IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 158 OF 1992

1. M/s. Nagpal Printing Mills … Appellant

vs.

1. The Municipal Corporation of Greater Bombay-1
2. The Commissioner of The Municipal Corporation of Greater Bombay-1 … Respondents

Mr. Rajesh S. Patil, Advocate for the appellant.
Mr. Suresh Pakale a/w Mrs. M. R. Bhoir a/w Mr. Sonawane, Advocate for the respondent / BMC.

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

JUDGMENT :

1. This appeal challenges the order dated 9th , 10th and 11th January, 1991 passed by the Court of Small Causes at Mumbai, dismissing the appellant's Municipal Appeal No.167 of 1979.

2. The appellant an erstwhile a partnership firm was carrying on business of printing and dyeing from 6 Mori Road, Mahim. As the land and the property was required by the State for construction of Mahim-Dharavi Fly-over Bridge. The State of Maharashtra offered a plot of land at Kandivali admeasuring about 1,850 sq. mts. to the appellant. The appellant took possession of the land in the year 1962 and submitted plans for construction of factory building. The ground floor of the building was constructed and occupied by the firm for it's business in the year 1970-1971. The ground floor was assessed for

the first time by the respondent Corporation in the year 1972 by fixing ratable value at Rs.3,870/-. That ratable value was increased from time to time to Rs.8,935/-, and Rs.12,660/-. In the meantime, on account of certain dispute the partnership firm was dissolved and in the year 1990 it became the Proprietary concern of Mr. Prakash Kundandas Nagpal.

3. In the year 1976 Officer of the respondent noticed that there was increase in the area under use on the ground floor and there was also construction of the first floor. Therefore the assessment was proposed to be enhanced with effect from 1st December, 1976 to Rs.35,975/-. Thereafter notice under Section 162 and 167 of the Mumbai Municipal Corporation Act ('MMC Act', for short) was issued to the appellant. Then the appellant filed a complaint to challenge the ratable value fixed for the year 1976-1977. The complaint was heard and disposed off by the Investigating Officer of the respondent by reverting to the original ratable value namely Rs.8,935/- for the period 1st April, 1976 to 30th November, 1976. The respondent, however, enhanced the ratable value of the ground floor on account of construction of the first floor. The appellant therefore again filed compliant which was heard and disposed off by the respondent by the order dated 1st March, 1979 fixing the ratable value at Rs.8,935/- for the period 1st April, 1976 to 30th November, 1976 and at Rs.25,085/- from 1st December, 1976. Being aggrieved by that order the appellant filed appeal in the Court of Small Causes at Mumbai i.e. Municipal Appeal No. 167 of 1979.

4. The appellant contended in the appeal that the mode

adopted by the Officer of the respondent for assessing the ratable value was incorrect. The second argument of the appellant was that the ground floor having been assessed at Rs.8,975/-, the assessment of the first floor could not have exceeded the value of the ground floor. Therefore the assessment of ratable value at Rs.16,150/- in respect of the first floor was erroneous. It was alleged that the Officer of the respondent had overlooked all the principles of valuation and had not appreciated certain peculiar facts of the case. According to it, the first floor came to be used from 1st September, 1977 and not from 1st December, 1976. The first floor after it's construction was vacant as some work was required to be completed before September, 1977.

5. The respondent filed it's written statement to contest the appeal. The several legal contentions raised by it were not pressed at the time of hearing. As regards the facts, the respondent contended that prior to 1st April, 1976 the property in question was assessed at Rs.8,935/- since the property consisted of ground floor only. In the year 1976 or thereabouts the respondent revised it's policy for assessing the premises which were constructed after 1st April, 1975. Therefore, the appellant's property was proposed to be assessed by the revised ratable value and by fixing it at Rs.12,660/- from 1st April, 1976. In the meantime, the appellant added one more floor i.e. the first floor admeasuring 798.60 sq. mts. to the building and placed wooden tables thereon for printing. Therefore the ratable value was proposed to be revised at Rs.35,975/- with effect from 1st December, 1976. The respondent issued notice under Section 162 and 167 of MMC Act to the appellant. In response to which the complaint in question came to be filed. During the course of the hearing of the

complaint, the Investigating Officer reverted to the original ratable value at Rs.8,935/- from 1st April, 1976 to 30th November, 1976 because the policy of the respondent of reassessing properties constructed after 1st April, 1965 was given up. As such, there was no increase in the ratable value for the ground floor on the basis of the policy but there was increase in the ratable value on account of addition of one more floor in the year 1976. Therefore the added portion was rated by adopting rate of Rs.20/- per 10 sq. mts. as the same was constructed in the year 1976-1977. The monthly rent taken by the Officer of the respondent for revising the ratable value was at Rs.1,597.20 ps. According to the respondent, it has followed all the principles of valuation, followed the correct method to arrive at the ratable value.

6. The appellant examined it's proprietor Prakash Nagpal in support of it's case and also an Architect. The respondent examined it's Superintendent in support of it's case.

7. The Court of Small Causes before touching upon the merits of the dispute considered two questions of law that were relevant for deciding the appeal. The first question was on whom should the burden to prove correctness of the ratable value fixed would lie. Relying upon two decisions of this Court i.e. (i) ***M/s. Polychem Ltd. V/s The Municipal Corporation for Greater Bombay. (71 B. L. R. page 396)*** and (ii) ***Filmistan Pvt. Ltd. versus The Municipal Corporation for Greater Bombay (72 B. L. R. page 461),*** the Court answered the question in following words -

> "Their Lordships have observed in clear terms that the burden heavily lies upon the party, who comes to the

> Court and it was for the Appellants to show by placing positive material before the Court that the valuation made by the Corporation was improper and that it should have been valued at a lesser amount. The sake principle is laid down in the second case that is Filmistan Pvt. Ltd. versus B. M. C. (72 B. L. R. 461). It therefore, follows that the burden heavily lies upon the Appellants in the Appeal before me to show that the rateable value as fixed by the B. M. C. is not fair, proper and reasonable and that it would be at a lesser rate."

The view expressed on the first question cannot be faulted with.

8. The second question was what would be the effect of failure of a party in putting it's case in cross-examination to the witness of the opposite party, on it's own evidence. The Court of Small Causes held that a party must put his essential and material case to the witness of the other side in cross-examination. This is not a technical rule of evidence. It serves to prevent surprise at trial and miscarriage of justice because it gives notice to the other side of the actual case that is going to be made when the turn of the party on whose behalf cross-examination is being made comes to give and lead evidence by producing witnesses. This question has also been correctly answered by the Court of Small Causes by taking support of the decision of the Calcutta High Court in ***A. E. C. Carapiet vs. A. P. Derderian*** reported in AIR 1961 Calcutta High Court, page 359.

9. Coming to the merits of the case, the Court of Small Causes has discussed the same at paras 10 to 17 of the impugned judgment. It was sought to be contended before the Court of Small Causes that though the construction of the first floor was started in the year 1970 was completed in all respects only in the year 1978,

hence it's assessment in the year 1976 was not correct. The contentions were rejected with the reason that the petitioner had failed to produce, the plans sanctioned by the respondent for the construction, the commencement certificate issued for the construction in respect of the first floor, completion certificate and occupancy certificate. In view of non-production of the documents, which would ordinarily be in possession of the petitioner, the Court of Small Causes drew an adverse inference against the petitioner. It also found that the reason assigned by the respondent for revising the ratable value on account of addition of the area on the ground floor was justified. The Officer of the respondent had actually measured the ground floor on 5th July, 1971 and found that the printing department was having an area of 325.15 sq. mts. There was extension on each side, which was used as an office with an area of 36.43 sq. mts. The area of the passage and stores was found to be 19.97 sq. mts. On the North side, there was a printing department having an area of 423.62 sq. mts. These additions were supported by the inspection report. The respondent, for assessing the ground floor had adopted the rate of Rs.11/- per sq. mtr. for the office premises and at the rate of Rs.10/- per sq. mtr. for rest of the premises. It considered the location of the building, and also the quality of construction. The petitioner had claimed that the quality of construction put up by it was inferior. It had led evidence of an architect (A.W.2) to support the claim. The Court of Small Causes rejected the claim as A.W.2 had not carried out any tests to find out the nature and quality of construction. The next argument advanced was that the first floor ought to have been assessed at a lower rate than the ground floor. This argument was also rejected for the reason that the Commencement Certificate obtained in the year 1965 was for the entire construction. The petitioner had got it revalidated in the year 1976 and then carried out the construction. As a consequence, the cost of construction of the first floor was naturally higher than the cost of construction of the ground floor. The cost of construction is one of the methods to assess the estimated rate if comparative rate is not available.

10. Mr. Patil, the learned advocate for the petitioner refers to the provision of Section 154, 156, 160, 162 and 164 of the MMC Act to submit that where the property is self-occupied by the owner, it is the duty of the assessing authority to find out as to what would be reasonably expected rent for fixing the ratable value. According to him, from the evidence recorded before the Court of Small Causes and from the documents produced, it is clear that the assessing authority had not complied with the provision of Section 154(1) of the MMC Act. He points out that the Investigating Officer on 17th November, 1977 had directed the Superintendent to verify the prevailing rates of the standard rent payable in the area. There is nothing on record to show that the Superintendent had in fact verified the prevailing rates. This according to him is a clear indication that the respondent had not followed the relevant provisions of the MMC Act. He next refers to the two decisions of the Apex Court in (i) ***Dr. Balbir Singh & ors. vs. M/s. M.C.D. & others*** reported in ***(1985) 1 Supreme Court Cases 167, paragraphs no.2, 6, 10, 19*** and (ii) ***Lt. Col. P. R. Chaudhary (Retd.) v/s. Municipal Corpn. Of Delhi*** reported in ***(2000) 4 Supreme Court Cases 577 – paragraphs no. 6,7*** to submit that the respondent had not followed

even the dictat of the Apex Court in the two decisions cited. Consenquently the burden had not shifted to the petitioner to prove that the ratable value fixed is not of the standard rent.

11. Mr. Patil submits that the Apex Court has in it's decision in Balbir Singh's case laid down principles for determining ratable value of a building as the annual rent which owner might reasonably expect to get from a hypothetical tenant if the building were to be let from year to year less certain deductions. In that decision the Apex Court was considering the questions as regards determination of rateable value of properties situate in the Union Territory of Delhi under the Delhi Municipal Corporation Act, 1957 and Punjab Municipal Corporation Act, 1911 with reference to Delhi Rent Control Act, 1958. The properties fell in four different categories namely (i) where the properties are self-occupied, that is, occupied by the owners; (ii) where the properties are partly self-occupied and partly tenanted, (iii) where the land on which the property is constructed is leasehold land with a restriction that the leasehold interest shall not be transferable without the approval of the lessor and (iv) where the property has been constructed in stages. The authority required to fix standard rent on the principles set out in Section 6 of the Delhi Rent Control Act. If it is not possible to determine the standard rent of any premises on the principles set forth in Section 6 of the Rent Act, there is a provision made in the same Act of Sub-section 4 of Section 9. This Section provides that in such a situation the Controller may fix such rent as would be reasonable having regard to the situation, locality, condition of the premises and the amenities provided therein and where there are provided similar or nearly similar premises for

the nearly locality, having regard also, standard rent payable to in respect of such premises. Mr. Patil next refers to para 19 of the judgment which deals with the category of the premises where the construction is carried out in stages. The Apex Court has observed therein that when the premises at the first stage of construction are to be assessed for rateable value, the Assessing Authority would first have to determine the standard rent of the premises by keeping in mind the upper limit fixed by the standard rent. It would be the rent, which the owner of the premises would reasonably expect to get if the premises are let out to a hypothetical tenant. When an addition is made to the premises at a subsequent stage if the addition is of only an extension to original premises and not of a distinct and separate unit of occupation, the original premises together with the additional structure will have to be treated as a single unit for the purpose of assessment.

12. By referring to the decision in the case of P.R. Chaudhary, Mr. Patil seeks to submit that the Assessing Authority while determining the ratable value of the landed property acts in quasi-judicial capacity and cannot arbitrarily ignore the principles laid down by the Apex Court. According to him, the respondent has not followed the specific provisions under MMC Act and the decision of the Apex Court in Balbir Singh's case.

13. Mr. Pakale, the learned advocate for the respondent on the other hand refers the decision of the Apex Court in ***Assistant General Manager, Central Bank of India and others vs. Commissioner, Municipal Corporation For the City of Ahmedabad***

and others reported in ***(1995) 4 Supreme Court Cases, page 696*** to submit that on receipt of the notice from the Assessing Authority it was for the petitioner to lead evidence and prove as what should be the correct ratable value. According to him, no such evidence is led by the petitioner.

14. In view of the submissions advanced and in particular the submission that the Investigating Officer has failed in his duty, it would be necessary to look into the text of the assessment order. The extract of the proceedings produced by the petitioner shows that the hearing was conducted on two dates i.e. 17/11/1977 and 1/3/1979. The orders passed on those two dates read as under :

> "**17-11-77** Shri. M. K. Nagpal, partner M/s. Nagpal Printing Mills appears. Supdt. Shri. Kudalkar present. Shri. Nagpal objects to the date of addition taken on 1-12-76. He says that 1st floor was not complete and same work of fitting is still going on. Shri. Nagpal also objects to the increase of rates for old portion from Rs.11/- to 17/- per 10 Sq.M. and from Rs.10 to Rs.15 per 10 Sq. Mt. and he says that there is no change at all in these portion. He also disputes the rates of Rs.28/- per 10 Sq. M. adopted for 1st floor which is newly added. He says that the land is old and the addition is made on old premises and therefore he pleads for taking lower rate. Shri. Nagpal requests for some further time to enable him to produce before the undersigned relevant documents. Supdt. to verify the prevailing rates. Adjourned to 9-12-77."

> "**1-3-79** Shri. M. K. Nagpal appears. Supdt. Shri Kudalkar present. Shri. Nagpal states that there is no justification for revising the rates of old portion as there is no change in the user. He therefore pleads for restoring the old rates in respect of the old portion. As regards date of addition he says the major portion of the work was completed after 1-1-77 and occupied much

later date, as regards rate he says that the major portion of the 1st floor was also constructed along with ground floor but for want of finance finishing the work completed now. He therefore pleads for the old rate of Rs.10/- per 10 Sq. Mts. Supdt. says at the time of inspection on 21-12-76 he found that the first floor was found occupied and printing work was carried out there. The rates of Gr. floor was revised under reassessment scheme. Since the reassessment scheme is given up I restore the old rate. Since the 1st floor is now completed I find a mean rate of Rs.20/- would be fair for 1st floor. As the 1st floor was found occupied at the time of inspection i.e. on 21-12-76 I fix the value as under from 1-12-76.

Gr. floor Area 36.25 Sq. Mts. as office @ Rs.11/- per 10 Sq. Mt.	Rs. 39.85
Remaining portion area 768.60 Sq. Mts. @ 10/-	Rs.768.74

	Rs.808.59
F. Floor Newly added area 768.60 Sq. Mt. @ Rs.20/-	
	Rs.1597.20

	Rs.2405.79

i.c.R.V. Rs.25085/-n.p.c.1 and 1-12

15. It is obvious from the above order that there was application of mind by the Investigating Officer on the material produced before him by the petitioner as well as the respondent. It is not the case of the petitioner that the Investigating Officer had ignored any specific material produced by it. The property had already been assessed which assessment was required to be revised on account of the additions to the property. From the two order it cannot be inferred that there was no verification done by the Superintendent pursuant to the direction dated 11/11/1977. It was

not even so suggested by the petitioner to the witness of the respondent in his cross-examination. Therefore there can be no substance in the argument of dereliction on the part of the Investigating Officer. The evidence led before the Court of Small Causes shows that the addition was vertical as well as horizontal. The entire evidence led by the petitioner for the first time before the Court of Small Causes has been assessed in detail in the impugned order and the view taken thereon is a proper view.

16. Lastly Mr. Patil refers to the Rules framed by the respondent for fixing capital value of Lands and Buildings called as the Factors and Categories of Users of Buildings or Lands (Assignment of Weightages by Multiplication) Fixation of Capital Value Rules, 2010. He submits that these rules which have come into force on the date of the publication i.e. 20th March, 2012 ought to be applied to the property. The argument needs to be rejected outright, since the assessment under consideration is of the year 1976.

17. For the reasons stated above, there is no merit in the petition. The same is dismissed.

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