

Received on : 16/10/2018.
Registered on : 16/10/2018.
Decided on : 02/03/2020.
Duration : 01Y,04-M,17-Days.

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,

NANDURBAR DIST. NANDURBAR

(Presided over by Smt. S.A. Virani)

Municipal Appeal No. 01/2018.

Exh. No. 08/B

1. Dhirajben Chabildas Goslia
Age :- 73 Yrs, Occ : Business
R/o. Shop No.4, Girivihar
Co-operative Housing Society,
Tal. & Dist. Nandurbar
 2. Girivihar Co-operative Housing
Society Ltd. Nandurbar. ... **Appellants.**
- Vs.**
- Nandurbar Municipal Council,
Through :- Chief Officer,
Municipal Council, Nandurbar
Dist.Nandurbar ... **Respondent.**

Mr. V. B. Shah advocate for appellant
Mr. G.D. Raghuvanshi, advocate for respondent.

Appeal Under Section 169(2) (Proviso) of
The Maharashtra Municipal Councils, Nagar Panchayats and
Industrial Townships Act, 1965

J U D G M E N T

(Delivered on 02/03/2020)

(1) The present appeal is filed by the tenant of **shop No. 04** situated in Girivihar Co-Operative Housing society, within municipal limits of Nandurbar Municipal Council, (herein after referred as “The Suit Property”). Appellants have challenged the claim of Nandurbar Municipal Council for taxes and other dues as included in the bill bearing No. **48320** dated 28.08.2018 and prayed for declaring that the said bill issued by the

Municipal Council, Nandurbar is illegal.

Brief facts of the appellant's case are as under :-

(2) Appellant No. 1 is tenant and possessor of the suit property situated within municipal limits of Nandurbar Municipal Council. This suit property was assessed to tax for first time in the year **2008-2009**. Then the suit property was assessed second time in the year **2014-2015**. Being aggrieved with this second assessment appellant had preferred an appeal with Municipal Tax Committee. The said appeal was decided after empty formality of hearing but no speaking order was passed. Despite objections raised by the appellant, the respondent did not make any inquiry and investigation as contemplated under The Maharashtra Municipal Councils, NagarPanchayats and Industrial Townships Act, 1965 (hereinafter referred as "*the Act*"). Thereafter, the new assessment of tax on the very property for the year 2014-2015 as increased by the respondent, was challenged by appellant in Municipal Tax Appeal before the Court. It is not disputed that, individual notices were served on the assessee as required by the later part of Section 119(1) of the Act 1965. Municipal Council, Nandurbar presented the necessary bill under Section 150 of Act on the **assessor for year 2018-2019 as Rs. 70,393/- + interest vide bill No.48320** including previous outstanding. Being aggrieved by the bill the assessee filed present appeal and raised various contentions. The main contention raised by the appellant is that, the Municipality increases the tax without any legal basis and without application of mind. Municipal Council did not follow the necessary provision laid down for reviewing assessment.

(3) The respondent Municipal Council cannot determine the annual letting value without considering the standard rent for the suit property under the Rent Act. The respondent has not considered the standard rent for the suit property. The assessment of Annual Letting value by the respondent is without inquiry. The respondent has also not

given any opportunity of hearing and investigation as mandated under section 120 of the Act. The magnitude of the Tax is extremely excessive and without any rational basis. The claim on account of special education cess is also ill conceived. Thus, the assessment of the Annual Letting value for year 2018-2019 is null and void and therefore requires to be set aside.

(4) The respondent has filed its say at **Exh. 7** and contended that, the present appeal is not filed within limitation. It further contended that, this appeal is not tenable as the requirement of section 170 of the Act has not been fulfilled. The disputed bill is the result of following all necessary provisions. The respondent had also invited the objections on the assessment and proper opportunity of hearing was given to appellant. The Court has not fixed the standard rent of the property tax therefore, the theory of standard rent is not applicable in present case. Moreover, the authorized Officer has fixed the annual letting value of the property in question. Hence the respondent prayed to dismiss the appeal with costs.

(5) I have heard learned advocate Mr. V. B. Shah for appellant and **Mr. G.D. Raghuvanshi** on behalf of the respondent. On perusal of pleading and documents on record, following points arise for my determination and I have recorded my findings thereon for the reasons discussed below.

<u>S.N.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the appeal is maintainable in view of Section 170 of the Act 1965?	Yes.
2	Whether the bill of Tax bearing No. 48320 dated 28.08.2018 served on appellant by the respondent is liable to be set aside?	Yes.
3	What order ?	As per final order

REASONS

As to points No.1 to 3 :-

(6) All these points are inter linked, so taken up for consideration

together.

Section 170 of the Act 1965 laid down the procedure for filing appeal in following terms:-

No appeal U/ Sec 169 shall be entertained unless the appeal under clause (a)(i) of sub-section (1), under clause (b) of sub section 2 of Sec 169 is brought within thirty days next after the presentation of the bill complained of;

(b) An application in writing stating the ground on which the claim of council is disputed, has been made to the council within the time fixed in the notice given U/Sec.119 or 123 of the assessment or alteration thereof.

(c) The appellant has paid in the Municipal Office full amount included in the bill.

(7) Hence, above provision of law makes it clear that, three conditions are required to be fulfilled before filing of appeal under Section 169 of the Act. The present appeal has been filed against the claim of the Municipal Council. Perusal of record shows that, the present appeal is filed on **16.10.2018**, the disputed bill is served upon the appellant on **01.10.2018**. Thus, the present appeal has been filed within the prescribed period. It is true that while filing the appeal, appellant had not deposited the entire amount of disputed bill. But, record shows that appellant deposited the part amount of disputed bill as per previous assessment in year 2008-09 on **10-10-2018** during hearing of this appeal. Appellant has filed on record receipt of payment of said bill through **Demand Draft no. 859770**.

(8) Ld. Advocate on the behalf of the respondent vehemently submitted that, the present appeal cannot be entertained as appellant has not paid full amount included in the disputed bill. Section 170 (c) (i) of the Act is mandatory provision. Thus, as appellant has not paid full amount of the disputed bill to Municipal council the present appeal is

liable to be summarily dismissed. In support of his submission he relied on Municipal Council, *Achalpur Vs. Shriram Sawmill 2007(2) Mh LJ 237 wherein Hon'ble High Court* held while considering the provisions of section 170 of the Act and of the rules made by the Hon'ble High Court under Article 227 relating to appeals under section 169 of the Act ; that, magistrate cannot call upon the municipal council to appear unless and until the amount of demand was shown to have been disputed with Municipal council by producing original receipt before him.

(9) The Ld. advocate on behalf of the appellant on the other side submitted that, as per Rule 5 sub-rule 4 (b) of The Maharashtra Municipal Councils and Nagar Panchayats (Property Tax Appeal Committee) Rules, 1995; the appellant has paid the requisite Tax amount to the respondent council. He further relied on *Shamkishor -Vs- M.C. Delhi reported in AIR 1992 Supreme Court 2279*, wherein Hon'ble Apex Court has held that,

“an appeal can be admitted or entertained but only cannot be heard or disposed off without pre-deposit of disputed tax. It is further observed that, the appellant authority can adjourned hearing of appeal for giving time to deposit tax.

(10) Section 170 of the Act does not create bar for filing appeal without depositing amount of disputed bill. But, it creates hurdle while entertaining appeal. The word entertained is interpreted by the Hon'ble High Court in various decision in which the requirement of depositing amount of bill should be met with before hearing. According to Rule 5 sub-rule 4 (b) of The Maharashtra Municipal Councils and Nagar Panchayats (Property Tax Appeal Committee) Rules, 1995; every appeal presented shall be accompanied by the certified copy of the receipt for payment of - (i) the full amount of tax as per the previous assessment, or (ii) In respect of new properties being assessed for the first time, thirty per cent of the amount of tax claimed in the bill by the Council. In the present case it appears that, appellant has deposited tax amount as per provision of above

mentioned rule on basis of previous assessment and the payment is made through Demand Draft in name of respondent Municipal Council. Therefore, I held that, the requirements of section 170 of the Act was duly complied with.

(11) Perusal of record shows that, the Property Tax Appeal Committee deciding the appeal in respect of suit property has rejected the appeal on the grounds which do not appear to be proper and sound. The Property Tax Appeal Committee has not considered any contention of the appellant and decided the appeal on merits. On the contrary it has passed order by affixing rubber stamp without giving any reasons for its conclusion. The objections raised by appellant are also not dealt with properly.

(12) The assessment of Tax fixes the permanent Civil Liability upon the assessee. Therefore, while deciding objections regarding the fixation of tax the authority is required to pass speaking order and with reasons for the same. The Hon'ble Apex Court in the case of **Siumense Engineering and Mfg. Co. Vs Union of India reported in AIR 1976 Supreme Court 1785** held that; *"the order passed while exercising quasi judicial function should be a speaking order and should have disclosed the reason and in the absence thereof the order is not in consonances with the law."*

(13) **Regarding increased tax :** Ld. Advocate on the behalf of the respondent submitted that, property tax is the main source of revenue to the Municipalities and Municipal Corporations. Due to which the Act 1965 was amended in the year 2010 wherein according to section 114 of the Act the Municipal Councils can determine property tax on the basis of ratable value or the capital value of any building or land assessable to a property tax. He further submitted that, the municipal Council has thus increased the property tax of the suit property. In support of submissions

Ld. advocate relied on Srikant Kashinath Jituri and others, Vs. Corporation of the city Belgaum, AIR 1995 Supreme Court 288 Ld. Advocate pointed out specifically para no. 12 of the said Judgment wherein Hon'ble Apex Court has expressed doubts as to the soundness and continuing relevance of the view taken by the court in regarding determining property tax on the basis of fair rent alone regardless of the actual rent received. The Hon'ble Apex court has taken view that, property tax is the main source of revenue to the Municipalities and Municipal Corporations. All types of expenditure has gone up steeply over the last more than forty years. In such a situation, insistence upon levy of property tax on the basis of fair rent alone-disregarding actual rent received is neither justified nor practicable.

(14) I have carefully gone through the judgment of Hon'ble Apex Court Shrikant Kashinath Jituri Vs. Corporation (supra). It reveals that, Hon'ble Apex court has expressed its views upon levy of property tax. Further on reading para No. 12 it reveals that, the Hon'ble Apex Court has not expressed final opinion on the said point as the question was not at issue. Thus, the said opinion of Hon'ble Apex Court is *obiter dictum* and not *ratio decidendi*.

(15) No doubt, the respondent has right to increase the assessment, but it should have been done by following the proper procedure as per law. The respondent has not shown any reason for increasing the tax in such manner. The appellant also preferred the objection under Section 119 but the respondent did not consider it in proper perspective. The Municipal Council was not transparent while increasing the tax. Municipal council have filed a mere vague say without any specific details and documents to show that proper inquiry was conducted and due procedure was followed before increasing the tax.

(16) Section 114 of the Act provides procedure for determining ratable value or the capital value of any building or land assessable to a

property tax. Time to time Government of Maharashtra has also issued various circulars bearing guidelines have been provided while making reassessment of the tax. Circular dated March 19, 1999 provides that while making reassessment of ratable value there should not be increase more than fifty percent of the previously assessed ratable value. But, in the present case disputed bill shows that the tax is increase more than three fold and there is no reason for such huge increase.

(17) The Ld. advocate on behalf of the appellant submitted that, the tax has to be fixed on ratable value, which is always based on standard rent of the premises. Further, Municipal Council should take into consideration amount of rent, which such building or land might reasonably be expected to let, or for which it is actually from year to year let, while fixing ratable value. In support of his submissions Ld. Advocate for appellant has relied on following case laws:

1) Bhagawatrai V/s. State of Punjab, AIR 1996 SC. 95, wherein Hon'ble Apex court has held that, "*the actual rent received from a tenant is not the measure for determination of the Annual Ratable Value, but the reasonable standard rent expected to be received under the relevant Rent Act.*"

2) AIR 1985 SC, 339 Dr. Balbir Singh and others Vs. M/s. M.C.D. and others, in which held that, "*rateable value would have to be determined on the basis of the rent which the owner may reasonably expect to get, if the premises as a whole are let out. Subject to the upper limit of the standard rent.*"

3) 1989 Mh.L.J. 292, Khadya Peya V. Sangh Vs. Munl Countil, in which held that, "*The test therefore is not what is the standard rent of the building but what is the rent which the owner reasonably expects to receive from a hypothetical tenant and such reasonable expectation can in no event exceed the standard rent of the building determinable in accordance with the principles laid down in the Rent Act, though it may in a given case be lower than such standard rent.*"

4) **AIR 2001 SC 50, Food corporation of India Vs State of Punjab**, in which held that, *"In Assessment of immovable property amendments or revision of assessment list, Notice to affected party stating that property has been wrongly kept out from assessment list must be given. If Notice neither states reasons for /or grounds on which amendment is proposed to be made, such Notice is vague and invalid."*

(18) Coming back to the factual aspect of the matter, there is absolutely nothing on record to show that, while fixing the ratable value or capital value, afresh Municipal Council, Nandurbar has applied above test. There is nothing on record to show that, the ratable value or capital value was assessed on the basis of standard rent of the building in dispute. The Municipal Council has failed to show that, the procedure as contemplated under the Act is duly followed. Further, the standard rent of the suit property is not fixed by the court is also admitted fact.

(19) On Perusal of record it seems that, objections raised by appellant has not been dealt with properly by the Municipal Council. Further, Municipal Tax appeal committee has decided the appeal without giving sound reasons. Thus, the Municipal council was not transparent while increasing the tax. It seems from the record that, the municipal council has not followed the procedure according to the Act for assessment of the suit property. The Municipal Council has claimed through disputed bill, the current dues as well as the previous arrears. The previous arrears are based on decision of Municipal Tax Appeal Committee. The committee has increased the tax exemplary without providing any sufficient reasons for its conclusion. Hence, claim of Municipal Council on the basis of said order of the committee seems to be arbitrary and improper. Considering above discussed legal and factual position I come to conclusion that, the bill bearing No. **48320** dated **28.08.2018** making claims towards property tax, allied taxes, previous

arrears and cess for the year 2018-2019 issued by the respondent is improper and it is liable to be set aside.

(20) The appellant has also prayed for refund of the excess amount of tax recovered by the respondent but the perusal of record does not show that, any excess amount is paid to the respondent. Hence, appellant is not entitled for refund of excess amount as prayed. Accordingly, I answered point No 1 and 2 in the affirmative and to answer point No. 3, I proceed to pass the following order.

ORDER

- (1) Appeal is allowed
- (2) Bill No.48320 dated 28.08.2018 issued by respondent is hereby set aside.
- (3) The respondent council is directed to make fresh assessment of tax of the property of appellant after giving opportunity of being heard and following due procedure of the Act.
- (4) Parties to bear their own costs.

Place:- Nandurbar.

Date:- 02-03-2020.

(Smt. S.A. Virani)
Judicial Magistrate First Class
Nandurbar, Dist.Nandurbar.