IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7380 OF 2005

1] Tatyasaheb Baburao Kotkar,
Chairman, Shetkari Sanghtana,
Kedgaon Vibhag,
Age 50 years, Occ. Agriculture,
R/o. Kedgaon, Old Gaothan,
Ahmednagar.

2] Genu Dashrath Kotkar
Age 70 years, Occ. Agriculture,
R/o. Kedgaon, Old Gaothan,
Ahmednagar.

3] Shri Tulsidas Madhavrao Kamble,
Age 52 years, Occ. Agriculture,
R/o. Kedgaon, Old Gaothan,
Ahmednagar.

4] Parvati Rambhau Thube
Age 60 years, Occ. Agriculture,
R/o. Kedgaon, Old Gaothan,
Ahmednagar.

5] Sau. Sangita Vijay Hajare,
Age 32 years, Occ. Agriculture,
R/o. Kedgaon, Old Gaothan,
Ahmednagar.

.. PETITIONERS,

VERSUS

1] The State of Maharashtra
Through Secretary,
Department of Urban Development,
Mantralalya, Mumbai – 400 032.

2] The Deputy Secretary,
Urban Development,
State of Maharashtra,
Mantralaya, Mumbai-32.

3] The Municipal Corporation,
Ahmednagar,
Dist. Ahmednagar.

4] The Commissioner,
Ahmednagar Municipal Corporation
Ahmednagar. .. RESPONDENTS.

Mr. A.K. Gawali, Advocate for petitioners,
Mrs. A.V. Gondhalekar, AGP for respondent Nos. 1 and 2.
Mr. S.P. Shah, Advocate h/f. Mr. Mukul Kulkarni, Advocate for respondent Nos. 3 and 4.

CORAM : S.V. GANGAPURWALA
& K.K. SONAWANE, JJ.
DATE OF RESERVING JUDGMENT : 11th AUGUST , 2016.
DATE OF PRONOUNCING JUDGMENT : 30th SEPTEMBER, 2016.

ORAL JUDGMENT : [PER S.V. GANGAPURWALA,J} :-

1] We have heard Mr. Gawali, learned counsel for the petitioners, Mr. Shah, for the Municipal Corporation and Mrs. Gondhalekar, learned AGP for the State.

2] Petitioners are challenging the notification dated 21.7.2005 issued by the Ahmednagar Municipal Corporation under Rule 20(c) of Chapter VIII (Taxation Rules) of the Bombay Provincial Municipal Corporation Act, 1949 (Now the Maharashtra Provincial Municipal Corporation Act) (Hereinafter referred to as,"the Corporation Act" for sake of brevity)

The present petition is filed by the petitioners challenging the notification dated 21.7.2005. We would consider the present petition only to the extent of the petitioners and not in a representative capacity as no procedure for filing the petition in a representative capacity seems to have been followed.

3] Mr. Gawali, learned counsel for the petitioner states that the properties of the petitioners are situated in Kedgaon area. The said area was merged with the larger urban area of Municipal Corporation, Ahmednagar. The area of Kedgaon excluding the area adjacent to Ahmednagar-Pune road is known as Kedgaon Gaothan, which consists of Agricultural land and farm houses of the farmers built in their field. No civic amenities are provided by the Municipal Corporation. On or about 19.2.2005, a resolution bearing No. 1-B, was passed in the General Body of the respondent Municipal Corporation, whereby, it was decided to divide the larger urban area of the corporation into 5 zones. It was further decided to sub-divide the zones and publish rates per square meter, per month, for premises in each zone, depending upon its category for the purpose of calculating the annual rateable value.

4] Learned counsel for the petitioner submits that in accordance with the Resolution dated 19.02.2005, a prior notification was published giving the division of “larger urban area” of Ahmednagar Municipal Corporation into five zones. A chart was also issued giving per square meter per month rates for calculating the Annual Rateable Value of the premises situated in different zones and objections were called by the said prior notification. The premises in the various zones were classified into three categories on the basis of type of construction i.e. :-

I] Having R.C.C. Construction.

II] Load bearing construction or Non-R.C.C. Construction,

III] Premises having tin roof, slums and construction made out of mud (other than load bearing and RCC construction.

The sub classes based on types of constructions are further categorized into classes based on the age of building. There are three- sub-categories in each of the above mentioned three categories based upon the age of construction :-

I] Less than 10 years;

II] Between 10 to 40 years.

III] Above 40 years.

The constructions categorized as per the above two methods are further classified into :-

I] Residential &

II] Non-residential premises.

The non-residential premises are further classified into premises a] abutting the main road; b] non-residential premises, which are not adjoining the main road.

5] Learned counsel for the petitioner further submits that representations were made by the residents of Kedgaon to the concerned minister complaining about the said action and manner of calculating the

Annual rateable Vaule. The petitioners also made various representations to the Commissioner bringing to his notice that the Commissioner has no power to decide the Annual Rateable Value purportedly exercising powers under Rule 20 (C) of Chapter 8. Learned counsel submits that as objections were raised by the petitioners, the respondent No.3 issued notice under Rules 17 and 18 calling upon the complainants for hearing. Personal hearing was given. Learned counsel submits that without considering the substance of the objections raised by the petitioners and the residents of Kedgaon to the prior notification dated 7.5.2005, the final notification was issued on 21.7.2005, thereby giving the per square meter per month rates to be considered for each category of premises in the different zones for the purpose of calculating the Annual Rateable Value. Learned counsel for the petitioner submits that on or about 1.10.2005, notification under Rule 13 and 15 of Chapter VIII (i.e. Taxation Rules) of the Maharashtra Provincial Municipal Corporation Act was issued, calling upon the residents to take objection to the entries made in the ward Assessment Books prepared by the Corporation for each ward.

6] Learned counsel for the petitioner submits that final notification dated 21.7.2005 issued by the Commissioner is not referable to any provision of law. The Commissioner is not invested with the powers under Rule 20(3) of Chapter VIII of Schedule D of Corporation Act. The said act of Commissioner issuing final notification dated 21.7.2005 is without jurisdiction. Learned counsel submits that Article 265 r/w. 243X of the

Constitution of India lays down that no tax shall be levied or collected except by authority of law. Even Section 127 (3) of the Corporation Act, requires that the municipal tax shall be assessed and levied in accordance with the provisions of the Act and the Rules. Learned counsel further submits that Rule 7(1) provides for a procedure for determining the Rateable Value, which is equal to the annual rent for which the land or building might reasonably expected to be let, thereby imparting the concept of standard rent, as directed in the Maharashtra Rent Control Act. It was impermissible for the respondents to devise their own method in the form of notification dated 21.7.2005, for assessing the Annual Rateable Value.

7] Learned counsel for the petitioner submits that the notification dated 21.7.2005 is arbitrary, not in accordance with the statute and rules, as such, is violative of Article 14 of the Constitution of India. Learned counsel submits that Section 2(54) of the Corporation Act, defines Rateable Value, which means, the value of any building or land, fixed in accordance with the provisions of this Act, and the Rules for the purpose of assessment of property tax.

8] Reliance is placed by the learned counsel on section 129 of the Corporation Act, to submit that the respondent is duty bound to follow the said provisions scrupulously and that property tax has to be levied on the basis of the Annual letting value. Learned counsel further submits that Taxation Rules have been lost sight of by the respondent.

9] learned counsel for the petitioner relies on the following judgments :-

1]New Manek Chowk Spinning and Weaving Mills Co. Ltd. Vs. Municipal Corporation of the city of Ahmedabad and others, AIR 1967 SC 1801

2] Anil Kumar Gulati and others Vs. State of M.P. and others, AIR 2004 Madhya Pradesh 182

3] Kunal Kumar Jain vs. Tazuddin and others AIR 2004 Madhya Pradesh 212

4] India Automobiles Ltd. Vs. Calcutta Municipal Corporation AIR 2002 SC 1089.

5] East India Commercial Co. Pvt. Ltd. Vs. Corporation of Calcutta AIR 1998 SC 1789

6]Municipal Corporation of Greater Mumbai and another Vs. Kamla Mills Ltd. AIR 2003 SC 2996.

7] Devan Daulat Rai Kapoor etc. vs. New Delhi Municipal Committee and another AIR 1980 SC 541.

Relying on these judgment learned counsel submits that in these catena of judgments, it has been specifically held by the Apex Court that it is the Annual Rateable Value which has to be considered for the determination of rateable value, The authority has to do valuation by keeping in mind the actual rent received by the owner or hypothetical standard rate, or rate of rent of the properties in the vicinity.

10] Mr Shah, learned counsel for the respondent Corporation submits that vide notification dated 21.7.2005 the respondent Corporation published a formula for arriving at Annual Letting Value for the purpose of assessment of property tax of all the properties within the municipal limits, whereby, the municipal limit was divided into 5 zones. Each zone was further divided into 3 categories depending upon the nature of construction. After classification of the properties, depending upon the nature of construction, the properties were further classified on the basis of age of construction, and thereafter on the basis of use to which the properties were put. According to learned counsel, the challenge to notification dated 21.7.2005 is misconceived and premature. The respondents have followed the procedure prescribed by Rules and also made extra effort to consider the view of general public before deciding the formula.

11] On 7.5.2005, the Corporation issued a public notice inviting objections to the proposal made in the general body meeting. The step was extra effort taken by the Corporation to seek public opinion on the proposed action. On 21.7.2005, the Corporation published notification declaring the formula preferred to determine the Annual Letting Value of the properties within the municipal limits. The said formula was evolved after considering the objections raised by public pursuant to the notice dated 7.5.2005. Even this step of publication of formula is in addition to the requirement under the Rules. Thereafter, on 1.10.2005, respondent Corporation published a public notice inviting objections to the Annual Letting Value determined according to the formula published on 21.7.2005. This public notice was required under Rule 13 of the Taxation Rules. The aggrieved persons had a right to file a complaint to the Commissioner pursuant to the said notification/public notice dated 1.10.2005. In the complaint, each aggrieved person could individually bring it to the notice of the authority about his property receiving the rent or its rental value. Rule 19 of the Taxation Rules thereafter provides for determination of Annual Letting Value after considering the complaint of the persons/assesses. The Corporation has followed said procedure scrupulously. The assessment of property tax made by the respondent Corporation is based on the Annual Letting Value . There is nothing on record to suggest that Annual letting value has not been properly determined. Even the petitioner could not show as to how the annual letting value on the property and the one arrived at by the Corporation is incorrect. In fact, by the formula derived by the Corporation, the Annual Letting value of several properties including some of the petitioners has been reduced and not increased.

12] According to learned counsel, the judgment relied by the petitioners cannot be of any avail. In the case of New Manek Chowk referred by the petitioner, the Ahmedabad Municipal Corporation did not further divide the properties depending upon its location, age, nature of construction etc. In the present case, the Corporation has taken care to classify the properties depending upon their location, nature of construction, age of construction.

In case of ***Anil Kumar Gulati (supra)***, referred by the petitioner, the Madhya Pradesh High Court had rejected the contention of the petitioners therein, that classification of the properties into zones is totally impermissible, particularly, when the relevant criteria like area, nature of construction, age etc. are considered. Learned counsel for the respondents submits that respondents have assessed the property tax as per the Annual Letting Value. It had followed the provisions of rules and have further taken extra measures to consider the view from the public at large. He, therefore, submits that the writ petition deserves to be dismissed.

13] We have heard the learned AGP also.

14] There cannot be any dispute with the proposition that no tax shall be levied or collected except by authority of law. Levy of tax is a legislative act. Assessment of tax is a quasi-judicial function and recovery of tax is an executive act. Petitioners herein are challenging the assessment of tax involving quasi-judicial function of the Corporation. At the time of assessment of tax on the properties, the provisions of the statute and the Taxation Rules are required to be adhered to by the authority. The bone of contention of the petitioner is about non-adherence by the Corporation to the principle of Annual Letting Value, while assessing the tax. There are catena of judgments referred to by the petitioner.

15] In the present case, the Corporation had divided the municipal limits into 5 zones and further sub-divided it. It also divided the properties in the respective zones on the basis of age of construction, nature of construction, so also, use of that property. The same was for the purpose of determining the Annual Rateable Value. A preliminary notice was published pursuant to the resolution passed by the Corporation regarding dividing the properties into 5 zones and also classifying the properties for arriving at Annual Rateable Value. The petitioners could have very well raised their objections and they have raised objections. After classifying the properties they had arrived at the Annual Letting Value. It is for the petitioners to show that the Annual Letting Value arrived at by respondent is not correct and proper and that the Annual Letting Value of their property is different than the one which is arrived at by the Corporation. Opportunity is given to the petitioners to put forth the Annual Rateable Value of their property. In the present case also, we do not get any suggestion about the Annual Rateable Value of the petitioners being different than the one arrived at by the Corporation. Same will be required to be proved by the petitioners.

16] Section 127 of the Corporation Act gives powers to the Corporation to impose property tax. Section 129 states that the property tax is leviable on rateable value or capital value as the case may be. Section

129(1)(c) lays down that the general tax can be levied on the rateable value. Rateable value is defined under Section 2(54). It means the value of any building or land fixed in accordance with the provisions of This Act and the rules for the purpose of assessment to property taxes. Section 2(53) defines rack rent. As per the said definition, rack rent means, amount of the annual rent for which the premises with reference to which the term is used might reasonable be expected to let from year to year as ascertained for the purpose of fixing rateable value of such premises. Rateable value, as such, is determined on the basis of the Annual Letting Value. Same is determined by measure of standard rent under the Rent Act. If the premises is occupied by the owner himself, then the rateable value has to be ascertained on the basis of what hypothetically the tenant would offer it, as a reasonable rent. Same is also held by the Apex Court consistently. Reference can be had to the judgment of the Apex Court in the case of ***Municipal Corporation of Greater Bombay vs. Kamla Mills, East India Commercial Co. Pvt. Ltd. and In case of Diwal Daulat Rai Kapoor*** (referred to supra).

17] Chapter VIII, of Schedule D of the Corporation Act, deals with Taxation Rules and lays down the procedure to be followed while determining the Annual Rateable Value. Rule 7 lays down the manner in which the rateable value has to be determined i.e. as per the annual rent for which such land or building might reasonably be expected to be let from year to year. Rule 9 deals with the maintainance of assessment book, which contains the details of all the buildings, so also, the rateable value of each such building determined in accordance with the provisions of the Act and Rules. Rule 13 prescribes for issuance of public notice when the valuation of the property of any ward has been completed. Rule 14 mandates that assessment book shall be open for inspection to the owner or occupier of the premises entered in the assessment book. Rule 15 requires the Commissioner to publish notice of receiving complaints against the valuation. Rule 18 requires the Commissioner to give hearing to the complainants. After the complaints are disposed of the Assessment book is authenticated by the Commissioner and the said assessment book shall be accepted as conclusive evidence of the amount of property tax leviable on each building and land in the ward in the official year to which the book relates.

18] In the present case, the Corporation had issued public notice on 7.5.2005, inviting objections to the proposals made in the general body meeting dated 19.2.2005. In the General Body meeting dated 19.2.2005, the proposal was made to divide the municipal area into 5 zones for determination of the Annual Letting Value. Said publication of notice is nowhere contemplated in the statute or the rules. In fact, the said public notice was preliminary notice. Thereafter again, on 21.7.2005, the Corporation published notification declaring the formula evolved to determine the Annual Letting Value of the properties within the municipal limits. It appears that this formula was evolved after considering the objections raised by the public pursuant to the public notice dated 7.5.2005.

Even this public notice dated 21.7.2005 was an additional step in addition to the requirement of the rules. Vide this notification dated 21.7.2005, the Corporation, to determine the Annual Letting Value, had divided the municipal limits into 5 zones and further sub-divided it. The properties in the respective zones were further divided and classified on the basis of (I) age of construction (ii) nature of construction (iii) use of the property (residential and non residential) (iv) the location of the property (on the main road or otherwise. Objections were invited to the rates being fixed pursuant to the said classification. Thereafter again, on 1.10.2005, public notice was published inviting objections to the Annual Letting Value determined according to the formula published on 21.7.2005. This public notice dated 1.10.2005, is pursuant to Rule 13 of the Taxation Rules. Pursuant to the said notice dated 1.10.2005, the complaints are received by the Commissioner. The hearing has been given to every complainant and thereafter the Annual Rateable Value is fixed and tax is assessed accordingly.

19] If the Annual Letting Value was less than the one fixed by the Commissioner vide said public notice inviting objections, it was for the complainant to show that the Annual Letting Value is less than what is determined. Vide public notice referred to above, the Corporation had taken care to divide the zones into various categories, such as, nature of construction, age of construction, use of the property and also location i.e. on main road of otherwise. If the petitioners would have come with a case that the Annual Letting Value is less than what is determined, then the respondent Corporation was certainly duty bound to consider the same. As is held by the Apex Court, in the case of ***Municipal Corporation of Greater Bombay Vs. Kamala Milss*** (supra) that if the rateable value is fixed by the Commissioner, the burden to show that it is unreasonable is on the assessee. In the present case petitioners are not in a position to show that Annual Letting Value of their property is less than what is determined by the Commissioner by adopting the said procedure. In cases of some of the petitioners herein, the property tax has been reduced i.e. they are required to pay less than what they were paying earlier.

20] In case of New Manek Chowk Spinning and Weaving Mills (supra) the Corporation therein sought to impose property tax on all spinning mills within the municipal limits on the basis of flat rate i.e. irrespective of the locality, quality, age and nature of property. In the present case, the Corporation has classified the properties depending upon their location, nature of construction, age of construction and the purpose for which it is used.

21] In the case of Anilkumar Gulati (supra) referred to by the petitioner, the M.P. High Court had observed on the basis of Rules 3 and 4 of the M.P. Municipality (Determination of Annual Letting Value of Building /land) Rules, that there would be classification of area by zone and thereafter there would be classification of building and land situated in the zone and the rates are to be determined. In fact, in the present case, the corporation has categorized the properties as was required under Rule 4 of the M.P. Municipality (Determination of Annual Letting Value of Building/Land) Rules, 1997. The procedure has been followed by the Corporation. The petitioners are not in a position to show that the Annual Letting Value of their property was less than what has been determined by; the Corporation by following their procedure.

22] Next challenge is on the powers of the Commissioner. The Municipal Corporation Ahmednagar was established vide notification dated 30.6.2003. The Commissioner has the powers to issue public notice and notification and same was pursuant to the resolution passed by the General Body in its meeting. As it cannot be shown by the petitioners that the Annual Rateable Value determined is not as per the Annual Letting Value, the petitioners are not entitled for any relief and as such, the writ petition is dismissed. Rule is discharged. No costs.

[K.K. SONAWANE]
JUDGE

[S.V. GANGAPURWALA]
JUDGE.

grt/-