**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 1339 OF 2008**

Sangli, Miraj, Kupwad City Corporation, Sangli … Appellant
(Orig. Plaintiff)

V/s.

Maharashtra State Electricity Board & Ors. … Respondents
(Orig. Defendants)

Mr. G.H. Keluskar for the Appellant.

Mr. Prashant Chavan a/w Mr. Kiran Gandhi, Ms. Reshmarani Nathani i/b Little & Co. for the Respondents.

**CORAM : A.A. SAYED &**
**MANISH PITALE, JJ.**
**DATE : 10th OCTOBER, 2017.**

**P.C. :**

1. This First Appeal is filed by the Appellant/original Plaintiff challenging the judgment and order dated 03.01.2008 passed by the Civil Judge, Senior Division, Sangli, whereby the Suit of the Appellant/original Plaintiff came to be dismissed with costs. The Appellant/original Plaintiff is Sangli, Miraj Kupwad City Municipal Corporation, Sangli. The Respondents/original

Defendants are Maharashtra State Electricity Board and the State of Maharashtra.

2 The Suit was filed by the Appellant/original Plaintiff for recovery of sum of Rs.7,95,37,819/- upon the taking over of the distribution of electricity from the Appellant/original Plaintiff as licensee by the Respondents/original Defendants. According to the Appellant/original Plaintiff, the Respondents/original Defendants ought to have paid the amount calculated at market value of the immovable and movable properties, set out in the Schedules to the Plaint upon the takeover, whereas according to the Respondents/ original Defendants, they were required to pay the book value of the said assets.

3 The following points arise for our determination in this Appeal:

| Sr. No. | Points | Findings |
|---|---|---|
| 1 | Whether the judgment and decree passed by the trial Court requires interference? | No. |
| 2 | What order? | Appeal is dismissed. |

4 We have examined the material on record and perused the impugned judgment of the trial Court. The trial Court in paragraph 11 has noted as follows :-

> "11. Prior to dealing with the issues in this matter, it will be just and proper to note the admitted facts. It is admitted that, previously then State of Sangli was holding the electric supply undertaking, lateron it was transferred in the year 1948 to the Sangli Municipality. Thereafter, it came to Sangli Municipal Council on 17/6/1950. The actual working of the undertaking was carried out by Jubilee Electric Works. It is admitted that, then Bombay Government had granted licence under Sec. 3(2) of I. E. Act, 1910 to the Municipal Council – Jubilee Electric Licence 1956, and since then Jubilee Electric Works was involved in the distribution and supply of electricity to the consumers. It is admitted that, the Government has issued a notification dtd. 5/7/1985 and revoked the licence of Jubilee Electric Works on the application of the Administrator moved to the defendant No. 3 and thereafter in the midnight of $14^{th}/15^{th}$ August, 1985 in presence of the representatives of plaintiff Council and defendants No. 1 and 2 the formalities of handing over and taking over the undertaking were completed. It is undisputed that, in presence of the representatives of Plaintiff Council and Defendants No. 1 and 2's representatives, a joint inventory of the assets and liabilities of the undertaking was carried out. The crux of the suit is that, the plaintiff is claiming the value of the undertaking to be determined as the market value prevailing at the time of taking over the undertaking by the defendants No.1 and 2 and on the other hand the defendants are stick up with their contention that, in view of the Maharashtra Amendment of 1976, in Sec. 7 of Indian Electricity Act, Sec. 7-A is added whereby plaintiff is entitled

to recover the value only as per the depreciated book value. Therefore, we have to concentrate on the said dispute considering the prayers of the plaintiff'. Since the defendant has raised the objections that, the suit is time barred, it will be just and proper to decide the said issue on priority which may go on the root of the case. "

(emphasis supplied)

5. The Amended Section 7-A of the I. E. Act, 1910 as applicable to the State of Maharashtra, reads as under :

"Determination of amount -

1. Whether an undertaking of a licensee is sold under sub-section (1) of Section 5 or purchased under Section 6, the amount payable for the undertaking shall be the book value of the undertaking at the time of delivery of the undertaking.

2. The book value of an undertaking for the purpose of sub-section (1) shall be deemed to be the depreciated book value as shown in the accounts rendered by the licensee in accordance with the provisions of Section 11 of all the lands, buildings, works, materials and plant of the licensee, suitable to, and used for him, for the purpose of the undertaking other than -

(i) a generating station declared by the licensee not to form part of the undertaking for the purpose; or

(ii) the service lines or other capital works or any part thereof, which have been constructed at the expense of the consumers.

> but without any addition in respect of compulsory purchase or of goodwill or of any profits which may be or might have been made from the undertaking or of any similar consideration."

6. In paragraphs 25, 30 and 31, the Trial Court has observed as follows:

> 25. On the other hand the learned counsel for the defendants No.1 and 2 argued that, it is proved that, till this date the value is not determined and finalized according to the provisions of I.E. Act. The valuation report which is produced on record is not showing the true market value prevailing at the time of taking over the undertaking by them. P.W. 3 Shri Wadkar has admitted in his evidence that, the market value was drawn on the basis of the rate prevailing in the year 1988. Moreover, in view of the provisions of Sec. 7-A (Amendment Act) of I.E. Act the plaintiff was entitled to get the depreciated book-value of the assets which are delivered to the defendant. The defendants were ready and accordingly informed the plaintiff their willingness to pay the book value after finalization of the accounts. As the law has prohibited to pay the market value since the amendment of 1976, the plaintiff who has delivered the assets in the year 1985 are not entitled to claim the market value but as much they can get the depreciated book-value. On this issue he has relied on the decision of the Hon'ble Supreme Court held in the case of Maharashtra State Electricity Board Appellant vs. Thane Electric Supply Company and others Respondents (1989) 3 SCC 616 wherein the constitutional validity of Sections 4, 5 and 6 of Indian Electricity Act 1976 were challenged. The Amendment Act 1976 came into force pursuance to

the Bill introduced on 13th July 1976. By this Amending Act of 1976 the principle of "Market Value" in the relevant provisions of the 1910 Act was substituted by the concept of an "amount" legislatively fixed as a sum equal to depreciated book-value of the assets of the "undertaking" to be taken over. While amending the Act it was considered that, the basis for determining such price is the market value of the undertaking at the time of purchase or at the time of delivery of the undertaking. Having regard to present trend of rising prices, the market value of an undertaking would be much higher than the original purchase price. In such an event, the purchaser will require to incur very heavy expenditure for payment of the purchase price of payment of compensation in accordance with the then existing provisions of the Act and it would have involved the purchasers in heavy financial commitments. Therefore, in the interest of the consumer and social justice, it was felt necessary to amend the Act suitably to provide for payment of amount equal to the depreciated book value of the undertaking either in cash or in annual installments. The Hon'ble Supreme Court has held Article 39(b) of Constitution and the protection given under Sec. 39(c) of the Constitution is intact and due to the amendment, it did not violate any of the Articles.

30. While perusing the documents on record I have come across with the copy of the resolution dtd. 2/8/1985 of the plaintiff Council and also come across with the notice dtd. 6/5/1988 issued by the plaintiff council to the defendants No.1 and 2, it is appearing that, the plaintiff is claiming the market value in view of the decision given by the Hon'ble Bombay High Court in the case of Thane Electricity Supply Co. and others etc. But it is pertinent to note that, the same decision of the Hon'ble Bombay High Court has been set aside by the Supreme Court in the Appeal which is reported

in (1989) 3 SCC 616. (In Civil Appeal No.4113/ 1985 with C.A. Nos. 344 and 243 of 1985) i.e. the same case on which the learned counsel for the defendants No.1 and 2 has relied. Under such circumstances, by any stretch of imagination it can be said that, the plaintiff is entitled to claim market value of the undertaking from the defendants No.1 and 2. Moreover, the valuation report Exh.89 which is annexed with the plaint is not reflecting the true market value prevailing at the time of taking over the undertaking on 15/8/1985, because admittedly P.W.3 had prepared the valuation report considering the market rates prevailing in the year 1988 i.e. at the time of filing this suit. So, in view of the provisions of Sec. 7-A of Maharashtra Amendment of 1976 Act of Electricity Act, as the book value, that to the amount as depreciated book value is to be the base of finalizing the value of the undertaking to be transferred.

31. Since the witnesses have admitted that, on receipt of the notice dtd. 6/5/1988 the defendants No.1 and 2 replied it on 31/5/1988 and expressed their unableness to pay the market value of the undertaking as per the notice demand. However, it is also admitted by plaintiff's witnesses that, the defendants had conveyed the plaintiff council that they are ready and willing to pay the depreciated book value and it is appearing from the record that, genuinely they have paid Rs.10,00,000/- towards the part payment of the book value and claimed that, subject to the finalization of the accounts and determination of the book value of the undertaking they expressed their willingness to pay the same. Under such circumstances, it cannot be said that, the plaintiff is entitled for any compensation as there was no breach on the part of the defendants. Though the plaintiff has stated that, the defendants have agreed to pay the market value, no such agreement is produced on record. So also it cannot be said that, the plaintiff is entitled to claim the

> compensation alongwith the interest as prayed. Hence, considering all these aspect I hold that, the plaintiff has failed to prove its claim against the defendants I answer the issues No.1 to 3, 7 and 11 and 12 in the negative. ”

7. It is not disputed by the learned counsel for the Appellant that the issues raised in the suit are squarely covered by the judgment of by five-Judge Constitution Bench of the Supreme Court in the case of *Maharashtra State Electricity Board v/s. Thane Electric Supply Company and others.*[1] The Apex Court in the aforesaid judgment has observed as follows:

> “... The License was to expire, by efflux of time on the 21st day of September, 1977. Cl. 11 of the license envisaged the option to the Government, usual to such grants, to purchase the undertaking on the expiration of the period of the license. The Bill for the Amending Act, 1976 was introduced in the Legislature on 13-7-1976. The State Electricity Board, by notice dated 26th of August, 1976 served on the company, exercised its option to purchase the undertaking on the expiry of the period of the license and accordingly, required the company to sell and deliver the undertaking to the Appellant-Board on the mid-night between 21st and 22nd day of September, 1977. The provisions of the Electricity Act 1910, as they stood on the day of the option was exercised, would entitle the Company to be paid the “Market-Value” of the undertaking.

1. *AIR 1990 SC 153*.

. However on 20.9.1976, the Amending Act 1976, pursuant to the Bill introduced on 13.7.1976 became law. The Act received the assent of the President on 2nd September, 1976, and came into force with effect from 20th September, 1976, within a month of the option to purchase contained in the notice dated 26.8.1976. By this Amending Act of 1976 the principle of "Market-Value" in the relevant provisions of the 1910 Act was substituted by the concept of an "Amount" legislatively fixed as a sum equal to the depreciated. Book-Value of the assets of the "undertaking" to be taken over. The Amended provisions were to govern cases where, as here, notices had been issued prior to the amendment. The Company and its shareholders challenged the Amending Act of 1976 as violative of Articles 14, 19(1) (f) & (g) and 31 of the Constitution. The Appellants-State of Maharashtra and the State Electricity Board-claimed the protection of Article 31-C to the Amending Act of 1976 and the consequent immunity from attack on the ground of violation of Articles 14, 19 and 31."

...

"... The Amending Act of 1976 was, indeed, more far reaching and brought about certain fundamental changes in the basis of the payment for the take over. The idea of "market value" was done away with and was substituted by the concept of an 'Amount' which was to be limited to the 'depreciated book value'. The statement of objects and reasons accompanying the Amending Bill sets out its main objects :

"Section 7A of the Indian Electricity Act, 1910, provides for determination of purchase price where any undertaking of a licensee is sold under Sub-section (1) of Section 5 or purchased under Section 6 of the Act. The basis for determining such price is the market value of the undertaking at the time of purchase or at the time of delivery of the undertaking. Having regard to the present trend of rising prices, the market value of an undertaking would be much higher than the original purchase price. In such an event, the purchaser will be required to incur very heavy expenditure for payment of the purchase price or payment of compensation in accordance with the existing provisions of the Act and will involve the purchaser in heavy financial commitments. In the interest of the consumer and social justice, therefore, it is necessary to amend the Act suitably to provide for payment of an amount equal to the depreciated book value of the undertaking either in cash or in annual installments.

The Bill is intended to achieve these objects."

By the Amending Act of 1976 Sub-section [2] of Section 5 of 1910 Act was substituted. The Sub-section [2] as substituted, reads :

(2) where an undertaking is sold under Sub-section (1), the purchaser shall pay to the licensee for the undertaking an amount determined in accordance with the provisions of Sub-sections (1) and (2) of Section 7A;

In Sub-section [3] and Proviso to Section 5 and Section 6 of 1910 Act, the words "payment of market-value" were substituted by the words "payment of the amount for the undertaking". Sub-section [7] of Section 6 was substituted. The substituted sub-section provided :

"(7) Where an undertaking is purchased under this Section, the purchaser shall pay to the licensee the amount determined in accordance with the provisions of Section 7A and interest at the Reserve Bank of India rate ruling at the time of delivery of the undertaking plus one per centum on the amount payable for the undertaking for the period from the date of delivery of the undertaking to the date of payment of such amount."

Sub-section [1] and [2] of the new Section 7A of the Act said :

7A(1) where an undertaking of a licensee is sold under Sub-section (1) of Section 5 or purchased under Section 6, the amount payable for the undertaking shall be the book value of the undertaking at the time of delivery of the undertaking.

(2) The book-value of an undertaking for the purposes of Sub-section (1) shall be deemed to be the depreciated book-value as shown in the accounts rendered by the licensee in accordance with the provisions of Section 11 of all lands, buildings, works, materials and plant of the licensee, suitable to, and used for him, for the purpose of the undertaking other than-

> (i) a generating station declared by the licensee not to form part of the undertaking for the purpose of purchase; and
>
> (ii) the service lines or other capital works or any part thereof, which have been constructed at the expense of the consumers,
>
> -but without any addition in respect of compulsory purchase or of goodwill or of any profits which may be or might have been made from the undertaking or of any similar consideration."

…

"6. The effect of the Amending Act of 1976, in substance, was that the concept of "Market-Value" was substituted by the concept of an "amount", which was the book value of the undertaking at the time of its delivery. The "book-value" was deemed to be the "depreciated book-value" as shown in the accounts rendered by the licensee in accordance with Section 11 of the 1910 Act, of all lands, buildings, works, materials, plants, etc. The licensee was given a solatium of ten percent of such book value. The provisions of the Amending Act of 1976 were made applicable to all licensees including a licensee upon whom a notice requiring him to sell undertaking had been served prior to coming into force of the Amending Act of 1976, but the purchase price had not been determined before the Amendment of the Act. The up-shot of the Amending Act of 1976 was that the entitlement of the company for payment for its "undertaking", respecting which the notice exercising the Board's option to purchase had been served on 26.8.1976, i.e. prior to the date of coming into fore of the Amending Act, 1976, also came to be governed by the provisions of the Amending Act, 1976. While on the basis of the provisions as they then stood the respondent-company was entitled to the payment of the "market-value" as determinable under these provisions, now, by virtue of the Amending Act, of 1976, the respondent-company became entitled to the payment of an "amount" which was equal to and represented the "depreciated book value" of all the lands, buildings, works etc., instead of the "Market-Value."

…

"The point that arises for consideration in these appeals, therefore, is whether:

"the Maharashtra Act No. XLIV of 1976, which statutorily modifies the principles for the determination of the purchase price for the undertaking...from the principle of Market-value contained in the unamended Section 7A of 1910 Act to the concept of an 'amount' equal to the depreciated book-value of the assets under Section 7A as amended by Maharashtra Act No. XLIV of 1976...could be said to be a law enacted for the acquisition of the undertaking with a reasonable and direct nexus with the object of Article 39[b] of the Constitution and has, therefore, the protection of Article 31C?"

…

"17. The business of an electricity supply undertaking, a public utility service, in pursuance of a license granted under the Electricity Act, 1910, is comprehensively controlled by the terms of that Statute. The terms on which a franchise is created and conferred are amenable to unilateral modification by Statute. The terms which are so amenable to unilateral alteration to the disadvantage of the licensee include the term pertaining to the quantification of the price payable for the take-over. It is difficult to accept the proposition that the right to the payment of the price gets crystallised into a 'chose-in-action' independently of or even before the actual transfer of ownership of the undertaking. In *Fazilka Electric Supply Company's case: 1962 Supp [3] SCR 496* it was, no doubt, held that the transfer of the ownership of the undertaking was the result of consensual, bilateral activity. However, in *Gujarat Electricity Board v. Girdharilal Motilal 1969]1 SCR 589* referring to the relevant provisions of the 1910 Act it was held that they conferred power on the State Electricity Board "to take away the property of the licensee."

…

"In the financial memorandum appended to the amending Act of 1976 it is, inter alia stated :

...So far as Maharashtra State is concerned, it is a matter of policy that Maharashtra State Electricity Board is purchasing Private Electricity Undertakings as and when their licences expire. This policy will be continued and the Board will take over private undertakings hereafter also as and when their licence periods expire.

Under Section 7A of Indian Electricity Act, on revocation of the licence as well as on the purchase of the undertaking, the Board or the State Government as the case may be has to pay compensation or purchase price at the market value of the undertaking. In the normal course this market value will be very high. Under the amended Act, the Board or the State Government will be required to pay as compensation or purchase price the depreciated book-value of the undertaking. This will be less than the compensation or purchase price to be paid under the present Act."

…

"19. The community's economic burden for social and economic reform is an integral part of the exercise involved in social economic change in the ushering in of an egalitarian and eclectic social and economic order in tune with the ethos of the Constitution. The cost-in terms of monetary expenditure-of economic change is a factor integrated with the objects of Article 39(b). The Court must, on matters of economic policy, defer to legislative judgment as conditioned by time and circumstances. The wisdom of social change is, dependent, in some degree, upon trial and error, on the felt needs of the time.

A similar contention was urged in Writ Petition Nos. 457 and 458 of 1972 (reported in AIR 1990 SC 123). We have discussed at para 16 of that judgment the inevitability of integrating the costs of social and economic reform-in terms of monetary burden on the State-with the effectuation of the directive principles.

20. We accordingly hold that the provisions of amending Act of 1976 have a direct and substantial relationship with the objects of Article 39(b) and, therefore, are entitled to the protection of Article 39-C (31-C). If the impugned law has such protection, as we indeed hold that it has, all challenges to it on the ground of violation of Articles 14, 19 and 31 must necessarily fail. ..."

8. The Trial Court, in our view, has rightly relied upon the aforesaid judgment of the Apex Court in concluding that the amount payable was on the basis of the depreciated book value. The judgment of the Apex Court is a complete answer to the issues raised by the Appellant/original Plaintiff' in the suit. The allegation in the Plaint that Defendants No.1 MSEB and Defendant No.2 Superintendent Engineer, MSEB executed undue influence on the Administrator and in pursuance thereof the Administrator submitted an application for revocation of licence is curious to say the least

and has been rightly rejected by the Trial Court. The Trial Court has rightly answered the issue raised. We have not been shown any error in the findings of the Trial Court by the learned Counsel for the Appellant.

9. In light of the above, no case for interference is made out and we affirm the impugned judgment and order of the Trial Court. The Appeal is accordingly dismissed. Inasmuch as the dispute is between a Municipal Corporation on one hand and the Maharashtra State Electricity Board & State Government on the other hand, the direction granting costs is set aside and the impugned order of the Trial Court shall stand modified to that extent only.

**(MANISH PITALE, J.)** **(A.A. SAYED, J.)**