

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1400 OF 1994

The Municipal Corporation of the City of Pune.] ... Petitioner
Versus
Mr. Ashok Appasaheb Deshpande.] ... Respondent

Mr. A. P. Kulkarni for Petitioner.

CORAM :- M. S. SONAK, J.

DATE :- DECEMBER 05, 2015

P. C. :-

1. Mr. A. P. Kulkarni for petitioner. None for respondent though served.

2. The challenge in this petition is to the Judgment and Order dated 21/06/1993 made by the Small Causes Court at Pune in Municipal Appeal No.230 of 1990. By the impugned Judgment and Order, the Small Causes Court has struck down rateable value of Rs.3,450/- determined by the petitioner and substituted the same with rateable value of Rs.1,420/- with effect from 01/02/1990. Mr.Kulkarni has submitted that the impugned Judgment and Order is vitiated by jurisdictional error. In this case, the respondent-assessee failed to step into the witness box or lead any evidence. Despite the same, the Small Causes Court has accepted the respondent's case with regard to non-service of special notice in terms of the Bombay Provincial Municipal Corporations Act, 1949 ('said Act'). Mr. Kulkarni further submitted that the entire reasoning of the Small Causes Court

is based upon the document at Exh.18 which is the certified copy of assessment of property located at Survey No.43/2, Erandavane, Pune, in the vicinity of the suit premises. Mr. Kulkarni submitted that there was no ground raised in the memo of appeal on the basis of Exh.18 and therefore, the petitioner had no opportunity to deal with the said document or or the said ground. In any case, Mr. Kulkarni points out that the document at Exh.18 is an assessment which relates to the year 1982. The same could never have formed the basis of assessment in the year 1988. Relying upon the decision of this Court in the case of *Trilok Baburao Deshpande Versus Municipal Corpn. of Gr. City of Pune*¹, Mr. Kulkarni submitted that in the present case as well, the Small Causes Court ought not to have disposed of the appeal without calling for record and proceedings from the municipal corporation.

3. Upon perusal of record, it is clear that the respondent had not led any evidence before the Small Causes Court. In such circumstances, there was no question of relying upon the statement made in the course of submission that no special notice was ever issued to the respondent. The petitioner had placed on record, copies of notices which had indeed been issued in the matter. If the respondent was serious in his contention that such special notice was never received by him, then the minimum that was expected of him was to step into the witness box and offer himself for the purposes of cross-examination. The Small Causes Court was obviously not right in accepting the bare statement of the respondent in this regard.

¹ 2013(3) Bom.C.R. 334

4. The impugned Judgment and Order very heavily relies upon the copy of assessment at Exh.18 which pertains to property in the vicinity. If the appeal memo is perused, then there is no reference to the document at Exh.18 and the ground based thereon. It is also not clear as to manner in which Exh.18 was produced on record. Possibly, because the said document is a certified copy of the assessment, the same may have been taken on record. However in absence of any reference to such assessment/document in the memo of appeal, it is possible that the petitioner was deprived of opportunity to place further material on record or to at least explain as to why the document at Exh.18 does not offer only comparable instance. At least *prima-facie*, a document at Exh.18 relates to the year 1982 and the Small Causes Court was concerned with the assessment for the year 1988.

5. There is no general rule laid down that the Small Causes Court, in every case, is required to call for record and proceedings from the municipal corporation concerned. In a given case, if reference to the basic facts upon which the determination of rateable value is premised are necessary to be gone into, then it would be appropriate to call for record and proceedings. The municipal corporation can also, on its own, produce the record and proceedings even though, there may not be any order calling for record and proceedings. Therefore, it is not possible to accept Mr. Kulkarni's contention that the impugned Judgment and Order is vitiated on account of failure to call for record and proceedings.

6. However, in view of the discussion on the aspects of special notice and placement of reliance upon document at Exh.18 without afford of sufficient opportunity to the petitioner to place on record further material or in any case, explain the import of the document at Exh.18, it would be appropriate if the impugned Judgment and Order is set aside and the matter is remanded to the Small Causes Court at Pune. In fact, Mr. Kulkarni submitted that remand, in the facts and circumstances of the present case, would be appropriate since the same relates to determination of rateable value.

7. Accordingly, the impugned Judgment and Order dated 21/06/1993 is set aside. The matter is remanded to the Small Causes Court at Pune for re-hearing of Municipal Appeal No.230 of 1990 in accordance with law and on its own merits. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

8. Parties to appear before the Small Causes Court at Pune on 11/01/2016 at 3.00 p.m. and produce authenticated copy of this order. The Small Causes Court at Pune is requested to serve notice upon the respondent herein, who is the appellant before the Small Causes Court.

(M. S. SONAK, J.)