

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :  
NAGPUR BENCH : NAGPUR.

Civil Revision Application No.74 of 2012.

- 1] Bestech Hospitality Pvt. Ltd.  
a Private limited Company  
having its Corporate Office at 124, Sector 44,  
Urban Estate, Gurgaon.
- 2] Bestech India Private Ltd.  
a Private limited Company  
having its Corporate Office at 124, Sector 44,  
Urban Estate, Gurgaon.
- 3] Hiteshi Leasing And Housing Pvt. Ltd.,  
a Private Limited Company  
having its Corporate Office at 124, Sector 44,  
Urban Estate, Gurgaon.
- 4] Babylon Builder Private Ltd.,  
a Private limited Company  
having its Corporate Office at 124, Sector 44,  
Urban Estate, Gurgaon.
- 5] Dharmendra Bhandari s/o D.P. Bhandari,  
aged about 47 years, Occ.-Business,  
R/o.-A-126, Sushantlok Gurgaon,
- 6] Sunil Satija s/o T.I. Satija,  
aged about 46 years, Occ.-Business,  
R/o.-A-125, Sushant Lok Gurgaon,

All [1] to [6] are acting through their  
authorized representative

Shri Kavindarkumar s/o Jogindarnath Talwar,  
Aged about 47 years, Occ.-Business,  
R/o.-Bairamji Town, Nagpur.

.... Applicants.

Versus

1] Assistant Commissioner, Zone-4,  
Nagpur Municipal Corporation, Nagpur,  
Ghat Road, Near Bangali High School, Nagpur,

2] The Assessor,  
Nagpur Municipal Corporation, Nagpur,  
Ghat Road, Near Bangali High School,  
Nagpur.

.... Non applicants.

Shri P.V. Vaidya, Advocate for applicants.

Shri J.B. Kasat, Advocate for respondents.

Coram : R. K. Deshpande, J.

Dated : 3<sup>rd</sup> April, 2013.

ORAL JUDGMENT

1. Admit. Heard the matter finally by consent of the learned

Counsels appearing for the parties.

2. The challenge in this civil revision application is to the order dated 14-12-2011 passed by the learned District Judge-4, Nagpur in Misc. Civil Appeal No.269 of 2010. The Petition also challenges the order dated 22-7-2010 passed by the Objection Officer, Dhantoli Zone No.4, Nagpur Municipal Corporation, Nagpur, rejecting the objection to the notice dated 26-3-2008 demanding the property tax for the period from 1-4-2003 to 1-4-2007.

3. The objection raised by the applicants was that no assessment could have been done with retrospective effect for the period from 1-4-2003 to 1-4-2007. This objection is rejected by the Objection Officer holding that the power to make the assessment with retrospective effect is conferred under Section 134(3) of the City of Nagpur Corporation Act,1948 [for short, 'the said Act'] read with Rule 13(iii) of the Property Tax Bye-laws. It is held that by an order dated 21-4-2003, passed under the Urban Land (Ceiling and

Regulation) Act, 1976 [for short, 'the U.L.C. Act'], the land in question was exempted by permitting the land owner to use the said land for the purposes of providing plots and construction of the tenements and hence it was assessable to property tax with effect from 1-4-2003. This fact according to the Corporation, was suppressed and, hence, the assessment was reopened in terms of Rule 13(iii) of the Property Tax Bye-laws and the applicants are called upon to make the payment.

4. The learned District Judge-4, Nagpur in Misc. Civil Appeal No.269 of 2010 preferred under Section 130 of the said Act has recorded the finding that the appeal was barred by limitation of 30 days prescribed under Section 130(1) and (2) of the said Act. On merits also the findings are recorded that the assessment was legal and proper. Hence, this civil revision application is preferred under Section 388 of the said Act by the applicant/objectors.

5. The undisputed factual position is that prior to 1-4-2003 the land in question was an agricultural land which was not and could not be the subject to any assessment of property tax at the instance of the Corporation. However, it was subject to the proceedings of determination of surplus land under the U.L.C. Act. The applicant purchased the said land on 31-3-2007, from the original owner and got it exempted under the provisions of U.L.C. Act, by an order dated 21-4-2003, passed by the Competent Authority. Thereafter, the applicant applied for conversion of land into non agricultural purpose. By an order dated 26-11-2007 passed by the Competent Authority under the Maharashtra Land Revenue Code, 1966 [for short, 'the M.L.R. Code'] the land in question was permitted to be converted into non agricultural purpose. The lay out plan was submitted for sanction to the Nagpur Municipal Corporation and on 16-12-2008 the building permit was issued. Subsequent thereto, the construction was carried out.

6. I have gone through the orders passed by the Objection Officer and the District Court which are impugned in this civil revision application. There is no basis for holding that the land in question becomes subject to the assessment of taxation as non agricultural land by the Municipal Corporation, with effect from 1-4-2003. The order dated 21-4-2003 passed by the Competent Authority under the U.L.C. Act, merely granted exemption in respect of the land in question, by permitting user of the land for providing plots and construction of tenements in accordance with the terms and conditions of the exemption. Unless permission is granted by the Competent Authority under the M.L.R. Code, the land cannot be put to use for non agricultural purpose. Hence, the Authority and the Court below committed an error in assessing the land in question to impose property tax with effect from 21-4-2003. The order of conversion of land, into non agricultural purpose, was passed by the Competent Authority under the M.L.R. Code, for the

first time on 26-11-2007. Hence, the land in question could be made subject to assessment of property tax only with effect from 26-11-2007 and not before that date.

7. The appellate Court has dismissed the appeal on the ground that it is barred by limitation. The order was passed by the Objection Officer on 22-7-2010, a notice of demand was issued on 23-7-2010, which was undisputedly received by the applicant. Relying upon the provisions of Rule 19(xiv) of the Property Tax Bye-laws, it is urged that the limitation of 30 days for filing an appeal under Section 130(1) and (2) of the said Act, starts from the date of service of notice of demand on 23-7-2010. The appeal was filed on 13-12-2010, hence, the appellate Court has held it was barred by limitation.

8. Undisputedly, the order containing reasons for rejection of

the objection passed on 22-7-2010, was not communicated to the applicants. However, on the basis of this order, a demand notice dated 23-7-2010 was served upon the applicants. Rule 19(xiv) of the Property Tax Bye-laws states that after hearing the parties and taking evidence, the investigating officer shall determine the objection and communicate the result to the objector personally, if present, otherwise by under a certificate of posting. It is implicit in the said Rule to communicate the order of rejection of objection containing the reasons. It is from the date of communication of such order, the period of limitation would start running. The applicant received the copy of the order containing reasons on 12-11-2010 pursuant to their application under the Right to Information Act submitted on 20-10-2010. The appeal was filed on 13-12-2010. Hence, it was within the period of limitation.

9. The contention of Shri Kasat, the learned Counsel appearing

for the respondents that the period of limitation should start from running the service of notice of demand on 23-7-2010, cannot be accepted for the reason that unless the reasons for rejection of the objection are communicated, the opportunity of file an appeal cannot be availed. The reasons for rejection constitute the foundation for appeal by raising appropriate grounds and without that no appeal can be preferred. The reasons are communicated on 12-11-2010. In view of this, the appellate Court committed an error of law in holding that the appeal was barred by limitation.

10. In the factual background as indicated above, there is no occasion to deal with the question as to whether the power under Rule 13(iii) of the Property Tax Bye-laws to reopen assessment with retrospective effect. Even assuming that it confers such a power, in view of the findings recorded above, the question loses its significance.

11. For the reasons stated above, the civil revision application is allowed. The Judgment and order dated 14-12-2011 passed by the learned District Judge-4, Nagpur in Misc. Civil Appeal No. 269 of 2010 is hereby quashed and set aside along with the order dated 22-7-2010 passed by the Objection Officer, Dhantoli Zone-4, Nagpur Municipal Corporation, Nagpur. A notice of demand dated 26-3-2008 issued to the petitioner is hereby quashed and set aside.

12. It is made clear that this Judgment shall not come in the way of the respondents to make the assessment after 26-11-2007 i.e passing of the order by the Additional Collector, Nagpur granting permission to convert the land for non agricultural purpose. In view of the aforesaid Judgment, if the applicants are entitled to make adjustment of the amount which is already said to have been paid, the Authorities concerned shall act accordingly.

13. Rule is made absolute in above terms. No order as to costs.

JUDGE

Deshmukh