

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 50 OF 2006

Bhusawal Municipal Council
(Through its Chief Officer
Shri Madhukar Kadu Ingale
Age: 52 years, Occu.: Service,
Presently working as Dy. Chief Officer,
Municipal Council, Bhusawal.
R/o Bhusawal, Tq. Bhusawal,
Dist. Jalgaon.

..PETITIONER

VERSUS

D.W. Kulkarni,
Age: 70 years,
R/o Block No.2, Shree Apartment,
Tapi Nagar, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.

:...RESPONDENT

....
Mr. S.B. Gorde Patil, Advocate for petitioner.
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**CORAM : T.V. NALAWADE, J.
DATED : 02nd FEBRUARY, 2017**

ORAL JUDGMENT :

1. The petition is filed to challenge the judgment and order of Municipal Appeal No. 29 of 2001 which was pending in the Court of Judicial Magistrate, First Class, Bhusawal and judgment and order of Criminal Revision Application No. 114 of 2004 which was pending in the Court of Additional District Judge, Jalgaon.

2. The municipal appeal was filed by present respondent to challenge the bill of demand of house tax issued by present petitioner. Learned Judicial Magistrate, First Class, Bhusawal allowed the appeal by holding that ratable value of premises ought to have been fixed on the basis of standard rent and it cannot exceed the standard rent. Learned Judicial Magistrate, First Class referred the cases of Apex Court reported as *AIR 1980 SC 541 (Devan Daulat Rai Kapoor Etc. Vs. New Delhi Municipal Committee and Another Etc.)* and *AIR 1985 SC 339 (Dr. Balbir Singh and Others Vs. M/s M.C.D. and Others)*.

3. The revision filed by the local body is dismissed on altogether different point and it is observed by the Sessions Court that as valuation is not done by the valuer appointed under the provisions of Section 113 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, the valuation cannot be recognised in law. The learned Counsel appearing for local body took this Court through the aforesaid two authorities of the Apex Court and also the provision of Section 114 of the Act. Provision of Section 144(1) of the Act runs as under:-

“114(1) In order to fix the reteable value of any building or land assessable to a property tax, there shall be deducted from the amount of rent for which such

building or land might reasonably be expected to let, or for which it is actually let, from year to year, whichever is greater, a sum equal to ten per centum of the said annual rent, and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever.”

4. This provision and observations made by the Apex Court in the above two cases show that if the standard rent is not fixed, it is up to the local body to ascertain the rent for which property may reasonably be expected to let. In view of these circumstances, it cannot be said that presumed that at the time of fixing the ratable value, this provision was not considered by the assessing authority. For that the entire material needs to be considered in the appeal by the Court. When standard rent is not fixed by Court, it cannot be presumed that ratable value was not fixed in accordance with the provision of Section 114 of the Act. Thus, Judicial Magistrate, First Class has committed error in allowing the appeal by giving such reasoning.

5. On the second point, which is raised by the Sessions Court against the local body, the learned Counsel for local body placed reliance on one case reported as ***1992 Mh.L.J. 953 (Indian Organic Chemicals Ltd. And Others Vs. Khopoli New Township Municipal Council and***

Others). In that case, the Division Bench of this Court has considered the provision of Section 113 of the Maharashtra Municipalities Act, 1965 and it is observed that the word 'may' used in this provision shows that the provision is directory in nature, it is not mandatory and the action of municipal council of levying tax when there was no appointment of valuer cannot be called as unjust. The provision of Section 113(2) of the Act runs as under:-

“113 (2) Each Council shall every year pay to the State Government such sum out of its revenue for the services rendered or to be rendered in that year by any authorised Valuation Officer or Officers for its purposes, as the State Government may by general or special order determine.”

6. This provision also shows that when authorised valuation officer is not appointed by State Government, the power lies with the municipal council. In such case, if authorised valuation officer is not there, that cannot be the reason for setting aside the demand notice or the valuation done by local body. Thus, on this point also the demand notice could not have been set aside. This Court hold that decisions of both the Court below, Judicial Magistrate, First Class and Sessions Court need to be set aside and the matter is to be remanded back to the Judicial Magistrate, First Class, Bhusawal for fresh consideration.

7. In the result, petition is allowed. The decisions given by Judicial Magistrate, First Class, Bhusawal and Sessions Court, Jalgaon in the aforesaid two proceedings is hereby set aside. Matter is remanded back to the Judicial Magistrate, First Class, Bhusawal. The Judicial Magistrate, First Class, Bhusawal to decide the matter on own merits after considering the material on record. Rule made absolute in those terms.

(T.V. NALAWADE, J.)

SSD