IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS Nos. 260, 337, 1428 of 1992
WITH
FIRST APPEALS Nos. 2130 of 1996, 7616, 7722, 7737 to 7744 of 1999,
WITH
FIRST APPEALS Nos 3168 to 3170, 3176 to 3178, 3180, 3340, 3342 to 3344, 3346, 3348, 3350, 3351 and 3536 of 2000,
WITH
FIRST APPEALS Nos 461 to 465, 467, 468, 470, 844, 845, 848, 850, 852, 854, 857, 859, 861, 862, 995 to 1005, 1022, 1023, 1033, 1082, 1085 to 1087, 1089 to 1091, 1093, 1094, 1096 to 1101, 1106, 1110, 1112, 1521, 1525, 1526, 1667, 1669 to 1671, 1673 to 1675, 1738 to 1740, 1742, 1744, 1745, 1748, 1782, 1787, 1792, 1793, 1796 to 1809, 1842, 1858, 2329, 2331, 2423, 2431, 2576, 2837 to 2842, 2844 to 2849, 2914, 2916, 2918, 2933, 2937 to 2940, 2997, 3002 to 3004, 3006, 3008, 3010, 3013, 3014, 3055, 3056, 3058 to 3061, 3264, 3266, 3267, 3269, 3271, 3275, 3324 to 3327, 3330 to 3333, 3337, 3338, 3340, 3341, 3343 to 3345, 3347 to 3352, 3383 to 3389, 3391, 3393, 3394, 3398, 3401, 3409, 3414 to 3416, 3418 to 3421, 3432, 3434 to 3436, 3439, 3441 to 3445, 3470 to 3473, 3477, 3479 to 3481, 3483, 3485 to 3487, 3490 to 3492, 3509, 3510, 3556 to 3558, 3561, 3562, 3564, 3566 to 3568, 3570, 3573, 3574 to 3576, 3580, 3582, 3589 to 3592, 3594, 3595, 3597 to 3600, 3607 to 3610, 3612, 3615, 3617, 3620, 3623, 3625 of 2001.

WITH
CIVIL APPLICATIONS Nos 3763, 3765, 3771, 3773, 3775, 3777 of 1990
AND
CIVIL APPLICATIONS Nos 13976, 14256, 14257, 14259 to 14262, 14264 and 14265 of 1999
AND
CIVIL APPLICATIONS Nos 351, 5106, 6199, 7196, 7199, 7200, 7201, 7203 to 7205, 7207, 7208, 7210, 7211, 7212 to 7214, 8555, 8556, 8562, 8563, 8564, 8566, 8670, 8683, 8695, 8700, 10963, 11383, 11386, 11388, 11389, 11391, 11394, 11397, 11400, 11767 of 2000
AND
CIVIL APPLICATIONS Nos. 817 to 821, 823, 2228, 2230, 2234, 2237, 2239, 2241, 2388, 2390, 2393, 2395, 2730 to 2740, 2802, 2803, 2869, 3679, 3684, 3685, 4103 to 4107, 4109, 4110, 4155 to 4157, 4160, 4163, 4165, 4168, 4320, 4325, 4330, 4331, 4334 to 4347,

4438, 4458, 5559, 5563, 5675, 5683, 5931, 6909 to 6914, 6916 to 6921, 7095, 7097, 7099, 7101, 7105, 7106, 7108, 7110, 7288, 7586, 7588, 7589, 7592, 7594, 7602, 7295, 7296, 8093, 8095, 8096, 8098, 8100, 8104, 8395 to 8398, 8401 to 8404, 8454, 8461, 8463, 8464, 8466 to 8468, 8470 to 8473, 8476, 8477, 8522 to 8528, 8530, 8532, 8533, 8537, 8540, 8573, 8584, 8585, 8586, 8589, 8590, 8592, 8593, 8659, 8661 to 8663, 8666, 8668 to 8672, 8698 to 8701, 8705, 8707 to 8709, 8711, 8713 to 8715, 8718 to 8720, 8783, 8785, 8862 to 8864, 8866, 8867, 8869, 8871 to 8874, 8877 to 8881, 8883, 8890 to 8893, 8895, 8896, 8898 to 8901, 8924 to 8927, 8929, 8932, 8934, 8937, 8940 and 8942 of 2001.

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

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 concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

A'BAD MUNICIPAL CORPORATION

Versus

DENA BANK

Appearance:

1. First Appeals and Civil Applns. for stay

M/S MAULIN R RAVAL, KS JHAVERI, MG NAGARKAR, KIRIT I PATEL and Ms ANU S VERMA for Petitioners

M/S PRAFULL K PATHAK, NISHITH P. THAKKER, HIMATLAL H. MEHTA, DHIRAJ M. PATEL, D.D. CHUDASAMA, SAMIR J. DAVE, V.M. DHOTRE, NM KAPADIA, YF MEHTA, AC GANDHI, SUNIT S SHAH, MAHENDRA K. PATEL, EJAZ M. SHAIKH, ASHOK K. PADIA, MB GANDHI, KB PANERI, HJ NANAVATI, SUDHA R. GANGWAR, PH GOHIL, MUKESH A PATEL, AV PRAJAPATI, NAYNA V PANCHAL, PARESH M DAVE, CB DASTOOR, HS MULIA, BA VAISHNAV, MINOO A SHAH, MR SAHANI, GM JOSHI, AI SURTI, IM BENGALI, MAHESH BHAVSAR, MRUGESH JANI, GN SHAH, UM SHASTRI, KV SHELAT, TARESH J BHATT, PANKAJ KAPADIA and AG VYAS for respondents.

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 31/03/2003

CAV COMMON JUDGEMENT

(Per : MR.JUSTICE AKSHAY H.MEHTA)

1. This group of appeals has been filed by the Ahmedabad Municipal Corporation under Section 411 of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as 'the Act') challenging the judgments and the assessments of the GRV of the concerned properties made by the Small Causes Court at Ahmedabad. The Small Causes Court in the Municipal Valuation Appeals filed before it, has upset the valuation done by the Assessment Officer of the appellant and instead has fixed its own, which is not acceptable to the appellant herein. Since they involve common questions of facts and law, they are disposed of by this common judgment.

2. The concerned properties are situated within the areas of Ahmedabad City which are subjected to imposition of property tax. For this purpose, appellant has made the assessment of the tax of the said properties, which according to it, is done in consonance with the provisions relating to the property tax as contained in the Act and the Taxation Rules. The respondents i.e. the owners/occupiers of the properties, however, were not satisfied with these assessment orders and the tax required to be paid by them to the appellant and hence they approached the Court of Small Causes under the provisions of Section 406 of the Act by way of Municipal Valuation Appeals. Before the Court of Small Causes the present respondents who were appellants before it, produced certain material in the form of document

regarding agreement to sell, sale-deed of the property, valuation report prepared by the valuer or the certificate issued by the respective societies wherein the premises are situated, tax receipts, etc. to indicate the financial value of the property in question and on the basis of the same, the Court of Small Causes has arrived at its own assessment of the GRV. In these appeals the GRV arrived at by the Court of Small Causes is lesser than the assessment thereof made by the appellant and hence it has approached this Court as stated above.

3. The grievances, by and large, that have been, made in these appeals by the appellant are that the Court of Small Causes has not followed the proper procedure as envisaged under the Act and the Taxation Rules as contained in the Chapter VIII of the Act and also the provisions of the Code of Civil Procedure as well as the Evidence Act and has based its judgment and order solely on the basis of the documents which have been produced by the present respondents purported to be indicative of value of the property and has determined the annual letting value of the same on the strength of such documents. According to the appellant, these documents were never produced before the Assessment Officer of the appellant at the time when the respondents were given the opportunity of hearing for determining the value of the property and they have produced them at a belated stage i.e. at the stage of the appeal before the Court of Small Causes and that too without examining the author of such documents. It is further contended by the appellant that the Court of Small Causes has committed grave error by taking on record and exhibiting these documents without following the proper procedure. It is the say of the appellant that there is no material on record to show what was the source of these documents and how the valuation indicated in these documents of the property in question was done. It is the grievance of the appellant that by not examining the author of such documents, the appellant has been deprived of its valuable right to cross-examine such person and to elicit correct position with regard to financial worth of the property in question. It is further submitted that the formula prescribed under the provisions of the Act and the Rules for determining the annual letting value is totally ignored by the Court of Small Causes in as much as it has arrived at its own assessment without there being any cogent evidence with regard to the cost of construction, the cost of land, the locality in which the premises in question are situated, the use to which the property in question is put, the age of the property, the

quality of construction, etc. According to the appellant, such assessment; solely based on the valuers' reports, agreements to sell, unautheticated sale deeds or certificates or notes, etc. cannot be the basis for arriving at the annual letting value and the resultant rateable value of the property in question. It is the say of the appellant that the Court of Small Causes has merely acted in a mechanical fashion by keeping in view the value of the property indicated in the aforesaid documents and the GRV has been fixed on different percentage ranging from 7% to 10% or even 11% by following the case law laid down by this Court as well as the Apex Court. It has also contended that while disposing of the appeals the Court of Small Causes has not taken into consideration the principles laid down by the Apex Court and this Court in their various judgments and it has mechanically followed the ratio laid down in Rajnikant Jesingbhai Sheth v/s. Rameshchandra Kantilal reported in 1982 (1) G.L.R. page 71 for applying the different percentage. According to the appellant, the assessment made by the Court of Small Causes is therefore, not proper and it is required to be quashed and set aside.

3.1. As against that, the counsels for the respondents have urged that no error has been committed by the Court of Small Causes and it is the appellant which had committed grave error in arbitrarily determining the GRV of the properties in question and has imposed tax on the basis of the same which has caused undue hardship to the citizens of the Ahmedabad City. It is the say of the respondents that the assessment made by the appellant is totally based on whims of the concerned officer and no proper procedure, as envisaged under the Act as well as the Taxation Rules, has been followed while determining the GRV. Not only that but the Officers of the appellant have not even cared to ascertain the correct value of the property by taking into consideration the various relevant factors and they have arrived at their own arbitrary figure which cannot be sustained in law. The grievance of the respondents is that the appellant has totally ignored the relevant factors such as the quality of construction, the cost of construction, the value of land, the locality, etc. and it has evolved its own omnibus formula taking in its sweep the properties liable to be taxed and thereby it has arrived at the GRV which is very much on higher side resulting into undue financial burden on the owners/occupants thereof. The respondents have contended that the arbitrariness of the appellant is writ large on the record of the case in as much as even when for the

earlier period the GRV fixed either by the appellant itself or the Court of Small Causes for the subsequent year it has been substantially increased without there being change of any kind in the said properties. They have also pointed out such cases wherein the GRV fixed for the previous years is very less; whereas for the concerned year i.e. for the immediately subsequent year the GRV is substantially increased and no reasons for such increase has been given by the appellant. It is also contended by the respondents that at the relevant time, before the Assessment Officer, they had produced material indicating the value of the property. However, the same had been not taken into consideration by them. They have also contended that even before the Court of Small Causes when the additional evidence either in the form of documentary evidence or oral evidence had been adduced, no objection from the side of the appellant was ever taken even when it was being amply represented by its counsels. In absence of any resistance or objection from the appellant, it was absolutely legal and proper for the Court of Small Causes to accept the evidence of the respondents and to decide the annual letting value of the property in question on the strength of such documents or oral evidence. According to the respondents, now the appellant has no right to make any grievance before this Court that the Court of Small Causes has not followed the proper procedure. Apart from this, the respondents have made serious grievance that in the cases where they property is let but no standard rent is fixed and where the property is not given on rent and hypothetical rent is required to be determined for the purpose of deciding the annual letting value of such property the principles and the guidelines laid down by the Apex Court in its various decisions and in particular the decisions rendered in the cases of Devan Daulat Rai Kapoor v/s. New Delhi Municipal Committee reported in AIR 1980 S.C. at page 541 and Dr. Balbir Singh v/s. M/s. M.C.D. and ors. reported in AIR 1985 S.C. p. 339 have not been followed and that has caused grave prejudice to the tax payers. At the time of hearing of the appeals certain respondents have also produced affidavits to substantiate their cases and the counsels have also filed written submissions. Needless to say that we have taken into consideration all these documents and have also considered oral submissions made by counsels of both the sides including the Advocate General Mr. S.N. Shelat for the appellant.

4. The issues that have been raised in these appeals have already come under consideration of the Apex Court and this Court and also the other High Courts on

number of occasions. With the passage of time the law has been crystalised on these issues and proper guidelines have also been framed to arrive at just, proper and legal rateable value of the property, the annual letting value and the property tax that can be imposed on such property. However, these issues have been extensively argued by the counsels for the parties and further the issue 'Whether procedure followed by the lower appellate Court, while determining the annual letting value of the properties being the subject matters of the appeals before it, is proper and if the answer is in negative what is the correct procedure ?' requiring us to examine them again. For resolving these controversies, we may first turn our attention to the provisions relating to imposition of property tax and the provisions defined in the procedure of the litigation that may arise in relation to imposition of the property tax by the municipal authority.

5. To start with, the definitions of certain terms which have great bearing on the provisions relating to the property tax can be referred to. Section 2 of the Act relates to the definitions of subsection (1-A) of section 2 defines 'annual letting value', which reads as under :-

> [(1-A) "annual letting value" means
>
> (i) in relation to any period prior to 1st April, 1970, the annual rent for which any building or land or premises, exclusive of furniture or machinery contained or situate therein or thereon, might, if the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom. LVII of 1947.) were not in force, reasonably be expected to let from year to year with reference to its use;
>
> (ii) in relation to any other period, the annual rent for which any building or land or premises, exclusive of furniture or machinery contained or situate therein or thereon, might reasonably be expected to let from year to year with reference to its use;
>
> and shall include all payments made or agreed to be made to the owner by person (other than the owner) occupying the building or land or premises on account of occupation, taxes,

insurance or other charges incidental thereto:

Provided that, for the purpose of sub-clause (ii),-

(a) in respect of any building or land or premises the standard rent of which has been fixed under Section 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, (Bom.. LVII of 1947) the annual Rent thereof shall not exceed the annual amount of the standard rent so fixed;

[(aa) in respect of any building or land or premises, the standard rent of which is not fixed under Section 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, (Bom.. LVII of 1947.) the annual rent received by the owner in respect of such building or land or premies shall, notwithstanding anything contained in any other law for the time being in force, be deemed to be the annual rent for which such building or land or premises reasonably be expected to let from year to year with reference to its use;

(aaa) Clause (aa) shall not apply to a case where the annual rent received by the owner in respect of such building or land or premises is in the opinion of the Commissioner less than the annual rent for which such building or land or premises might, notwithstanding anything contained in any other law for the time being in force, reasonably be expected to let from year to year with reference to its use;]

(b) in the case of any land of a class not ordinarily let the annual rent of which cannot in the opinion of the Commissioner be easily estimated, the annual rent shall be deemed to be six per cent of the estimated market value of the land at the time of assessment;

(c) in the case of any building of a class not ordinarily let, or in the case of any

industrial or other premises of a class not ordinarily let, or in the case of a class of such premises the building or buildings in which are not ordinarily let, if the annual rent thereof cannot in the opinion of the Commissioner be easily estimated, the annual rent shall be deemed to be six per cent, of the total of the estimated market value, at the time of the assessment, of the land on which such building or buildings stand or, as the case may be, of the land which is comprised in such premises, and the estimated cost, at the time of the assessment, or erecting the building or, as the case may be, the building or buildings comprised in such premises;]

Subsection (5) of section 2 defines 'building', which reads as under :-

"Building" includes a house, out-house, stable, shed, hut and other enclosure of structure whether of masonry, bricks, wood, mud, metal or any other material whatever, whether used as a human dwelling or otherwise, and also includes verandahs, fixed platforms, plinths, doorsteps, walls including compound walls and fencing and the like;

Subsection (6-A) of section 2 defines 'Carpet area', which reads as under :-

"Carpet area" means the floor area of a building excluding the area over which a wall whether outer or inner is erected".

Subsection (30) of section 2 defines "Land", which reads as under :-

"Land" includes land which is being built upon or is built upon or covered with water, benefits to arise out of land, things attached to the earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over any street."

Subsection (54) of section 2 defines "Rateable Value", which reads as under :-

"Rateable value" means the value of any building or land fixed whether with reference to any given premises or otherwise, in accordance with the provisions of this Act and the rules for the purpose of assessment to property taxes."

So far as the provisions with regard to the property tax are concerned, they are contained in Chapter XI of the Act under the Heading 'Municipal Taxation'. Section 127 (1)(a) envisages imposition of property taxes by the Corporation. Section 129 onwards deal with property tax that may be levied by the Corporation. Section 141-B deals with the rate at which the property tax is leviable. It is essential to reproduce the text of said section here -

"141-B. Property tax at what rate leviable

(1) For the purpose of subsection (1) of section 127, property tax shall, subject to such exceptions and conditions hereinafter provided, be levied annually on building and lands in the city at such rate per square meter of the carpet area of building and of the area of lands (hereinafter to as "the rate of tax) as the corporation may determine.

(2) For the purpose of levy of tax on buildings in the city under subsection (1)

(a) the buildings be classified into residential buildings and buildings other than residential; and

(b) the corporation may determine one rate of tax for residential buildings and other rate of tax for building other than residential;

Provided that it shall be lawful for the corporation to determine for residential buildings, the carpet area of which does not exceed forty square meters, such rate of tax as is lower than the rate of tax determined for residential buildings generally under this subsection.

(3) The rate of tax determined under subsection (1) read with subsection (2) shall not-

(a) in respect of residential buildings, be less than ten rupees per square metre of

carpet area and more than forty rupees per square metre, such rate of tax as is lower than the rate of tax determined for residential buildings generally under this subsection.

(b) in respect of buildings other than residential, be not less than twenty rupees per square metre of carpet area and more than eighty rupees per square metre of carpet area.

(4) The Corporation may, subject to rules, increase or decrease or neither increase nor decrease the rate of tax determined under subsection (1) read with subsection (2) and (3),

(a) in the case of residential buildings, having regard to the following factors, namely :-

(i) in market value of the land in the area of the city in which the buildings are situate,

(ii) the length of the time of the existence of the buildings,

(iii) the type of the buildings, and

(iv) whether the buildings are occupied by owners or tenants,

(b) in the case of buildings other than residential, having regard to the following factors, namely :-

(i) The market value of the land in the area of the city in which the buildings are situate,

(ii) the length of the time of the existence of the buildings,

(iii) the purpose for which the buildings are used, and

(iv) whether the buildings are occupied by owners or tenants.

(5) In lieu of the property tax leviable under subsection (1) read with subsection (2) and (3), there shall be levied annually on,-

(a) residential huts, and

(b) residential tenements in a Chawl, each such tenement having carpet area not exceeding twenty five square meters,

Such amount of tax as the Corporation may determine :

Provided that the amount so determined shall not be less than such amount as the State Government may, by notification in the Official Gazette, specify

Explanation : For the purpose of levy of tax under this section, where an addition is made to an existing building whereby the Carpet area of that building is increased, such addition shall be treated as a separate building and the length of the time of its existence shall be computed from the year in which the addition is made."

So far the issues concerning the property tax involved in these appeals are concerned, they can be adequately appreciated in the light of aforesaid provisions of the Act together with the provisions of the Taxation Rules. Chapter VIII of the Act contains rules which have been framed under the Act for the purpose of taxation. Rule 7 prescribes how the rateable value is required to be determined. It reads as under :-

"Rateable value how to be determined.

7(1) In respect of industrial premises and in respect of any other premises, which the Commissioner may decide to treat as one property having regard to the nature of the premises and the use or uses to which they are put or are capable of being put the rateable value of the buildings and land comprised in such premises shall be determined premises-wise.

(2) For the purpose of fixing the rateable value, different parts of any other premises may be valued according to their use.

(3) In order to fix rateable value of any building or land or premises assessable to a property tax there shall be deducted from the amount of the [annual letting value of such building, land or premises a sum equal to ten per cent of such annual letting value] and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever."

Rule 8 empowers Commissioner to call for certain information from the owner or occupier or to enter and inspect the assessable premises to enable him to determine the value of any building or land. The information that can be sought for are in relation to the dimension of the building or land concerned, the rent if any, that may be fetched by such building or land, the actual cost or any other specified details connection with the determination of value of such building or land or premises. So far the owner or occupier is concerned, he is bound to comply with the requisition that may be made by the Commissioner and to give correct information to make a true return to the best of the knowledge of such owner or occupier. Rule 9 envisages the Commissioner to keep assessment book and in the said assessment book he is required to enter the following details every official year :-

"Assessment book what to contain.

The Commissioner shall keep a book, to be called "the assessment-book", in which shall be entered every official year :-

(a) a list of all [buildings or lands or as the case may be, premises] in the City distinguishing each either by name or number as he shall think fit and containing such particulars, regarding the location or nature of each as will, in his opinion be sufficient for identification;

(b) the rateable value of each such [building or land or as the case may be, premises] determined in accordance with the provisions of this Act and the rules;

(c) the name of the person primarily liable for the payment of the property taxes, if any, leviable on each such building or land [or as the case may be, premises];

(d) if any such building or land [or as the case may be, premises] is not liable to be assessed to the general tax, the reasons of such non-liability;

(e) when the rates of the property taxes to be levied for the year have been duly fixed by the Corporation [and either the

period] fixed by public notice, as hereinafter provided, or the receipt of complaints against the amount of rateable value entered in any portion of the assessment book has expired, [or the complaint if any, made against any entry has been disposed of in accordance with the provisions hereinafter contained], the amount a which each building or land [or premises] entered in such portion of the assessment-book is assessed to each of the property-taxes if any, leviable therein;

(f) if under section 134 or 135, a charge is made for water supplied to any building or land [or premises] by measurement, or the water-tax or charge for water by measurement is compounded for, or if, under section 137, the conservancy tax for any building or land [or premises] is fixed at a special rate the particulars and amount of such charge, composition or rate;

(g) such other details, if any, as the Commissioner from time to time thinks in to direct."

Rule 10 provides that assessment book should be made separately for each ward and if found necessary in parts. Rule 21 provides that the Commissioner did not prepare assessment book every official year and he can adopt the entries made in the earlier assessment year.

6. Thus, the aforesaid provisions empower the Corporation to levy property tax, prescribe the property which can be subjected to tax and lay down the method in which the tax is to be assessed and also provide for keeping the record by the Corporation with regard to such properties and details of their owners and/or occupiers.

6.1. Chapter XXVI of the Act deals with the proceedings before the Judge, appellate Courts and Magistrate. Part III thereof deals with appeals against valuation and taxes. However, we will refer to these provisions later on in the course of this judgment.

7. We may now turn our attention to the

dispute which is raised by both the sides to the effect that while determining the GRV of the properties in question and fixing the amount of tax to be levied on such properties, the procedure and the method prescribed under the aforesaid provisions of the Act and the rules as well as the guidelines and the law laid down by the Apex Court and this Court have not been properly followed. So far the appellant is concerned, its grievance is directed against the Court of Small causes; whereas the respondents have made grievance against the appellant.

7.1. As provided u/S. 141-B; for the purpose of section 127 of the Act, the property tax thereof be levied annually on building and land in the city at such rate per sq. mtr. of the carpet area of building and of the area of land as the corporation may determine. Thus, it is the building and the land situated in the city which are to be made liable to be taxed at the rate that may be determined by the Corporation per sq. mtr. of their carpet area annually. To determine the value of the property certain relevant factors which are to be kept in view are the cost of construction, the cost of land, the area of the property in question, the location and the use to which such property is put, age of the building and the quality of the construction. For the purpose of assessing the tax to be levied two factors which are of utmost importance are the rateable value and the annual letting value of the property in question. Again this valuation has to be made on the basis of the reasonable return that might be available to the owner of the property out of the said property. Now what can be said to be 'reasonable return' in respect of a particular property is a question that has been examined by the Apex Court and this Court on several occasions and that has yielded well defined guidelines for this purpose. However, since counsels for the parties have extensively argued on this point, we will deal with the same in detail.

7.2. For deciding the rateable value of a property, first we will have to turn our attention to the definition of "Annual Letting Value". Section 2 (1-A) of the Act defines these words. It is mainly divided into two parts viz. clauses (i) and (ii). Clause (i) deals with period prior to 1st April, 1970 whereas Clause (ii) deals with any other period. Both these clauses say that Annual Letting Value would mean the annual rent for which the concerned property might reasonably be expected to let from year to year with reference to its use. The only difference between the clauses is clause (i)

envisages the annual rent for which the concerned property might be expected to let from year to year, as if the provisions of Bombay Rent Act were not in force; whereas clause (ii) envisages otherwise.

Proviso to subsection (1-A) is again divided into five clauses viz. (a), (aa), (aaa), (b) and (c) and the proviso relates to clause (ii) of this subsection. Clause (a) prescribes that when standard rent of the concerned property is fixed u/S. 11 of the Bombay Rents. Hotel and Lodging Houses Rates Control Act (hereinafter referred to as 'the Bombay Rent Act'), the annual rent should not exceed the annual amount of the standard rent; whereas clause (aa) prescribes that when no such standard rent is fixed u/S. 11 of the Bombay Rent Act, the annual rent received by the owner of the concerned property. For the present we are not touching the remaining three sub-clauses.

Clauses (a) and (aa) take into its sweep the cases wherein the concerned property is actually let.

7.3. So far determination of the annual rent for the properties covered under sub-clause (a) is concerned, it does not pose much problem because annual amount of the standard rent is the outer limit prescribed under the Act. However, when the standard rent is not prescribed of the property which is let out and which may fall in clause (aa) category, the controversy arises whether the annual rent has to be determined on the basis of the standard rent that could be fixed in relation to such property u/S. 11 of the Bombay Rent Act or it should be on the basis of the actual rent received by the owner. Similar controversy also arises in case wherein the concerned property is not letout i.e. it is self occupied. The question that may therefore, require consideration is 'whether the actual rent i.e. charged by the landlord can be considered to be reasonable rent that the premises may fetch annually or it is subject to the limits of the standard rent that could have been fixed under the provisions of the Bombay Rent Act? This question arose for consideration before the Apex Court in the case of Devan Daulat Rai Kapoor (supra). In that case the Apex Court was required to decide the question with regard to determination of annual value of the premises and the word 'reasonable' which occur in section 3(1) (b) of the Punjab Municipal Act. After considering various decisions of the Apex Court, the Apex Court held as under:-

"10. Now it is true that in the present cases the period of limitation for making an application for fixation of the standard rent had

expired long prior to the commencement of the assessment years and in such of the cases, the tenant was precluded by section 12 from making an application for fixation of the standard rent with the result that the landlord was lawfully entitled to continue to receive the contractual rent from the tenant without any let or hindrance. But from this fact-situation which prevailed in each of the cases, it does not follow that the landlord could, therefore, reasonably expect to receive the same amount of rent from a hypothetical tenant. The existing tenant may be barred from making an application for fixation of the standard rent and may, therefore, be liable to pay the contractual rent to the landlord, but the hypothetical tenant to whom the building is hypothetically to be let would not suffer from this disability created by the bar of limitation and he would be entitled to make an application for fixation of the standard rent and may, therefore, be liable to pay the contractual rent to the landlord, but the hypothetical tenant to whom the building is hypothetically to be let would not suffer from this disability created by the bar of limitation and he would be entitled to make an application for fixation of the standard rent at any time within two years of the hypothetical letting and the limit of the standard rent determinable under the Act would, therefore, inevitably enter into the bargain and circumscribe the rate of rent at which the building could reasonably be expected to be let. This position becomes absolutely clear if we take a situation where the tenant goes out and the building comes to be self-occupied by the owner. It is obvious that in case of a self-occupied building, the annual value would be limited by the measure of standard rent determinable under the Act, for it can reasonably be presumed that no hypothetical tenant would ordinarily agree to pay more rent than what he could be made liable to pay under the Act. The anomalous situation which would thus arise on the contention of the Revenue would be that whilst the tenant is occupying the building the measure of the annual value would be the contractual rent, but if the tenant vacates and the building is self-occupied, the annual value would be restricted to the standard rent determinable under the Act. It is difficult to see how the annual value of the building could

vary accordingly as it is tenanted or self-occupied. The circumstance that in each of the present cases the tenant was debarred by the period of limitation from making an application for fixation of the standard rent and the landlord was consequently entitled to continue to receive the contractual rent, cannot therefore affect the applicability of the decisions in the Life Insurance Corporation's case and the Guntur Municipal Council's case and it must be held that the annual value of the building in each of these cases was limited by the measure of the standard rent determinable under the Act.

11. The problem can also be looked at from a slightly different angle. When the Rent Control Legislation provides for fixation of standard rent, which alone and nothing more than which the tenant shall be liable to pay to the landlord, it does so because it considers the measure of the standard rent prescribed by it to be reasonable. It lays down the norm of reasonableness in regard to the rent payable by the tenant to the landlord. Any rent which exceeds this norm of reasonableness is regarded by the legislature as unreasonable or excessive. When the legislature has laid down this standard of reasonableness, would it be right for the Court to say that the landlord may reasonably expect to receive rent exceeding the measure provided by this standard? Would it be reasonable on the part of the landlord to expect to receive any rent in excess of the standard or norm of reasonableness laid down by the legislature and would such expectation be countenanced by the Court as reasonable? The legislature obviously regards recovery of rent in excess of the standard rent as exploitative of the tenant and would it be proper for the Court to say that it would be reasonable on the part of the landlord to expect to recover such exploitative rent from the tenant? We are, therefore, of the view that, even if the standard rent has not been fixed by the Controller, the landlord cannot reasonably expect to receive from a hypothetical tenant anything more than the standard rent determinable under the Act and this would be so equally whether the building has been let out to a tenant who has lost his right to apply for fixation of the standard rent or the building is self-occupied by the owner. The assessing

> authority would, in either case, have to arrive at its own figure of the standard rent by applying principles laid down in the Delhi Rent Control Act, 1958 for determination of standard rent and determine the annual value of the building on the basis of such figure of standard rent.
>
> 12. It is, therefore, clear that in each of the present cases, the annual value of the building must be held to be limited by the measure of the standard rent determinable on the principles laid down in the Delhi Rent Control Act, 1958 and it cannot exceed such measure of standard rent. We accordingly allow Appeals Nos. 1143 and 1144 of 1973 and declare in such of these two cases that the assessment of the Annual value of the building in excess of the standard rent determinable on the principles laid down in the Delhi Rent Control Act, 1958 was illegal and ultra vires. So far as Appeal No. 1201(N) of 1973 preferred by the Municipal Corporation of Delhi is concerned, it relates to assessment of annual value of self-occupied building and since we have held that in case of self-occupied building also the annual value must be determined on the basis of the standard rent determinable under the provisions of the Delhi Rent Control Act, 1958 and there we have agreed with the judgment of the High Court, that appeal must be dismissed. The assessee in each case will get his costs throughout."

The aforesaid observations made and the ratio laid down by the Apex Court make it very clear that in case where the standard rent is not fixed and the contractual rent is the sole basis for determining the annual letting value of the premises, the word 'reasonable' appearing in the said section has to be on par with the standard rent and not the contractual rent that may be charged by the owner of the premises. In the case before the apex Court for want of determination of the standard rent during the time prescribed under that Act, the contractual rent was being charged by the landlord. However, the Apex Court said that for want of fixation of standard rent, it did not follow that for the purpose of determining the annual letting value, the measure of contractual rent should be adopted in case of rented property or that the landlord could reasonably expect to receive the same amount of rent from hypothetical tenant of the property which is

self-occupied. When the section refers to the premises may reasonably be expected to let from year to year, it would mean that the reasonable rent would be the standard rent and not the contractual rent. In the opinion of the Apex Court this would equally apply to the cases wherein the property is let but no standard rent of that property is fixed and what is received by the landlord is contractual rent.

7.4. It may be, however, noted here that in the case of Municipal Corporation, Indore v/s. Smt. Ratnaprabha reported in (1977) 1 S.C.R. at page 1017 the Apex Court had an occasion to consider the provisions of section 138 (B) of Madhya Pradesh Municipal Corporations Act, 1956, which defined annual value of the building and in particular the non-obstante clause appearing therein. The said section provided that the annual value of any building shall, notwithstanding anything contained in any other law for the time being in force, be deemed to be the gross annual rent at which such building might reasonably be expected to let from year to year, subject to certain specified deductions. In that case, it was the contention of the assessee that even though no standard rent in respect of the building was fixed by the Controller, the reasonable rent contemplated by section 138 (B) could not exceed the standard rent determinable under the Rent Control Act and it was incumbent upon the Municipal Commissioner to determine the annual value of the building on the same basis on which the standard rent was required to be fixed under such Act. While advancing this contention reliance was placed on behalf of the assessee on the cases of Corporation of Calcutta v/s. Padmadevi reported in (1962) 3 S.C.R. at page 49 and Guntur Municipal Council v/s. Guntur Town Rent Payers' Association reported in (1971) 2 S.C.R. at page 423 wherein the Apex Court has taken the same view as has bee taken by it in the case of Devan Daulat Rai Kapoor (supra). However, the Apex Court in the case of Municipal Corporation, Indore (supra) took the view that non-obstante clause occurring in section 138 (B), namely, "notwithstanding anything contained in any other law for the time being in force" would mean that while the requirement of the law was that the reasonable letting value should determine the annual value of the building; it has also been specifically provided that this would be so "notwithstanding anything contained in any other law for the time being in force" and observed that it would be a proper interpretation of these words to hold that in a case where the standard rent of building had been fixed under section 7 of the Madhya Pradesh Accommodation Control Act and there is nothing to show that there was

any fraud or collusion, that would be the reasonable letting value, but where that was not so and the building had never been let out and was being used in a manner where the question of fixing of its standard rent did not arise it was permissible to fix its reasonable rent without regard to the provisions of the Madhya Pradesh Accommodation Control Act, 1969; meaning thereby that it was not incumbent upon the Controller to assess the rent on the basis of norms laid down u/S. 7 of the Madhya Pradesh Accommodation Control Act for determining the standard rent and to have his own assessment keeping in view the factors required for fair and reasonable rent of such building. This may again mean that the gain assessed by the Controller may even exceed the amount of standard rent that might have been determined otherwise. The Apex Court in Devan Daulat Rai Kapoor's case (supra) has raised certain doubts regarding the view taken by Apex Court in the case of Municipal Corporation, Indore (supra) by particularly referring to the non-obstante clause and has observed that the word 'reasonable' appearing in that section would only relate to the standard rent and not anything else. It may also be noted here that the strength in both the cases i.e. in the Municipal Corporation, Indore and Devan Daulat Rai Kapoor's case (supra) is the same, namely, the Bench comprising 3 Hon'ble Judges of the Apex Court.

7.5. However, provisions of clause (aa) of proviso to sec. 2 (1-A) (ii) of the Act, with which we are right now concerned, directly came under consideration before the Apex Court in a judgment rendered in Civil Appeal No. 5404 of 1995 alongwith its cognate matters in the case of Assistant General Manager, Central Bank of India v/s. Commissioner, Municipal Corporation for the City of Ahmedabad. It may be desirable, at this juncture, to revert back to the provisions of section 2 (1-A) and in particular clause (aa) of proviso to the said section. As seen above, the said clause deals with any building or land or premises, the standard rent of which is not fixed under section 11 of the Bombay Rent Act and it envisages that in such case annual rent received by the owner in respect of such building or land or premises shall, notwithstanding anything contained in any other law for the time being in force, be deemed to be the annual rent for which such building or land or premises might reasonably be expected to let from year to year with reference to its use. This provision is very similar to the provision contained in section 138 (B) of the Madhya Pradesh Municipal Corporations Act, 1956. This very clause of the proviso has been considered in this judgment by the Apex Court in

light of the decisions rendered by the Apex Court in the cases of Municipal Corporation, Indore and Devan Daulat Rai Kapoor (supra). The Apex Court after considering in detail the provisions of different statutes of different States in relation to the annual value of the building, land or premises, pointed out the distinguishing features and laid much stress on the non-obstante clause occurring in the provisions of section 138 (B) of the Madhya Pradesh Municipal Corporations Act and clause (aa) of proviso to section 2 (1-A) of the Act. The Apex Court pointed out that in the cases of Guntur Municipality, Calcutta Municipal Corporation and Devan Daulat Rai Kapoor (supra) the relevant provisions did not contain the non-obstante clause and, therefore, the view taken by the Apex Court in those cases would not apply to the cases covered under the provisions of section 138 (B) of the Madhya Pradesh Municipal Corporation Act as well as clause (aa) of proviso to section 2 (1-A) of the Act. While doing so, the Apex Court has deviated from the view taken by the said Court in earlier decision rendered in the case of Devan Daulat Rai Kapoor and it has held that in cases where the standard rent has not been fixed, but the property it let, the rent that is to be considered is the actual rent received by the landlord.

7.6. In view of the later decision of the Apex Court, though delivered by the Bench comprising 2 Hon'ble Judges of the Apex Court, we have to follow it because it has considered in detail both the decisions that have been rendered in the cases of Municipal Corporation, Indore as well as Devan Daulat Rai Kapoor (supra) to interpret the provisions of clause (aa) of proviso to section 2 (1-A) of the Act. Meaning thereby that while considering the annual letting value in relation to cases covered under clause (ii) of subsection (1-A) of section 2, in case where the building or land or premises, the standard rent of which has been fixed under Section 11 of the Bombay Rent Act, the annual rent thereof shall not exceed the annual amount of standard rent so fixed. Secondly in respect of any building or land or premises, the standard rent of which is not fixed under section 11 of the Bombay Rent Act, the actual annual rent received by the owner would deem to be the annual rent for which such building or land or premises might reasonably be expected to let from year to year with reference to its use. Ofcourse the second category can be subject to scrutiny of the Commissioner in case in the opinion of the Commissioner less than the annual rent for which such building or land or premises, notwithstanding anything contained in ay other law for the time being in force, reasonably be expected to let from year to year with

reference to its use in view of the provisions contained in clause (aaa) of proviso.

7.7. This would bring us to consider the 3rd category i.e. wherein the concerned property is not let. Ofcourse this category has already been referred to in the foregoing paragraphs. However, it is necessary for us to carve out as a separate category of the property and the manner in which rateable value of such property is required to be assessed. As already discussed above, the view taken by the Apex Court to the effect that the Assessing Authority will have to decide the annual letting value on the basis of the principles laid down for determining standard rent. In other words, the hypothetical rent that may be assessed by the Assessing Authority should not exceed the standard rent that would have been fixed for such property under the rent control provisions. The Apex Court in the case of Assistant General Manager, Central Bank of India (supra) has categorically laid down that such view can be applicable only to the cases where the relevant provisions of law do not contain the non-obstante clause. Ofcourse, the distinction has been drawn by the Apex Court in Assistant General Manager's case by virtue of language contained in clause (ii) of the proviso which covers only the cases where the premises have been let but no standard rent is fixed. Unlike Section 138(B) of the M.P. Municipal Corporations Act there is no general provision containing 'non-obstante clause' and, therefore, ratio laid down in Asstt. General Manager's case would apply to property falling within the ambit of clause (aa) and it will not apply to self-occupied property.

7.8. At this juncture it is worthwhile to refer to a decision rendered by the Division Bench of this Court in the case of Municipal Corporation of the City of Ahmedabad v/s. Oriental Fire & General Insurance Co. Ltd. reported in 1994 (2) G.L.R. at page 1498 in which various provisions relating to the property tax as contained in the Act and the Rules have been considered and extensively dealt with by the Division Bench. After explaining the plain meaning of sections 2 (1A)(i) and (ii) of the Act in para. 8 of the judgment, it has said in para. 9 as under :-

> "9. Section 2(1A)(ii) on the mere reading of the said sub-clause states that the "annual letting value" means the "annual rent" for which the building may reasonably be expected to let. The provisos, apply only to tenanted premises, but in case of tenanted premises for a period

prior to 1/4/1984 the rateable value will have to be fixed on the same principle which is to be applicable to self-occupied premises."

The Division Bench has discussed cases of Devan Daulat Rai Kapoor and Dr. Balbir Singh and in para. 33 it has been observed as under :-

"33. As already noticed, with effect from 1st April, 1984, with the insertion of proviso (aa) to Sec. 2(1A), the contractual rent received by the owner is deemed to be the annual rent for the purposes of determining the annual letting value. This is, of course, subject to proviso (aaa), with which we are not concerned in these cases. The principle of Devan Daulat Rai Kapoor's case or Dr. Balbir Singh's case would not apply with regard to tenanted premises, after 1/4/1984. The said principles will, however, continue to apply with regard to self-occupied premises."

The Division Bench has summed up the legal position in relation to provisions of sec. 2 (1A)(i) and (ii) and provisos to clause (ii) of the said section of the Act as under :-

"(1) In the case of self-occupied premises, the rateable value has to be arrived at by applying the principles enunciated by the Supreme Court in Devan Daulat Rai Kapoor and Dr. Balbir Singh's cases and the decision of this Court in the case of Rajnikant Jeshingbhai Sheth & Ors.;

(2) In the case of tenanted premises for the period prior to 1/4/1984, applying the principles of Devan Daulat Rai Kapoor and Dr. Balbir Singh's cases, the first rent fixed is the standard rent and if no order under Sec. 11 of the Rent Act is passed, then that rent will be the annual letting value;

(3) In the case of tenanted premises after 1st April, 1984, in view of proviso (aa) to Sec. 2(1A)(ii), the contractual rent will be the annual rent;"

Obviously the Division Bench did not have the benefit of the judgment of the Apex Court delivered in the case of Assistant General Manager, Central Bank of India and its cognate maters since it was delivered subsequently, however, in respect of clause (aa) it receives

confirmation from the view taken by the Apex Court in this case.

8. In a recent decision rendered by the Apex Court in the case of India Automobiles (1960) Ltd. v/s. Calcutta Municipal Corporation reorted in 2002 AIR S.C.W. page 833 it has been made very clear that there are two distinct groups of principal laws, one expressly excluding application of Rent Restriction Act and other not excluding Rent Restriction Act. It has further clarified that in the first group the determination of annual letting value is referable to the method provided under Principal Act; whereas in second group the determination has to be made on the basis of standard rent notwithstanding the actual rent. As can be seen from the judgment rendered in the case of Assistant General Manager, Central Bank (supra) that clause (aa) of the proviso is covered under the category of non-obstante clause and, therefore, in respect thereof the application of Rent Restriction Act is excluded. Therefore, so far the premises given on rent but where the standard rent is not fixed u/S. 11 of the Bombay Rent Act, the actual rent received by the landlord would be the criteria for determining the annual letting value. For holding this, we could have simply followed the ratio laid down by the Division Bench of this Court in the case of Ahmedabad Municipal Corpn. v/s. Oriental Fire & General Insurance Co. (supra), but since the counsels for the respondents have extensively argued this point placing reliance on Devan Daulat Rai Kapoor's case and Dr. Balbir Singh's case and since the Apex Court has taken identical view in subsequent decisions explaining and highlighting the distinction between two sets of provisions of law, one containing the non-obstante clause and the other without it, we have carried out this exercise elaborately.

9. So far fixation of standard rent is concerned, the provisions relating to it contained in the Bombay Rent Act would very much govern the field. This aspect has been taken of by the Division Bench of this Court in the case of Municipal Corporation of Ahmedabad v/s. Oriental Fire & Gen. Insurance Co. (supra) in detail and it has given its careful consideration on various aspects relating to standard rent which may have bearing on determination of GRV of the property in question such as the meaning of the standard rent as envisaged under the provisions of the Bombay Rent Act, contractual rent to be treated as standard rent in certain cases, the method of comparison of two premises for fixing the standard rent and how far that can be useful for that purpose, etc. Therefore, there is hardly

anything left to be said by us. However, when the question of hypothetical rent to be determined of the self-occupied premises is concerned, in view of the decision of the Apex Court in Devan Daulat Rai Kapoor's case, Municipal Authority can form its own assessment, keeping in focus the measure of standard rent determinable under the Rent Control provisions on the basis of all the relevant factors for that purpose and arrive at a figure which should not be higher than the standard rent that could have been fixed by the Court under the provisions of the Bombay Rent Act and the rateable value will have to be decided on that basis.

10. In case of property for which there is standard rent already fixed and the property for which the standard rent is not fixed but which is given on rent, normally it should not create any problem for assessing its annual rent because in the former case the standard rent will be the basis; whereas in the latter it would be the actual rent that may be received by the landlord, but when the property is not let, in such cases the Municipal Authority will have to make its own assessment of the annual rent. In the case of Dr. Balbir Singh (supra) the Apex Court has held that the discretion of the Rent Controller is not unfettered and unguided . In this decision the Apex Court has not only pointed out that there is restriction placed on the discretion of the Rent Controller, but it has even laid down principles on which standard rent is required to be fixed. It has also observed that the standard rent of any property is the upper limit and the rent that property may fetch would be even lesser than the standard rent considering the peculiar characteristics/circumstances of such property. The Apex Court in this decision has further pointed out the distinction between the use of the building in case of self occupancy and the use of it while giving it on rent and has laid down that in case of self-occupancy rebate of 20% in the property tax assessed is required to be granted because to have a shelter is a basic need of human being. However, when the property is given on rent, there is element of profit making and no such rebate is required to be given. This is the precise reason why the amount of property tax is lower in the case of self occupancy than in the case of premises given on rent. Therefore, these observations are made vis-a-vis determination of standard rent they equally apply to Municipal Authority for deciding the hypothetical rent of non-tenanted premises and resultant assessment of the rateable value.

10.1. So far the determination of standard rent is concerned, there are two main methods of determining the same, namely the theory of comparables and secondly the investment theory. In the first theory, the exercise can be carried out by comparing the premises in question with the other similarly situated premises in the locality of which the rent is already fixed. Ofcourse while making the exercise of comparison the following factors can be kept in view :-

(a) Premises should more or less be similarly situated in the same locality with the same user,
(b) Relevant period of letting of the comparable premises.
(c) Whether the rents of the comparable premises are fair and reasonable or on the low side due to a number of extraneous circumstances.
(d) the amenities and facilities provided in such building.

By carrying out such exercise the standard rent of the concerned property can be fixed without much difficulty. So far the other method is concerned, it would depend on provisions meant for fixing the standard rent as contained in section 11 of the Bombay Rent Act and also the guidelines laid down by the Apex Court in the case of Dr. Balbir Singh (supra). This again will be subject to the outgoings in the nature of maintenance expenses, expenses for having basic facilities such as making provision for water, the municipal taxes, the required annual repairs, insurance, etc., which may be required to be taken into account even after deduction of sum equal to ten percent towards the allowance for repairs, etc. as envisaged under sub-rule (3) of rule 7 of the Rules. The Apex Court in the decision rendered in the case of Dr. Balbir Singh has very emphatically said that in cases of self occupied premises 20% rebate is required to be given as self-occupancy rebate because to have shelter is a basic necessity of every human being and unlike giving the premises on rent, there is no element of profit involved. It is, therefore, very clear that for fixing the rent that can be expected to be received from the hypothetical tenant to determine the GRV, the Municipal Authority will keep in sight all the requirements for fixing the standard rent. However, as stated earlier the theory of comparables can be adopted provided there is no considerable disparity between the premises. At this juncture more recent decision rendered in the case of Lt. Col. P.R. Chaudhary (Retired) v/s. Municipal Corporation of Delhi reported in (2000) 4 S.C.C. at page 577 by the Apex Court is required to be

seen. These observations are vis-a-vis method of fixing the standard rent and they are helpful in determining the Gross Rateable Value in the case of hypothetical tenant. It has dealt with the disparity that may prevail between two premises of same kind because of the disadvantage and it has also pointed out that even in the cases where there is comparison between two buildings one being old and other being newly constructed, there would be great disparity on account of the rising cost of construction, the land prices, etc. and in that case such comparison would be irrational and illogical and, therefore, the factors regarding the increase in cost of construction, land prices, etc. will have to be kept in mind. It has observed as under :-

"Law as interpreted by the Supreme Court cannot be brushed aside by saying that it is not in conformity with statutory provisions. The law laid down by the Supreme Court is explicit and admits of no doubt. For the purpose of arriving at the rateable value the basic principle is the annual rent which the owner of the premises may reasonably expect to get if the premises were let out to a hypothetical tenant. It would depend on the size, situation, locality and condition of the premises and the amenities provided therein. All these and other relevant factors would have to be followed in determining the rateable value. That, however, cannot be in excess of the standard rent which would be the upper limit. But then considering the runaway prices of land and building materials if the standard rent were to be the measure of rateable value there would be a huge disparity between rateable value of old premises and those recently constructed though they may be similar and situated in the same or even adjoining locality. Considering the same and similar services which are provided by the local authority if there is vast disparity between the rateable value of the old premises and the new premises that would be wholly illogical and irrational. To avoid such a situation Dr. Balbir Singh case laid the principles which have to be followed in arriving at the rateable value of the newly constructed premises. Ofcourse, rateable value cannot be the same but then at the same time a wide disparity would certainly be irrational, unreasonable and unfair which situation could be avoided by following the principles laid down by the Supreme Court otherwise the rateable value recording wide

disparity would be struck down. There cannot be an ambiguity as to the principles laid down by the Supreme Court in arriving at the rateable value."

The aspect regarding disparity in a theory of comparables has been adequately dealt with by the Division Bench of this Court in Ahmedabad Municipal Corporation v/s. Oriental Fire & Gen. Insurance Co.'s case (supra) by referring to various previous decisions. Hence it is not necessary for us to dwell on this aspect more.

11. At this juncture it will be necessary to turn our attention to sec. 141-B of the Act, which deals with at what rate property tax is leviable. Sub-sec. (4) of that section empowers the Corporation, subject to rules, to increase or decrease or neither increase nor decrease the rate of tax determined under sub-sec. (1) read with sub-sections (2) and (3) and enunciates factors contained in clause (a)(i) to (iv) and clause (b)(i) to (iv) to be taken into consideration for that purpose. Broadly speaking these factors can also become useful to Municipal authority to determine the rateable value of the premises in question before it. This coupled with the guidelines that have been evolved by now by different counts the factors can be spelt out as under :-

(a) Location of premises with respect to floor and its position on the floor specially road view, sea view, park view, etc.
(b) The type of construction, finishings and amenities
(c) The extent of area
(d) Planning of premises and extent of accommodation
(e) Age of the building and extent of repairs necessary.
(f) The cost of land and building,
(g) the carpet area,
(h) the locality in which the premises or the building is situated,
(i) the access to transport facility,
(j) quality of construction,
(k) the estimated life of the building, etc.

These are not exhaustive and other special features which the Municipal authority may find relevant for the purpose of arriving at the figure of the fair return that the property in question residential and non-residential may yield. It can also be seen that some factors are common for both the purposes viz. to determine the rateable value on the basis of hypothetical rent of the premises

not given on rent keeping in view the measure of the standard rent. Thus, it is very clear that the power or discretion of the Municipal authority in case of self-occupied property to assess the rateable value thereof, is not unfettered and unguided and it should revolve round the criteria described above.

12. Thus, to sum up the aforesaid discussion, the annual letting value of the premises in question has to be on the basis (A) in case the standard rent is fixed under Section 11 of the Bombay Rent Act, the standard rent and (B) in case the building is let but the standard rent is not fixed and the contractual rent is there, the contractual rent i.e. the rent actually received by the landlord and (C) where the premises are self-occupied for the residential purpose by the owner himself, the Municipal Authority will have to form its own assessment with regard to rent that may be received by the landlord from the hypothetical tenant, keeping in view the measure of standard rent that can be fixed for such property having reference to relevant Rent Control enactment and (D) while deciding the rent from the hypothetical tenant under Clause (c) the factors mentioned above for determining the standard rent have to be kept in view. The GRV has to be based on the data of such rent.

13. This brings us to the second limb of these appeals about the required procedure that has to be followed in the litigation concerning determination of the rateable value of and imposition of tax on the properties in question. It is the grievance of the appellant that the Small Causes Court has upset the GRV fixed by the appellant without any justification and that too by placing reliance on the documents which have not been produced before the Municipal Authority but at a belated stage i.e. at the stage of appeal produced by the assessee without following the proper procedure and which have been received in evidence by the Court, also without following the proper procedure. According to the appellant the Court of Small Causes has taken into consideration these documents which are purported to be either the valuation report or agreement to sell or sale deed or any such document, without making any effort to ascertain its authenticity. Such documents cannot be said to have any evidentiary value. As against that, the respondents have contended that the appellant was very much party to the proceedings before the Court of Small Causes and its counsels never raised any objection to such documents being exhibited and relied on by the said Court and, therefore, at this stage such grievance cannot be entertained by this Court.

13.1. We have perused the judgments of the Small Causes Court which have been annexed in all these appeals and it is found that barring few exceptions, in all the matters the appeals have been disposed of by the Court of Small Causes by giving judgment comprising three small paragraphs. The contents of these paragraphs formed factual data or description of the concerned property in first para., the GRV fixed by the appellant, and the present respondent producing some document indicating a particular value of the property and in the second para. the Court arriving at the figure applying the 7% formula by accepting the value given in such document in third para. All these judgments hardly run into one page or little more than that. It is, therefore, very clear that the Court of Small Causes has not applied its mind to find out whether the document produced by the respondent was genuine; that it reflected the correct value of the property in question and whether it came from the proper source. It is very obvious that without this scrutiny no reliance can be placed on such documents. In fact even for exhibiting such document certain procedure has to be followed by the Court of Small Causes, but the same has not been done by it.

13.2. It may be noted here that the respondents, on their part have made grievance against the appellant that it has not given opportunity to the concerned person of hearing before assessing the rateable value and fixing the tax on his property. Hence principles of natural justice have been violated and such assessment cannot be considered as valid. Say of the appellant is that adequate opportunities have been afforded to them despite that if they do not remain present nor choose to produce relevant material, they have to thank themselves and no blame can be thrown at the appellants door.

13.3. The provisions of the Act and the Taxation Rules, create complete machinery for various purposes relating to property tax such as identifying the property liable to be taxed, assessment to be made of such property, to impose the tax and collection of the same, etc. Apart from this they also provide for a structure to take care of the litigation tat may arise in respect of the property tax. We may first turn our attention to Rule 8 of the Taxation Rules, which we have already narrated, empowers Commissioner to call for informations or return from owner or occupier in relation to his property to enable him to determine value of the property. This provision, at the same time, provides

opportunity to owner or occupier of such property to produce all the relevant material to indicate the true value of the property. Though this rule leaves it to the discretion of the Commissioner whether to call for the information, it clearly appears, considering the nature of the information to be called for, and also to fulfill the requirements of Rules 9 and 10 with regard to maintaining Assessment-book, it is absolutely essential for the Commissioner to resort to provisions of rule 8. This will also give the proposed assessee to produce all the relevant record pertaining to his property.

13.4. The assessee gets a chance to object to determination of the rateable value by the Commissioner in view of requirements of Rules 13 to 18. This stage comes after the rateable value of the concerned property is determined and the entry is made into the assessment register. Rule 13 requires issuance of public notice intimating the public to place where the assessment book or section thereof would be available. Rule 14 entitles every person who reasonably claims to be the owner or occupier of premises entered in the assessment book to have free inspection and also to have copy of the extract of the entry. Rule 15 envisages Commissioner to notify by public notice receiving the time of complaint which the owner or occupier may intend to file against the determination of rateable value, which should not be less than 15 days from the date of publication of notice. Rule 15(2) envisages giving of special written notice to the owner/occupier also after the issuance of public notice in (1) when premises are for the first time entered in assessment book as property liable to payment of tax or the rateable value of any premises liable as such is increased.

13.5. Rule 16 prescribes time and manner of filing complaints against valuation. It should be in the form of written application. Sub-rule (2) says :-

> "Every such application shall set forth briefly but fully the grounds on which valuation is complained against."

Rules 17 and 18 of the Rules read as under :-

> "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 whereat his complaint will be investigated.

18. Hearing of complaints.

(1) At the time and place so fixed, the Commissioner 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 17 and any necessary amendment shall be made in accordance with result in the assessment book."

From the aforesaid rules, it is very clear that even after the rateable value is determined by the Commissioner, it is open for the assessee to dispute it by making complaint against it. As it is decided by this Court in Ahmedabad Municipal Corpn. v/s. Oriental Fire & General Insurance Co.'s case (supra) the burden of proving that the rateable value determined by the Commissioner is on the higher side. Therefore, the assessee even at the time of hearing of the complaint under Rule 18 of the Taxation Rules can produce more material in support of its case since at that stage matter is still under investigation by the Commissioner. No provision of law prevents him from producing additional evidence at that stage, if for reasons beyond his control he had omitted to comply with the requisition or had failed to give true information or to make true return to the best of his knowledge or belief, which he was otherwise required to do as per Rule 8.

13.6. Thus the owner or occupier is given ample opportunity at different stages to supply relevant information to enable the Commissioner to determine the rateable value. Moreover, he is also entitled to file complaint against value determined by the Commissioner in relation to his property and to remain present at time of such complaint is being investigated. It is therefore, incumbent upon the assessee to produce whatever evidence he proposed to rely on to show and establish the return which the property may reasonably be expected to fetch. Rule 18 requires Commissioner to investigate into the complaint. Obviously therefore he is required to examine pros and cons of every aspect relating to such property. He will have to examine all the material which is placed

before him. If the assessee fails to remain present or produce any relevant record he should suffer the consequences. At the same time Commissioner is also duty bound to ensure that requirements of issuance of public notice and/or service of personal notice have been fully complied with. If there is complete compliance and despite that assessee fails to either remain present or fails to produce evidence, he is precluded from doing it subsequently, at the time of appeal before the Court, ofcourse subject to certain provisions pertaining to production of additional evidence as contained in the Act and the Municipal Appeals Rules, 1976.

13.7. Thus, a conjoint reading of Rules 8, 9, 15, 16, 17 and 18 will show that all relevant information which may enable the Municipal Authority to identify the property and determine its rateable value has to be made available to it at this stage which may also be taken into consideration at the time of investigation by the Commissioner in the event of any complaint having been made by the owner or occupier in respect of such property.

14. At this stage it will be worthwhile to refer to certain provisions dealing with the legal proceedings that may arise on account of the determination of valuation and imposition of property tax. Chapter XXVI of the Act deals with proceedings before Judge, appellate Courts and Magistrates. Part III of this chapter deals with appeals against valuation and taxes. Section 406 prescribes that appeals against any rateable value or tax fixed or charged under this Act shall be heard and determined by the Judge. Now the word "the Judge" is defined in section 2 (29) of the Act, and it means that in the city of Ahmedabad the Chief Judge of the Court of Small Causes or such other Judge of the Court as the Chief judge may appoint in tis behalf and in any other city the Civil Judge [Senior Division] having jurisdiction in the city. Thus in the City of Ahmedabad an appeal against the rateable value or tax fixed or charged under the Act would lie before the Chief Judge of the Court of Small Causes, who would either hear it himself or assign it to some other Judge of the said Court. This appeal can be filed subject to certain restrictions which have been enumerated in subsection (2) of section 406. Section 411 of the Act deals with appeals to the Civil appellate Court. Section 2 (8A) defines 'civil appellate Court'. Civil appellate Court means in the case of city of Ahmedabad the High Court and in the case of other city the District Court having jurisdiction in the district in which city is situated.

Thus for Ahmedabad city it is the High Court which has the jurisdiction to entertain appeal against the order passed under Section 406. Section 411 is comprising 4 clauses with proviso and clause (a) prescribes for filing of appeal to this Court against the decision of the Judge under Section 406 by which rateable value in excess of Rs.2,000/- is fixed. Section 418 confers powers on the Judge to summon witnesses and compel production of documents. Subsection (1) of this section is required to be reproduced in toto. It reads as under :-

> "418. Power to summon witnesses and compel production of documents.
>
> (1) For the purpose of any inquiry or proceeding under this Act, the Judge may summon and enforce the attendance of witnesses and compel them to give evidence and compel the production of documents, by the same means and, as far as is possible, in the same manner as is provided in the case of a Court of Small Causes by or under the relevant Small Causes Courts Act and in all matters relating to any such inquiry or proceeding the Judge shall be guided generally by the provisions of the said Act so far as the same are applicable.

This provision will squarely apply to the appeal u/S. 406 of the Act as it is proceedings before the judge under the Act as can be seen from the title of Chapter XXVI.

14.1. This subsection envisages that the Judge is required to follow the procedure prescribed under The Presidency Small Cause Courts Act, 1882, in its application to the City of Ahmedabad, for summoning the witnesses and compelling the production of the documents. It also prescribes that it is required to generally follow or be guided by the provisions of the said Act so far as the same are applicable. It may be noted here that by virtue of section 9 of the Small Cause Courts Act, this Court has framed Ahmedabad Small Causes Court Rules regarding procedure to be followed and practice to be observed by the said Court.

15. At this juncture special mention is required to be made of Municipal Appeals Rules, 1976 (hereinafter referred to as 'Appeals Rules') made under Article 227 of the Constitution of India by this Court. They relate to appeals u/S. 138 of the Gujarat Municipalities Act, 1963 and u/S. 406 of the Act. These

Appeal Rules prescribe the manner in which presentation of appeals is to be made, persons authorised to institute them, the form of petition of appeals, filing of written statement by respondent municipality or municipal corporation, etc. Rules 11, 12 and 13 of the Appeals Rules deal with leading of additional evidence by parties which can be reproduced as follows :-

"11. No party shall be entitled to lead evidence in addition to what has been led in the proceedings held under section 106 or 109 of the Gujarat Municipalities Act, 1963, or under the relevant provisions of the Act, and rules in Schedule A to the Bombay Provincial Municipal Corporations Act, 1949, as the case may be, unless permitted by the Magistrate or the Judge, as the case may be. The Magistrate or the Judge, may, however suo motu call for additional evidence if he considers it necessary in the interest of justice.

12. A party desiring to lead additional evidence shall apply in writing for permission to do so. It shall state in its application as to what evidence it wants to lead and reasons, for permission to lead the evidence at the stage of the appeal.

13. If after hearing the objections of the opposite party and perusing the petition of appeal and the written reply of the respondent, if any, and the other papers produced in the case, the Magistrate or the Judge, as the case may be, is of the opinion that it would be expedient in the interest of justice to allow such additional evidence to be led, the same may be allowed to be led, provided, however, that where one party is allowed to lead additional evidence the opposite party shall also be allowed, if it is so desired, to lead evidence in rebuttal of such additional evidence. The Magistrate or the Judge, as the case may be, may allow any fact to be proved by affidavit, subject however, to the provisions of Order XIX of the Code of Civil Procedure, 1908, in that behalf."

Rule 11 clearly shows that no party shall be entitled to lead evidence in addition to what has been led in the proceedings u/Ss. 108 and 109 of the Municipalities Act or under the provisions of the Act and rules in Schedule A to the Act unless permitted by the Magistrate or the

Judge as the case may be. It can, therefore, without doubt be said whatever evidence that parties desire to lead has to be done at the time of following the procedure under the Act and the Taxation Rules which has been discussed in detail in the foregoing paragraphs. We are, therefore, completely fortified in saying that the assessee is precluded from producing evidence at the stage of appeal, ofcourse subject to discretion of the Judge to grant such permission in case of application being made for additional evidence and his suo-motu power to call for additional evidence. As observed earlier, even provisions of section 418 of the Act confers suo motu for exercise of such power by the judge. Rule 12 of Appeals Rules requires party desiring to lead additional evidence to make application setting out particulars of such evidence and reasons for seeking such permission at the stage of appeal. Rule 13 of Appeals Rules says that the Judge, before forming the opinion that it would be expedient in the interest of justice to allow such additional evidence to be led, will have to take into consideration the objections that may be taken by the otherside, petition of appeal, written statement and other papers produced in the case. The judge may also allow any fact to be proved by affidavit. Reverting back to Rule 12 of Appeals Rules it can be stated that its provisions are completely in consonance with the provisions of Order XLI Rule 27 of the Code of Civil Procedure, which are as under :-

"R.27. Production of additional evidence in Appellate Court.-

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

The Judge, while deciding the application under Rule 12 of Appeals Rules has to take into consideration all the aforesaid facts which have been enumerated in Order XLI Rule 27 to arrive at a just and proper decision. These provisions apply complete brake on party producing any document without following the due procedure and prevent the judge taking such document on record as a matter of course as has happened in most of the cases before us. The learned Judge has proceeded on the footing as if the provisions of the Act, the Taxation Rules, the Appeals Rules and the Code of Civil Procedure, as well as, the Indian Evidence Act do not exist.

15.1. Section 434 of Part X of the aforesaid chapter envisages application of the provisions of the Code of Civil Procedure which can be reproduced as follows :-

"434. Code of Civil Procedure to apply.

(1) Save as expressly provided by this Chapter the provisions of the Code of Civil Procedure, 1908, (V of 1908) relating to appeals from original decrees shall apply to appeals to the Judge from the orders of the Commissioner and relating to appeals from appellate decrees shall apply to appeals to the Civil Appellate Court.

(2) All other matters for which no specific provision has been made under this Act shall be governed by such rules as the State Government may from time to time make after consultation with the High Court."

Thus in appeals which may be filed before either the Judge or the Civil appellate Court the procedure prescribed under the Civil Procedure Code will apply to all other matters where no specific provision has been made under the Act and shall be governed by the rules framed by the State Government from time to time after the consultation of the High Court.

15.2. In the provisions of Rules 11, 13 of

Appeals Rules and section 418 of the Act are read together, it will become clear that when the judge grants permission under Rule 13 or decides suo-motu to have evidence documentary and/or oral under Rule 11 or section 418 of the Act, he will have to resort to the provisions of relevant Small Causes Courts Act to summon and compel the attendance of witnesses and compel them to give evidence and compel the production of documents. Perusal of the impugned judgments clearly shows that at nowhere the judge has stated either he had exercised powers u/S. 418 of the Act or Rule 11 of the Municipal Appeals Rules nor does it show that it was in the interest of justice that the respondents were permitted to produce the additional evidence nor does it show that the judge had satisfied himself, before granting the permission, that the concerned respondent was prevented due to adequate reasons from producing it before the Municipal Authority.

16. By and large, speaking about the appeals before us, we have noticed that the Court has neither followed the proper procedure nor it has even cared to ascertain the genuineness of these documents. This is not proper. When the Act requires following of certain procedure, the Court has to follow it in toto and it cannot resort to 'shortcuts'.

17. Thus, to sum up, in our opinion whatever evidence the owner or occupier desires to lead and whatever material he desires to produce, he should produce it when the matter is pending before the Municipal Authority in the proceedings under the Act and the Taxation Rules for determining the rateable value. When that stage has gone, he is precluded from doing it, subject to provisions relating to additional evidence as contained in the Act and Appeals Rules. The assessee cannot have his own choice in this and himself decide the stage at which such material should be produced. We have noticed that in large number of cases this has not been done and the respondents have been permitted to produce the material at the stage of appeals u/S. 406 of the Act without following the due procedure by the assessee as well as by the Court. Obviously therefore the Court of Small Causes has based its judgment on strength of documents which had not been produced at the time when the matter was under consideration of the Municipal Authority but they were just submitted to the Court at the time of hearing and the Court had placed reliance on it without insisting upon its proper production and without verifying their authenticity. The appellant's grievance is, therefore, fully justified.

17.1. Further, normally the judge will have to decide the appeal on the basis of material that is already produced before the Municipal Authority and ofcourse the documents such as petition of appeal, tax bill, written statement, etc. which are filed as per the requirement of Appeals Rules. For granting permission to lead additional evidence, it will have to insist for application from the concerned party and pass order on that application assigning reasons for forming his opinion keeping in view Rule 13 of Appeals Rules. It is pertinent to note that section 409 of the Act prescribes even appointment of expert valuer upon any party to the appeal making an application for the said purpose before evidence as to value is adduced. Obviously evidence referred to in this section will mean additional evidence. Thus, the Court of Small Causes cannot assess the value of the property in question simply on the basis of the document, even the authenticity of which is doubtful. In fact the exercise that is required to be carried out by the appellant in case of determining the rateable value will also have to be carried out by the Court of Small Causes in such cases. Mere production of some document by the assessee should not suffice or provide the adequate data for determining the rateable value. The Court of Small Causes will have to first inquire about the veracity of such documents and if it is desired to be produced by the assessee on record, it should come from the proper custody and the procedure which is required to be followed under the provisions of the Appeals Rules, the Small Causes Courts Act as well as the Civil Procedure Code will have to be followed. It may also be kept in mind by the Court that in the event the learned advocate appearing for the Corporation does not have any objection for production of such document then his consent in writing should be obtained to form part of the record of the case and even then it should make effort to find out whether permission under Rule 13 is required to be granted and if yes, whether the value indicated in such document was proper having regard to the attending circumstances. The Court is even required to direct the party to adduce evidence if it is required to be done to ascertain the factual data relating to the factors mentioned hereinabove for determining the correct rateable value or with a view to ascertain whether the value shown in the document was proper. We find that in all these appeals the said exercise has not been carried out. No efforts seem to have been made by the Court of Small Causes to ascertain whether the value of the property mentioned in the documents relied on by it was proper. We also find that the Court of Small Causes has not even cared to find out whether the concerned document

is coming from the proper custody and it has not tried to verify the truthfulness or genuineness of such document. Without making any effort in such direction the reliance placed on such documents by the Court of Small Causes is totally misplaced. For that purpose these appeals are required to be sent back to the said Court for reconsideration in the light of the foregoing discussion.

18. The last but not the least factor that is required to be referred to is whether 7% formula applied by the Court of Small Causes is proper. Sufficient discussions have been made on this aspect by this Court in the decisions of Rajnikant and Oriental Fire & General Insurance Co. (supra). It also appears from the judgments delivered by the Small Causes Court in different present municipal appeals to fix the return of the property, criteria of 7% has been adopted. It has been submitted before us that considering change of circumstances, this aspect is required to be reconsidered. In our opinion, the principles evolved in these decisions with regard to determining the fair return of the property cannot undergo any change and they would by and large remain the same. However, it is the economic condition prevailing at the time is the principal criteria for determining the rate of return. The word "economic condition" in its fold would embrace different aspects concerning the real estate market, the cost of living, the return received from Government securities, etc. Since for determination of the fair rent, value of the property is required to be fixed and on the basis of that value the fair return of the said property, having regard to the different circumstances, can be decided. The word 'value' has different meanings and even in the world of economics it is always said that value is a highly subjective economic term and it is somewhat abstract in nature. Obviously there is variance between the words "value of the property" and the "cost of the property". The word "price" has also different meaning. The cost of the property is the actual expenditure that has been made on account of the purchase of materials, labour and other sundry expenditure made for erection of the property. So far the value is concerned, it would depend on (1) utility, (2) scarcity, (3) demand and (4) transferability. So far the price is concerned, the essential elements are the actual cost plus the commissions and the reasonable profit that could be expected in sale of the property keeping in view the demand. Thus so far the value of the property is concerned, the essential criteria are not only demand and supply but its utility also. The value of immovable property is, therefore, governed by, so far the economic

aspect is concerned, several factors which can be (1) demand and supply, (2) the economic policy of the State as well as Central Government, (3) inflation and deflation, (4) general money market situation, (5) boom or recession in real estate market, (6) the paying capacity of the people of the locality in which the property is situated, etc. Ofcourse, there are several other legal as well as technical and social aspects which may have their own bearings on this question. However, for the purpose of dealing with these appeals the same are not required to be gone into in detail. Suffice it to say that the aspects like the size of the land, shape, the area of the property, quality of construction, infrastructure facilities, environmental conditions, the locality, the population or density of the area, etc. are some of the relevant factors. So far the city of Ahmedabad is concerned, it is a matter of common knowledge and certainly judicial notice can be taken of such fact that the real estate market is passing through recession period for the last several years and to add to that the devastating earthquake which occurred on 26th January, 2001 has brought further recession in the said market since the people are now scared of having residence in multi-storeyed buildings. Needless to say that the city is having number of such buildings. It may also be noted here that so far the gilt-edged securities of the Government are concerned, the rates of interest have been curtailed substantially. Ofcourse, the rate of interest prevailing for such securities as on today are higher than the rate of return that may be had on immovable property. This, however, has its adverse effect on the paying capacity of the buyer. It is obvious that rate of return yielded by the residential property is normally lesser than the rate of interest yielded by commercial properties. The Court of Small Causes has without application of mind adopted the formula of 7% in most of the cases which are before us. If the Court had applied its mind to aforesaid aspects, it could have realised that considering variety of reasons, the criteria of 7% cannot be applied uniformly, irrespective of the facts of the case. It is quite possible that considering the then economic condition and the commencement of process of recession in real estate market, as submitted by counsels for the respondents, the rate of interest by way of yield on the property may be lesser than 7%. For this reason also, the cases in these appeals are required to be reconsidered.

So far the other incidental submissions such as that the appellant has determined the rateable value already fixed in the previous year to a higher amount in

the subsequent year, which is not permissible, etc. are concerned, these questions have already been dealt with by this Court in the case of Oriental Fire & General Insurance Co. (supra) and in the case of Ahmedabad Municipal Corporation v/s. Dineshchandra C. Desai by the Division Bench of this Court in First Appeal No. 3503 of 2001 dated 1/2/2002 and, therefore, they have not been dealt with here.

19. In the result, these appeals are allowed and the impugned judgments in the appeals, other than mentioned in para. 20, are quashed and set aside. The appeals are remanded back for reconsideration of the Court of Small Causes in the light of the discussions made in this judgment. No order as to costs.

20. The examination of individual case of these appeals shows that in the following appeals the decision has been rendered by the Court of Small Causes on the basis of legal documentary evidence in the form of rent receipts, etc. produced after following the due procedure. These appeals, therefore, do not call for any interference by this Court.

First Appeals Nos. 260/1992, 1428/1992, 7737/1999, 7739/1999, 7741/1999, 7743/1999 and 7744/1999.

Similarly, in the following appeals the judgments have been delivered on the basis of the previous judgments for the preceding assessment year of the said Court in respect of the very properties involved in the present case. No plausible reason has been brought on record by the appellant justifying the increase in valuation for the following year. In that view of the matter, the judgments delivered in these cases are also not required to be disturbed. In the circumstances, the following appeals are dismissed :-

First Appeals Nos.337/1992, 2130/1996, 3331/2001, 3557/2001 and 3558/2001.

The appellant has also preferred Civil Applications for stay alongwith the appeals in this group. In view of the judgment delivered in these appeals, the Civil Applications do not survive and they are disposed of accordingly.

[J.N. BHATT, ACTG.C.J.]

[AKSHAY H. MEHTA, J.]

* Pansala