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

**WRIT PETITION NO. 53 OF 2019**

| | | |
|---|---|---|
| **Mahabaleshwar Hotels and Restaurants Association, Mahabaleshwar** | } | **Petitioner** |
| **versus** | | |
| **The Mahabaleshwar Giristhan Nagar Parishad and Ors.** | } | **Respondents** |

Mr.P.K.Dhakephalkar-Senior Advocate with Mr.N.P.Deshpande for the petitioner.

Mr.Vijay D.Patil I/b. Mr.Arun S. Khot with Mr.Siddharth R.Karpe for respondent nos. 1 and 2.

Ms.M.P.Thakur-AGP for State.

**CORAM :- S. C. DHARMADHIKARI &**
**B. P. COLABAWALLA, JJ.**

**DATE :- MARCH 13, 2019**

**P.C.** :-

1. By this writ petition under Article 226 of the Constitution of India, the petitioners are challenging the letter of 28th August, 2018, thereby approving the division of hotels and lodging houses at Mahabaleshwar in four categories on the basis of the facilities provided and the bills issued to the members of the petitioner-Association as per the said categorisation.

2. At the outset, Mr.Patil appearing for the contesting respondents raised a preliminary objection to the maintainability of this writ petition. Appearing for respondent nos. 1 and 2, he would submit that the petitioners have an alternate and equally efficacious remedy of filing an appeal against the fixation of rateable value. He would submit that in the garb of challenging one communication, what the petitioners are seeking to do is to give a go bye or bypass the entire scheme of Chapter IX of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. Under a broad heading "Municipal Taxation", the Chapter is divided into two sub-heads. First is "Imposition of Compulsory and Voluntary Taxes" and secondly, there is "Assessment and Liability to Tax on Building and Lands". Mr.Patil would submit that once there is imposition of compulsory taxes and there is a scheme also to impose discretionary tax, but the assessment and liability to tax buildings and lands is dealt with separately, then, it must be presumed that it is not just a communication or letter which is being challenged, but it is the entire exercise preceding it. The entire exercise preceding it commences from appointment of Authorised Valuation Officer, determination of rateable value, preparation of assessment list, then fixing primary liability of property tax and thereafter, there is a procedure. At the end of

all this, if there is a demand for payment of property tax on the basis of the determined rateable value, then, such a demand can be a subject matter of appeal. The law also enacts provisions enabling filing of an appeal. What these provisions envisage is that once a bill is raised, tax is demanded or rateable value fixed, then, all of this can be a subject matter of an appeal and the members of the petitioner-Association have indeed filed individual appeals which are pending. If they can avail of an alternate and equally efficacious remedy or what they have availed of is known to them to be a complete remedy, then, merely because the Association has come before this court, the writ petition should not be entertained. Now, there is no segregation or distinction which can be made on the basis that if the dispute is only about assessment and valuation of the taxes, then, the appeal is an efficacious remedy and if the issue is about the legality and constitutionality of the levy itself, then, this court's jurisdiction under Article 226 of the Constitution of India can be directly availed of. Even that principle if at all prevailing earlier is now diluted, if not entirely wiped out. If on the basis of what is challenged or impugned in this petition, the rateable value is fixed in cases of individual properties, such as hotels and lodges, which are belonging to the members of the petitioner-Association, then, they are not precluded from disputing the annual rateable value and the tax computation and the demand on the basis of the same and while raising a broad challenge, they are equally permitted to urge that this levy is illegal and unconstitutional and once the levy itself is such, then, no question arises of sustaining the demand.

3. Mr.Dhakephalkar learned senior counsel, on the other hand, would submit that this preliminary objection overlooks the fact that the petitioner, as an Association of the owners of hotels and restaurants in the town of Mahabaleshwar, is aggrieved by the *ex-facie* illegal and unconstitutional act. The provisions of the Act do not rule out the application of the rent control legislation. A Division Bench of this court in the case of *Khadya Peya Vikreta Sangh and Ors. vs. Municipal Council, Akola*[1] has laid down a principle that actual letting value of the property in question cannot be taken into account while fixing the rateable value. Further, the impugned letter/communication categorises the hotels and lodging houses on the basis of alleged facilities and it assumes that on par with any other structure or building standing on the land and letting it out, the rent that is fetched from occupants of buildings or rooms therein is equivalent to the charge or rate fixed for occupying a room or a cottage in a lodge or hotel. It cannot be that merely similar facilities are granted that

1 **1989 Mh. L. J. 291**

these occupancies can be equated. Therefore, whatever may have preceded the impugned communication, the very foundation of the same is illegal. Now, on the basis of a flat rate, maximum 20% for residential and 40% for commercial buildings, hotels and lodges are brought in. If they are brought in by this method, then, the classification itself is arbitrary. The writ petition, therefore, questions the very legality and constitutionality of the levy and therefore, it should be entertained.

4. We are not impressed by the submission of Mr.Dhakephalkar. Eventually, as an Association, the petitioner is aware that its individual members are carrying on business of running lodges and hotels. They may be placed in a category by the Municipal Council and commensurate with the facilities extended. The occupancies are of a room or cottage and what is styled as general category includes such hotels and lodges which are set out in the Appendix of the communication. Thus, the rate charged depending upon the amount fetched for the occupancy has gone into determination of the annual rateable value. If not, the annual rateable value would be computed on the basis of the categorisation as also other stipulations in the impugned letter.

5. In the event the individuals, on whom the burden falls to pay the tax on the basis of this rateable value, impugn the bills

received or the tax demanded by approaching the appellate authority, then, the appellate authority is not precluded from considering even the wider challenge. Depending upon the facts and circumstances of each case and each hotel or lodge, the appellate authority, while rendering its conclusion as to whether the classification of an individual lodge or hotel is illegal or arbitrary, will either scale it down or it will set aside the bill or the tax demand by upholding the challenge to the determination of the annual rateable value of the property. In these circumstances, once the petitioner aver in para 14 that room rent depends upon number of factors such as location, convenience of the customers, age of the building etc., then, merely because a swimming pool or such other facilities are provided, that does not necessarily enhance the rate charged for the room. The other issues and highlighted in paras 15 and 16 are all therefore, mixed ones and can be raised and highlighted before the appellate authority. We do not think that dehors the individual facts and circumstances based on which the challenge is raised, at this stage it appears to be academic.

6. Let, therefore, appeals be filed by the members of the petitioner-Association and we clarify that we do not express any opinion on the rival contentions insofar as the merits of the determination.

7. When the appeals are brought and are heard, the members of the petitioner-Association or the aggrieved appellants can place before the appellate authority all the materials and support their contentions. We have no doubt in our mind that the appellate authority, which is obliged to pass a reasoned order, will consider these matters and it is not as if in the scheme of the law by mere finality being attached to the appellate orders that the orders of the appellate authority are immune for any further challenge. If not a further appeal, there is always a remedy open and to approach this court in writ jurisdiction. In the event that occasion arises, this court will, irrespective of what is observed by us while disposing of this writ petition, entertain the challenge and pass appropriate orders in accordance with law.

8. Presently, we are inclined to uphold the preliminary objection of Mr.Patil and dismiss the writ petition accordingly. Accordingly, the writ petition is dismissed by upholding the preliminary objection of Mr.Patil that the petitioners have an alternate and equally efficacious remedy of an appeal, to impugn the actions of the Municipal Council.

**(B.P.COLABAWALLA, J.)** **(S.C.DHARMADHIKARI, J.)**