

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 3638 of 2006****With****FIRST APPEAL No. 3639 of 2006****To****FIRST APPEAL No. 3641 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE C.K.BUCH****HONOURABLE MR.JUSTICE K.M.THAKER**

=====

1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
?

=====

AHMEDABAD MUNICIPAL CORPORATION - Appellant(s)**Versus****DR ANANT KANUGA - Defendant(s)**

=====

Appearance :

MR MAULIN R RAVAL for Appellant(s) : 1 in all appeals.

MR RM VIN for Respondent(s) : 1 in all appeals.

=====

CORAM : HONOURABLE MR.JUSTICE C.K.BUCH**and****HONOURABLE MR.JUSTICE K.M.THAKER****Date : 30/09/2008**

COMMON ORAL JUDGMENT**(Per : HONOURABLE MR.JUSTICE C.K.BUCH)**

1. Heard Mr. Maulin R. Raval, learned advocate for the appellant-Ahmedabad Municipal corporation.

2. The appeals are admitted. Mr. R.M. Vin, learned advocate appears and waives service of notice of admission on behalf of the respondent in all these appeals. At the joint request of the learned counsel for the parties, the appeals are taken up for final hearing today.

3. All these four appeals are filed by the appellant-Ahmedabad Municipal Corporation challenging the judgment and order passed by the Presiding Judge of Small Causes Court of Ahmedabad in Municipal Valuation Appeals preferred by the original assessee-Dr. Anant Kanuga. The assessee has challenged the assessment fixed by the Ahmedabad Municipal Corporation in four different orders in these four appeals and it is submitted by Mr. Maulin

Raval, learned advocate for the appellant, that all these four appeals can be disposed of by this common judgment as the issue involved in all these four appeals is similar.

4. Mr. R.M. Vin, learned advocate appearing for the respondent (original assessee) Dr. Kanuga, submits that the judgments under challenge require to be confirmed because the premises used by a doctor cannot be said to be a commercial premise and the appellant Corporation is wrong in assessing the premise as a commercial premise or business premise.

5. It is not necessary for us to enter into the details as to whether the premise can be termed as commercial premise or not and at what rate assessment ought to have been made. Indisputably, the premise under assessment is being used by the respondent Dr. Kanuga for his medical profession. So in cases where the Small Causes Court, being the Court of appeal, is of the view that the

assessment made by the Municipal Corporation is not otherwise legal and the property ought to have been assessed in a different category than it has been assessed actually by the Ahmedabad Municipal Corporation then the presiding Judge is supposed to decide the GRV of the property referred to the Court by the appellant for legal assessment.

6. We are in agreement with the submission made by Mr. Raval that the issue in these appeals is covered by a decision of the Honourable the Apex Court in the case of Municipal Corporation of the City of Ahmedabad v. Oriental Fire & General Insurance Co. Ltd., 1994 (2) GLRT 1948. In paragraph 67 of the said judgment, the Honourable the Apex Court has held that "even if the assessment is held to be not in accordance with law, whether because of the wrong method followed with regard to determining the rateable value or because of any irregularity or illegality in procedure or because of violation of the

principles of natural justice or because notice under Rule 15 (2) had not been issued, then the Small Causes Court would itself have the jurisdiction to examine evidence and determine the correct rateable value...." In the present case also while quashing the bills of assessment for determination of GRV by the Municipal Corporation, the learned Presiding Judge ought to have assessed the GRV by assigning good and sound reasons.

7. According to Mr. Vin, learned advocate for the original assessee, these matters can be remanded to the Small Causes Court so that the original assessee can convince the Court and can get the property assessed as premise not being used as commercial or business purpose.

8. Without entering into the factual controversy, we are inclined to allow these four appeals by quashing and setting aside all the four orders under challenge in these appeals and

remand all the four matters to the Small Causes Court, Ahmedabad with a direction to decide the controversy between the parties afresh considering it on merit and the ratio of the judgment of the Honourable the Apex Court referred to by this Court in paragraph 6.

9. This order shall not come in the way of the original assessee Dr. Kanuga in convincing the Small Causes Court on merit that the premise cannot be assessee as commercial premises.

10. All the four appeals are accordingly allowed with no order as to costs. Order and direction accordingly.

(C.K. Buch, J.)

(K.M. Thaker, J.)

...

(karan)