

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3634 OF 2005

NAVNATH
SITARAM
WAGHMARE

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Date: 2026.08.25
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Rehmatullah Abdul Aziz Shaikh
(Deceased through L.Rs)

1. Jamila Bano
Aged: Adult, Occ.: Household.

2. Sohail R. Shaikh
Aged: Adult, Occ.: Business.

3. Baazil R Shaikh,
Aged: Adult, Occ.: Business.

4. Rahil R. Shaikh
Aged: Adult, Occ.: Business.

5. Muzamil R. Shaikh
Aged: Adult, Occ.: Business

6. Seema Iqbal Shaikh
Aged: Adult, Occ.: Household.

7. Sabanaz Javed Muniff
Aged: Adult, Occ.: Household
All r/o. 17, Bundgarden Road Green Co-
operative Housing Society, Pune-1.

...Petitioners

Versus

1. Municipal Corporation of City of Pune
Having its Head Office at Shivaji Nagar, Pune-5.

2. The State of Maharashtra

...Respondents

Mr. Shriram S. Kulkarni for the Petitioners.

Mr. Rajdeep Khadapkar for Respondent No.1.

Ms. Ashwini A. Purav, AGP for the State/ Respondent No.2.

CORAM : M.M. SATHAYE, J.

DATE : 25th AUGUST, 2026

JUDGMENT :

1. Invoking Articles 226 and 227 of the Constitution of India, the Petitioners are challenging the Judgment and Order dated 29.01.2005 passed by the learned 10th Ad-hoc Additional District Judge, Pune in Civil Appeal No. 568 of 2001, allowing the appeal filed by Respondent-Municipal Corporation, thereby dismissing Municipal Appeal No. 63 of 1995.

BRIEF BACKGROUND

2. Subject matter plot is situated at Hadapsar Industrial Estate Pune admeasuring 10,000 sq ft bearing Plot No.21/1. In the year 1966-67, rateable value of ground floor was fixed by the Respondent-Municipal Corporation @ Rs 2765/- by taking standard rent of 10 paise per sq. ft., which was not disputed. The Petitioners' Predecessor - Mr. Rehmatullah Abdul Aziz Shaikh, who was proprietor of M/s Pacoline Industries, purchased it from Mr. K.R. Pataskar in March, 1990. Mr. Rehmatullah obtained completion certificate on completing construction of first floor in March, 1995. Subsequently, an assessment order dated 01.07.1995 was passed thereby fixing the rateable value of the first floor @ Rs.30,185/- w.e.f 01.04.1993. Thus, total rateable value was fixed @ Rs.32,950/-.

3. Being aggrieved by the said assessment order, Mr. Rehmatullah filed Municipal Appeal No. 63 of 1995 under section 406 of the then Bombay Provincial Municipal Corporation Act, 1949 ('the said Act' for short), contending *inter alia* that the assessment was excessive and exorbitant and that rateable value ought to have been fixed on the cost

of construction which is Rs. 87,000/-. It is also contended that annual rent comes around Rs. 7,178/- and after giving concession of 15% for maintenance and repairs, the rateable value comes around Rs.6,101/- rounded off to Rs. 6,100/- plus old rateable value of Rs.2,765/- making it total Rs. 8,865/-.

4. The Respondent- Municipal Corporation opposed the appeal. By Judgment and Order dated 28.08.2000, the Judge, Small Causes Court, Pune, allowed the appeal setting aside the impugned assessment order dated 01.07.1995, thereby fixing the rateable value @ Rs.7,950/- w.e.f 01.04.1995. The Respondent-Municipal Corporation was directed to correct the assessment accordingly. Extra tax collected, if any, was directed to be refunded with interest imposed @ 9% per annum in case refund is not made within a period of three months from the date of the order.

5. The Respondent-Municipal Corporation filed Civil Appeal No. 568 of 2001 under section 411 of the said Act, in the District Court, Pune.

6. By the impugned Judgment and Order dated 29.01.2005, the appeal has been allowed, thereby dismissing the appeal filed by the Petitioners, thereby confirming the original assessment order dated 01.07.1995.

7. The Petitioners filed the present writ petition challenging above order 29.01.2005. The Petition was admitted on 05.12.2005. The Petitioners were directed to pay the assessed amount, without prejudice, but it is made subject to final outcome of the petition.

SUBMISSIONS

8. Learned counsel Mr. Kulkarni appearing for the Petitioners submitted as under.

8.1. That subject matter property was bought by the Petitioner in March, 1990. Revised plan was submitted and thereafter Occupation Certificate (OC) was obtained in 1995. He submitted that an architect/valuer has been examined and valuer's report has been produced on record, which is not considered properly. Value of the property as per Index-II has been considered as basis, which is completely erroneous. He submitted that cost of construction is a relevant factor and valuer's report is a piece of expert evidence, which was accepted by the first Court, however, has been disbelieved by the Appeal Court on unsustainable grounds.

8.2. Relying on the Judgment of Hon'ble Supreme Court in **Dr. Balbir Singh and Ors Vs. M/s M.C.D. and Ors. (1985) 1 SCC 167**, he contended that when any addition is made to the premises at a subsequent stage, three situations are contemplated, out of which the present case falls in first situation where the additional construction is only an extension of existing premises which are self occupied and in such cases, the original premises with additional structure would have to be treated as single unit for the purpose of assessment and its rateable value will have to be determined on the basis of rent which the owner may be reasonably expect to get, subject to limit of standard rent.

8.3. He further submitted that otherwise, rateable value will have to be calculated on the basis of construction cost regarding which evidence is led by the Petitioner.

9. On the other hand, learned counsel Mr. Khadapkar appearing for the Respondent-Municipal Corporation opposed the petition contending *inter alia* as under.

9.1. That the construction of new structure started sometime in 1991, when commencement certificate was issued and it was completed in 1995 and the first floor is completely new construction and can not be treated as extension.

9.2 That it can be seen from the valuer's report that he has taken rates as in the year 1967, as basis. That the valuer has given fatal admissions and therefore the valuer's report should not be taken as basis.

9.3 That the said Act does not refer to Bombay Rent Act, 1947 specifically and therefore freezing the standard rent as per rent available in old time can not be accepted. Relying on **Malpe Vishwanath Acharya and Ors Vs. State of Maharashtra and Anr. (1998) 2 SCC 1**, it is contended that in fact the Hon'ble Supreme Court was about to strike down the Bombay Rent Act; however, Hon'ble Supreme Court took note of the proposed re-consideration of the statute by the Government. Therefore, it should not be accepted that 'rent cannot be higher than the standard rent'. He submitted that therefore the standard rent of the ground floor structure cannot be taken as basis.

9.4. Relying on this Court's judgment in **Pune Municipal Corporation Vs. M/s Deval Electroplators (Writ Petition No 1765 of 1996, judgment dated 08.03.2024)**, it is submitted that rateable value cannot be fixed comparing it with nearby structures and equating it with the construction cost in earlier years is not permissible.

9.5. That consideration amount mentioned in Index-II is not directly

considered as basis.

9.6. Lastly, he submitted that **Balbir Singh (Supra)** cannot be applied to the peculiar facts of this case.

REASONS AND CONCLUSIONS

10. I have considered the rival submissions and perused the record.

11. At the very beginning, it is necessary to note that it is settled position of law that in disputes regarding rateable value, the burden is upon the assessee to establish by leading evidence, as to how the proposed assessment is excessive.

12. Assessee has led evidence of PW-1- Mr. Vishwas Gopal, who is the Architect/Valuer who has proved valuation report and has been cross-examined by the Respondent- Municipal Corporation. This witness has stated that he has given several reasons by which cost of construction is recorded. He has stated that there are 21 reasons for which cost of construction is recorded. He has stated that he has visited the subject matter property and measured the built-up area. He has stated that the design of the construction is very simple and there are no fancy fittings and fancy elevation to the construction. He has stated that construction of first floor is an extension of the existing building. He has stated that the Petitioners' have shown the documents about the construction cost including bills for purchase of material and labour charges etc. He has stated that receipts of bills shown by the Petitioners were in the name of the Predecessor Mr. Rehmatullah and sometimes in the name company as M/s Pacoline. He has also stated that receipts were for a period of 1967-1991. He has also stated that the construction cost is about Rs.87,000/-. From the cross-examination of this witness,

nothing fatal seems to have been extracted.

13. However, the Appeal Court in the impugned order has disbelieved this witness only on the ground that Mr. Rehmatullah could not have the receipts (about construction costs) in his name because he has purchased the suit property in 1990 and it is therefore not known as to how receipts pertaining to 1967 till 1991 came in his possession. It is not disputed that in the present case, the construction of first floor was completed in March, 1995 and it is also not disputed that the Petitioners' predecessor purchased the property in March, 1990 and thereafter the construction of first floor was carried out. In that view of the matter, after purchase of the property, he can certainly have receipts in his name. If Mr. Rehmatullah had receipts in his name which are produced in support of construction cost for the first floor, no fault can be found therewith. In the cross-examination, on a question asked to the witness (Architect/Valuer), he has stated that receipts were for a period of 1967 to 1991 and he has stated that receipts were in the name of Mr. Rehmatullah. It can not be taken to mean that all the receipts were in Mr. Rehmatullah's name. If the Architect has seen receipts in the name of Mr. Rehmatullah for the purpose of arriving at construction cost, it could not have been disbelieved only on the basis that receipts for period of 1967 to 1991 can not stand in his name. Entire evidence of the Architect is discarded, which is not legal and proper, in my considered view.

14. The Appeal Court has held that the first floor is used for commercial purpose. However, admittedly even the ground floor is used for commercial purpose, for which standard rent was considered as 10 paisa per sq.ft. as per completion certificate in 1967.

15. In the teeth of the valuation report, duly proved by the

examining and Architect, the Appeal Court could not have accepted the increase in the hypothetical standard rent from 10 paisa per sq. ft. in 1967 to 1.70 per sq. ft. in the year 1993, which is 17 times increase. Mere admission on the the part of the Valuer that the receipts were in the name of Mr. Rehmatullah cannot be taken as basis for discarding the entire valuation report, which considered many other factors for arriving at construction cost of Rs. 87,000/-.

16. The Appeal Court seems to have accepted that the hypothetical rent is bound to increase from 1967 to 1991. However, increase of 17 times is not justified by any cogent reason especially in the teeth of the valuation report, which was clear evidence available on record about construction cost.

17. In the aforesaid facts and circumstances, the impugned order appears to have been passed by perverse re-appreciation of evidence.

18. The first Court had accepted the construction cost of Rs. 87,000/- on the basis of valuation report Exh. 35 and had applied 7% return thereon making it Rs. 6,090/- as annual rent and thereafter 15% deduction was applied towards repairs and maintenance and had arrived at Rs. 5180/-. Adding this amount to rateable value of ground floor (Rs. 2,765/-) and then rounding it off on higher side, the figure of 7,950/- was arrived at by the first Court. The reasons adopted by the first Court clearly appear to be more cogent and probable in the teeth of available evidence.

19. In **Malpe Vishwanath Acharya (Supra)**, while considering unreasonably low standard rents as per Bombay Rent Act, it is held that freezing of rent as on 01.09.1940 or as on the date of first letting has become arbitrary and unreasonable in view of constant escalation,

inflation and fall in the money value. Assuming that the construction of the first floor is a separate and distinct unit as contended by the Municipal Corporation, its valuation will have to be calculated independently, either on the basis of standard rent or on the basis of construction cost. Since it is found that evidence regarding construction cost has been properly appreciated by the first Court and perversely appreciated by the Appeal Court, it is not necessary to consider this Judgment any further.

20. Paragraph No.19 of **PMC Vs. Deval Electroplators (Supra)** relied upon by the learned counsel for the Respondent -Municipal Corporation will not apply to the facts of the present case at hand, because material is available about independent construction cost of the first floor in the form of valuer's report; therefore, there is no question of equating rateable value with some other construction of earlier year.

21. For the reasons recorded above, interference is necessary. Hence, the petition succeeds. The impugned Judgment and Order dated 29.01.2005 is quashed and set aside. Appeal No. 568 of 2001 filed by Respondent Municipal Corporation, is dismissed. Judgment and Order dated 28.08.2000 passed by Small Causes Court, Pune, in Municipal Appeal No. 63 of 1995 is confirmed.

22. **Writ Petition is allowed and Rule is made absolute in above terms. No order as to costs.**

23. All concerned to act on duly authenticated or digitally signed QR verifiable copy of this order.

(M.M. SATHAYE, J.)