

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 62 OF 1992

1. Municipal Corporation of Gr. Bombay	
2. The Muni pal Commissioner of Greater Bombay	
3. Assessor and Collector 'C' Ward of Municipal Corporation and Greater Bombay	... Appellants
Versus	
M/s. Karnani Building	...Respondent

Mr. Suresh Pakale, Senior Advocate a/w Santosh Parad for the Appellant/Corporation.
Ms. Nazia S. Sheikh for the Respondent.

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**CORAM : M.M.SATHAYE, J.
RESERVED ON : 5th DECEMBER 2023
PRONOUNCED ON : 20th FEBRUARY 2024**

J U D G M E N T

1. By this appeal under Section 218 D of the Bombay Municipal Corporation Act, 1888 (as it then was, hereinafter "the said Act" or "BMC Act"), the Appellant (Municipal Corporation of Greater Bombay) has challenged the Judgment and Order dated 29 October 1990 passed by the Additional Chief Judge, C.R. No.18 of the Small Causes Court in Municipal Appeal No. 261 of 1985. This Municipal Appeal is filed by Respondent/Owner/Assessee of the subject property (described hereinafter) under Section 217 of the said Act, challenging the order dated 5 August 1985 passed by the Assessor & Collector, 'C' Ward fixing rateable value @ Rs.45,835/-

2. Heard the learned counsel for the parties. With their assistance, perused the record.

3. Facts shorn of unnecessary details, for deciding this appeal, are as under.

- a) Premises no. 21, which is a godown cum office in a building at 19/23 Vithoba Lane, Vithalwadi Bombay is the subject matter property.
- b) In 1940, there were 4 tenants - Dwarkadas Pragji, Shrinath Shaligram, Gordhandas Gokuldas and Moraji Laxmidas in the suit building, out of which subject property was in possession of Gordhandas.
- c) After Gordhandas, one M/s Daudayal and Asharam became tenant.
- d) Sometime in 1973, the Respondent became owners of the subject property under a settlement in a High Court Suit, when Daudayal & Asharam was paying rent of Rs. 74/- per month.
- e) After Daudayal & Asharam vacated, the Respondent carried out renovation by alterations and modifications to the subject property and let-out it to Sangli Bank from 1st June 1977 at monthly rent of Rs. 4000/- per month. This increase was reported by Respondent/Assessee to Appellants and accordingly, the Appellants modified the rateable value @ Rs. 30,440/- w.e.f 1 June 1977 from the earlier value of Rs. 5,785/- (hereinafter "the first revision") This revision was not challenged by the Respondents.
- f) From 1 April, 1982, the rateable value was again increased to

Rs. 43,510/- due to increase in rent payable by Sangli Bank from Rs. 4000/- to Rs. 6084/- (hereinafter “the second revision”). This value continued till March 1984. This revision was also not challenged by the Respondents.

- g) From 1 April 1984, the rateable value was again increased to Rs. 45,835/- for Assessment Year 1984-85, due to further increase in rent (hereinafter “the third revision”). This time, the Respondents lodged a complaint with Appellants against the said increase in rateable value, however, the investigating officer decided/rejected complaint on 5 August 1985 and kept /fixed the rateable value at Rs. 45,835/-
- h) The Respondent filed Municipal Appeal No. 261 of 1985 and challenged the order dated 5 August 1985 for setting aside the rateable value.
- i) By impugned Judgment and Order dated 29 October 1990, the Additional Chief Judge, Small Causes Court set aside the order of Assessor and Collector dated 5 August 1985 and directed the Appellants to fix rateable value on the basis of monthly rent of Rs. 196/- w.e.f. 01 April 1984 and make necessary adjustment and pay refund.
- j) Appellants filed present First Appeal challenging the above order. This appeal was admitted on 7 February 1992.

SUBMISSIONS

- 4. Learned Senior Counsel appearing for the Appellant/Municipal Corporation, Mr. Pakale submitted that the burden to prove that the rateable value fixed by the officer is incorrect or illegal is on the Respondent/Assessee. He submitted that the learned Judge, while

passing the impugned order has erroneously placed this burden on the Appellant/ Municipal Corporation. He further submitted that the Respondent/Assessee itself had informed that in the year 1977, the property was let out to Sangli Bank on monthly rent of Rs.4000/- and therefore, the rateable value was revised. He submitted that not only in 1977, but again in the year 1982 there was revision in rateable value. He submitted that first and second revision (increase) in rateable value, were not challenged by the Respondent/Assessee, but third revision is challenged. He contended that having accepted the first and second revision in rateable value, it was neither open for the Respondent/Assessee to challenge the third revision nor it was open for the Court to fix rateable value lesser than the second revision value. He further submitted that even applying the principles under the applicable Rent Act in the form of standard rent, admittedly in the present case, standard rent is not fixed by Court under Section 11 of the The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter "Bombay Rent Act"). He submitted that therefore, due to multifold increase in 'the agreed rent' in the year 1977 when the property was renovated and let out to Sangli Bank, the rateable value was revised. He submitted that the earlier letting of subject property was to Daudayal & Asharam which was a family concern involving the Respondent's family member and as such that rate cannot be taken as indication of prevailing market rent. He further submitted that therefore in 1977, Rs. 4000/- was taken as an amount of rent for which the subject property can be reasonably be expected to let, as provided under section 154 of the said Act. Mr. Pakale in support of these submissions has relied upon the Judgment of *Filmistan Private Limited v/s. Municipal*

Corporation of Greater Mumbai - AIR 1973 Bom 66 = 1971 SCC OnLine Bom 5, Motichand Hirachand v/s Municipal Corporation of Greater Mumbai - 1968 AIR (SC) 441, Municipal Corporation of Greater Mumbai v/s State Bank of India - 2005 (3) BCR 319, Municipal Corporation of Greater Mumbai v/s. Kamala Mills Limited - (2003) 6 SCC 315.

5. Per contra Ms. Shaikh, learned counsel for the Respondent/Assessee submitted that under Section 5(10)(b) of the Bombay Rent Act, the standard rent is defined and under clause (iii) thereof, standard Rent is defined as rent at which premises were first let out after 01 September 1940. She submitted that therefore, Rs.84/- per month being paid by Daudayal and Asharam till the year 1977 should be taken as standard rent which must be taken as basis for determining rateable value. She further submitted that because of the loan taken by the Respondent/Assessee from Sangli Bank, the amount which was actually received by the Respondent from its tenant Sangli Bank was reduced to only Rs.1000/- per month after adjustment of loan amount. She urged that this aspect must be considered while arriving at rateable value. She submitted that in the present matter, admittedly standard rent is not fixed by any order of the Court and therefore, under impugned order itself the standard rent is being fixed for the first time and no fault can be found with that. She submitted that the Respondent/Assessee had itself volunteered that the rent paid by the neighbor of the subject property - Dwarkadas Pragji @ Rs.196/- per month can also be taken as basis, as accepted in the impugned Order. On these submissions, the learned counsel for the Respondent/Assessee supported the

impugned order. In support of her submissions, the learned counsel for the Respondent has relied upon the Judgment of *Guntur Municipal Corporatoin v/s. Guntur Town Rent Payers Association - AIR 1971 SC 353 and Mangaldas N. Verma Charitable Trust v/s MCGM - 2006(3) Mh.L.J. 662. Interestingly, even Respondent is relying upon the Judgment of Filmistan Private Limited (Supra) and Municipal Corporation of Greater Mumbai v/s. State Bank of India (Supra).*

REASONS & CONCLUSIONS

6. I have carefully considered the rival submissions and case law relied upon in support thereof. It will be useful to reproduce the relevant provisions of law viz. **Section 154 (1) of the BMC Act** which reads thus :

“154 (1) In order to fix the rateable value of any building or land assessable to a property-tax, there shall be deducted from the amount of the annual rent for which such land or building might reasonably be expected to let from year to year a sum equal to ten percentum of the said annual rent and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever.”

7. In the case of **Filmistan Private Limited (Supra)**, this Court, way back in the year 1971 considered this debate on the determination of the rateable value under Section 154 of the said Act on the basis of ‘agreed rent’ vis-a-vis ‘standard rent’. After considering the issue from various angles, this Court held as under :

“26. It was urged by Mr. Chitale that the interlocutory judgment given by the Division Bench of this Court proceeded upon the footing that it was the hypothetical standard rent as on an application under Section 11 of the Bombay Rent Act that would be the proper basis for

determination of rateable value under Section 154 of the Bombay Municipal Act, That does not appear to be the correct position. The learned Chief Judge who dismissed the appeals under Section 217 had in his judgment observed that the standard rent of the premises can be fixed only by the Court of exclusive jurisdiction constituted under the Bombay Rent Act, and that, therefore, the contractual rent must be taken as the standard rent and that must form the basis for fixing the annual letting value of the property. It was held by the Division Bench in its interlocutory judgment that the learned Chief Judge was not right in this view. The Division Bench, in our opinion, does not lay down that although the agreed rent at the time of letting out in 1960–61 could be the standard rent within the meaning of Section 5(10)(b)(iii) of the Bombay Rent Act, the notional or hypothetical standard rent as on an application under Section 11 of that Act must necessarily be the basis for determining the annual letting or rateable value.

27. The proposition of law as laid down by the Supreme Court in Padma Debi's case, AIR 1962 SC 151 undoubtedly is that in fixing the rateable value under the Bombay Municipal Act the hypothetical rent which the owner can reasonably be expected to receive if the building is to be let has to be considered. It has also been laid down that such hypothetical rent cannot exceed the standard rent or the statutory rent. In the subsequent case reported in (1970) 2 SCC 44 : AIR 1970 SC 1417 it has been clarified that this consideration was to apply not only to cases where rent was fixed by the authority which was to determine the standard rent but even otherwise. However, there is, as pointed out, a material difference between the West Bengal Rent Control Act and the Bombay Rent Act. The definition of 'standard rent' in the West Bengal Rent Control Act is in our opinion materially and vitally different from that under the Bombay Rent Act. In our opinion under the Bombay Rent Act, in case of premises first let after the first day of September, 1940, the agreed rent at which they were first let is by the statutory definition to be the standard rent. Such standard rent is, however, subject to the provisions of Section 11. In this later section provision has been made by the Legislature for recalculation or refixation of the standard rent in certain cases. So long as there is no determination by the

Court under Section 11, the landlord is perfectly justified in recovering from the tenant or claiming from the tenant the contractual rent; neither his recovery nor his claim is in any sense of the term unlawful. Thus in such cases what the land-lord can charge under Sec. 5(10)(b)(iii) is the standard rent until there is subsequent determination by the Court that it is excessive; on such determination the standard rent would be recalculated and refixed at a lower amount Until such refixing is done, the agreed rent will be the standard rent. The two sections must be read together and when this is done it is clear that in case of premises let out after the first day of September, 1940, the rent at which they were let out is the standard rent which may be varied subsequently in case an application is made to the special Court under Section 11 in such proceedings as are indicated therein. Until such an application is made the agreed rent is the standard rent within the meaning and definition of 'standard rent in the Bombay Rent Act'.

28. In the appeals before us it is clear from the evidence (even apart from the specific concession made by the learned Advocate for the Appellants before the learned Additional Chief Judge) that the premises in respect of which these appeals have come up were let out by the Appellants for the first time in 1960–61. Previous thereto these premises were occupied by the Appellants themselves. The Appellants attempted to show that these premises had been let out earlier and in such attempt the Appellants failed. The rateable value to be fixed by the Municipal Corporation under Section 154 of the Bombay Municipal Act undoubtedly cannot exceed the standard rent of the premises in respect of which the rateable value is fixed. As we have indicated above, the standard rent in respect of the premises which are concerned in these appeals before us appears to be, on the evidence led before the learned Additional Chief Judge, the agreed rent- the rent at which they were let out in 1960–61 by the Appellants to the various occupants. If that be so, the objection of the Appellants must necessarily fail and be rejected inasmuch as the rateable value fixed is not based on any rent which is in excess of the standard rent.

29. If and when an application is made under the provision of Section 11 of the Bombay Rent Act in respect of these premises, then it is possible that such rent may cease to be

standard rent Thereafter the standard rent of each premises would be the rent which the Court may fix on such application. We are unable to accept Mr. Chitale's submission that the standard rent which will be the upper limit for the purpose of fixing the annual letting or rateable value must in all cases be such standard rent as would be notionally fixed as on an application under Section 11 of the Bombay Rent Act This does not appear to us to be the scheme under the Bombay Rent Act Our view in this behalf appears to be in accordance with the observations of Chagla, C.J., in *Karamsey Kanji's case* referred to earlier in the course of the judgment. ”

[Emphasis Supplied]

It is therefore clear that when there is no order by the Court under Section 11 of the Bombay Rent Act fixing standard rent, agreed rent can be taken as basis for the purpose of arriving at rateable value under Section 154 of the said Act.

8. In the case of ***Municipal Corporation of Greater Mumbai V/s. State Bank of India (Supra)***, this Court has considered the methodology for determining rateable value and it was held that when circumstances change, the standard rent cannot remain static and must change in accordance with tenancy terms. It was held that it was an error to compute rateable value on standard rent fixed in earlier suit and therefore, fresh trial was found necessary and the matter was remanded to Small Causes Court for re-determination of rateable value.

9. This Court in the case of **Mulraj Dwarkadas v/s. Municipal Corporation of Greater Mumbai (Supra)**, as can be seen from para 8 thereof, followed the Judgment of **Motichand Hirachand v/s**

Municipal Corporation of Greater Mumbai (Supra) and held that since as a result of changes made, the value of the property had increased and it yielded more income, it can be considered for upward revision in rateable value.

10. In the case of **Municipal Corporation of Greater Mumbai V/s. Kamala Mills (Supra)** the Hon'ble Supreme Court has clearly held in Para 36 that while objecting to rateable value fixed by the Municipal corporation, the burden of proving that a particular rateable value determined is illegal or unreasonable, is upon the assessee .

11. Now let us consider the case at hand. Admittedly, there is no adjudication about standard rent by the Court in the present case. Argument of Respondent/Assessee that the impugned order itself be treated as determination of standard Rent has to be rejected, for the simple reason that it is not decided in a *lis* between the landlord and tenant, but the impugned order is passed in the litigation between the landlord and Municipal Authority. Obviously, therefore considerations cannot be similar and are in fact different. Therefore, it has to be held that in the present matter, there is no determination of standard rent by the Court. Assuming that figures are available to indicate first letting out of the subject property after 01 September 1940, in the form of monthly rent paid by Daudayal and Asharam at the rate of Rs.74/- or by the neighboring tenant at the rate of Rs. 196/-, the jump in the 'agreed rent' received by the Respondent/Assessee from these figures to Rs.4,000/- per month from Sangli Bank is way too high to be simply ignored while arriving

at 'amount of annual rent for which the subject property might reasonably be expected to fetch' as contemplated under Section 154 of the said Act.

12. Assuming that the rent at which the property was first let after 1 September 1940 is to be taken as standard rent and therefore basis for calculating rateable value, in the present case admittedly the only evidence brought on record by the Respondent/ Assessee to indicate such letting is a letter dated 12 December 1962 taken from the record of rent book of Court Receiver, which was handed over to the Respondent while handing over the suit building in the court proceedings. This is a letter issued by Court Receiver to M/s Daudayal and Asharam, mentioning the amount of rent at that time. The amount of rent indicated is Rs. 74.06/-. It is material to note that the Respondent's witness has admitted that M/s Daudayal and Asharam was a family concern of Respondent- Karnani family and therefore they received the said letter from the Court Receiver. Mr. Pakale learned counsel for the Appellant/ Municipal Corporation is therefore right in submitting that this rent or any rent suggested as being paid by Daudayal and Asharam cannot be taken as any indication of fair market rent, which can satisfy the requirement of section 154 of the said act viz. 'amount of annual rent for which the property might reasonably be expected to let'. If that be so, in fact also, there is no believable evidence before the Court of first time let-out after 1 September 1940. The only material evidence is the case of the Respondent itself of letting the property to Sangli Bank on 1 June 1977 of agreed rent of Rs. 4000/- per month and subsequent increase up to Rs. 6084/- per month.

13. In any case, in these peculiar facts, I find it difficult to accept that the earlier amount of Rs.74/- or even Rs.196/- paid by neighbor could have been taken the basis for deciding standard rent just because they are 'first-let' values available after 01 September 1940. It has to be borne in mind that in the year 1977, agreed rent between Respondent/Assessee and his tenant has been increased multifold to Rs.4000/- per month. This shows the potential of the subject property at the relevant time.

14. In view of this peculiar fact, the judgment relied upon by the Respondent in the case of **Mangaldas N. Verma Charitable Trust vs MCGM (Supra)** will not advance the case of the Respondent. It is because in Mangaldas's case there was evidence of earlier letting and therefore it was taken as standard rent relevant for fixing rateable value. Additionally, in Mangaldas's case there was no change in the property. In the present case, according to Respondent's own case after carrying out renovation, the subject property was let out to Sangli Bank. On this aspect also the present case is distinguishable from the judgment of Mangaldas (Supra).

15. Having said that, lets now consider what that weighed with the learned Trial Judge to accept Rs. 196/- as basis for reducing rateable value and setting aside order of Assessor dated 5 August 1985. As can be seen from Para 6 of the impugned order, the Respondent/Assessee itself contended that after the subject property was vacated by M/s Daudayal and Asharam, certain renovations were carried out and it was let out to Sangli Bank on a monthly rent

of Rs. 4,000/- which was subsequently increased up to Rs. 6,084/-. The real reason on which the rateable value is reduced by the learned Trial Judge can be found in para 9 of the impugned judgment. It is clearly held therein that the rent of Rs. 4000/- is not the rent of let-out for the first time and in fact it is rent of the third time let-out. It is therefore held by the learned Judge that the rent charged to Sangli Bank ought not to have been taken for fixing rateable value, it being not standard rent within the meaning of Section 5(10)(b) of the Bombay Rent Act. The learned Judge has then proceeded to accept Rs. 196/- as reasonable rent capable of treating as basis, being that paid by adjoining tenant for area more or less same to the subject matter property.

16. The learned Trial Judge, has however completely overlooked the position iterated since 1968 in the matter of **Motichand Hirachand (Supra)** where the Hon'ble Supreme Court in the matter arising from this Court has held in para 7 that if the property yields an extra income over and above the actual rent, such income can be taken into consideration by the assessing authority while determining annual rent. Thereafter in the year 1971, this Court in the matter of **Filmistan Pvt. Ltd. (Supra)** has shed light on the effect of absence of Order under Section 11 of the Bombay Rent Act on consideration of 'agreed rent' vis-a-vis 'standard rent' for determining rateable value. In the case at hand Rs. 4000/- was not even extra income over the actual rent but it was the actual agreed rent that tenant Sangli Bank had agreed to pay to Respondent/Assessee every month. In such situation, this Court fails to understand how multifold increase in the rent from Rs. 74/- or Rs. 196/- per month

to Rs. 4000/- per month could have been ignored by the learned Judge, in absence of adjudication of standard rent by the Court under Section 11 of the Bombay Rent Act. It is seen from the Para 7 of the impugned order that the learned Trial Judge was conscious of the judgment of this court in **Filmistan Pvt. Ltd. (Supra)** which was specifically relied upon. At the beginning of para 7, the learned Trial Judge seemed to be aware about undisputed position that while fixing rateable value annual rent which the property to be assessed might reasonably fetch if let, is to be taken as basis. Despite this the crucial aspect of absence of adjudication under section 11 of the Bombay Rent Act, in the present matter, has been overlooked. It is also beyond comprehension as to how the learned Trial Judge could have gone behind the second revision in rateable value (Rs. 43,510/-) in any case. It is because the second revision in rateable value was not challenged at all [pl see para 3(f) above]

17. So far as reliance placed by the learned counsel for the Respondent/Assessee upon the judgment of **Guntur Municipal Council (Supra)** is concerned, the said judgment was arising out of assessment under the provisions of Madras District Municipalities Act 1920, in which at the end of para 6, Hon'ble Supreme Court has held that assessment of valuation for the purpose of tax must be made in accordance with and in the light of the provisions of 'The Rent Act which would be in force' during the period of assessment. Admittedly in the present matter the rent act in force was Bombay Rent Act at the relevant time and interplay between its provisions and the provisions of the BMC Act have been duly considered by this court in the cases of **Filmistan Pvt. Ltd.** and other judgments referred

hereinabove. In that view of the matter, the judgment of **Guntur Municipal Council (Supra)**, does not help the Respondent any further.

18. This brings me to the only remaining argument of Respondent/Assessee that because it had taken loan from the tenant Sangli Bank, the Respondent/Assessee was getting only Rs.1000/- per month out of the actual rent of Rs.4000/-, after adjusting the interest payable and this has to be considered while arriving at either standard rent or rateable value. This argument is devoid of any merits, for the reason that the adjustment between Respondent/Assessee and tenant Bank about how to adjust the rent payable and how to distribute it under mutually agreed heads (interest and remaining amount etc.) is a contract *inter se* the Assessee and its tenant. The same does not have any bearing on the potential of the subject property to fetch multifold increased agreed rent of Rs.4000/- per month at the relevant time. Therefore the said argument is rejected.

19. In view of the aforesaid facts and circumstances, I am of the considered view that in the peculiar facts of this case and in the light of the evidence available on record, the learned Judge was not justified in allowing the appeal of Respondent/Assessee setting aside the assessment order dated 05 August 1985.

20. In the net result, the appeal succeeds and the same is allowed. The impugned order dated 29 October 1990 is quashed and set aside. The assessment order dated 05 August 1985 is restored. No

order as to costs.

21. The Court is informed that during pendency of the appeal, the Respondent/Assessee has been paying the taxes based on the rateable value as fixed under the impugned order. Since the impugned order is set aside, the Appellant/Municipal Corporation would at liberty to calculate the arrears based on rateable value fixed under the Assessment order dated 05 August 1985, adjust refund made, if any and seek recovery of due and payable amount in accordance with law.

22. All concerned to act on duly authenticated/digitally signed copy of this order.

[M.M.SATHAYE,J.]