IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 357 OF 1992

1. The Municipal Corporation of Greater Bombay
2. Jamshed Gilfa Kanga … Appellants (Ori. Respondents)

vs.

1. Madhuribai Tulsidas Gordhandas Khatau
2. Nirvan Tulsidas Gordhandas Khatau
3. Yashwin Tulsidas Gordhandas Khatau
4. State Bank of Travancore … Respondents (Ori. Appellants)

Mr. N. V. Walawalkar, Sernior Advocate for the appellant/BMC.
None for the respondent.

Coram : Smt. R. P. SondurBaldota, J.
Date : 22nd June, 2016.

JUDGMENT :

1. This appeal is directed against the judgment and order dated 26th February, 1991 passed by the Court of Small Causes at Bombay in Municipal Appeal No.194 of 1986.

2. Respondents no.1 to 3 are the owners of the property known as BalRajeshwar Apartment, Mulund (W), Mumbai. They entered into an agreement dated 3rd July, 1980 with M/s. Crystal Construction Corporation for development of their plot of land admeasuring 8755 sq. mtrs. M/s. Crystal Construction Corporation by the agreement dated 20th August, 1980 agreed to sell and assign it's right, title and interest including the benefit of the agreement

dated 3rd July, 1980 in favour of M/s. Kanti Construction Company. The transferee carried out the construction on the land and by the agreement of sale dated 28th November, 1983 sold the Flats No.G3, G4 and G5 on the ground floor together admeasuring 2336 sq. ft. to one Smt. Kusum Nagindas Bilakhia and others, who thereafter leased the said premises to respondent no.4, the State Bank of Travancore.

3. The appellants served special notices dated 22nd February, 1985 under Section 162 (2) and 167 of the Mumbai Municipal Corporation Act ('MMC Act', for short) upon respondents no.1 to 3. Being aggrieved by the notices respondents no.1 to 3 filed complaint dated 25th March, 1985. Under the said complaint the ratable value proposed to be fixed at Rs.2,29,830/- was questioned. The complaint was heard and decided by the Assessor and Collector of the appellant on 7th October, 1985, who reduced the ratable value to Rs.1,83,860/-. Feeling aggrieved by that order respondent nos.1 to 3 preferred appeal to the Court of Small Causes at Mumbai under Section 217 of MMC Act. Respondent no.4 Bank came to be impleaded to the appeal proceedings on its own application. The first contention raised by the respondents before the Court of Small Causes was that the appellants had failed to consider that the Rent and Licnece Fee from respondent no.4 was being recovered by Smt. Kusum Bilakhia and others and not by respondents no.1 to 3. Therefore the ratable value fixed at Rs.1,83,860/- on the basis of a sum of Rs.15,417.60 ps. as the monthly rent / compensation was not correct. The second contention was that the monthly rent paid by the Bank to Smt. Kusum Bilakhia was only Rs.7,008/-. The balance amount of Rs.8409.60 ps. of

compensation were service charges, which is not rent. Next the rent paid by respondent no.4, Rs.7,008/- per month to Smt. Kusum Bilakhia could not have been taken into consideration as it did not reflect the standard rent of the premises under appeal. These respondents also alleged that the ratable value fixed by the appellants was arbitrary and contrary to the principles of law laid down by the Apex Court in various decisions. It was incumbent upon appellant to arrive at it's own calculation of the fair rent in accordance with the principles laid down under the Rent Control Act and be bound by that fair / standard for arriving at the proper rateable value.

4. The appellants contested the appeal by filing their written statement in which they admitted that the building in which the premises are situated was constructed by M/s. Kanti Construction Company and that the premises were sold by it to Smt. Kusum Bilakhia and others. It was the case of the appellants that on 21st January, 1985 when it's Officer visited the property, he found that the construction work on the ground floor for the purpose of respondent no.4 Bank was complete in respect of which occupation certificate was issued on 14th August, 1984. The owners of the premises had started collecting rent from respondent no.4 from 18th April, 1984. The appellants therefore proposed to assess the Bank portion with effect from 18th April, 1984 and proposed the ratable value of Rs.2,29,830/- NPA on the basis of the rent of Rs.15,417.60 ps. paid by the Bank to Smt. Kusum Bilakhia. As regards the hearing before the Investigating Officer the appellants contended that no documentary evidence was produced by respondents no.1 to 3 as

regards the Leave and Licence Agreement with respondent no.4. On his visit, the officer of the appellant had found that the entire ground floor was occupied by respondent no.4. The Officer took the rent at the rate of Rs.3/- per sq. ft. as per the agreement as the agreed rent to fix the ratable value. It was also claimed by the appellants that while fixing the ratable value the Investigating Officer had considered all the provisions of law, and the principles laid down for fixing the ratable value, to arrive at the ratable value of Rs.1,83,860/- NPA.

5. Before the Court of Small Causes the parties led oral as well as documentary evidence. Respondents no.1 to 3, the owners of the property, in which the premises are situate, did not step into the witness-box to support their contentions raised in the appeal. Respondent no.4 Bank examined it's Branch manager and one Pravinchandra Doshi an Architect to support the challenge to the ratable value. The petitioner examined K. S. Patoli, it's Assistant Assessor and Collector in 'N' Ward. Respondent no.4 produced two agreements both dated 4th December, 1984 between it and Smt. Kusum Bilakhia and others. The first agreement was for lease of the premises in question, with lease rent at Rs.3/- per sq. ft. per month, totalling to Rs.7,008/- per month. The second agreement was for providing services to appellant no.4 for which the consideration payable was of Rs.8,409.60 ps. Thus the total amount paid by respondent no.4 for occupying the premises is of Rs.15,417.60 ps.

6. On the basis of the pleadings between the parties, the Court of Small Causes framed following three points for it's

determination :- (i) whether the ratable value ought not have been fixed by the petitioner by taking lease rent of Rs.7,008/- per month into consideration, (ii) whether it could take into consideration the service charges of Rs.8,409.60 ps. per month also and (iii) whether the correct standard rent in respect of the premises was Rs.7,421.52 ps. per month. For the reasons stated in the appeal, the Court of Small Causes has held that the petitioner could not have taken into consideration the amount of Rs.8,409.60 ps. for fixing the ratable value and fixed ratable value at Rs.75,600/- with effect from 18th April, 1994.

7. While appreciating the evidence by respondent no.4 before it, the Court of Small Causes noted that the Officer of the respondent no.4 was not in a position to throw any light on any of the aspects for fixing the ratable value. He was not aware of the cost of construction of the premises in question, cost of the land under the premises etc. He merely produced two agreements i.e. lease agreement and service agreement. The second witness of respondent no.4, the Architect deposed about the location of the premises about which there is no dispute and his opinion as regards the fair standard rent and the ratable value. After giving description of the premises in question, it's area, the Architect claimed to have taken two factors into consideration for arriving at his opinion at the standard rent i.e. the land cost component and the construction cost component. He calculated the land value at Rs.1,25,900/- on the basis of “experience and local enquiries and on the basis of sale instance”. Similarly, he assessed cost of construction at Rs.3,59,630/- by taking into account

the cost of consideration in the prevailing period of the properties in Wagale Industrial Estate, Thane. Then after giving fair return at 6.50% on the land component and 7.50% on the building cost component he gave deduction on the repairs, insurance, maintenance, payments towards Municipal Taxes etc. and worked out the fair monthly rent at Rs.7,424.52 ps. The Court of Small Causes for the reasons stated in the impugned order rejected this assessment by the Architect with observations that it was easily possible for the respondents to bring before the Court the evidence of actual price of the land and the actual cost of construction since the owners i.e. respondents no.1 to 3 were themselves parties to the proceedings and also it was possible for respondent no.4 to secure the relevant documents either from M/s. Crystal Construction Corporation or M/s. Kanti Company Company or at least from Smt. Kusum Bilakhia. The learned Judge opined that the respondents had deliberately withheld the evidence available to them from the Court which evidence was important and relevant for considering the fair and standard rent of the premises. Thereafter it observed that since there was no sufficient evidence to arrive at the standard rent of the premises, it was necessary for it to find out what would be the fair and reasonable rent for the premises for the purpose of fixing the ratable value. It noted that for proposing the ratable value of Rs.2,29,830/- the Investigating Officer of the appellant had taken into consideration the lease rent paid by respondent no.4 to Smt. Kusum Bilakhia and others under the two agreements. The evidence on record shows that after purchasing Flats No.G3, G4 and G5 on the ground floor, Smt. Kusum Bilakhia and others had carried out certain additions and alterations to the premises to make the same suitable for banking business. The change included a strong-room for the Bank, and Manager's cabin with decorative false ceiling. Smt. Kusum Bilakhia and others also provided certain furnitures and fixtures included air conditioner to the Manager's cabin admeasuring 300 sq. ft. The agreement for rent provided for payment of rent of Rs.7,008/- for the premises. The service agreement referred to charges towards furnitures and fixtures provided by the owner, maintenance of the premises and payment of society charges. During the course of evidence, the witness of respondent no.4 stated that the maintenance of the premises included white washing, painting and upkeep of premises. The Court of Small Causes noted that the service agreement does not state details of the furnitures and fixtures. It only refers therein service of providing Air Conditioner, strong room cleaning, sweeping and other services needed at the premises as per the requirement of respondent no.4. Thus, observations of the Court of Small Causes indicate that it was not really satisfied with the evidence of service agreement as the agreement for charges for the services rendered by the owner to respondent no.4. It took note of suggestions of respondent no.1 in his cross-examination that the payment of interest on the cost of the furnitures and fixtures, which the owner had provided to the premises, to opine that it was not the case of the appellant at trial that the amount of service charges were not the charges for the service provided by the owner to respondent no.4 but a part of the rent and that it was only coloured so deliberately.

8. Relying upon the decision of the Apex Court in ***Motichand Hirachand and others vs. Bombay Municipal Corporation reported in AIR 1968 Supreme Court page 441*** it was submitted on behalf of the appellant that the additional income from the premises was received as and by way of providing the furnitures and fixtures. The services charges was really return on the investment into the amount spent on making the premises suitable for the bank.

9. The Court of Small Causes while accepting the argument that additional income of Rs.8,460/- was received as and by way of additional income, distinguished on facts, the decision cited. It observed as follows :-

> "It is no doubt true that the Appellants are getting a sum of Rs.8,460/- as and by way of alleged service charges, but when Respondents themselves contend that it is an amount of the interest on the investment made on the cost of the furniture and fixtures. This cannot be termed as an additional income within the compass of the observations made by Their Lordships in Monichand Hirachand's case (supra)."

It held that the Investigating Officer of the appellant erred in taking into consideration the sum of Rs.8,409.60 ps. for fixing of ratable value. It similarly discarded the argument on the additions and alterations to the premises to suit the requirements of respondent no.4. In the absence of the sufficient and substantiate evidence on the point of standard rent, it took into consideration the sum of Rs.7,000/- for the purpose of calculation of the ratable value and fixed the ratable value at Rs.7,008/- with effect from 18th April, 1994.

10. The first submission of Mr. Walawalkar, the learned Senior Advocate for the appellant/BMC is that after having arrived at the finding that the respondents had failed to produce any material before the Court for fixing of the standard rent, the Court of Small Causes could not have rejected the calculation of ratable value by the Investigating Officer of the appellant. He submits that it is well established position in law that in the challenge to the market value applied by Municipal Corporation, the burden to prove the allegedly correct market value of the property is on the assessee and failure on the part of the assessee to discharge the burden would justify the action of the Municipal Corporation. He refers to the decision of the Apex Court in ***Municipal Corporation of Greater Bombay and another vs. Kamla Mills Ltd. reported in (2003) 6 Supreme Court Cases page 315*** in this connection.

11. From the impugned order, it is obvious that the Court of Small Causes was aware of this legal position. Because it has specifically observed in the impugned order that the respondents have deliberately not produced the material in their possession and the material which was easily available to them which was important and relevant for arriving at the standard rent in respect of the premises. The evidence withheld included that for the cost of the land and the cost of construction of the building in which the premises in question are situate. Production of the two agreements i.e. agreement of rent and service agreement would not amount to discharge of that burden. In that circumstance, the Court of Small Causes could have and ought to have as submitted by Mr. Walavalkar accepted the standard rent

arrived at by the Investigating Officer of the appellant.

12. The second argument of Mr. Walwalkar is that the Court of Small Causes completely misread and misconstrued the decision of the Apex Court in Motichand's case. In the case on hand, the additions, alterations and improvements to specifically suit the requirement of respondent no.4 were providing a strong-room for the Bank, a special cabin for the Manager of the Bank with decorative false-ceiling and air conditioner. Provision for the strong-room was obviously the most important alteration required for the activities of the Bank. In Motichand's case the premises in question had been let out to the Tata Locomotive and Engineering Co. Ltd. (TELCO) and the landlord had made special arrangement for display of an advertisement for Tata Mercedes-Benz Automobile Trucks and Buses by means of a neon-sign on the terrace of the building and TELCO had agreed to pay the landlord Rs.800/- per month in consideration of the permission to display the advertisement and further a sum of Rs.700/- per month in consideration of the owners agreeing not to allow anyone else to use any portion of the building for display of any advertisement save those of the tenants of the ground floors but not above the level of the height of the ground floor. The Apex Court held that it is a well recognized principle in rating that both gross value and net annual value are estimated by reference to the rent at which the property might reasonably be expected to let from year to year. Various methods of valuation are applied in order to arrive at such hypothetical rent, for instance, by reference of actual rent paid for the property or for others comparable to it or where there are no

rents for reference to the assessment of comparable properties or to the profits earned from the property or to the cost of construction. The measure of rating is therefore the rent which hypothetical tenant looking at the building as it is, would estimate, that which he would offer as rent, is not hypothetical but concrete. While estimating the rent he would be prepared to pay he would naturally take into consideration all the advantages together with the disadvantages attached to the property and the maximum beneficial use to which he would be able to put the property. In doing so he is bound to take into consideration the fact of the property being situate at a unique place and such an amenity as is bound to add to the beneficial use to the tenant. The Apex Court in the facts of the case had held that the location of the property in question was such that the neon-sign advertisement could be vividly seen fixed on the top of the building by the pedestrians as well as people in vehicles, from fairly long distances in all directions specially as the advertisement happened to be a rotating one. This undoubtedly was an amenity adding to the beneficial value of the property for the tenant who desired to take the same on lease. In the case on hand, the alteration in the premises of providing strong-room for the banking business would be at par with the facility of a neon-sign advertisement exclusively available to the tenant. Therefore, the Court of Small Causes erred not to have taken into consideration the service agreement for arriving at a standard rent, particularly in view of the details of the services, mentioned in the service agreement. The agreement provides for a cabin for the Manager of respondent no.4 with false-ceiling and air conditioner, services of white washing, painting, paying maintenance to the society by the owner etc. If one takes into account all these factors the rateable value fixed by the appellant cannot be said to be excessive.

13. For the above reasons, the impugned order cannot be sustained. Hence, the appeal is allowed. The order dated 26th February, 1991 passed in Municipal Appeal No.194 of 1986 is set aside.

[Smt. R. P. SondurBaldota, J.]