IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4002 OF 2003

1. Municipal Corporation of the City of Pune, having its office at Shivajinagar, Pune – 411 005.)

2. The Commissioner Pune Municipal Corporation, Shivajinagar, Pune – 411 005.) .. Petitioners

Versus

Shri Ramlal Tikamdas Shrigod since deceased through his Heir and LR Manoj Ramlal Shrigod Age 59 yrs, Occ. Business, Nat 806, Guruwar Peth, Pune 42) .. Respondent

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Mr.Rhishikesh Mukund Pethe for the petitioners.
Mr.Pramod Pawer for respondent.

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

Oral Judgment :-

. Petitioner 1 is the Municipal Corporation of the City of Pune and the petitioner 2 is the Commissioner of the Corporation (Collectively referred to as “Corporation”).

2. The original respondent Ramlal Tikamdas Shrigod expired

during the pendency of the petition and is represented by his legal heir Mr. Manoj Shrigod (hereinafter referred to as “the Assessee”).

3. The short question involved in the petition is whether the upward revision in the property tax qua shop 22 admeasuring 235 square feet situated at Shankar Kripa Housing Society, Shukrawar Peth, Pune (“shop”) owned by the Assessee is in accordance with the statutory regime.

4. In the context of the controversy, only few facts may be noted.

5. The rateable value of the shop was fixed by the Corporation in 1991 @ Rs.4,970/- (Rupees Four Thousand Nine Hundred Seventy only). According to the Corporation, during an inspection conducted in the year 1995, it was noticed that the shop was let out to Meghana Marketing Pvt. Ltd. for monthly rent Rs.1,800/- (Rupees One Thousand Eight Hundred only). The said tenant submitted a declaration to the Corporation stating that monthly rent was Rs.1,800/- (Rupees One Thousand Eight Hundred only).

6. The Corporation contends that the property was let out for the first time after the reconstruction of the building in the year 1995. The actual rent of Rs.1,800/- (Rupees One Thousand Eight Hundred only) was considered as a standard rent and the Corporation proposed to fix the Annual Rateable Value (ARV) of the shop @ Rs.18,350/- (Rupees Eighteen Thousand Three Hundred Fifty Only) with effect from 1.4.1995. The Corporation contends that special notice issued to the Assessee was not accepted and was affixed on the shop on 5.10.1995.

7. The Corporation contends that the Assessee objected to the special notice, the hearing was fixed on 19.12.1995 and then on 15.3.1996. Considering the objection to the special notice, the Corporation in its wisdom issued fresh special notice dated 21.3.1996. The Assessee made an endorsement “not acceptable” on the said notice, which endorsement, the Corporation treated as objection raised by the Assessee. The case of the Corporation is that the Assessee and his lawyer was heard on 26.3.1996 and on the said date, the Assessor and Collector of Taxes revised the ARV to Rs.18,350/- (Rupees Eighteen Thousand Three Hundred Fifty Only).

8. The Assessee assailed the decision of the Assessor and the

Collector of Taxes by preferring appeal under Section 406 of the Bombay Provincial Municipal Corporations Act, 1949 ("Act") which the Small Causes Court, Pune allowed vide judgment dated 8.10.1998. The First Appellate Court stayed the revision in ARV holding that ARV shall be Rs.4,900/- (Rupees Four Thousand Nine Hundred Only).

9. Dissatisfied with the judgment of the First Appellate Court, the Corporation preferred Civil Appeal 889 of 1998 under Section 411 of Act which the learned Vth Additional District Judge, Pune dismissed vide judgment dated 10.1.2002. The Corporation is assailing the judgments of the Courts below on several grounds. In the context of the order which I propose to make an elaborate reference to the grounds in the petition. Suffice it to note, that according to the Corporation, both the Courts below committed grave error in not appreciating the fact that the shop was let out for the first time after reconstruction and the monthly rent was Rs.1,800/- (Rupees One Thousand Eight Hundred Only) is admitted. The Corporation contends that in the teeth of such admission, the monthly rent is the standard rent and the revision of ARV on such terms suffers from no infirmity.

10. I am not inclined to consider the submissions which centre

on the interplay and interpretation between/of the provisions of the Bombay Rents Hotel and Lodging House Rates (Control) Act, 1947 and Bombay Provincial Municipal Corporations Act, 1949. I need not undertake such exercise for the simple reason that the mandatory provisions of Taxation Rules under Chapter VIII (Schedule D) of the Act, are clearly breached. The entire exercise of determining the ARV is vitiated.

11. The learned counsel for the Corporation Mr.Pethe would fairly submit that the power to revise ARV flows from the provisions of Rule 20 which reads thus :-

> "*20. Assessment book may be amended by the Commissioner during the official year:-*
>
> *(1) Subject to the provisions of sub-rule (2)the Commissioner may upon the representation of any person concerned or upon any other information at any time during the official year to which the assessment-book relates amend the same--*
>
> *(a) by inserting therein the name of any person whose name ought to be so inserted or any premises previously omitted;*
>
> *(b) by striking out the name of any person not liable to the property tax;*
>
> *(c) by increasing or reducing the amount of any rateable value and of the assessment based thereupon;*

(d) by altering the assessment on any land or building which has been erroneously valued or assessed through fraud, accident or mistake;

(e) by inserting or altering an entry in respect of any building erected,re-erected, altered, added to or reconstructed in whole or in part after the preparation of the assessment-book;

(f) by making or cancelling any entry exempting any premises from liability to any property tax.

(2) Where any amendment is made under sub-rule (1)which has the effect of imposing on any person any liability for the payment of property taxes which would not be incurred but for such amendment or which hasthe effect of increasing the rateable value of any premises as stated in the assessment book, a special written notice as provided in sub-rule (2) of rule 15 shall be given by the Commissioner and, as far as may be, the procedure laid down in rules 16,17and 18shall be followed.

(3) Every such amendment shall be deemed to have been made, for the purpose of determining the liability or exemption of the person concerned in accordance with the altered entry, from the earliest day in the current official year when the circumstances justifying the amendment existed.

12. It is thus clear that if the upward revision in the rateable

value is proposed, special written notice, as provided in Sub-rule (2) of Rule 15, shall be given by the Commissioner, and as far as may be, the procedure laid down in Rules 16, 17 and 18 shall be followed.

13. Sub-rule (2) of Rule 15 reads thus :-

> *"15. Time for filing complaints against valuations to be publicly announced.*
>
> *(1) …*
>
> *(2) In every case in which any premises have for the first time been entered in assessment-book as liable to the payment of property-taxes, or in which the rateable value of any premises liable to such payment has been increased, the Commissioner shall, as soon as conveniently may be after the issue of the public notice under sub-rule (1), give a special written notice to the owner or occupier of the said premises specifying the nature of such entry and informing him that any complaint against the same will be received in his office at any time within fifteen days from the service of the special notice."*

14. It is obvious that after special written notice is served, the Assessee is entitled to lodge objection to proposed revision within fifteen days from the service of special notice.

15. Rules 16, 17 and 18 regulate the procedural aspects of the

decision making process and read thus :-

> *16. Time and manner of filing complaints against valuation :-*
> *(1) Every complaint against the amount of any rateable value entered in the assessment-book or against the mention of the name of any person as primarily liable for the payment of property taxes 21[or against any entry indicating the use of any building or land or premises] or against the treatment of any building or land as liable to be assessed to the general tax must be made by written application to the Commissioner, which shall be left a this office on or before the day or the latest day fixed in this behalf in the public or special notice aforesaid.*
>
> *(2) Every such application shall set forth briefly but fully the grounds on which the valuation is complained against.*
>
> *17. Notice to complainants of day fixed for investigating their complaints The Commissioner shall cause all complaints so received to be registered in a book to be kept for this purpose and shall give notice in writing, to each complainant, of the day, time and place when and where a this complaint will be investigated.*
>
> *18. Hearing of complaints*
> *(1) At the time and place so fixed, the Commission or shall investigate and dispose of the complaint in the presence of the complainant, if he shall appear, and, if not, in his*

absence.

(2) For reasonable cause, the Commissioner may from time to time adjourn the investigation.

(3) When the complaint is disposed of, the result thereof shall be noted in the book of complaints kept under rule 17and any necessary amendment shall be made in accordance with such result in the assessment-book.

16. The special written notice is admittedly served on 21.3.1996 and according to the Corporation, the hearing was held on the 5th day i.e. 26.3.1996.

17. The Assessee stepped into the witness box and in paragraph 7 of the examination-in-chief deposed that while he did attend the hearing on 26.3.1996, no hearing as such was given and that he filed an affidavit dated 29.3.1997 before the Tax Assessor and that vide letter dated 27.3.1996 objected to the hearing scheduled on 26.3.1996. The Assessee categorically asserted that he was denied the opportunity to submit objection to the special notice dated 19.3.1996 (served on 23.3.1996). While in the cross-examination, it is extracted that the Assessee submitted the objection dated 20.10.1995, the reference is obviously to the objection to the earlier notice which was dropped in view of certain lacunae therein.

18. The learned counsel Mr.Pethe would submit that since the special written notice bears the endorsement “not acceptable,” no prejudice is caused to the Assessee by scheduling the hearing and rendering the decision within five days. The submission is on the line of the ground raised in the petition and I am rejecting the submission without any hesitation. The endorsement by the Assessee that the revision is not acceptable cannot and does not take away the right of the Assessee to file elaborate response within the statutorily provided period of fifteen days. The provision is mandatory since the underlying intent and rationale is to ensure that the Assessee gets sufficient opportunity to show cause against the revision of the ARV.

19. In my considered view, the breach of the mandatory provisions of Taxation Rules obviates the need to the address of the submissions which are canvassed on the basis of the statutory regime.

20. I see no reason to interfere with the judgment impugned, in exercise of writ or supervisory jurisdiction.

21. The petition is dismissed with the clarification that Pune Municipal Corporation is free to take appropriate action in accordance

with law, if so advised for the revision of rateable value/property tax.

ROHIT B. DEO, J.