

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3056 OF 1997

M/s. Laxminarayan Ginning
& Oil Mills Satana through
Proprietor Shri. Champalala S. Bhangadia
(since deceased through his Heirs
and LRs.) .. Petitioners

vs.

The State of Maharashtra and ors. .. Respondents

WITH

WRIT PETITION NO. 3484 OF 1997

Shri. Jayant D. Khare .. Petitioner

vs.

The State of Maharashtra and ors. .. Respondents

WITH

WRIT PETITION NO. 3533 OF 1997

Shri. Narayan M. Bhangadia (since
deceased) by His Heirs and Lrs. and ors. .. Petitioners

vs.

The State of Maharashtra and ors. .. Respondents

WITH

WRIT PETITION NO. 3485 OF 1997

M/s.Prabhat Oil Mills Satana
through R.R. Agarwal .. Petitioner

vs.

The State of Maharashtra and ors. .. Respondents

Mr. C.G. Gavnekar and Mr.H.S. Hiranandani for the
Petitioners.

None for the Respondents.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 22nd September 2017.

Date of Pronouncing the Judgment: 26th September 2017.

COMMON JUDGEMENT:-

1] Heard Mr. Gavnekar, learned counsel for the Petitioners in all the petitions. He submits that substantially common issues of law and facts arise in all these petitions and therefore, all these petitions may be disposed of by common judgment and order, by treating Writ Petition No. 3056 of 1997 as the lead petition.

2] Writ Petition No. 3485 of 1997 was not on board. However, at the request of Mr. Gavnekar, learned counsel for the petitioners, the same was taken on board, since, substantially common issues of law and facts arise in this petition and the remaining three petitions.

3] In Writ Petition No. 3056 of 1997, the challenge is to the determination of non-agricultural assessment rate in respect of the petitioners' properties as determined by the District Collector by order dated 27th June 1983.

4] The petitioners aggrieved by such determination had instituted an appeal before the Revenue Commissioner, Nashik. This appeal was dismissed. As against such dismissal,

the petitioners instituted Writ Petition No. 3843 of 1987 before this Court. By judgment and order dated 17th February 1995, this petition was disposed of. The order made in the appeal was set aside and the appeal was remanded to the appellate authority for reconsideration. In pursuance of such reconsideration, the appellate authority once again, by order dated 10th December 1996 has dismissed the petitioners' appeal. The petitioners, thereafter, took out a review petition, which has since been dismissed by the order dated 18th February 1997. In this petition, the challenge is to the orders dated 10th December 1997 made by the appellate authority, confirming the rate of non-agricultural assessment determined by the District Collector, Nashik, in his order dated 27th June 1983.

5] Mr. Gavnekar, learned counsel for the petitioners, submits that the impugned appeal orders are in violation of principle of natural justice, inasmuch as the advocate for the petitioners was not afforded opportunity to make his submissions in the appeals. Without prejudice, Mr. Gavnekar submits that in this case, the Collector, failed to divide the urban areas into blocks on the basis of market value of lands,

failed to have due regard to the situation of the lands, the non-agricultural purposes for which they were used and the advantages and disadvantages attaching thereto before determining the rates of assessment. Mr. Gavnekar submits that any assessment, without taking into consideration these factors, is in breach of Section 111 of the Maharashtra Land Revenue Code, 1966 (MLRC). Mr. Gavnekar submits that there is also a breach of Rule 16 of the Maharashtra Land Revenue (Conversion of Use of Land and Non-Agricultural Assessment), Rules 1969 (Rules).

6] Mr. Gavnekar submits that the District Collector, has failed to take cognizance of the provisions in Section 112 of the MLRC, which imposes a ceiling in the matter of such determination of rates. He points out that in terms of Section 112 of the MLRC, non-agricultural assessment of lands in each block in an urban area shall not exceed three per cent of the full market value thereof, when used as a building site.

7] Mr. Gavnekar finally points out that despite the remand of the matters by this Court to the appellate authority, the appellate authority has, in fact, declined to exercise appellate

jurisdiction by observing that no appeal or application was maintainable before it. Mr. Gavnekar submits that this is clearly a case of failure to exercise of jurisdiction and therefore, the impugned orders made by the appellate authorities are required to be set aside.

8] The respondents, though served, neither filed any affidavit nor appeared through the AGP in these matters. Since, these petitions relate to the year 1997, it was not possible to adjourn the same. The matters were duly notified on the cause-list and the record indicates that on some earlier occasions, the AGP had appeared in the matters.

9] Chapter VII of the MLRC deals with assessment and settlement of land revenue of lands used for non-agricultural purposes. This chapter comprises Sections 108 to 120. Besides, the State, in exercise of powers conferred upon it by several sections of the MLRC has made the said Rules of 1969, in relation to the assessment of the land revenue of lands used for non-agricultural purposes.

10] Section 108 of the MLRC provides that for purposes of Chapter VII, unless the context requires otherwise, “*full market value*” in relation to any land means an amount of equal to the market value of that land plus the amount representing the capitalised assessment for the time being in force. The capitalised assessment shall be determined in such manner as may be prescribed.

11] In this case, we are concerned with lands which are situated in urban areas. Section 111 of the MLRC provides that for the procedure for determining non-agricultural assessment in urban areas. This provision states that the Collector shall divide urban areas into blocks on the basis of the market value of lands, due regard being had to the situation of the lands, the non-agricultural purposes for which they are used, and the advantage and disadvantages attaching thereto. Section 112 of the MLRC provides that non-agricultural assessment on lands in each block in an urban area shall not exceed three per cent of the full market value thereof, when used as a building site. Section 113 of the MLRC provides *inter alia*, that subject to the provisions of Section 112, the State Government shall, or if so authorised

by the State Government by Notification in the Official Gazette, the Collector shall fix the rate of non-agricultural assessment per square metre of land in each block in an urban area to be called "*the standard rate of non-agricultural assessment*" at such percentage of the full market value of such land as may be prescribed. The explanation to Section 113 of the MLRC provides that for the purposes of sub-section (1) of Section 113 of the MLRC, the full market value shall be estimated in the prescribed manner on the basis of the land rates as determined and issued in the form of Annual Statement of rates, by the Chief Controlling Revenue Authority under the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995 framed under the Bombay Stamp Act, 1958, during the period of five years immediately preceding the year in which the standard rate of nonagricultural assessment is to be fixed. This explanation was substituted for the existing explanation by Maharashtra Act 23 of 1999. Sub-section (2) of Section 113 of the MLRC provides that the standard rate of non-agricultural assessment shall remain in force for a period of five years ("*the guaranteed period*") and shall then be liable to be revised in accordance with the provisions of Chapter VII. Again, this

provision was introduced in the year 1999 and therefore, may not be very relevant for the purposes of determining the validity of the orders impugned in this petition.

12] Section 114 of the MLRC *inter alia* provides that subject to the provisions of this section, the rate of assessment in respect of lands in urban areas, used for the purposes of residential building, shall be the standard rate of non-agricultural assessment; used for the purposes of industry shall be one and one-half times the standard rate of non-agricultural assessment, used for purposes of commerce, shall be thrice the standard rate of non-agricultural assessment in the areas within the limits of all the other Municipal Corporations excluding the area of the Mumbai City District in the Mumbai Municipal Corporation area, and twice the standard rate of non-agricultural assessment in the remaining urban areas of the State. The rate in respect of lands in urban areas used for any other non-agricultural purpose shall be fixed by the Collector, at a rate not less than the standard rate of non-agricultural assessment, and not exceeding one and one-half times that standard rate, regard being had to the

situation and special advantages or disadvantages attaching to such lands.

13] Rule 16 of the said Rules provides that for the purpose of determining the standard rate of non-agricultural assessment, the Collector shall, on the basis of full market values of plots ascertained in accordance with the principles enunciated in the preceding Rule 15, first estimate the full market value of non-agricultural land in each block separately for each of the five years immediately preceding the year in which the standard rate of non-agricultural assessment is to be fixed. On the basis of full market value determined for the preceding five years under sub-rule (1), the Collector shall estimate the full market value of land per square meter in each block. The standard rate of non-agricultural assessment per square meter of land in each block shall be equal to three per cent of the full market value estimated under sub-rule (2) of Rule 16. The Collector shall submit to the State Government for approval the standard rate determined under sub-rule (3) through the Commissioner of the Division. The State Government may modify the Collector's proposal in respect of standard rate to such extent as it may deem fit. The

standard rate approved by the State government shall be published in the Official Gazette and such standard rate shall come into force with effect from the commencement of the relevant guaranteed period as provided Section 113. The standard rate shall also be put up on the notice board in the office of the Tahsildar. The standard rate fixed under sub-rule (13) shall remain in force for the relevant guaranteed period and thereafter shall be liable to be revised under Section 113 of the Code.

14] In the present case, the District Collector of Nashik, by his order dated 27th June 1983 has determined the rates of assessment. In tis order, there is reference to the standard rates published as required by Rule 16(5) of the said Rules. The District Collector has, accordingly, made the assessment as per the standard rates of assessment. As per these rates, for residence, the assessment is 0.43 paise per square meter, for commercial 0.65 paise per square meter, for industries 0.86 paise per square meter. Mr. Gavanekar is right in his submission that this assessment is about six times the earlier assessment of 0.15 paise per square meter. The contention that the District Collector had failed to observe the mandate

of Section 111 of the MLRC , by failing to divide the urban area into block, does not appear to have been raised before the District Collector or for that matter in the appeal before the appellate authority. No doubt, there is a ground to the said effect found in the appeal memo. However, there is nothing in the order of the appellate authority to indicate that such a ground was raised or pressed in the course of appeal. Rather, the contention raised was that the market value of the land was Rs.1,00,000/- per hectare and therefore, the assessment, which can never exceed three per cent of the market value, could in this case have never exceeded 0.30 paise per square meter.

15] In this case, the determination has been made by the District Collector on the basis of standard assessment undertaken in terms of Section 113 of the MLRC read with Rule 16 of the said Rules. The standard assessment, in the present case, had been duly notified by publication in the Official Gazette as required under Rule 16(5) of the said Rules. The District Collector, in such circumstances, was entirely justified in determining the rates of assessment by reference to the standard rate as determined and published in

the Official Gazette. There is no material on record to hold that there was any breach in the determination of such standard rate. In the determination of standard rate, there is no reason to proceed on the basis that the procedures prescribed have not been adhered to. Since, the petitioners had alleged breach of compliances with legal procedure, it was for the petitioners, to make good their contentions otherwise, the presumption under Section 114 of the Evidence Act would apply in favour of the authorities.

16] It is not possible to evaluate the issues of full market value in the exercise of jurisdiction under Article 227 of the Constitution of India. The petitioners have not placed any material on record before the appellate authority or before this court to establish that the market value of the lands in question was Rs.1,00,000/- per hectare and therefore, the assessment, in terms of Section 112 of MLRC could not have exceeded 0.30 paise per square meter. In such circumstances, it cannot be said that there is breach of provisions of Section 111, Section 112 or Section 113 of the MLRC.

17] Mr. Gavanekar is not right in his submission that the appellate authority has declined to exercise appellate jurisdiction. If the impugned order is perused, it is clear that the appellate authority has exercised appellate jurisdiction, but merely observed that the appellate authority cannot sit in appeal over standard rate of non-agricultural assessment determined in terms of Section 113 of the MLRC and published in the Official Gazette in terms of Rule 16 of the said Rules. The contentions of the petitioners as regards the full market value of the land and the consequent ceiling imposed by Section 112 of the MLRC have been duly considered and rejected by the appellate authority. Accordingly, this cannot be said to be a case of failure to exercise jurisdiction by the appellate authority.

18] Mr. Gavanekar, had placed reliance upon the decision of the Division Bench of this Court in ***State of Maharashtra vs. Nirlon Syntehtic Fibres and Chemicals Ltd. and anr. - 1992 (2) Mh.L.J. 1327***. The said decision is basically an authority for the propositions that the principles of natural justice are not required to be observed and no notice is required to be issued to each of the residents before undertaking any

legislative functions as prescribed under the MLRC. Such an issue does not arise in the present petition. Accordingly, the said decision, does not assist the case of the petitioners.

19] This is also not a case of a violation of principle of natural justice by the appellate authority. The appellate authority, in its order dated 10th February 1996, records the following :

“The Appellant's advocate was given opportunity from time to time to argue his case, however, the Appellant's advocate did not submit any argument”.

20] The statement recorded in the order of a *quasi judicial* authority is required to be accepted and cannot be simply ignored. If the statement does not reflect the correct position, then the petitioners were required to apply to the very same authority for clarification.

21] In this case, the petitioners, did institute a review petition. In the review petition, the appellate authority, once again, granted full opportunity to the petitioners. The contentions on behalf of the petitioners were considered, however, not found favour with. In such circumstances, it

cannot be said that the impugned orders violated the principles of natural justice.

22] Upon cumulative consideration of the facts and circumstances, as well as legal provisions under the MLRC and the said Rules, it cannot be said that there is any jurisdictional error or perversity in the making of the impugned orders. Accordingly, there is no case made out to interfere with the impugned orders under Article 227 of the Constitution of India.

23] Writ Petition No.3056 of 1997 is liable to be dismissed and is hereby dismissed.

24] Since the issues involved in the remaining writ petitions are substantially the same, for the reasons recorded aforesaid, even the said three writ petitions are liable to be dismissed and are hereby dismissed.

25] The interim orders, if any, are hereby vacated.

26] In the facts and circumstances of the present case, there shall be no order as to costs.

(M. S. SONAK, J.)