

CASE NO.:
Appeal (civil) 4052 of 1996

PETITIONER:
THE COMMISSIONER

Vs.

RESPONDENT:
GRIHA YAJAMANULA SAMKHYA & ORS.

DATE OF JUDGMENT: 02/05/2001

BENCH:
S.P. Bharucha, D.P. Mohapatra & S.N. Phukan

JUDGMENT:

With Civil Appeal Nos. 4057-4060
and
Civil Appeal Nos. 4061-4088 of 1996

J U D G M E N T

D.P. MOHAPATRA, J.
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The Andhra Pradesh High Court disposed of a batch of Writ Petitions involving the controversy regarding assessment of property tax of buildings located within the limits of different Municipal Corporations in the State by the common judgment rendered on 29th December, 1994. The conclusions arrived at by the High Court have been summed up as follows:

1) The power for determination of the rateable value of the building and the property-tax belongs to the commissioner which cannot be fettered by rules framed under the Acts;

2) The Committee constituted by the Government has no role to play and the Commissioner is not bound by their recommendations.

3) The annual rental value to be fixed by the Commissioner in the corporation areas shall be limited to the fair rent either determined or determinable under the A.P. Buildings (Lease, Rent and Eviction) Control Act.

4) Subject to the maximum as above the Commissioner may fix a lesser annual rental value keeping in consideration the factors as provided for in Section 212 of the Corporations Act.

5) The annual rental value in respect of all buildings in Municipal Areas, where rent has been determined under the rent control legislation, would be the gross annual rental on the basis of such rent determined unless, there is any fraud or collusion and that in respect of other buildings in the Municipality areas, the Commissioner has to determine

the factors under Section 87(2).

6) In determining the annual rental value the Commissioner may resort to plinth area method so as to serve him as a basis and guide but it will be open to the assesseees to contest the annual rental value, rateable value or property-tax determined in respect of their buildings and when objections are raised, the Commissioner has to decide those objectively without fettering his discretion because of the determination already made on the basis of the plinth area method.

7) Rules 3 to 7 of the Corporation and the Municipal rules are to be read only as enabling provisions for the Commissioner to aid him in discharge of his functions under the corporation or the Municipal Act to arrive at working figures for the purpose of determination but not as fettering his discretion in the matter as conferred upon him under the statutes.

8) The form-A publications already made would be deemed to have been issued by the Commissioner only on such basis as is stated above and not in pursuance of recommendations of the Committee.

9) Before Form-B is issued in respect of buildings and lands, the Commissioner shall afford opportunity to the assesseees to object to the determinations made and shall decide the objections on considerations as directed above and provisions of Sections 214 to 225 of the Corporations Act shall be scrupulously followed subject to the provisions of appeal. Xxx xxx xxx In the result the writ petitions are allowed to the extent indicated above, but in the circumstances there shall be no order as to costs.

The correctness of the said judgment is under challenge in these appeals filed by the Commissioners of the Municipal Corporations concerned and the Government of Andhra Pradesh. On perusal of the impugned judgment it appears that the main challenge in the case was against the determination of the annual rental value of the buildings within the area of Municipal Corporations and Municipalities in the State. Since the questions arising in all the appeals are similar and the appeals arise from a common judgment, all the cases were heard together and they are being disposed of by this judgment. Determination of the questions raised in these cases depends on the interpretation of the relevant provisions of the Hyderabad Municipal Corporations Act, 1955, the Andhra Pradesh Municipalities Act, 1955 as amended by the A.P. Municipalities Act, 1989, the Hyderabad Municipal Corporations (Assessment of Property Tax) Rules, 1990 (for short the Rules) and the A.P. Municipalities (Assessment of Taxes) Rules, 1990 (for short the Municipal Rules). Hyderabad Municipal Corporations Act, 1955 (for short the Corporation Act)

Under Section 2(3) building includes a house, out-house, stable, latrine, godown, shed, hut, wall, fencing, platform and any other structure whether of masonry, bricks, wood, mud, metal or of any other material whatsoever. In section 2(7) Commissioner is defined to mean the Municipal Commissioner for the city appointed under Section 104 and includes an acting Commissioner appointed under Section 110.

Section 2(48) defines rateable value to mean the value of any building or land fixed in accordance with the provisions of this Act and the rules made thereunder for the purpose of assessment to property taxes.

Chapter VIII of the Act contains the provisions regarding Municipal taxation. Sections 197 to 289 are included in the said chapter. In section 197(1)(i) it is provided that for the purposes of this Act the Corporation shall impose the following taxes namely :

a) taxes on lands and buildings. Xxx xxx xxx

In section 199 provisions regarding property taxes are made. Property taxes include (a) a general tax; (b) a water tax; (c) a drainage tax; (d) a lighting tax; (e) a conservancy tax. In sub-section(2) it is provided that save as otherwise provided in this Act these taxes shall be levied at such percentages of their rateable value as may be fixed by the Corporation. Provided that the aggregate of the percentages so fixed shall not in the case of any land or building be less than 15 per cent or greater than 30 per cent.

(emphasis supplied)

Sections 204 to 206 contain provisions regarding person or persons on whom rests the liability for payment of the property tax.

In Sections 207 to 211 are the provisions regarding notice of transfer etc., of premises assessable to property tax.

In sections 212 and 213 are contained the provisions regarding valuation of property assessable to property taxes.

Section 212 which deals with the determination of the rateable value reads as follows:

212. Rateable value how to be determined (1) (a) The annual rental value of lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to be let from month to month or from year to year with reference to its location, type of construction, plinth area, age of the building, nature of use to which it is put and such other criteria as may be prescribed.

(emphasis supplied)

(b) the annual rental value of lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to be let from month to month or from year to year, less deduction at the rate of 10% for buildings aged upto 25 years; and 20% for the buildings aged above 25 years; of that portion of such gross annual rent which is attributable to the buildings, apart from their sites and adjacent lands occupied as an appurtenance thereto and the said deduction shall be in lieu of all allowances for repairs or on any other account whatsoever.

Provided that a rebate of 40 per cent of the annual

rental value shall be allowed in respect of the residential buildings occupied by the owner inclusive of the deduction permissible elsewhere.

In Section 213 power is vested in the Commissioner to call for information or returns from owner or occupier or enter and inspect assessable premises. To enable the determination of the rateable value of any building or land and the person primarily liable for the payment of any property tax leviable in respect thereof the Commissioner may require the owner or occupier of such building or land, or of any portion thereof, to furnish him, within such reasonable period as the Commissioner specifies in this behalf with information or with a written return signed by such owner or occupier.

Section 218 mandates the Commissioner to give public notice as far as possible, when the entries required by clauses (a)(b)(c) and (d) of section 214 have been completed, and of the place where the ward assessment book or a copy of it, may be inspected.

In Section 220 provision is made for receipt of complaints against the amount of rateable value in the ward assessment book in the office of the Commissioner.

Section 223 mandates that 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. (emphasis supplied)

The Ward assessment books which are to be authenticated by the Commissioner, is provided under section 224 of the Act.

Rule 3 of the Municipal Corporation Rules contains the provision regarding annual rental value. Sub-rule(1) of Rule 3 provides that the annual rental value of lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to be let from month to month or from year to year with reference to its location, type of construction, plinth area, age of the building, nature to use to which it is put and such other criteria as may be specified.

(emphasis supplied)

In sub-rule(2) it is laid down that the Commissioner shall gather the information relating to the prevailing rental value as specified in Rules 4 to 6 so as to arrive at the rate of rent per month or per year per square meter of plinth area and then issue a draft notification in a daily newspaper having circulation in the district and in the District Gazette calling for objection and suggestions from the public so as to reach the Commissioner within 15 days from the date of publication of the draft notification, regarding the Division of the Corporation into Zones and monthly or yearly rental values per square metre of plinth area in each Zone. The rule further provides that the Commissioner should consider the objections and suggestions, if any, received in response to the said notification and revise the Zones and the monthly or yearly rents wherever necessary and that he shall place the proposals before the Committee constituted by the Government for its final recommendations. On the basis of the recommendations of the

Committee, the Commissioner shall issue a final notification in Form-A and publish it in a local newspaper having circulation in the District and in the District Gazette for information of the public.

Rule 4 contains provisions regarding division of Municipal Corporation area into Zones. Rule 5 is regarding classification of buildings and Rule 6 provides that after classification of the buildings based on the type of construction they shall be further classified taking into consideration the nature of use of such buildings.

Rule 7 which contains provision of fixation of monthly or yearly rent reads as follows (p.355): 7. Fixation of monthly or yearly rent : 1) All buildings located in a zone shall be classified based on types of construction and nature of use, 36 categories of buildings can be identified in each zone based on the above criteria. The Commissioner shall gather the information relating to the prevailing rental value of the buildings of various categories in a zone and arrive at average monthly or yearly rent fixable for each category of building per sq. metre of plinth area.

(2) The Commissioner shall then provisionally fix monthly or yearly rent for each category in a Zone per square metre of plinth area and notify the rate of monthly or yearly rental so fixed in Form A for adopting the said rates for fixation of monthly or yearly rental of the buildings in a zone and publish the same in the District Gazette and in a local newspaper having circulation in the district calling for objections or suggestions from the Public for such adoption regarding the division of Municipality into Zones. The notification shall contain the monthly or yearly rental value of the buildings in a Zone together with the localities/areas with particulars of door numbers included in the Zone. The objections or suggestions, if any, on the said notification shall have to be sent to the Commissioner within 15 days from the date of its publication. The Commissioner shall consider the objections and suggestions, if any, received in response to the said notification and revise the Zones and the monthly or yearly rental values wherever necessary. He shall then place all the proposals before the District Level Advisory Committee constituted by the Government for its final recommendations. Thereupon the Commissioner shall publish a final notification in Form A in the District Gazette and local newspaper having circulation in the District for information of the public. (Emphasis supplied) Note- Any notification issued prior to this amendment by the Commissioner shall be treated as a draft notification.

(3) The Commissioner shall fix the monthly or yearly rent for each category in a zone per square metre of plinth area and notify the rate of monthly or yearly rent so fixed in Form A for adopting the said rates fixation of monthly or yearly rental value of buildings in a zone and for information of the public. The Commissioner shall issue a notification in Form A furnishing the localities, area included in the zone and particulars of door numbers included in the zone. The notification in Form A shall be published in local newspapers having circulation in the area for information of the public.

(4) The Commissioner shall obtain information of all buildings in respect of plinth area, type of construction,

age of building, nature of use and fix monthly or yearly rental value as per the rate of monthly rents notified for each category of a building in a zone. The property tax assessment list of buildings shall be prepared in Form B.

(5) The rates of monthly or yearly rents for each category of building in a zone shall be revised once in 5 years taking into consideration the rent component of cost of living index prevailing at the time of preparation of new assessment books. In respect of value of the lands on which buildings constructed for the purposes of choultries, hotels, lodges and cinema theatres whose value increases and the income on the property does not increase, the average rental value shall be fixed with reference to the income of the property.

(6) In the case of items wherein varying rates are provided, the Municipal Corporation shall adopt the rates found suitable for the particular municipal area after taking the local conditions into account. The Commissioner may also increase the rates so adopted by the Municipal Corporation by not exceeding 10% over the rates aforesaid for superior quality of better type of flooring and fine plastering depending upon the workmanship and cost involved. Where the entire roof is not of the same description appropriate rates shall be adopted for the different types of roof for arriving at the total cost of erection. The rate of cost per square metre plinth area shall be determined in consultation with the concerned Local Engineer belonging to Roads and Buildings Department in consonance with the price levels prevailing at the time of such revision.

(7) In the case of buildings which are partly occupied by the owner and partly let out on rent, property tax shall be levied as per Rules 6 and 3 on owner occupied portions and rental portions respectively.

(8) For the purpose of assessing the vacant land, the estimated capital value of the land shall be the market value fixed by Registration Department for the purpose of registration.

[8. Any tax lawfully levied by or on behalf of the Corporation at the commencement of these rules shall notwithstanding any change in the method or manner of assessment under these rules, be continued till assessment under these rules is made.]

By virtue of section 5 of the A.P. Municipal Corporation (2nd Amendment) Act, 1995 (Act No.25 of 1995) the amendment made to the Hyderabad Municipal Act, 1955 by section 3 was extended to and made applicable also to the Vishakhapatnam and Vijayawada Municipal Corporations. During the hearing of the cases the main thrust of the arguments advanced by Shri R.F. Nariman, learned senior counsel appearing for the appellants was against the conclusions arrived at by the High Court (para 2) that the Committee constituted by the Government has no role to play and the Commissioner is not bound by their recommendations.; and (para 3) that the annual rental value to be fixed by the Commissioner in the corporation areas shall be limited to the fair rent either determined or determinable under the

A.P. Buildings (Lease, Rent and Eviction) Control Act and (para 7) that the provisions in rules 3 to 7 of the Corporation Rules are only enabling provisions for the Commissioner to help him in discharge of his functions but not to fetter his discretion in the matter.

The calculation of rateable value of a property for the purpose of determination of property tax by municipal corporation/council has engaged the attention of this Court from time to time.

In the case of the Corporation of Calcutta vs. Smt. Padma Debi and Others (1962(3) SCR 49), this Court held that on a fair reading of the express provisions of s.127(a) of the Calcutta Municipal Act, 1923, the rental value cannot be fixed higher than the standard rent under the Rent Control Act. It was further held that words gross annual rent at which the land or building might at the time of assessment reasonably be expected to let from year to year in s.127(a) of the Act implies that the rent which the landlord might realise if the house was let is the basis for fixing the annual value of the building. The criterion is the rent realisable by the landlord and not the value of the holding in the hands of the tenant. The value of the property to the owner is the standard in making the assessment. Interpreting the word reasonably it was observed that whether a particular act is reasonable or not depends on the circumstances in a given situation. A bargain between a willing lessor and a willing lessee uninfluenced by any extraneous circumstances may afford a guiding test of reasonableness. The phrase at the time of assessment means that the assessment commences with the making of the valuation under s.131 of the Act and ends with the determination of the objection under s.140 thereof. An event which takes place during this period may be relied upon for assessing the annual value under s. 127(a) of the Act.

In the case of Guntur Municipal Council v. Guntur Town Rate Payers Association (1971) 2 SCR 423), this Court held that under Section 82(2) of the Madras District Municipalities Act (5 of 1920) the test is what rent the premises can lawfully fetch if let out to a hypothetical tenant. The municipality is not free to assess any arbitrary annual value but has to look to and is bound by the fair or the standard rent which would be payable for particular premises under the Rent Control Act in force during the year of assessment. This Court did not agree that the language of s. 82(2) of the Municipalities Act any distinction can be made between buildings the fair rent of which has been actually fixed by the Controller and those in respect of which no such rent has been fixed. This Court further held that the assessment of valuation must take into account the measure of fair rent as determinable under the Act. It may be that where the Controller has not fixed the fair rent the municipal authorities will have to arrive at their own figure of fair rent but that can be done without any difficulty by keeping in view the principles laid down in section 4 of the Act for determination of fair rent. In Corporation of Calcutta vs. Life Insurance Corporation of India (1971 (1) SCR 248), this Court took note of the decision in Smt. Padma Debi's case (supra) and the interpretation of the proviso to section 168(1) of the Calcutta Municipal Corporation Act, 1951 and observed:

By the addition of the proviso, in our judgment, the meaning of the expression gross rent at which the land or building might reasonably be expected to let is not altered. In the present case, there is no order of the Controller fixing standard rent under s. 9 of the West Bengal Premises Rent Control (Temporary Provision) Act, 1950, but the standard rent stands determined by the definition of that expression in s. 2(1)(b) of that Act, which provides (omitting parts not relevant):

standard rent in relation to any premises means-

(a) (b) where the rent has been fixed under section 9, the rent so fixed; or at which it would have been fixed if application were made under the said section.

We are therefore of the view that the High Court was right in assessing the annual value on the basis of the standard rent as statutorily determined.

This Court summed up its views in the following words:

But under the Act the quantum of the consolidated rate depends upon the annual value of land or building on the gross rent for which the land or building might reasonably be expected to let, and not the gross rent at which the subordinate interest of a tenant may be expected to be sublet. In determining the assessment of annual value, the assessing authority is not concerned with the rent which the tenant may receive from his sub-tenant. It is the gross rent which the owner may realize by letting the land or building under a bargain uninfluenced by extraneous considerations which determines the annual value. Section 193 only provides for apportionment of consolidated rate : it is irrelevant in determining annual value.

In the case of Srikant Kashinath Jituri vs. Corporation of the City of Belgaum ((1994) 6 SCC 572), a Bench of three learned Judges of this Court expressed the doubts as to the soundness and continuing relevance of the view taken by this Court in several earlier decisions that the property tax must be determined on the basis of fair rent alone regardless of the actual rent received. The observations of this Court are quoted herein-below:

Before parting with this appeal, we feel compelled to express our doubts as to the soundness and continuing relevance of the view taken by this Court in several earlier decisions that the property tax must be determined on the basis of fair rent alone regardless of the actual rent received. Fair rent very often means the rent prevailing prior to 1950 with some minor modifications and additions. Property tax is the main source of revenue to the municipalities and municipal corporations. To compel these local bodies to levy and collect the property tax on the basis of fair rent alone, while asking them at the same time to perform all their obligatory and discretionary functions prescribed by the statute may be to ask for the discretionary functions prescribed by the statute may be to ask for the impossible. The cost of maintaining and laying roads, drains and other amenities, the salaries of staff and wages of employees in short, all types of expenditure have 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 the actual rent

received is neither justified nor practicable. None of the enactments says so expressly. The said principle has been evolved by courts by a process of interpretation. Probably a time has come when the said principle may have to be reviewed. In this case, however, this question does not arise at this stage and, therefore, it is not necessary to express a final opinion on the said issue.

In the case of Asstt. General Manager, Central Bank of India and others vs. Commissioner, Municipal Corporation for the City of Ahmedabad and others (1995 (4) SCC 696), this Court interpreting section 2(1-A)(ii), provisos (aa) & (aaa) held :

Accordingly, we hold that proviso (aa) means what it says and has to be applied and followed in the cases covered by it. So far as the Municipal Corporations Act is concerned, the annual rent is the actual rent received where the standard rent is not fixed under Section 11 of the Bombay Rent Act and it constitutes the basis for determining the annual letting value, rateable value and property taxes. That is the plain effect and meaning of proviso (aa). So far proviso (aaa) is concerned, an apprehension was expressed that it would enable the Commissioner to question the actual rent received in every case and it would be an endless enquiry. In our opinion, however, the said provision is conceived to meet situations where the rent put forward as the actual rent received is not a genuine plea, i.e., where it is a false plea. A landlord may let out a building at less than market rent for many a reason, e.g., the tenant is a close friend or a close relative or because the tenant is a charitable or religious organisation. Proviso (aaa) does not enable the Commissioner to ignore such situation for, in such cases, the rent actually received is the genuinely stipulated one. This power is reserved to the Commissioner only with a view to ensure that by merely putting forward a figure which is not true, persons do not escape the correct levy.

Recently, in the case of East India Commercial Co. Pvt. Ltd. vs. Corporation of Calcutta (1998) 4 SCC 368, this Court taking note of several earlier decisions including Corporation of Calcutta vs. Padma Debi (supra), Guntur Municipal Council v. Guntur Town Rate Payers Association (supra), Corporation of Calcutta vs. Life Insurance Corporation of India (supra), Municipal Corporation v. Ratnaprabha (supra) and Central Bank of India vs. Municipal Corporation for the City of Ahmedabad (supra), summed up the gist of the principles deducible from the decisions in the following words :

From the aforesaid decisions, the principle which is deducible is that when the Municipal Act requires the determination of the annual value, that Act has to be read along with Rent Restriction Act which provides for the determination of fair rent or standard rent. Reading the two Acts together the rateable value cannot be more than the fair or standard rent which can be fixed under the Rent Control Act. The exception to this rule is that whenever any Municipal Act itself provides the mode of determination of the annual letting value like the Central Bank of India case relating to Ahmedabad or contains a non obstante clause as in Ratnaprabha case then the determination of the annual letting value has to be according to the terms of the Municipal Act. In the present case, Section 168 of the

Municipal Act does not contain any non obstante clause so as to make the Tenancy Act inapplicable and nor does the Act itself provide the method or basis for determining the annual value. This Act has, therefore, to be read along with determining the annual value. This Act has, therefore, to be read along with Tenancy Act of 1956 and it is the fair rent determinable under Section 8(1) (d) which alone can be the annual value for the purpose of property tax.

From the statutory provisions noted above, it is clear@@

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that the Act provides that the tax shall be levied at such percentages of the rateable value as may be fixed by the Corporation. It further provides the method and manner of determination of the rateable value. The determination of the annual rental value which is the basis for calculation of the rateable value is also provided in the Act and the Rules. The Act mandates that the Commissioner shall determine the tax to be paid by the person concerned in the manner prescribed under the statute and the rules. It is our view that the Act and the Rules provide a complete code for assessment of the property tax to be levied for the buildings and lands within the municipal corporation. There is no provision in the statute that the fair rent determined under the Rent Control Act in respect of a property is binding on the Commissioner. The legislature has wisely not made such a provision because determination of annual rental value under the Act depends on several criteria. The criteria for such determination provided under the Act may not be similar to those prescribed under the Rent Control Act. Further the time when such determination was made is also a relevant factor. If in a particular case the Commissioner finds that there has been a recent determination of the fair rent of the property by the authority under the Rent Control Act he may be persuaded to accept the amount as the basis for determining the annual rental value of the property. But that is not to say that the Commissioner is mandatorily required to follow the fair rent fixed by the authority under the Rent Control Act. The High Court therefore did not commit any error in holding that the determination of fair rent under the Rent Control statute will not be binding on the Commissioner for the purpose of assessment of property tax under the Act.

Coming to the Committee set up by the State Government, we find that the State Government constituted the Committee under an executive order. Our attention has not been drawn to any provision of the Act which empowers the State Government to constitute such a Committee under the statute. A provision is made in the Act for District Level Committees; but its role is only advisory. The Committee set up by the State Government has no statutory existence. Its recommendations are advisory and are not binding on the Commissioner. In this regard also the High Court cannot be said to have committed any illegality in holding that the powers of the Commissioner are not fettered by the recommendation of the Committee.

The intent and purpose of the exercise to determine the annual rental value is to avoid arbitrariness in the process of assessment of the tax and also to ensure that the landlord does not escape payment of amount due as tax by taking recourse to fraudulent and manipulated underwritings of the rental value. For proper implementation of

the provisions of the Municipal Act it is necessary that the power of assessment should be vested in an authority specified in the statute. The importance of specifying the authority to assess property tax under the Municipal Act cannot be over-emphasised. Keeping in view the incidence of the tax the persons who are to bear the burden of payment of the tax and the effect it will have on the funds of the municipalities for the purpose of development of the area, the legislature vested the power in the Commissioner of the Municipal Corporation to complete the exercise. As noted earlier, the statute makes provision for setting up committees like the District level Committee; but such committees play an advisory role for rendering assistance to the Commissioner in the matter. Therefore, the order of the State Government making the decision of the Committee binding on the Commissioner is not sustainable and the view taken by the High Court in this regard is unassailable.

On the discussions in the foregoing paragraphs, the decision that emerges is that only the findings/decision of the High Court in point nos.(3) and (5), as stated in the judgment under challenge, are to be set aside. It is ordered accordingly. The appeals are allowed in part. No costs.

...J. (S.P.Bharucha)

...J. (D.P.Mohapatra)

...J. (S.N.Phukan) New Delhi; May 2, 2001