IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 369 OF 2007

The Pune Municipal Corporation & Anr. .. Applicants
vs.
Bageecha Hotels Pvt. Ltd. .. Respondent

Mr. R. M. Pethe for Applicants.
Mr. M. S. Karnik with Ms. Leena Patil for Respondent.

CORAM : M. S. SONAK, J.
DATE: 22 APRIL 2015

P.C. :-

1] This revision application challenges order dated 10 March 2000 made by the Judge of the Small Causes Court, acting as appellate authority under Section 406 of the Bombay Provincial Municipal Corporations Act, 1949 (said Act). By the impugned order, the appellate authority has set aside the annual rateable value in respect of the suit property determined by the applicants at Rs.73,600/- and further determined the annual rateable value of Rs.1,550/- w.e.f. 1 April 1999.

2] If the impugned order is perused, then the same is based upon the following premises :

(A) That the applicants failed to grant time of fifteen days to the assessee to file complaint against the valuations made by the applicants by its special notice dated 16 November 1999;

(B) That since the stamp duty paid on the conveyance in respect of the suit property was Rs.2,69,000/-, the same ought to be regarded as the valuation of the suit property, for the purposes of determination of annual rateable value;

(C) That amnesty circular dated 19 January 2001, though issued at a later date, was required to be taken into consideration, for the purposes of determination of annual rateable value.

3] The learned counsel for the applicants has submitted that special notice dated 16 November 1999 was not only received by the respondent - assessee, but further, the respondent - assessee had struck off the portion '*not acceptable to me*' whilst furnishing endorsement upon the said notice. In these circumstances, it cannot be said that determination of assessment was ever disputed by the respondent - assessee. In any case, the learned counsel for the applicants submitted that if the stamp duty in respect of the suit property was Rs.2,69,000/-, then the valuation of the suit property, would be much higher. Finally, the learned counsel for the applicants submitted that amnesty circular dated 19 January 2001 was prospective in operation and in any case amnesty scheme, could not apply to the case of the respondent - assessee.

4] The learned counsel for the respondent - assessee submitted that there is no error of jurisdiction in the making of the impugned order. The learned counsel submitted that assessment order was made even before the period of fifteen days from the date of special notice dated 16 November 1999 would expire. In any case, the learned counsel submitted that there was no reason to deny the respondent - assessee benefit of amnesty circular dated 19 January 2001, as otherwise, the respondent - assessee, would be put to a disadvantage qua other assessees who had not even bothered to make any payments to the applicant - corporation.

5] Having heard the learned counsel for the parties and perused the records, in my judgment, the impugned order is required to be set aside and the matter remanded to the appellate authority for fresh consideration. This is because, the impugned order, contains an error apparent on face of record. On the conveyance concerning the suit property, the respondent - assessee has paid stamp duty of Rs.2,69,000/-. This means that valuation of the suit property is undoubtedly much higher since the amount of stamp duty only constitutes a small percentage of the valuation of the suit property, whereon stamp duty is required to be paid on *ad valorem* basis. The appellate authority, in such circumstances, can never have regarded the value of the suit property itself as being Rs.2,69,000/-

and on the said basis proceed to itself determine the annual rateable value at Rs.1,550/-.

6] Further, the finding that annual rateable value as determined by the applicant corporation stands vitiate on account of breach of procedure, is also not correct. The special notice was indeed published on 16 November 1999. There is no serious dispute that such notice was also served upon the respondent - assessee. The only dispute is whether the respondent - assessee accepted the valuation and determination of annual rateable value specified therein. This can hardly be regarded as any serious breach of procedure, so as to render the determination of annual rateable value by the applicant corporation, infirm. This however, does not mean that the respondent - assessee should have no opportunity to challenge the annual rateable value so determined by preferring an appeal under Section 406 of the said Act. Accordingly, it will be just, fit and proper that the respondent - assessee's appeal is reconsidered by the appellate authority.

7] In so far as the issue of application of amnesty circular dated 19 January 2001 is concerned, even the said issue is left open for decision by the appellate authority. However, the appellate authority to decide the entire matter, uninfluenced by any observations made in the impugned order, which in any case is now being set aside.

8] Accordingly, the impugned order dated 10 March 2000 is set aside. The respondent - assessee's appeal is restored to the file of the appellate authority. The appellate authority to decide the Municipal Appeal No. 37 of 2000 in accordance with law and as expeditiously as possible so as to dispose of the same within a period of six months from the date of production of authenticated copy of this order.

9] The parties are directed to appear before the appellate authority on 15 June 2015 at 11.00 a.m. and produce authenticated copy of this order.

10] Rule is made absolute to the aforesaid extent. There shall however be no order as to costs.

(M. S. SONAK, J.)

Chandka