

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5242 OF 2008

[Arising out of SLP (C) No. 4351 of 2007]

M. K. Palia & Sons Pvt. Ltd.

.. Appellant

Versus

Mumbai Municipal Corporation

& Another

..

Respondents

J U D G M E N T

Dalveer Bhandari, J.

1. Leave granted.

2. This appeal is directed against the judgment of the Bombay High Court dated 25.9.2006 passed in Writ Petition No.1989 of 2006.

3. Brief facts giving rise to the present appeal are recapitulated as under:

The appellant is one of the 600 lessees of the Mumbai Port Trust, who after a lapse of 23 years has challenged the rateable value fixed by the Mumbai Municipal Corporation in the year 1982.

4. There are 600 lessees and the appellant is one of them. According to the learned counsel appearing for the respondent Mumbai Municipal Corporation, 599 lessees have already paid the rateable value fixed by the Mumbai Municipal Corporation. The appellant has challenged the rateable value fixed in the year 1982 by filing a complaint in November, 2005. The appellant is the lessee of commercial premises admeasuring 845.70 sq. meter area i.e. 9048 sq. ft.

5. Under Section 162 of the Mumbai Municipal Corporation Act, 1888 (for short 'the Act'), the Commissioner has to give fifteen days notice from the date of publication of such notice according to the scheme of the Act. The notice has to be advertised in the local newspapers and published in the Official Gazette and complaints against the amount of any rateable value shall be entertained by the office.

6. In order to properly comprehend the controversy in this case, it is imperative to understand the scheme of the Act by carefully perusing the provisions of the Act.

7. Section 156 of the Act deals with rateable value of each such building and land determined in accordance with the provisions of the Act. Section 156 of the Act reads as under:

“156. Assessment book what to contain- The Commissioner shall keep a book, to be called “the assessment book” which shall be entered every official year-

- (a) a list of all buildings and lands in Brihan Mumbai distinguishing each either by name or number, as he shall think fit;

- (b) the rateable value of each such building and land determined in accordance with the foregoing provisions of this Act;
- (c) the name of the person primarily liable for the payment of the property taxes, if any, leviable on each such building or land;
- (d) if any such building or land is not liable to be assessed to the general tax, the reason 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 the period fixed by public notice, as hereinafter provided, for the receipt of complaints against the amount of rateable value entered in any portion of the assessment-book, has expired, and in the case of any such entry which is complained against, when such complaint has been disposed of in accordance with the provisions hereinafter contained, the amount at which each building or land entered in such portion of the assessment-book is assessed to each of the property-taxes, if any, leviable thereon;
- (f) if under section 169, a charge is made for water supplied to any building or land by measurement or the water taxes or charges for water by measurement are compounded for, or if, under section 170, the sewerage taxes or sewerage charges for any building or land are fixed at a

special rate, the particulars and amount of such charges, composition or rates;

- (g) such other details, if any, as the Commissioner from time to time thinks fit to direct.”

8. Sections 160 and 162 of the Act read as under:

“160. Public notice to be given when valuation of property in any ward has been completed.

(1) When the entries required by clauses (a), (b), (c) and (d) of section 156 have been completed, as far as practicable, in any ward assessment book, the Commissioner shall give public notice thereof and of the place where the ward assessment-book, or a copy of it, may be inspected.

(2) Such public notice shall be given by advertisement in the Official Gazette and in the local newspapers, and also by posting placards in conspicuous places throughout the ward.

162. Time for filing complaints against valuations to be publicly announced.

(1) The Commissioner, shall at the time and in the manner prescribed in section 160, give public notice of a day, not being less than fifteen days from the publication of such notice, on or before which complaints against the amount of any rateable value entered in the ward assessment-book will be received in his office.

(2) Special notice to be issued in certain cases.-

In every case in which any premises have for the first time been entered in the assessment-book as liable to the payment of property rates or in which the rateable value of any premises liable to such

payment has been increased, the Commissioner shall, as soon as conveniently may be after the issue of the public notice under sub-section (1), give a special written notice to the owner or occupier of the said premises specifying the nature of such entry and informing him that any complaint against the same will be received in his office at any time within fifteen days from the service of the special notice.”

9. Under section 164 of the Act, all complaints received by the Commissioner are properly investigated and under Section 165 of the Act, those complaints are disposed of in the presence of the complainants. Sections 164 and 165 of the Act read as under:

“164. Notice to complaints 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.

165. Hearing of complaint.- (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 the complaints kept under section 164, and any necessary amendment shall be made in accordance with such result, in the assessment-book.”

10. Section 167 is also relevant and the same reads as under:

“167. Assessment-book may be amended by the Commissioner during the official year.- (1) The Commissioner may, upon the representation of any person concerned, or upon any other information, at any time during the official year to which an assessment-book relates amend the same by inserting therein the name of any person whose name ought to be so inserted or any premises previously omitted or by striking out the name of any person not liable for the payment of any property tax, or by increasing or reducing the amount of any rateable value and of the assessment based thereupon, or by making of cancelling an entry exempting any premises from liability to any property-tax.

(2) Every such amendment shall be deemed to have been made, for the purpose of determining the liability or exemption of the person concerned in accordance with the altered entry, from the earliest day in the current official year when the circumstances justifying the amendment existed.”

11. According to the scheme of the Act, any person aggrieved by disposal of the complaint regarding fixation of rateable value can challenge the same by filing an appeal under section 217 of the Act.

12. Section 217 of the Act reads as under:

217. Appeals when and to whom to lie. (1)

Subject to the provisions hereinafter contained, appeals against any rateable value or tax fixed or charged under this Act shall be heard and determined by the Chief Justice of the Small Cause Court.

(2) But no such appeal by the Chief Judge of the Small Cause Court shall be entertained by the said Chief Judge, unless—

(a) it is brought within fifteen days after the accrual of the cause of complaint;

(b) in the case of an appeal against a rateable value a complaint has previously been made to the Commissioner under section 163 as such complaint has been disposed of;

(c) in the case of an appeal against any amendment made in the assessment book under section 167 during the official year, a complaint has been made by the person aggrieved within fifteen days after the first received notice of such amendment, and his complaint has been disposed of;

(d) in the case of an appeal against a tax, or in the case of an appeal made against rateable value the amount of the disputed tax claimed from the appellant, or the amount of the tax chargeable on the basis of the disputed rateable value, up to the date of filing of the appeal, has been deposited by the appellant with the Commissioner.

(3) In the case of any appeal entertained by the Chief Judge, but not heard by him before the date of commencement of the Maharashtra Municipal Corporation (Amendment) Act, 1975, the Chief Judge shall not hear and decide such appeal unless the amount of the dispute tax claimed from the appellant, or the amount of the tax chargeable on the basis of the disputed rateable value, as the case may be, up to the date of filing the appeal, has been deposited by the appellant with the Commissioner within thirty days from the date of publication of a general notice by the Commissioner in this behalf in the local newspapers. The Commissioner shall simultaneously serve on each such appellant a notice under section 484 and 485 and other relevant provisions of this Act, for intimating the amount to be deposited by the appellant with him.

(4) As far as possible, within fifteen days from the expiry of the period of thirty days prescribed under sub-section (3) the Commissioner shall intimate to the Chief Judge the names and other particulars of the appellants who have deposited with him the required amount within the prescribed period and the names and other particulars of the appellants who have not deposited with him such amount within such period. On receipt of such intimation, the Chief Judge shall summarily dismiss the appeal of any

appellant who has not deposited the required amount with the Commissioner within the prescribed period.

(5) In the case of any appeal against any rateable value or property tax fixed or charged under this Act, which may have been entertained by Chief Judge before the commencement of the Act aforesaid, or which may be entertained by him after the said date, the Chief Judge shall not hear and decide such appeal unless the property tax, if any, payable on the basis of the original rateable value plus eighty *per centum* of the property tax claimed from the appellant on the increased portion of the rateable value of the property out of the property tax claimed under each of the bills, which may have been issued, from time to time, since the Filing of appeal, is also deposited with the Commissioner within the period prescribed under the Act. In case of default of the appellant, on getting an intimation to that effect from the Commissioner, at any time before the appeal is decided, the Chief Judge shall summarily dismiss the appeal:

Provided that in case the appeal is decided in favour of the Corporation, interest at 6.25 *per centum per annum* shall be payable by the applicant on the balance amount of the property tax from the date on which the amount of property tax was payable:

Provided further that, in case the appeal is decided in favour of the appellant and the amount of property tax deposited with the Corporation is more than the property tax payable by him, the Commissioner shall adjust the excess amount of the property tax with interest at 6.25 *per centum per annum* from the date on which the amount is

deposited with the Corporation towards the property taxes payable thereafter.”

13. The entire scheme of challenging the rateable value has been fixed by the Corporation. There is also a statutory provision of filing an appeal after the complaint has been decided by the concerned authority.

14. In the instant case, the appellant has approached the court regarding fixation of rateable value by filing a writ petition after a lapse of 23 years. The other 599 lessees of the building have already paid the rateable value fixed by the respondent Corporation. Even the appellant has also regularly paid rateable value fixed by the Corporation till 1999.

15. In the impugned judgment of the Division Bench of the High Court dated 25.9.2006, it has been rightly observed that there seems to be no justification of approaching the court after a lapse of 23 years.

16. Faced with this situation, the learned counsel for the appellant tried to take shelter of the judgment of this Court in ***Jamshed Hormusji Wadia v. Board of Trustees, Port of Mumbai & Another*** (2004) 3 SCC 214. We have carefully perused this judgment. It does not help the appellant at all. The submission of the appellant that they are entitled to seek review of the rateable value on the basis of ***Wadia's*** judgment (supra) is totally devoid of any merit.

17. Nine-Judge Bench of this court in ***Mafatlal Industries Ltd. & Others v. Union of India & Others*** (1997) 5 SCC 536 held that “once assessment or levy became final in case of a manufacturer–assessee, he cannot later file suit or writ petition claiming refund on the ground that decision of the court or tribunal in another person’s case led him to discover the mistake of law under which he paid the duty”.

18. The High Court correctly observed that it was not a case of unjust enrichment made under the mistake of law by the respondent.

19. In pursuance to the notice issued by this court, the Assistant Assessor and Collector of Mumbai Municipal Corporation has filed a detailed counter affidavit. It was submitted that the appellant has not only failed to file any complaint in the year 1984 or in the subsequent years challenging the increase in the rateable value but also paid the taxes on the basis of increase in rateable value without any demur or protest. Regarding increase in the rateable value, by no stretch of imagination, it can be said to be excessive, disproportionate or contrary to the provisions of the Act. The appellant is carrying on commercial activities in the prominent area of Mumbai and cannot be permitted not to pay a reasonable rateable value of the premises.

20. In the counter affidavit, it is also incorporated that the rateable value of the property was increased in accordance

with law in the year 1984-85 on account of the increase in the lease rent by the Mumbai Port Trust. The appellant has paid the taxes as per rateable value fixed by the Corporation upto the year 1999 and the same has attained finality under section 219 of the Act and cannot be re-opened with retrospective effect.

21. Section 219 deals with unappealed value and taxes and decisions on appeal to be final and the same reads as under:

“219. Unappealed values and taxes and decisions to appeal to be final.- (1) Every rateable value fixed under this Act against which no complaint is made as hereinbefore provided, and

the amount of every sum claimed from any person under this Act on account of any tax, if no appeal therefrom is made as hereinbefore provided, and

the decision of the Chief Judge aforesaid upon any appeal against any such value or tax, if no appeal is made therefrom under section 218D, shall be final.

(2) Effect shall be given by the Commissioner to every decision of the said Chief Judge on any appeal against any such value or tax.”

22. It was submitted by the respondent that in view of the aforesaid provisions it is not within the powers of the Commissioner or the respondent to reopen the assessment or make any alternation in the assessment done with retrospective effect.

23. Though it was not necessary to examine the detailed averments of the complaint, however, in order to satisfy ourselves that there is no injustice done to the appellant, we have also looked into the facts of this case. The appellant's property No. 2797(1) being used for commercial purpose was assessed on 31st March, 1961 at the rateable value of Rs.20,100/- per annum. The premises was assessed as land with C.I. Shed having an area of 2860 sq. ft. assessed at the rate of Rs.8/- per brass and remaining land for storage was assessed at the estimated rent of Rs.1,766/-. The property was, therefore, assessed at a rateable value of Rs.20,100/- per annum with effect from 31.3.1961. The rateable value of the property was revised to Rs.25,645/- in the year 1984-85 on account of increase in rent by the owner. There has been

increase of Rs.5,545/- in the rateable value after about 23 years, which cannot be said to be exorbitant by any stretch of imagination. It may be pertinent to mention that rateable value for 2006-07 is still Rs.25,645/-. The appellant continued to pay increased rateable value without any demur till 1999. The complaint for the first time was filed on 12.11.2005.

24. It is incorporated that the appellant has, however, not paid property tax from the year 2000 till December, 2007. The total amount of Rs.5,86,185/- is outstanding by way of taxes an amount of Rs.64,216/- by way of penalty and Rs.750/- towards fees for notice of demand. Admittedly, these amounts have not been paid by the appellant.

25. We do not want the appellant to get undue advantage over all other 599 lessees, who have been regularly paying the taxes within the prescribed time. The appellant by filing a frivolous petition should not get unjust advantage over other lessees, therefore, we direct the appellant to pay the entire

outstanding amount with 10% interest per annum from the date when the amount became due and payable along with penalty and the fees towards notice of demand being charged by the respondent. In case the amount is not paid by the appellant within two months time, then respondent no. 1 would be entitled to get 15% interest on the outstanding taxes from the date when it becomes due and payable and would also be at liberty to take appropriate steps in accordance with law.

26. This appeal, being devoid of any merit, is accordingly dismissed with costs.

.....J.
(Dalveer Bhandari)

.....J.
(Harjit Singh Bedi)

**New Delhi;
August 26, 2008.**