IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4321 OF 2005
WITH
CIVIL APPLICATION NO.2428 OF 2005

Girdharilal Daulatram Sachdeo ..Petitioner/Applicant
Versus
Nashik Municipal Corporation and Anr. ..Respondents

Mr. G. H. Keluskar, for the Petitioner/Applicant.
Mr. V. A. Gangal, for the Respondent Nos.1 & 2.

CORAM : NITIN W. SAMBRE, J.

DATE : 10th MARCH, 2022

P.C.

1. Impugned in the petition is judgment of the Appellate Court i.e. learned Additional District Judge, Nashik dated 16th April, 2005, whereby the judgment of the Trial Court in Municipal Appeal No.18 of 1999 is set aside and the annual letting value as was determined by the Commissioner was confirmed.

2. The facts necessary for deciding the present petition are as under :-

Petitioner claims to be the owner of the commercial property which are used for lodging and boarding. The annual letting value and tax amount was fixed by the respondent/

Corporation and accordingly, a demand bill dated 29th November, 1999 was served on the present petitioner/owner. Feeling aggrieved, the petitioner preferred appeal under Section 406 of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred as “BPMC Act” for the sake of brevity).

3. The said appeal came to be allowed by the Civil Judge Senior Division, Nashik on 12th March, 2002, thereby quashing the order of fixing annual letting value at the rate of Rs.3,06,828/ 2,76,145/- by demand notice dated 21st April, 1999 and the earlier annual letting value of Rs.1,11,476/1,00,328/- came to be restored. Instead of ordering refund of the amount of tax recovered, the Court in its appellate jurisdiction has directed adjustment of the amount of tax.

4. The respondent/Corporation feeling aggrieved preferred Misc. Appeal, which came to be allowed vide order impugned dated 16th April, 2005 passed by the learned Additional District Judge, Nashik. As such, this petition.

5. The contentions of learned counsel for the petitioner/ owner are, the proceedings for determining annual letting value are required to be conducted in accordance with the provisions of Chapter VIII of the BPMC Act.

6. According to said chapter, the entire procedure has to be

adopted in the matter of determination of annual letting value. He would urge that there are two steps which are required to be scrupulously followed by the respondent/Corporation viz. Issuing of notice thereby proposing annual letting value, inviting objection for the same and thereafter final notice. According to him, such procedure is given complete go-by, as such Trial Court in its appellate jurisdiction under Section 406 of the BPMC Act has rightly passed order of restoring the original letting value. He would further claim that the attempt on the part of the petitioner to seek cross-examination of the witness of the respondent/Corporation was specifically denied and there was denial of opportunity of hearing. In addition, his contentions are the impugned judgment delivered by the learned Additional District Judge is devoid of aforesaid provision. He would claim that no findings are recorded by the Appellate Court on the issue of mandatory compliance of the Taxation Rules. He would then urge that the judgment impugned is too vague in considering the material which has prompted the reverse finding of the Court below, as such contention is order impugned warrants interference. Drawing support from the Division Bench judgment of this Court in the matter of ***Khadya Peya Vikreta Sangh and Ors. Vs. Municipal Council Akola*** reported in ***1989 Mh.L.J. 291***, he would urge that the assessment of annual letting value cannot be based on the income derived from the property in question but it has to be based on the calculation of appropriate amount of letting value. He would further claim that in determining the annual letting value, the maximum rent that the landlord gain will be of hardly any significance. What is required to be considered is the rent from the tenant, in case if the property is let out.

7. Mr. V. A. Gangal, learned counsel for the respondents while supporting the order impugned would urge that the learned District Judge has considered evidence in the form of affidavit and proceeded to urge that the actual annual letting value of the property in question has to be taken into account and that being so more admissible latitude is shown viz. only 50% occupancy was considered. He further claim that the petitioner has failed to discharge his burden that there was no compliance of the Taxation Rules. He would further urge that petitioner has failed to demonstrate subsequent taxation and that being so, the order impugned is just and proper. As such, he has sought dismissal of the petition.

8. Considered rival submissions.

9. From the record, it appears that notice dated 28.03.1999 was served by the respondent/corporation on the present petitioner of proposed annual letting value to be levied and as such, called upon the petitioner to submit his explanation.

10. The petitioner accordingly submitted his explanation

and objected to the procedure adopted by the respondent in calculating the annual letting value.

11. It appears that, the present petitioner was called for hearing on the same on 27th May, 1999 by the respondent/corporation and straight way Demand Bill dated 29.11.1999 was served on 2nd December, 1999, feeling aggrieved the present petitioner took out proceedings in the form of appeal before the Civil Judge Senior Division, Nashik, questioning the aforesaid demand bill. Learned Civil Judge Senior Division, Nashik vide its judgment dated 12th March, 2002 in exercise of power under Section 406 of the BPMC Act has recorded specific finding that the issue is governed by provision of Taxation Rules framed under Chapter 8 of BPMC Act. The said court then, noticed that the procedure which is mandatory in nature contemplated under Rule 8 of the said rules is not followed by the respondent. As a consequences of which order of fixing annual letting value as reflected in 2nd December, 1999 was quashed and set aside and the earlier annual letting value was came to be restored.

12. The Appellate Court while allowing the appeal of the respondent/corporation has recorded finding that the appropriate opportunity was given to the petitioner and as such, the court below committed an error in quashing and setting aside the demand bill of fixing annual letting value.

13. In the light of rival submissions, what can be inferred is the provisions of Rule 8 of Taxation Rules framed under BPMC Act, contemplated calling of information from the petitioner regarding property in issue by issuing notice thereof. It appears that instead of calling information the respondent corporation unilaterally has gone in assessing the annual letting value, based on expected rental income which the petitioner might derive from the property.

14. In a lodging business room rent charged can't be taken by the Corporation authorities as a measure for assessing letting value of the said premises. Rather based on secret information, tax assessment of a residential or commercial unit on profit basis is a complete unrealistic and unpermissible method of calculating Annual Letting Value. The so called secret procedure adopted by the respondent/Corporation is not known to law. Statutory body like respondent cannot conduct itself in secret manner in the issue of assessing property tax. The law on the said point is well settled, as is apparent from the Division Bench judgment of this Court in the case of *Khadya Peya Vikreta Sangh (cited supra)*. Paragraph 8 of the said judgment which reads thus :-

> "8. Room rent charged from guest by a lodger is taken by the respondent to be the measure of assessing the letting value. The respondent has made no secret of the fact that assessment has been made on the "unit and profit" basis. Now it is a matter of common knowledge that room rent of a lodge includes charges for several facilities like furnishing, services etc., and the room rent

> does not necessarily depend on the letting value of the building as such. Thus, the room rent factor cannot determine the annual letting value of the building for the purposes of assessment of the consolidated property tax under section 114 of the Act. Moreover, the respondent has made no distinction between a lodge and a lodge. Average rate of Rs.8/- per room is taken to be the basis for every lodge in the town irrespective of the situation of the building, the time of its construction and the standard of the facilities and services provided. Thus, in the process of making assessment unequals have been treated as equals for no justifiable reasons. For determination of rateable value for the purposes of assessing the property tax on self occupied building, what is relevant is the retable value of that building based on rent from a hypothetical tenant which in cases where the HRC Order applies cannot exceed the maximum provided thereunder. Thus, looked from any angle, the assessments made by the respondent cannot be sustained at all and have to be quashed and set aside."

supports the contention of the petitioner.

15. Apart from above, it is in the expressed terms established that neither final notice as contemplated under Rule 8 of the Taxation Rules was served on the petitioner, nor any opportunity at that stage was offered.

16. Leave apart above, even basic mandatory procedure contemplated under Taxation Rules was not adhered to by the respondent/corporation. Even if it is claimed by Mr. Gangal that the affidavit of Assistant Superintendent of Tax was placed on record to justify the basis for annual letting value, I hardly see any reason to

accept the same particularly, in the light of the law laid down by the Division Bench of this Court in the judgment of *Khadya Peya Vikreta* (*cited supra*).

17. In the aforesaid background, in my opinion, the order impugned passed by learned District Judge not only goes contrary to the pleadings and evidence on record but also is in disregard to statutory Rules.

18. The observations of learned District Judge while allowing appeal are without any basis as regards the compliance of the procedure prescribed for the purpose of assessing the annual letting value. That being so, the judgment impugned dated 16th April, 2005 passed by learned Additional District Court, Nashik in Civil Appeal No. 126 of 2004 is hereby quashed and set aside. As a consequence of above, the judgment passed by the Court below i.e. Learned Civil Judge Senior Division, Nashik in Misc. Appeal No.18 of 1999 stands restored to file.

19. The petition stands allowed in above terms.

20. In view of disposal of Writ Petition, Civil Application also stands disposed of.

[NITIN W. SAMBRE, J.]