

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2260 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI  
and

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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A'BAD MUNICIPAL CORPORATION

Versus

SINGAL TRANSPORT  
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Appearance:

MR M R Raval for Petitioner  
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CORAM : MR.JUSTICE M.H.KADRI and  
MR.JUSTICE D.P.BUCH  
Date of decision: 31/01/2000

ORAL JUDGEMENT

The appellant has filed this appeal under Section 411 of the Bombay Provincial Municipal Corporation Act, 1949 (for short, 'the Act') challenging the judgment and order of the Small Cause Court No.12, Ahmedabad in

Municipal Valuation Appeal No.3583/89 by which the gross rateable value of the premises of the respondent was fixed at Rs.2100/-.

2. The property bearing Municipal Census No.906/19/1-Tenament No.4403-001-00-0163-S is the ownership of the respondent which is situated in Sheherkotda Ward No.1. As per the averments made in the appeal memo, the appellant was in possession of the subject premises since last 15 years. Prior to the date of assessment the rent was at Rs.3/- per day and they had carried out construction on the said land. It is the case of the respondent that the said property was closed since the year 1980. When the said property was opened for cleaning purpose, the respondent came to know that the appellant had issued bills of the assessment year 1988-89. As per the respondent's case in the year 1980-81, the appellant Corporation had assessed gross rateable value at Rs.5100/- against which the respondent had filed appeal in the Small Cause Court bearing Municipal Valuation Appeal No. 482/81 wherein the Small Cause Court, by its judgment and order dated April 27, 1981 had fixed the gross rateable value at Rs.2100/-. The appellant-Municipal Corporation had again raised the gross rateable value to Rs.13,200/- for the assessment year 1982-83. It is the case of the respondent that before raising the assessment, no special notice was served by the Municipal Commissioner and, therefore, the revision of the assessment at Rs.13,200/- per year is illegal and against the provisions of the Act. The respondent pleaded that there was no improvement or change in the premises and, therefore, the Municipal Commissioner had no power to raise the gross rateable value to Rs.13,200/-.

3. The respondent, by filing its written statement at Exh.9, inter-alia contended that the appeal is not tenable as it was barred by period of limitation. It was further averred that the respondent had not filed complaint against the gross rateable value fixed by the Corporation in respect of the premises and, therefore, the appeal was not maintainable against the tax bill. It was further averred that the Corporation has got power to impose and levy property tax according to the amount of rent paid by the respondent in respect of the premises in question. It was further averred that looking to the situation of the premises, the gross rateable value is required to be fixed taking into consideration the reasonable rent of the premises if the same is given on lease. It was lastly averred that the gross rateable value fixed by the Corporation was quite proper, just and

reasonable and having regard to the facts and circumstances and the situation of the premises, the appeal deserves to be dismissed.

4. The learned Judge, Small Cause Court No.12 by its judgment and order dated January 29, 1990, allowed the appeal and reduced the gross rateable value of the premises in question for the year 1984-85 at Rs.2100/-. The learned Judge, Small Cause Court in fixing the gross rateable value of the premises in question, relied on the judgment and order of the Municipal Valuation Appeal No.682/81 which was decided on 17.4.1981 wherein the gross rateable value of the very premises in question was fixed at Rs.2100/-. The Small Cause Judge held that there was no change in the premises, its use and occupation since then and hence the effect is required to be given to the previous judgment of the Court in Municipal Valuation Appeal No.682/81 which was with regard to the gross rateable value fixed by the Court in relation to the premises in question for the year 1981-82. The said decision of the Small Cause Court is challenged by the appellant by filing this appeal.

5. Learned Advocate for the appellant, Mr Maulin R Raval has taken us through the Record and Proceedings of the Small Cause Court of Municipal Valuation Appeal No.2583/89 and has submitted that the appeal filed by the respondent before the Small Cause Court was beyond the period of limitation. It is further contended that the previous judgment was with respect to the assessment year 1980-81 and the Corporation was legally entitled to raise the gross rateable value keeping in view the increase in letting value of the premises. It is further contended that the appellant-Corporation was entitled to revise the gross rateable value as per the provisions of the Act. It is contended that the Corporation has taken into consideration of the relevant aspects and the principles of assessment in raising the gross rateable value of the premises in question and, therefore, the appeal deserves to be allowed.

6. The respondents are duly served but they have not appeared personally or engaged Advocate.

7. We do not find any merits in any of the contention raised by the learned Advocate for the appellant. The respondent had categorically stated before the Small Cause Court that the premises in question were not used since last 8 years and he only came to know of the raising of the gross rateable value when he opened the premises in the year 1989, where he

found the bill in question under which the gross rateable value was raised to Rs.13,200/- and the municipal tax was assessed on the said gross rateable value. Admittedly, before raising the gross rateable value, the respondent was not served with the special notice under Rule 15 of the Tax Rules. Moreover, there was no change in user of the premises in question. Therefore, the learned Judge of Small Cause Court No.12 was justified in reducing the gross rateable value from Rs.13,200/- to Rs.2100/-. The contention of the learned Advocate for the appellant that the appeal was time barred does not deserve any merit. As the respondent was not served with special notice before raising the gross rateable value, the appeal was maintainable and, therefore, the appeal was even though time barred, was entertained by the Appellate Court. The appellant had not led any evidence in support of raising the gross rateable value by leading evidence that there was any change in the premises and, therefore, the Corporation was justified in raising gross rateable value. In absence of any evidence produced by the Corporation, the learned Judge, Small Cause Court was justified in relying on the previous judgment of the premises in question with regard to the assessment year 1980-81 wherein the gross rateable value was fixed at Rs.2100/-. These were the only submissions made by the learned Advocate for the appellant and we do not find any merit in those submissions and hence this deserves to be dismissed. We make it clear that however, it will be open to the Corporation to raise the gross rateable value after following the procedure as prescribed under the Act. This appeal is dismissed. No order as to costs.

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