

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2243 OF 1995

Pune Municipal Corporation,
Through Municipal Commissioner,
Shivajinagar, Pune – 411 005.

.. Petitioner
(Orig. Respondent)

Versus

1. Shri Moreshwar Ganesh Bhalerao,
Age 76 years, Occu. Business.

2. Shri Pralhad Moreshwar Bhalerao,
Age : 51 years, Occu.: Business,
Both R/o. 1371, Sadashiv Peth,
Pune 411 030.

.. Respondents
(Orig. Appellants)

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- Mr. Rajdeep S. Khadapkar, Advocate for Petitioner.
 - None for Respondents.
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CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 24, 2022.

JUDGMENT :-

1. By the present Writ Petition - Pune Municipal Corporation - Petitioner challenged the legality and validity of Judgment and Order dated 15.02.1994 passed by the Judge of the Small Causes Court, Pune in Municipal Appeal No.46 of 1990. Dispute between the parties is in respect of the fixation of the Rateable Value (for short “RV”) in respect of shop premises No.4 situated on the ground floor of building standing on CTS No.549/550, Shaniwar Peth, Pune-10 (for short “the said shop”).

2. Brief facts of the case which emerge for consideration are as under:-

2.1. Respondents purchased the said shop from the developer on executing agreement for sale dated 26.07.1984 for consideration of Rs.21,000/-. The RV of the said shop for the purpose of levying assessment was required to be computed. According to the Corporation, the said shop originally stood in the ownership of S.N. Pawaskar.

2.2. Petitioner contended that, notice was issued to Mr. S. N. Pawaskar on 15.03.1985. That he appeared before the Competent Authority on behalf of Respondents.

2.3. Since the said shop was a commercial unit, after hearing the Petitioner, by assessment order dated 10.07.1986 assessment was fixed on computation of RV at Rs.1800/- per annum. The assessment order is at Exh.8 to the Petition.

2.4. On the basis of the above assessment order 1st Bill bearing No.3088 dated 08.02.1990 on the basis of RV @ 1800/- per annum in respect of the said shop was issued to Respondents and they were asked to deposit the same.

2.5. Being aggrieved Respondents filed statutory appeal under Section 406 of the Bombay Provincial Municipal Corporation Act, 1949, *inter alia*, contending that they were the first purchasers of the shop from the developer vide agreement dated 26.07.1984 and

despite that Corporation issued the impugned tax bills for the period 01.08.1984 to 30.04.1990 calling upon them to deposit Rs.6509/- without calculating and computing the RV in respect of the said shop. In short it was Respondent's case that without fixing and computing the RV of the said shop, RV of Rs.1800/- adopted by the Corporation was excessive, highhanded and arbitrary. That according to Respondents the RV ought would have been Rs.650/- in respect of the said shop.

2.6. Appeal was resisted by the Corporation by filing its say (Exh.C), *inter alia*, contending that due notice was issued, hearing was held, Respondents were represented by their agent i.e. Mr. S.N. Pawaskar and only thereafter RV was fixed. That Mr. Pawaskar had appeared alongwith Authority letter on behalf of Respondents before the Competent Authority.

2.7. By oral judgment dated 15.02.1994 the Judge Small Causes Court, Pune after considering evidence of Respondent No.1 and another witness on behalf of Respondents partially allowed the Appeal by setting aside the impugned property tax bill and fixed RV @ Rs.880/- per annum w.e.f. 01.04.1986 in respect of the said shop.

2.8. Being aggrieved by the above judgment, Corporation has approached this Court and challenged the impugned judgment.

3. I have heard Mr. Khadapkar, learned Advocate appearing for the Petitioner - Corporation at length and perused the record. None

has appeared for Respondents.

4. Writ Petition was admitted on 16.06.1997 and rule was issued.

5. Before advertizing to adjudicate on the issue, some facts which are relevant for fixation of RV in the present case need to be noted. It is seen that the impugned bill was for the period 1984 to 1990. Admittedly, Mr. Pawaskar was the landlord of the old structure standing on C.T.S No.549/550. Further it is seen that Respondents entered into an agreement for purchase of the said shop admeasuring 127 sq. ft. on ownership basis from the developer Mr. B.V Datar. Records indicates that the developer obtained completion certificate and only thereafter put the respondents in possession of the said shop. The date of possession is however are not available on record. Record further indicates that on 15.03.1985 a special notice was issued to Mr. S.N. Pawaskar and on 10.07.1986 the impugned assessment order was passed wherein RV for the said shop was fixed at Rs.1800/- per annum.

6. It is pertinent to note that in the assessment order, names of Respondents are mentioned against shop No. 4 though the order was issued in the name of Mr. S.N. Pawaskar. In the say of the Corporation before the Small Causes Court the aforementioned facts are not disputed and are admitted. However, it is the Corporation's case that Mr. S.N. Pawaskar had the Authority to represent and appear on the

behalf of Respondents for fixing the RV pertaining to the said shop. It may be noted that save and except the bare statement, no such Authority has been produced by the Corporation. Hence, in the first instance the notice issued by the Corporation on 15.03.1985 cannot be considered to have been issued to the Respondents who had purchased the said shop on 26.07.1984. However, as stated earlier since Respondents were put in possession of the said shop after obtaining completion certificate, it may not be appropriate to decide and give weightage to this issue regarding address of notice and issuance of the assessment order to Mr. S.N. Pawaskar.

7. Thus it is seen that admittedly no notice for fixation of RV was issued to Respondents. In the statutory Appeal filed before the Small Causes Court, Pune, it was Respondents case that RV of Rs.1800/- per annum fixed by the Corporation was arbitrary, unjustified and excessive as water connection was also not provided to the said shop. It was Respondents' specific case that though they had paid the demand under protest, they had demanded fixation of RV @ 650 per annum instead of 1800/- per annum computed by the Corporation. Admittedly the computation of RV @ Rs.1800/- per annum was never informed or explained by the Corporation. It is pertinent to note that before the Small Causes Court, Respondents led the evidence of two witnesses, viz, Mr. Moreshwar Bhalerao (Exh.28) and Mr. Ghole (Exh.34) whereas Corporation did not lead any

evidence in rebuttal. It is seen that the impugned assessment order dated 10.07.1986 has for the first time confirmed RV @ 1800/- per annum but the computation and calculation of the said RV is not there in the order nor explained by the Corporation in any document or subsequent pleadings or even before the Small Causes Court. On the basis of this order the first bill was issued in the year 1990 for the period 1984 to 1990. Therefore, on the face of record of the impugned assessment order, it could not have been issued for the period prior to 10.07.1986. It is further seen that before the Small Causes Court, Witnesses No.2 on behalf of Respondents entered the witness box to give evidence for fixation of RV. That Mr. Ghole (PW-2) was occupant of flat No. 16 in the same building where the said shop was situated. He testified that the area of his flat was 330 sq. ft. for which the RV was fixed at Rs.1200/- (Exh.33). That the bill issued by the corporation in respect of flat No. 16 and RV fixed by Corporation itself at Rs.1200/- per annum was produced in evidence and considered by the Court. The learned judge of the Small Causes Court on the basis of the above rate for residential premises computed and fixed RV for the said shop on the basis of annual rent by applying a deduction of 55% for owner occupied property and deduction for repairs and maintenance. The exercise carried out by the learned Judge in para No.7 of the impugned judgment on the basis of the aforesaid formula for arriving at the RV of Rs. 880/- in respect of the

said shop is properly computed. It was held that on the basis of the annual rent of the said shop, after giving 15% deduction for repairs and maintenance, the remaining balance 85% of the annual rent would be the RV of the said shop. Thus only 15% deduction was applied on the annual rent of the said shop as compared to 55% deduction applied for the residential property in the same building. I find no fault with this exercise undertaken by the learned Judge of the Small Causes Court, Pune while passing the judgment dated 15.02.1994 in Municipal Appeal No.46 of 1990. I do not agree with the submission and contention of Mr. Khadapkar that error was committed by the learned Court while computing the RV. Mr. Khadapkar has fairly submitted that besides the Exhibits to the Petition, he is not in a position to place on record any additional evidence or material to show that the RV computed by the learned Judge of the Small Causes Court, Pune was erroneous, incorrect, based on incorrect facts and area or based on incorrect comparison etc.

8. The Judgment dated 15.02.1994 has been correctly passed after considering the evidence on record and calls for no interference. The Judgment dated 15.02.1994 is sustained.

9. Hence, the Petition fails. Rule discharged.

10. In view of the above, Writ Petitions is dismissed.

[MILIND N. JADHAV, J.]