IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1675 OF 2017

Kinetic Engineering Ltd.
A Duly Registered Public Limited Company, Through its Duly Authorised A.G.M.(HR & ADMN),Shri.Shashikant Shivanand Gulve, Age 50 years, Occ. Service, R/o. Dund Road, Ahmednagar. ... **Petitioner**.

VERSUS.

1 The State of Maharashtra, Through The Secretary, Urban Development Deptt. Mantralaya Mumbai-32.

2 The Municipal Corporation, Ahmednagar, Through it's Commissioner. ... **Respondents**.

...

Advocate for Petitioner : Mr. R.R. Mantri.
APP for Respondent No. 1 : Mr. A.P.Basarkar.
Advocate for respondent No. 2 : Mr. N.V. Gaware.

CORAM : K. L. WADANE, J.
Reserved on : 16th March, 2018.
Pronounced on : 21st March, 2018.

JUDGMENT

1. Rule. Rule made returnable forthwith. By consent of the learned counsel for both parties, this petition is taken up for final hearing.

2. The petitioner has challenged the order passed by the learned Additional Sessions Judge, Ahmednagar,

in Criminal Revision Application No. 31/2011 dated 10.11.2017, by which the Criminal Revision is dismissed and the order passed by the 3rd Jt. Civil Judge, Senior Division and Judicial Magistrate, First Class, Ahmednagar, in Municipal Tax Appeal No. 250/1996 dated 21.12.2010 has been confirmed. Hence, present petition.

3. Brief facts of the case may be stated as follows;

The petitioner is a duly registered company. It constructed required factory sheds in land Sy. No. 138 and 139, which partly on the boundary of the respondent No.2/Corporation and village Panchayat, Burudgaon. In the factory premises the petitioner started production of Luna mopeds.

4. In the year 1979 the respondents predecessor Council fixed arbitrary Annual Letting Value (in short 'ALV') of its factory premises and as such Municipal Tax Appeal No. 13/1979 was filed, in which, Court quashed the ALV and fixed 'ALV' at Rs. 77,379/- and that judgment become final. In the year 1989-90 the respondent Council increased the ALV to Rs. 07,09,593/-, as new additions were made from time to time.

5. On 06.09.1994 the reassessment of entire town

was done by the Town Planning. The Council passed a resolution not to increase and continue 1989's position. It is alleged that, the respondent Council however arbitrarily, suddenly and illegally increased ALV of Rs. 40,87,829/-without following any provision/ rules. The proposal was strongly objected but without hearing/opportunity, same was confirmed inspite of the objection of 04.11.1995.

6. It is further alleged that on 04.02.1996 bill with retrospective demand at above ALV rate was served on the petitioner on 15.02.1996. After paying the demand, the Tax Appeal No. 250/1996 was filed. That appeal was decided by the Judicial Magistrate First Class, Ahmednagar, and it fixed ALV for pre-Corporation period at Rs. 21,28,689/- and for post Corporation period from 2004-2005 onwards at Rs. 28,38,252/-.

7. The petitioner assails this order by way of filing Criminal Revision No. 31/2011. Partly aggrieved by the ALV the respondents also filed an Appeal No. 16/2011 to the District Judge, Ahmednagar. Both proceedings were rejected on the ground of maintainability. The petitioner approached this Court by way of Criminal Revision Application No. 77/2011 which was allowed and the matter was remanded back to

the Additional Sessions Judge to decide it on merit. Writ Petition No. 5918/2011 filed by respondent/ Corporation was dismissed by this Court. It is further contended that the respondent Corporation also filed Criminal Revision with delay condonation application bearing Criminal Misc. Application No. 26/2012 in Sessions Court against the judgment in Municipal Tax Appeal No. 250/1996. On 10.11.2017 learned Sessions Judge, dismissed the revision filed by the petitioner and after dismissal of the revision the respondent/ Council issued notice of proclamation to sale the administrative building. Therefore, present petition.

8. I have heard Mr. Mantri, learned counsel, for petitioner as well as Mr. Gaware, learned counsel for respondent No. 2 at length.

9. During the course of arguments, Mr. Mantri, learned counsel, has argued that when notice under section 123 of the Maharashtra Municipal Councils Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred as 'the Act') was issued to the petitioner, it objected the notice, however, no opportunity was given to the petitioner of being heard. Therefore, the rateable value fixed by the respondent No. 2 was behind back of the petitioner which is

against the principle of natural justice.

10. Mr. Mantri, further argued that there are no rules, provisions in the Act for fixation of the rateable value in respect of the property in the category of factory. Premises of the factory of the petitioner do not fall under the category of either residential or commercial. Therefore, in absence of specific rule/provision, the respondent Corporation is not authorized to fix the ALV. Mr. Mantri, learned counsel, further argued that the ALV was fixed in Tax Appeal earlier therefore it cannot be reopened that too with retrospective effect. Mr. Mantri, learned counsel, further argued that rateable value of the property cannot be fixed on the basis of square feet. He further argued that, the penalty in reference to the notice and warrant fees is illegal, therefore, needs to be set aside.

11. As against this Mr. Gaware, learned counsel for respondent No. 2 has argued that at the time of presentation of the Tax Appeal before the Chief Judicial Magistrate, Ahmednagar, the petitioner has not deposited total amount of bill as contemplated under section 170(c)(i) of the Act, therefore, the Tax Appeal No. 250/1996 itself is not an appeal in the eyes of

law.

12. Mr. Gaware, learned counsel, further argued that, in view of the provisions of Section 124 of the Act, the Corporation is authorized to revise the rateable value from time to time, particularly, under the old Act for every four years and under the amended provisions for every five years. Therefore, the contentions raised on behalf of petitioner that the earlier rateable value fixed in the Tax Appeal cannot be reopened is improper and without any base. Mr. Gaware, learned counsel further argued that the present petition is filed under the provision of Article 226 of the Constitution of India and scope of such petition is very limited. Therefore, disputed question of facts and reassessment of the evidence is not permissible.

13. Mr. Mantri, learned counsel, has relied upon the case reported in **2003 (2) Bom.C.R. 851 (Kantilal Dharsi Desai V/s Karmala Nagar Palika & others)**, in which it is observed that “rateable value of the properties on the basis of “profit method”, without issuing any notice, is improper”.

14. Mr. Mantri, learned counsel, further relied upon the observations in case of **1976 BCI 17 (Ramkumar Ramchandra Choudhary V/s. Hingoli Municipal Council, Hingoli and another)** and **1977 BCI 3 (Thane Municipal Council, Thane, V/s. Thane Co-operative Housing Society**

Ltd., Thane) to contend Section 170 of the Act prohibits entertaining of the appeal without the deposit of the amount. The section does not say that no appeal shall be filed. In addition to that Mr. Mantri, learned counsel, submitted that the petitioner had already deposited the tax amount before presentation of the appeal and the appeal was filed by the petitioner in view of provisions of Section 169(ii) and it does not fall under the provision of section 169(i) of the Act.

15. Mr. Mantri, learned counsel, further relied upon the observations in case reported in **2015 (6) Bom. C.R. 362 (MIDC Industries Association V/s. State of Maharashtra and others)** in which it is observed that, tax on the basis of square feet is not proper.

16. Mr. Mantri, learned counsel further pointed out that the learned Magistrate dealing with Tax Appeal No. 250/1996 has taken into consideration the documents/ evidence placed in the appeal in Tax Appeal No. 12/2004 and the observations given in Writ Petition No. 956/2001. By referring the relevant reasons/ observations recorded by the Appellate Court, Mr. Mantri, learned counsel, points out that no opportunity was given to the petitioner to defend the documentary

evidence which is placed in another appeal.

17. Mr. Mantri, learned counsel, further relied upon the observations in Writ Petition No. 956/2001 wherein directions were issued to form a committee and there are no directions in reference to the fixation of the rateable value in regards with the subject matter/property of the petitioner.

18. Mr. Gaware, learned counsel for respondent No. 2 has relied upon the observations in case reported in **1984 A.I.R. (SC) 653 (Siliguri Municipality V/s. Amalendu Das)** in which it is observed that "grant of stay to the recovery of tax is not proper."

19. Mr. Gaware, learned counsel, further relied upon the observations in case of **2011 DGLS (SC) 925 (Dewan Chand Builders & Contractors V/s. Union of India & Ors.)** in which it is observed that, the tax recovered goes in the consolidated funds which is utilized for the public purpose.

20. Thus relying upon the aforesaid observations in the cases cited (supra) Mr. Gaware, learned counsel, has argued that the Respondent No. 2/Corporation has authority in law to revise the rateable value of the property for every four years. Accordingly, by passing resolution the Corporation has increased the rateable

value and fixed the tax upon the same.

21. Considering the rival submissions of both the sides it is material to mention here that it is the contention of the petitioner that inspite of the objection raised by it, no opportunity of being heard is given to the petitioner, therefore, the rateable value/tax fixed behind back of the petitioner, is against the principle of natural justice, therefore, needs to be set aside.

22. On perusal of the witness examined by the respondent No. 2/Corporation in Tax Appeal No. 250/1996 it appears that, witness Mr. Zine is an employee of respondent No. 2. During the course of cross-examination he has stated that the Tax assessment was done in the year 1994-95, after the appointment of the Assistant Director of Town Planning and admitted that he do not know on the basis of which the ADTP (in short) has fixed the rateable value/tax. He further specifically admitted that the Corporation heard thousands of tax payers after issuing notices within one day.

23. Looking to the aforesaid admission it is highly impossible for respondent No. 2/Corporation to hear objections of the persons in thousands. More

particularly there is no evidence in the present matter to show that liberty was given to the petitioner to represent and to put his case, more particularly, on the ground that the petitioner has already submitted his objection to the notice of tax.

24. Since from the aforesaid circumstances it appears that no opportunity of being heard was given to the petitioner, before fixation of 'ALV' therefore Mr. Mantri, learned counsel for petitioner has rightly relied upon the observations in case reported in **2011 (4) Mh.L.J., 705 (Municipal Corporation of the City of Pune V/s. Jayant Vyankatesh Sangole)** in which it is observed that no hearing was given by the Corporation to the respondent before increasing and fixing rateable value under the circumstances, the fixation of rateable value was illegal and was rightly set aside in exercise of the jurisdiction vested in the Small Causes Court. In view of the above, this Court holds that no opportunity was given to the petitioner to represent his case in the matter.

25. Next important aspect is to be considered that in the Tax Appeal No. 250/1996 learned 3rd Jt. Civil Judge, S.D., & J.M.F.C., Ahmednagar, has relied upon the documents which are placed in another appeal i.e.

Tax Appeal No. 12/2004 which was on the board on the same day and documents filed in the Tax Appeal No. 12/2004 particularly resolution No. 60 dated 13.12.2001 was considered and relying upon the contents of the resolution No. 60 the learned Appellate Court has fixed the rateable value as Rs. 21,28,689/- for revisional period. Since 2004-05 onwards the rateable value is fixed of Rs. 28,38,252/-.

26. It is surprising to note that the petitioner was unaware about the resolution or its copy placed in Tax Appeal No. 12/2004. Therefore, apparently, it appears that the Appellate Court has taken into consideration extraneous material which was not known to the petitioner and fixed the rateable value. Learned Appellate Court has also considered the observations in Writ Petition No. 956/2001. On perusal of the same it appears that in the aforesaid Writ Petition this Court has directed the State Government, through Principal Secretary of the Department of Urban Development to frame rules as required under the proviso to Section 114(i) of the Act, as expeditiously as possible and in any case before 31.12.2001. So looking to the directions issued in the aforesaid writ petition the only direction was given to the State Government is to

frame the rules. The relevant observations of the learned Appellate Court in para No. 12 reads as follows :

> "12. The new R.C.C. construction is 11%. The new tin shed construction is 48%. As already stated the law permits periodical increase in R.V. Today Tax Appeal No. 12/2004 is on board. In that case the copy of resolution No. 60 dated 13.12.2001 passed by the respondent is on record. It is revealing that one Writ Petition No. 956/01 was pending against the respondent. In that writ petition the Hon'ble Bombay High Court had directed the Municipal Council to take decision by forming Tax Appeal Committee. That resolution is also revealing that the respondent had resolved to increase the R.V. by three time by previous one. That rise for the revisional year 1995-96. Asper this resolution previous R.V. means R.V. by the year 1989-90. Considering all these facts and circumstances of the present case I am of the opinion that Rs. 21,28,689/- as the rateable value for the revisional period 1995-96 to 2002-03 and 2003 to 2004 is sufficient. In the year 2003-04 Municipal Corporation has been formed. For the revisional period since 2004-05 the rateable value is fixed as Rs. 28,38,252/-."

27. Order passed by the Appellate Court was assailed in Criminal Revision No. 31/2011. The learned

Revisional court observing the same thing has dismissed the revision. So apparently it appears that the documents which are not part of the record of the Tax Appeal No. 250/1996 was considered and the learned Appellate Court has fixed the rateable value as referred above. Therefore, apparently it appears that taking into consideration the evidence in the other proceedings which was unknown and surprise to the petitioner, cannot be considered unless the same documents are placed in the proceeding before the Appellate Court.

28. In view of the above, following order is passed :

ORDER

1. The Writ Petition is allowed.

2. The judgment and order passed by the 3rd Joint Civil Judge, Senior Division & J.M.F.C., Ahmednagar in M.T.A. No. 250/1996 dated 21.12.2010, and the judgment and order passed by the Additional Sessions Judge, Ahmednagar in Criminal Revision No. 31/2011 on 10.11.2017, are quashed and set aside.

3. The respondent No. 2 is directed to give opportunity of being heard to the petitioner and fix

the rateable value in accordance with law.

29. Rule is made absolute in the above terms. Writ Petition is accordingly disposed of. No costs.

(K. L. WADANE, J.)

30. After pronouncement of the order, Mr. Gaware, learned counsel appearing for respondent No. 2 submits that the order passed by this Court today be stayed for a period of three weeks as respondent No. 2 intending to assail the judgment and order before the Apex Court. Mr. Mantri, the learned counsel for the petitioner has no objection to stay the same. Hence, operation of the above order is stayed for a period of three week from today.

(K. L. WADANE, J.)

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