the Respondent

Judgement

R.M.S. Khandeparkar, J.—Heard. Perused the records.

2. The petitioners challenge the orders dated 4-3-1997 and 29-3-1997 in respect of fixation of the rateable value of the petitioner-society's property along with the warrants of attachment dated 11-8-1999 and 29-12-2000 to be bad in-law. The contention of the petitioners is that consequent to the said orders relating to the rateable value, the respondent-corporation has passed the orders in contravention of the decision of the Apex Court in The Municipal Corporation of Greater Bombay Vs. Polychem Ltd., , and there has been virtually double taxation in contravention of the provisions of the Mumbai Municipal Corporation Act, 1888, hereinafter referred to as the "the said Act" and the criteria adopted for fixation of the rateable value is also against the settled procedure in that regard and in contravention of the decision of the Apex Court in the matter of Municipal Corporation of Greater Mumbai and Another Vs. Kamla Mills Ltd., inasmuch as instead of adopting the method of standard rent, the contractor's method has been adopted for fixation of the rateable value.

3. Few facts relevant for the decision are that a plot of land came to be allotted to the petitioner-society under the post-war reconstruction scheme on 8-2-1960.

Plans for construction of 9 bungalows of "A" type, 4 buildings of "B" type and 1 building of "B1" type were approved on 25-2-1964. The plans were further modified and only 5 bungalows and 3 chawls were constructed in July, 1968. The petitioner-society approached the Assessor and Collector to carry out the assessment under their letter dated 31-12-1969. Notices were issued on 20-3-1973 and the rateable value was fixed at Rs. 1510/- for each of the bungalows and the rateable value in respect of the chawls was fixed at Rs. 2970/- each. In February, 1993 plans were sanctioned for further construction. Again new plans were sanctioned for construction of 2 buildings, 1 chawl and 2 bungalows as per the layout plan dated 14-6-1996. Only one chawl could be constructed and no other building could be constructed. On 29-3-1997 the respondent No. 1 issued three notices u/s 162, Sub-section (2) of the said Act, purporting to fix the rateable value at Rs. 69,005/- on consideration that the plot in question was "land under construction" (for short "LUC"). The petitioners filed their objections. However, the respondents passed the order on 4-3-1997 confirming the said rateable value and the same was followed by warrant of attachment issued on 11-8-1999. The petitioners thereafter addressed letters dated 9-9-1999 and 20-10-1999 and again on 5-7-2000. The respondents replied by their letter dated 26-9-2000 stating that the rateable value in respect of the property was correctly assessed and fixed and, therefore, the tax was liable to be paid accordingly. Thereafter, again the petitioners approached the respondents under their letter dated 27-1-2001. The respondent No. 1 thereafter sought to revise the tax and marginally reduced the same under the order dated 30-3-2001. However, even prior to that warrant of attachment was issued on 29-12-2000. Hence, the present petition.

4. It is the contention of the petitioners that the respondents are not entitled to recover the property taxes treating the property as LUC in view of the decision of the Apex Court in *Polychem's case* (supra). It is their further case that the chawls and the row-houses constructed in the said property have not been demolished and the Corporation continues to collect the property taxes in respect thereof and, therefore, the respondents could not have treated the property as a vacant land, and under no circumstances, could have assessed the same at the rate much higher than that applicable to the buildings and by adopting the contractor's method and ignoring the well-established practice of applying standard rent in that regard which has even been approved by the judicial pronouncements, including in the matter of *Kamla Mills* (supra). The taxes sought to be levied being not in accordance with the Chapter VIII of the said Act, the warrants of attachment issued are liable to be set aside. The respondents, on the other hand, submitted that consequent to the approval of the plan for further construction, on inspection of the site it was found that the property was levelled and the construction work of residential structures was started somewhere in April, 1996. It is further sought to be contended that the expression "land under construction" i.e. LUC has been used to identify the plot of land and not to distinguish the said land either being a plot without building or a vacant plot, as

sought to be contended on behalf of the petitioners. According to the respondents, a vacant land has more value than the land having any structure therein and it has better marketability and, therefore, the rateable value fixed by the Corporation in relation to the open land cannot be found fault with.

5. As far as the fact that the entire plot of land admeasures about 9124 sq. metres and that the chawl or the building which exist in the said plot occupies an area of 728.15 sq. metres, as also the proposed construction which has an area of 2219 sq. metres has not been completely constructed are not in dispute. It is also not in dispute that the structures which are already completed are already subjected to payment of property taxes and they are being paid by the petitioners. It is also not in dispute that the rateable value was sought to be revised pursuant to the submission of the plans for construction of 2 more buildings along with 1 chawl and 2 bungalows.

6. It is sought to be contended on behalf of the respondents that consequent to approval of the said plan, the respondents were found to have levelled the open land and the construction work of the residential structures was started somewhere in 1996. The said statement is followed by the statement to the effect that "as the construction activities were started on the said levelled plot of land, it was proposed to sub-divide the said plot and to assess the same at the revised rate". However, in the entire affidavit in-reply the respondents have not disclosed what exactly is the construction work carried out in the levelled area of the said plot, either in April, 1996 or any time thereafter. To the specific query in that regard, the learned Advocate for the respondents was not able to produce any material disclosing that the Corporation had any evidence regarding the construction of any structure in the said plot with necessary details regarding such structure. Apparently, the statement that the construction work of the residential structures was started somewhere in April, 1996 was solely on the basis of the fact that some portion of the land was found to have been levelled in the said plot, and there was no other material available with the Corporation to arrive at the said conclusion. In other words, only changes which were brought about in the building in question were in the form of levelling of ground in the open land in the said plot. At the same time, it is not in dispute that the chawls which were already constructed and which were required to be demolished for carrying out new construction have not been demolished and that the said chawls continues to be subjected to payment of taxes to the Corporation by the petitioners. In other words, apart from levelling of the ground in certain area of the plot, there was no change whatsoever brought about in the said plot so as to justify the revision of the rateable value in the manner carried out by the respondent-corporation.

7. The Apex Court in M/s Polychem 's case had clearly ruled that :--

"..... all "land", whether vacant, or in the process of being built upon, or built upon, is rateable according to the well settled principles. All that can be said is that, so long as a building being constructed on some land is not in a state fit for

occupation, its rateable value should not be more or less than that of land which is vacant."

and therefore it was further ruled that:--

"..... we have reached the conclusion that land on which a building is being constructed does not cease to be rateable simply because a construction is going on upon it. The difference between English law and the position which emerges from the statute before us is vital for deciding the question before us. The most that can be said is that land which is being built upon should not be rated like land on which a building has been actually constructed unless and until the construction has reached a stage at which some occupation of the constructed portion is also legally and actually possible so that it could be taken into account in determining the rateable value."

The law, therefore, is well-settled that any land which is being used for carrying out construction activities, unless such activities are complete and the resultant structure is legally fit for occupation thereof, the land on which the structure exist cannot be classified other than as the vacant land for the purpose of fixation of the rateable value. Once it is revealed that apart from levelling of the ground the petitioners have not completed the construction of any building or structure in such levelled plot, the same will have to be treated as a vacant land and there is no such classification like land under construction. It is true that the Corporation merely for the purpose of identifying any plot separately from other plots of land can identify the same by the expression "plot under construction or land under construction"; however, that by itself would not empower the Corporation to treat such land differently from the vacant land for the purpose of fixation of the rateable value. In the case in hand, though the respondents have sought to contend that the expression "land under construction" was used to identify the plot of land, what actually has been done is that the same has been used for the purpose of revision of the rateable value on the basis that the land is being used for construction activities when such construction was not complete and it has not been used merely for the purpose of identification of the plot.

8. It is also revealed from the records that even without demolition of the already existing structure and which was being subjected to payment of property taxes, on an assumption that the land is being used for construction activities, without ascertaining the factual situation in loco, the respondents have proceeded to revise the rateable value in total disregard to the provisions of law contained in the said Act as well as the settled principles of law in relation to revision of the rateable value by the decision of the Apex Court in M/s Polychem's case. Unless there was material available with the Corporation that the old building had been demolished in terms of the proposed plan and the new construction has been carried out and completed and has been made legally fit for occupation, it could not have been assessed for rateable value in the manner it has been assessed.

9. It is also undisputed fact that it is a long standing practice to fix the rateable value on the basis of standard rent in the absence of specific provisions to the contrary in the said Act or the Rules made thereunder. The Apex Court in *Kamla Mills's case* (supra) clearly held that the law on the point was abundantly clarified in *East India Commercial Co. Pvt. Ltd. Vs. Corporation of Calcutta*, . It was held in *East India Commercial Company* (supra) that :--

"17. From the aforesaid decisions, the principle which is deducible is that when the Municipal Act requires the determination of the annual value, that Act has to be read along with Rent Registration Act which provides for the determination of fair rent or standard rent. Reading the two Acts together the rateable value cannot be more than the fair or standard rent which can be fixed under the Rent Control Act. The exception to this Rule is that whenever any Municipal Act itself provides the mode for determination of the annual letting value like the *Central Bank of India case* relating to Ahmedabad or contains a non obstante clause as in *Ramaprabha case* then the determination of the annual letting value has to be according to the terms of the Municipal Act. In the present case, Section 168 of the Municipal Act does not contain any non obstante clause so as to make the Tenancy Act inapplicable and nor does the Act itself provide the method or basis for determining the annual value. This Act has, therefore, to be read along with Tenancy Act of 1956 and it is the fair rent determinable u/s 8(1)(d) which alone can be the annual value for the purpose of property tax. (vide: SCC pp.377-78, para 17)"

Further, in *India Automobiles (1960) Ltd. Vs. Calcutta Municipal Corporation and Another*, it was held that :--

"21. A perusal of various judgments, relied upon by the learned counsel for the parties, clearly shows that this Court has taken a consistent view regarding the determination of annual value of land or building for the purposes of determination of taxes under the Municipal Acts. On the basis of various statutes relating to the determination of the annual value for the purposes of the Municipal Acts, this Court has devised two distinct groups. One such group deals with the municipal laws of some States which do not expressly exclude application of the Rent Restriction Acts in the matter of determination of annual value of a building for the purposes of levying municipal taxes and the other group deals with the municipal laws which expressly exclude application of the land or building on rental method. Whereas in the first category of cases the determination of annual value has to be made on the basis of fair or standard rent notwithstanding the actual rent, even if it exceeds the statutory limits. In the other group where the restriction in the rent Acts has been excluded, the determination of annual value of the building on rental method is referable to the method provided under the relevant Municipal Act. Whereas *Padma Debi case*, *LIC case*, *Guntur Town Rate Payers'* case and *Dewan Daulat Rai case* deal with the first group of municipal laws, the cases in *Ratnaprabha case*, *AGM*, *Central Bank of India case*, *East India Commercial Co. case*, *Balbir Singh case*, *Indian Oil*

Corpn. case and Srikant case deal with the second group. As already noticed, this Court in LIC case dealt with the first category as in Section 168 of the Calcutta Municipal Corporation Act, there existed no non obstante clause. The observations of the Bench of this Court which dealt with the case on 10-10-2001 cannot be taken in isolation.

It was further observed (vide SCC pp. 408-09, para 23)

23. As already noticed even without specific determination, the standard rent was held to have been statutorily determined u/s 2(10)(b) of the Rent Act. Upon analysis of the various municipal laws and the judgments of this Court it is held that in cases where the municipal laws exclude the applicability, of the rent Acts by incorporating non obstante clause in the taxing statute, the powers of the authorities under the Municipal Acts are not circumscribed by the limits indicated in Padma Debi case and followed in that group of cases. In cases where the fair rent payable by the tenant has been determined and there is no justification for refusing to accept that fair rent as rental value of the premises, the municipal authorities should generally accept the standard rent fixed, notwithstanding the non-applicability of the rent Acts because such a view would be a reasonable guidelines to determine the rate of rent at which such land or building might, at the time of assessment, be reasonably expected to let from year to year. The rent which the tenant is receiving from his sub-tenant is also an important statutory consideration for determining the rent at the time of assessment to which the property might reasonably be expected to be let out from year to year. Such a consideration is also justified on the principles of reasonableness. We cannot agree that in all cases, notwithstanding the non obstante clause the annual rent value cannot be fixed beyond the standard rent determined or determinable under the rent statute. We also find it difficult to hold that in all cases the rent actually paid by the sub-tenant to the tenant be taken as a sole criterion for determining the annual value on the assumption that such land or building might, at the time of assessment, be reasonably expected to get the aforesaid amount of rent if let from year to year."

After taking note of the above rulings, it was clearly observed in Kamla Mills" case that the law has been culled out in the said decision quoted above. Bare reading of the orders passed by the respondent-Corporation in relation to the fixation of rateable value nowhere discloses the Corporation having followed the law laid down by the Apex Court in the above referred decision including the decision in Kamla Mills" case.

10. In the result, therefore, the orders in relation to fixation of the rateable value being contrary to the law laid down by the Apex Court, as stated above, both the orders are liable to be quashed and set aside and the matter remanded to the Corporation to decide the same afresh, after hearing the petitioners and bearing in mind the law laid down by the Apex Court as well as this Court in various other decisions relevant to the matter in issue, and to which the Corporation was the party.

11. It is noticed that in spite of the law on the point being well-settled time and again, the respondent-corporation chooses to ignore the said law and insists upon passing orders in relation to fixation of rateable value in contravention of the said decision as well as the provisions of law. This causes immense inconvenience as well as hardship to the citizens. Being so, it is necessary to impose costs upon the Corporation while remanding the matter. The Corporation shall be at liberty to hold necessary inquiry and to recover the costs from the errant officers of the Corporation.

12. In the result, the petition succeeds. The impugned orders along with the warrants of attachment are hereby quashed and set aside and the matter is remanded to the Corporation to re-assess the rateable value, after hearing the petitioners and bearing in mind the law laid down by the Apex Court and this Court in various decisions. The respondent-corporation shall pay the costs of Rs. 5,000/- (Rupees Five Thousand only) to the petitioner-Society. Rule is made absolute accordingly.