IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION 8606 OF 2007
WITH
WRIT PETITION 8643 OF 2007

Anand Vyankatrao Gundyal and Ors. … Petitioners
Versus
Solapur Municipal Corporation, Solapur … Respondent

******

Mr. Arun H. Palkar for the Petitioners.
Mr. R. S. Alange for the Respondent.

******

CORAM : ROHIT B. DEO, J.
DATE : 9th JUNE, 2022

P.C. :-

. Both the petitions involve similar facts and can be conveniently disposed of by a common judgment.

2. The petitioners in Writ Petition No. 8606 of 2007 (assessee) own residential house assigned Municipal House Number 162 situated in Solapur. The Solapur Municipal Corporation (Corporation) undertook revision of the assessment and fixed the rateable value of the property at Annual Letting Value (ALV) Rs.25,795/- and Annual Rateable Value (ARV) Rs.21,923/-. Aggrieved the assessee preferred Tax Appeal 4 of 2002 which the 5th Joint Civil Judge, Senior Division, Solapur allowed. The First Appellate Court held that the assessee is successful in proving

that the Corporation has erred in fixing the annual rating value and the rateable value. The First Appellate Court held that the rateable value of the property is Rs.5,000/- (Rupees Five Thousand only) and directed that the amount deposited by the assessee be adjusted towards future/further recovery.

3. The Corporation was not satisfied and preferred Miscellaneous Civil Appeal 89 of 2004. The assessee filed cross objections to the limited extent of questioning the directions that the excess amount deposited be adjusted against future/further recovery. The IInd Adhoc District Judge, Solapur allowed the appeal preferred by the Corporation and dismissed the cross objections of the assessee vide judgment dated 30th July, 2007. Dissatisfied, the assessee is invoking jurisdiction under Article 227 of the Constitution of India.

4. The petitioners in both the petitions are common. In Writ Petition 8643 of 2007, the upward revision pertains to different properties owned by the Gundyal family (assessee). In Writ Petition 8643 of 2007, the factual matrix is similar to that in Writ Petition 8606 of 2007. The assessee succeeded in the First Appellate Court and suffered reversing judgment in the second appeal preferred by the Corporation.

5. A perusal of the separate judgments would reveal that the judgment are virtually unreasoned *qua* certain material aspects. Since it is common ground that both the judgments are similarly worded, I am referring to the judgments of the Second Appellate Court which is impugned in Writ Petition 8606 of 2007.

6. The Second Appellate Court confirmed the finding of the First Appellate Court that the appeal referred by the assessee was within limitation. This finding is not assailed by the Corporation and I need not dilate further on the said aspect.

7. The first finding which is recorded by the First Appellate Court is that the assessment done by the Corporation is on the basis that the property is commercial and such assumption is factually incorrect. The consideration by the First Appellate Court is in paragraphs 2 to 4 of the order which reads thus :-

> *"2) The area purchased by the appellants is admeasuring 683.8 sq. mtrs. and it is true that the purchased price is of Rs.8,08,500/-, Rs.34,361/- re remained of which the notices are issued. The said notice also discloses that it has been assessed without any house property Rs.27.07.1995. the area purchased by the appellants is very small area, they have purchased the same for residential purpose, but notice has been issued considering the purchased price.*
>
> *3) The procedure to fix the tax has been laid down in the section 127-A and in section 129 of the Bombay Provincial Municipal Corporation Act, 1949. In view of the section 99 the Corporation shall on or before the date of February, after considering the Standing Committee proposal on above determined subject to the limitations and*

conditions prescribed in chapter 10. The arguments were also submitted on behalf of respondent's advocate Mr. Gondal that u/s, 485 the errors in the assessment can be corrected and invalid date assessment could be consider. According to him they have send the demand bill not for the residential purpose. Except his bear words there is nothing on record because the documents produced on record shows that whatever tax has been levied in which without considering residence purpose.

4) In view of provisions of section 129-C while levying the tax it should be less than 12% of their ratable value. In the present case if we consider that the ratable value is of Rs.34,361/- @12% it will come near about 4,123/- which can be called as general tax. Here in the present case the admitted facts on record that it is a plot admeasuring 683.8 sq. mtrs and it is a open plot. I am of the considerate view that the tax levied by the respondent Corporation is excessive as the Corporation has not considered its nature. Hence, point No.1 for determination is answered in affirmative."

8. The other finding which is recorded that the assessment ought to have been made effective from 1st April, 2002. The reason recorded by the First Appellate Court is that the open plot was not assessed from 1995 till 2002 and the contention of the Corporation that the tax assessed can be recovered from the date of intimation of the transfer of the property, is flawed.

9. It is discernible from the reversing judgment that the contention of the assessee which is based on the premise that the property is residential and not commercial, is not considered.

10. The learned counsel for the assessee has invited my attention to various decisions of this Court, *inter-alia* ***Satish Dattatray Shivalkar v/s. Pimpri Chinchwad Municipal Corporation and anr., AIR 2022***

Bom 244 to buttress the submission that the assessment could not have been made effective from the date of purchase of the plot. I would refrain from making any positive observation on the rival contentions since I propose to remit the matter to the Second Appellate Court for fresh consideration in accordance with law.

11. The right of the appeal is a valuable right. There is nothing in Section 411 of the Bombay Provincial Municipal Corporation Act, 1949 which restricts the scope and ambit of the appeal and the learned Appellate Judge ought to have addressed and adjudicated all questions of fact and law by independent consideration of the material on record. I am satisfied that the Second Appellate Court erred in not undertaking such an exercise.

12. In this view of the matter, I see no option but to remit Tax Appeal 4 of 2002 and Tax Appeal 3 of 2002 for fresh consideration to the learned Second Appellate Court.

13. The petitions are partly allowed.

14. The matters are remitted to the Second Appellate Court for fresh decision after hearing the parties.

15. Needless to observe that the Second Appellate Court shall

independently consider the contention and record the findings supported by the reasons.

16. The parties shall appear before the learned Second Appellate Court on 10th August, 2022 without expecting a formal notice.

17. The Second Appellate Court is requested to decide the appeals afresh as expeditiously as possible and in any every, within the next six months.

18. It is further needless to observe that every contention raised in the petition are kept expressly open.

[ROHIT B. DEO, J.]

BIPIN DHARMENDER PRITHIANI

Digitally signed by BIPIN DHARMENDER PRITHIANI
Date: 2022.07.27 18:01:54 +0530