CNR No.MHSCA20011092019

Presented on : 30.03.2019

Registered on : 03.01.2022

Decided on : 10.10.2023

Period required for disposal:

years-04 months-06 days-11

Exhibit___

IN THE COURT OF SMALL CAUSES AT MUMBAI

MUNICIPAL APPEAL NO. 01 Of 2022

Mittal Court Premises Co-operative Society Limited)
a society registered under the provisions of the)
Maharashtra Co-operative Societies Act, 1960)
having its registered office at Basement, Mittal Court,)
Plot No.224, Backbay Reclamation Scheme III,)
Nariman Point, Mumbai – 400 021.)...Appellants

Versus

1. The Municipal Corporation of Greater Mumbai,)
a statutory corporation constituted under the)
Mumbai Municipal Corporation Act, 1888)
having its office at Municipal Corporation)
Head Office, Mahapalika Bhavan,)
Mahapalika Marg, Fort, Mumbai - 400 001.)
2.The Municipal Commissioner)
The Municipal Corporation of Greater Mumbai,)
having his office at Municipal Corporation Head)
Office, Mahapalika Bhavan, Mahapalika Marg,)
Fort, Mumbai - 400 001.)..Respondents

Appearance:-
Mr. T. C. Deshpande, Ld. Advocate for the Appellants.
Mr.Som Sinha i/b. Mrs. Rupali S. Adhate, Ld. Advocate for the Respondents.

Coram :- Smt. T. G. Mitkari,
Addl. Chief Judge
C.R.No.18
Date : 10.10.2023

ORAL JUDGMENT :

1. The Appellant is a registered Co-operative Housing Society under the Maharashtra Co-operative Societies Act,1960 having its registered office at Basement, Mittal Court, Plot No.224, Backbay Reclamation Scheme III, Nariman Point, Mumbai – 400 021.

2. The respondent No.1 Municipal Corporation of Greater Mumbai (in short the "**MCGM**") is the statutory Corporation rendering Municipal Services to the City and Suburbs of Mumbai. The respondent No.1 is empowered to levy and collect property tax on immovable property, being land and buildings situated within its municipal are based on the 'Annual Rateable value' of such land and buildings, but subject to the provisions of The Mumbai Municipal Corporation Act,1888 (in short the "**MMC Act**"). The respondent No.2 is the Municipal Commissioner appointed under the provisions of the MMC Act.

3. The appellants came with the case that they are entitled to the leasehold interest in the land bearing Plot No.224 of Block III of Backbay Reclamation Scheme at Nariman Point, Mumbai. The appellant society is the owner of the building known as "Mittal Court" constructed on this land comprising of basement, ground and 17 upper floors, assessed by the respondents under Ward No.A-1315

(140), A/c No. AX1901210000000 (hereinafter referred to as "**appeal property**"). The appeal property is non-residential (commercial) building comprises of 240 Units, owners of which are members of appellant society. Some of the Units in the appeal property are given on leave and license / lease basis and/or are let out by the respective members to third persons while the balance Units are self-occupied by the owners/members of the appellant.

4. The appellant further pleaded that, prior to 01.04.2000, the Rateable Value of the appeal property of the appellant society was arrived at by assessing the self occupied units at the rate of Rs.250/- per 10 sq. meters, the units occupied on leave and license by banks at the rate of Rs.600/- per 10 sq.meters and the units occupied on leave and license other than bank at the rate of Rs.500/- per sq.meters. With effect from 31.03.2000, on coming into force of the Maharashtra Rent Control Act, 1999 (in short "**MRC Act**"), the MCGM changed the basis of fixing rateable value. The appellant claimed that the rateable value for Units given on leave and license / lease basis and/or are let out was increased despite there was no change in circumstances warranting a steep revision in rateable value.

5. The appellant further contended that, in view of the MRC Act having come into force with effect from 31.03.2000 and certain premises being exempt from the Rent Control Act. Accordingly, the respondents increased the rent for units given on leave and licence / lease basis to others at the rate of Rs.1950/- per 10 sq.mtrs from Rs.500/- per 10 sq.mtrs. In respect of units which were occupied by owner members, the respondents continue to apply the rate of Rs.250/- per $10m^2$. The rates for owners members occupying basement were fixed at Rs.125/- per 10 sq.mtrs. The appellant

pleaded that they filed complaints with respect to assessment of rateable value for the period 01.04.2000 to 31.03.2008 for which taxes has already been cleared.

6. The appellant further contended that, thereafter the respondents issued special notice for the period 01.04.2008 to 31.03.2010 by which the rateable value was exorbitantly increased to more than three times the rateable value fixed for previous period of 01.04.2000 to 31.03.2008. The appellant received the special notice No.08SPN151966 dated 26.03.2009 under Section 167 of the MMC Act fixing the rateable value at the rate of Rs.19,17,83,390/- NPA for the period 01.04.2008 onwards and Special Notice No. 08SPN151994 dated 26.03.2009 under Section 167 of the MMC Act fixing the rateable value at the rate of Rs.19,39,01,870/- NPA with effect from 01.08.2008 and Special Notice No. 08SPN152005 dated 26.03.2009 under Section 162(2) of the MMC Act revising the rateable value at the rate of Rs.19,26,63,090/- NPA with effect from 18.11.2008.

7. The appellant submitted that the complaints for the year 2008-2009 and 2009-2010 were registered as ACR-223 of 2008-2009 and ACR-224 of 2009-2010 respectively, in which it was requested that the earlier rate of Rs.1,950/- per 10 sq.mtr. for offices and Rs.3,250/- for Banks given on leave and licence be restored from 01.04.2008 onwards as fixed prior to 01.04.2008. The Investigating Officer fixed the rateable value at Rs.7,150/- per 10 sq.mtrs for offices and Rs.11,910/- per 10 sq.mtrs for Banks given on leave and licence.

8. The appellant claimed that property taxes from 01.04.2000 to 31.03.2008 have been paid. That the amount of tax paid of

Rs.17,39,612/- in respect of the premises 3ABC from 1997 and Rs.1,14,70,731/- on account of exemption granted by MCGM as the premises in basement viz. 3A, 4A, 3ABC, 124/A are occupied by Income Tax Department and Unit Nos.161A to 165B are occupied by Special Bureau (Government of India).

9. The appellant states that the respondents issued final notice No.AA&C/A/Outward/A/19/IN/2018-2019 dated 11.03.2019 for property tax of Rs.7,51,98,127/- up to 31.03.2010 within 48 hours failing which respondents stated water supply of the property will be disconnected.

10. The appellant invoked extraordinary jurisdiction in Writ Petition (L) No.881 of 2019 before the Hon'ble High Court of Judicature at Bombay on 28.08.2015. It is disposed off by order dated 19.03.2019 by their Lordships Shri S.C. Dharmadhikari and B.P. Colabawala, by passing following order.

> “*a) If the petitioners file an appeal within a period of 15 days from today and comply with the conditions imposed by the Statute, then, the remedy of appeal be allowed to be availed of.*
>
> *b) For a period of 15 days from today and in order to enable the Petitioners to avail of the appellate remedy by approaching the Court of Small Causes, Mumbai, the water supply to the premises shall not be disconnected. In other words, the impugned notices shall not be acted upon for a period of 15 days from today.*
>
> *c) We clarify that we have not expressed any opinion on the merits and we have granted this protection in order to enable the petitioners to file an appeal. Our order shall not be constructed as granting any protection to the petitioners.”*

11. The appellant, pursuant to the liberty granted by the Hon'ble High Court, preferred this appeal to challenge the impugned order No.AA&C/A/Outward/A/19/IN/2018-2019 dated 11.03.2019 and the order passed by Investigating Officer in Complaint Nos.ACR223 of 2008-2009 and ACR225 of 2009-2010 since the dispute pertains for the period 01.04.2008 to 31.03.2010, on the grounds that the fixation of rateable value is contrary to the provisions of MMC Act. The special notices issued with respect to the period 01.04.2008 to 31.03.2010 are illegal and invalid in as much as they do not give the grounds on which the rateable value was increased.

12. In ground of appeal-memo, the appellant clarified that the respondents relied on the decision of the Hon'ble Bombay High Court in the case reported in **2006(3) Bom. C.R. 557 of MMC V/s. Dalamal Tower Premises Co-operative Society Ltd. and others**. This was set aside by Hon'ble Supreme Court by its order dated 08.03.2011 and the matter was remanded to the Hon'ble Bombay High Court with a direction to decide the matter afresh in accordance with law. The matter i.e. appeal No.801 of 2004 has since been decided by the Division Bench of Hon'ble Bombay High Court by order dated 09.09.2011 read with order of His Lordship Dr.D.Y.Chandrachud dated 11.09.2012. Subsequently the matter has been decided by the Division Bench of Hon'ble Bombay High Court by order dated 28.08.2017. His Lordship Hon’ble Mr.Justice D.Y. Chandrachud in order dated 11.09.2012 reported in **2013(1) Bom.C.R. 426** has clarified that, “*the assessing authority must have regard to all relevant facts and circumstances while applying the standard of reasonableness under Section 154(1), including the prevalent rate of rents of lands and buildings in the vicinity of the property being*

assessed, the advantages and disadvantages relating to the premises such as, the situation, the nature of the property, the obligations and liabilities attached thereto and other features, if any, which enhance or decrease their value. It is submitted that the respondents failed to apply the necessary standard of reasonableness in deciding rateable value for concerned period."

13. In grounds of appeal, the appellant raised that the respondents have failed to appreciate that all units in the building are not given on leave and licence at the same rent/compensation and has unreasonably applied a uniform rate of Rs.11,910/- per 10m2 for units given on leave and licence. The respondents ought to have taken the actual rent/compensation received from each unit into account while assessing the rateable value.

14. The appellant claim that the respondents have not provided any better or new facility to justify the increase in rateable value and that the value for the same units cannot be exorbitantly high for only the intervening period of two years when there has been no change in the circumstances affecting the said units. It clearly shows that the increase in rateable value for the said two years' period is arbitrary and without application of mind.

15. The appellant submitted that the rateable value for the period from 01.04.2008 to 31.03.2010 cannot be more than the rateable value for the period from 01.04.2000 to 31.03.2008, in the absence of any special or new circumstances. The circumstances affecting the units given on leave and licence/lease including actual rents for the period 01.04.2008 to 31.03.2010 have not undergone any change vis-a-vis the circumstances prevailing during the period

01.04.2000 to 31.03.2008. Hence, the impugned order dated 15.04.2015 in Complaint Nos.ACR/223/2008-2009 and ACR/224/ 2009-2010 and the demand notice bearing No.AA&C/A/Outward/A/ 19/IN/2018-2019 dated 11.03.2019 is liable to be set aside and the bills issued for the period 01.04.2008 to 31.03.2010 be quashed and set aside.

16. The respondents in challenge to the present appeal, submitted in written statement (Exh-20) that rateable value fixed by the Investigating Officer is just, fair and proper and not liable to be disturbed.

17. The respondents came with the case that as per the Assessment records maintained by 'A' ward, the appeal property stands assessed in the name of Government of Maharashtra and Lessee Malliram Mittal, that the appellant has challenged the order of Investigating Officer received by it on 15.04.2015 fixing the rateable value in Complaint No.ACR/223 of 2008-09 and ACR/224 of 2009-10 with effect from 01.04.2008 and 01.04.2009 respectively.

18. The respondent came with the case that the appeal property represented a house having basement, ground and 17 upper floors and stands assessed at rateable value of Rs.2,86,75,985/- NPA(NR). On inspection of the building, it was noticed that 9C on basement, 1/A/A, B/3, C/4 on ground floor, A-11 amd 12 on 1st floor and B wing part portion and C wing on 2nd floor and whole 3rd floor, A/41/42, A/44, 45, 46m C/41-46 on 4th floor, 51, 52, 53, C-51 on 5th floor, A-64, 65, 66, B-61, 63, 64, C-65 on 6th floor, A-74, 76, B-71, C-73, 74 on 7th floor, A-84-85, B-82, 83, C-84 on 8th floor, C-91, 94 on 9th floor, A-104, B-104-105 on 10th floor, A-113, B-112, C-113 on 11th

floor, A-121, 123, B-122, C-126 on 12th floor, A-131, 132, 133, B-131, 132, 133, C-131 on 13th floor, B-141, C-141-143, 145, 146 on 14th floor, A-151, 152, B-153, 155, C-154 on 15th floor, A-1622, 162 on 16th floor, A-171, 172, B-171, 172 on 17th floor were given on leave and licence basis and the rent chit under Section 155 of MMC Act was served on appellant on 5th, 6th and 7th January,2009.

19. Respondents pleaded that in Inspection, it is observed that Unit No.3A, 4A, Store No.6/B, Store No.12 on basement, Unit No.54B, 55B on 5th floor, A-81-82-83, C-81-82 on 8th floor, A-92-93 on 9th floor, C-101, 102 on 10th floor, B-113, C-112 on 11th floor, B-123 on 12th floor, A-135, 136, B-134 on 13th floor, A-141-142,144,145, B-144, C-144 on 14th floor, A-155, C-151-153, 156 on 15th floor were found locked. Unit No.B-75 previously given on leave and licence to ESA India Ltd. Unit No.86C given on leave and licence to Aren Capital have not produced possession letter and also have not intimated about vacating the premises and therefore previous rent is maintained as before for assessment purpose.

20. The respondents further mentioned about observations that 2nd floor of A wing and B wing admeasuring area 1090.97 sq. mtr. is occupied by IDBI as owner and remaining portion adm.1394.03 sq.mtr. was given on leave and licence basis to M/s.Stockholding, Rajesh R. Shroff, Proprietor of Anjali Darchy and member of the society, Office No.155C on 15th floor purchased by Mr. Paresh D. Shah as per Sale Deed dated 27.02.2007, Unit No.B-64 on 6th floor was purchased by Sunilkumar S. Maru on 18.11.2008 as per Sale Deed. The premises were occupied by owners and therefore treated as owner occupied.

21. On the basis of Inspection Note, Respondents' case is that the entire 3rd floor, Unit Nos.A-41, 42, 45, 46, 51B, 52B, 53B, 51C, 64, 65-66C, 61B, 63B, 64B, 65C, 74-76A, 74C, 84-85A, 82-83B,84C, 104A,113A, 112B, 113C, 121A, 123A, 131 and 132A, 133A, 131B, 132B, 141B, 141C, 145C, 151A, 152A, 153B, 155B, 161-162A have not complied with rent chit details and hence it was proposed estimate amount of compensation at the rate of Rs.214.89 sq.ft. and return under Section 155 of MMC Act was served on appellant on 02.01.2009, but was not complied with by them.

22. In reference to claim of exemption of the occupiers of the premises given on leave and licence basis are exempted under Section 3(1)(b) of the MRC Act. The respondents contended that the provisions of said Act are not applicable to the appeal property.

23. It is pointed out that the premises which are not governed by the Rent Control Legislation are required to be assessed as per the ratio set out by the Hon'ble Supreme Court in the case of **Government Co-op. House Building Society Ltd reported in 1998 Supreme Court Cases 381** observing that where there is no artificial control on rent which is charged by the annual rent actually received by the landlord in the absence of any special circumstances would be a good guide to decide the rent which the landlord might reasonably expect to receive from a hypothetical tenant.

24. The respondents claimed that the interest free security deposit is compensation affecting factor and therefore 8% interest per annum was added to the monthly compensation. Therefore, the proposed revised rateable value of the property after deduction applicable from the compensation to arrive at a reasonable rate as

contemplated under Section 154(1) of the MMC Act with effect from 01.04.2008, 01.08.2008 and 18.11.2008 was mentioned in Tabulated Ward No.367 for the fortnight ended 15.03.2009. Therefore, value at Rs.19,17,83,390/- NPA(NR) with effect from 01.04.2008 to 31.07.2008 and at Rs.19,26,63,090/-NPA(NR) with effect from 18.11.2008 was proposed.

25. The respondents pleaded that the Special notices as per the provisions of the MMC Act were issued and in complaint registered under No.ACR/223/2008-09 and ACR/224/2009-10, the Investigating Officer modified the rateable value of the appeal property by adopting the rate of Rs.7150/- per 10 sq.mtr. for office units and Rs.11,910/ for Bank given on leave and licence basis, taking into consideration the leave and licence compensation, the locality, user and the rates in the vicinity

26. It is submitted that the Investigating Officer has considered all the relevant points and fixed the rateable value. No evidence contrary thereto was produced and the rate uniformly applied depending on the user is correct. Therefore, the respondents claimed that the appellant is not entitled for any of the prayers and respondents prayed to dismiss the appeal with costs.

27. In this background, the learned advocates for the appellant and respondent argued at length and relied on citations placed on record vide list Exhibit-49 and 50 respectively. The appellant and respondents also relied on the written arguments vide Exhibit-48 and Exhibit-50 placed on record.

28. The points raised in contest of the litigation by the parties, ratio and observations of the authorities cited and arguments

advanced, gave rise to following points for my determination and I have recorded my findings thereon for the reasons to follow.

	Points	Findings
1.	Whether the appellant is entitled for the reliefs claimed?	In the negative
2.	What Order?	As per final order.

R E A S O N S

AS TO POINT NOS. 1 & 2 :

29. To decide the merits of appeal, it is necessary to evaluate the oral and documentary evidence adduced on record.

30. That the appellant has relied on the evidence of its witness adduced on record in the form of affidavit of examination in chief (Ex-21) and documents in support of their case. The respondents MCGM opted not to lead their evidence, however, relied upon the TWR (Ex-45), Investigating Officer order and complaint (Ex-46) and outstanding statement (Ex-47) which are filed along with the list Ex-44.

31. The appellant preferred to adduce the evidence of witness Mr. Nilesh Sakpal, the Manager and authorized person of the appellant society. This witness has produced the documents in support of the case of the appellant. The cross-examination at length of this witness was conducted by the Ld. Counsel Mr.Som Sinha for the respondent corporation. The categorical admissions extracted in cross-examination of this witness are that the 70 to 72 tenants have executed the leave and licence agreements, further that the ratable

value changes according to the leave and licence agreement, that the documents placed before the Investigating Officer by the complainant were not produced on record of this court.

32. The learned advocate for the appellant, in support of their arguments, has argued that the appeal property comprises of basement, ground and 17 upper floors. Out of 240 units, some units are occupied on self occupied basis and some on leave and licence. All are for commercial user. Whole 3rd floor in Wings A, B and C are given on leave and licence to Income Tax Department along with Unit Nos.3A & 4A, 3ABC, 124/A and Unit Nos.161 A to 165B are occupied by Special Bureau (Government of India) which are exempted under Section 3(1)(b) of the Maharashtra Rent Control Act,1999. The Ld. Advocate for the appellant argued confirming the contents of the appeal memo and given comparative instances of the same area for the properties given on leave and licence.

33. The appellant relied on the ratio of case between **Dr. Balbir Singh & Ors. V/s. M/s M.C.D & Ors., AIR 1985 Supreme Court 339** pointing out that, *the Rent Controller must derive guidance from the standard rent similar or nearly similar premises in the locality.* The appellant also relied on the ratio of the case between **Lt.Col. P.R.Chaudhary V/s. MCD reported in (2000)4 SCC 577** which is a reiteration of judgment in the case of Dr. Balbir Singh (supra).

34. The Ld. Advocate for the appellant further argued that the appellant has discharged the burden of proof as per the ratio laid down by the Apex Court in the case of **Municipal Corporation of Gr. Mumbai & Anr. Vs. Kamla Mills Ltd. AIR 2003 SC 2998** as the appellant has produced instances of the building situated on Nariman

Point vicinity nearby appeal property.

35. The Ld. Advocate for the appellant further relied on the judgment in the case of **Municipal Corporation of Greater Mumbai V/s. Dalamal Tower Premises Co-operative Society Ltd.** reported in **2013(1) Bom.C.R. 426** wherein while answering the reference affirmative by the Hon'ble Apex Court, it is clarified in paragraph 43(2) of the judgment as follows

> *43(2) Where the premises are exempt from the provisions of the Maharashtra Rent Control Act, 1999, it is not unlawful for the landlord to claim or receive an amount in excess of the standard rent since the provisions of Section 10 would not be attracted. In such a case, the actual rent received by the landlord is in the absence of special circumstances a relevant consideration which may be borne in mind by the assessing authority while determining the rateable value for the purposes of municipal taxation under Section 154(1) of the Mumbai Municipal Corporation Act, 1888. The assessing authority must have regard to all relevant facts and circumstances while applying the standard of reasonableness under Section 154(1), including the prevalent rate of rents of lands and buildings in the vicinity of the property being assessed, the advantages and disadvantages relating to the premises, such as, the situation, the nature of the property, the obligations and liabilities attached thereto and other features, if any, which enhance or decrease their value."*

36. On the other hand, the Ld. Advocate for the Respondents has argued that MCGM is duty bound to discharge valuable duties and functions, as prescribed in detail in the MMC Act. MCGM is providing urgent and necessary facilities to the public at large in respect of health, education, transportation, electricity, water, public amenities and also it maintains the roads and other infrastructure for the daily usage of public at large. That one of the major aspects which contributes to smooth discharge of these duties of the MCGM are the funds received from the property taxes collected.

37. It is pointed out that the provisions of **Section 146 of the**

MMC Act deal with the primary responsibility of the owner of a property to pay taxes can be recovered from the occupier as laid down under the provisions of **Section 147 of the said Act.** That **Section 154 of the MMC Act** provides determination/fixation of rateable value and defines and demonstrate the method in which rateable value can be levied on a property/land.

38. That various wards of MCGM maintain assessment books which records all these details of all the buildings and land falling under the respective Wards. The Assessing Officer are duty bound to conduct annual inspection, any changes of user in terms of subletting, leave and license etc. have been done. Thereafter, a detailed Report of prepared by the Assessing Officer and the rateable value is fixed accordingly.

39. The Ld. Advocate for the respondents emphasized that periodical changes to the rateable value fixed is necessary . Once the rateable value is fixed and Notice is issued to that effect to the owner of the property, the owner in turn has a statutory right to challenge such change/fixation in RV by lodging appropriate complaint with the Assessing Officer or Enquiry Officer.

40. It is further argued that Appellant's building constitutes a basement, ground and 17^{th} upper floors which includes 240 commercial units. The burden of proving the fact that the rateable value is fixed at an incorrect rate or is exorbitant lies on the assesses. On its merits along with substantial documentary proof and valid grounds of challenges to the assessment. That mere averments, submissions or oral arguments will not benefit the Appellant in any circumstances.

41. It is argued that in the present case, the Appellant has failed to prove its case on merits and has also failed to produce necessary documents or evidence which will support its claim. Therefore, in submissions of the Ld. Advocate for the respondents, the Order passed by the Investigating Officers revising the rateable value is correct and there is no need of any interference.

42. Further that the TWR Report prepared by the Officer at Exhibit-45 on consideration of all the aspects required for fixation of rateable value as per the provision laid down in the MMC Act and therefore, the same needs no interference.

43. It is argued that on usual round of inspection of the property conducted by the Ward Inspector, it was found the several premises in the Appellant's building were given on leave and license basis or sub-let to third-parties. The same has been admitted by the Witness of the Appellant i.e Mr. Nilesh Sakpal in his cross examination. However, the intimation pertaining to the change in such users of leave and licence copies in respect of such users has not been produced or updated in the records of the MCGM by the Appellant. It is the duty of the Appellant to maintain such records, however in cross examination Mr. Sakpal admitted to the fact that nothing is produced on record which clearly shows that the Appellant best known to them refrained from producing the same. Therefore, the assessment department has maintained the previous rent for assessing the said buildings. The MCGM has issued rent chit which the Appellant failed to comply with its obligation as required under the MMC Act and also failed to prove case of the appeal.

44. The Appellants in the present matter has referred and relied

upon orders passed by the Investigating officer in matters pertaining to three buildings Embassy Centre dt.23.10.2018(Ex 39), Regent Chambers dt.17.11.2019 (Ex 40) and Nirmal building dt.4.09.2018(Ex 41) respectively, stating these properties are of nearby vicinity and the rate applied to these are lesser then the Appellant's building and hence the same rate should be applied to the Appellant's building.

45. The respondents challenged it on the basis of argument that Section 154 of the MMC specifies the manner and the aspects which are required to be taken into consideration while determining the rateable value fixed for any property. Some of the main aspect which are to be taken into consideration i.e. the nature and type of land, structure of the building, carpet area of the building, user category, age of the building, value of the building/land as may be specified in the ready reckoner. That all these buildings have different structure, features areas and amenities as mentioned hereinabove and therefore the rates fixed are bound to vary when such factors are taken into consideration.

46. It is emphasized by the Ld. Advocate for the respondents that the Appellant have not filed documents pertaining to the property in question such as the books of accounts or ledger maintained showing the actual rent earned under leave and licence, leave and licence agreement executed with the Licensee etc. The Appellant witness though admitted the fact that 70 to 72 units were given on leave and licence during the dispute period, however no documents to that effect have been produced with the Appeal is admitted fact. Infact the Witness volunteered that the Society did not maintain any such records. Further, it is highlighted that the witness of the Appellant

also admitted the very fact that due to the introduction of the MRC Act, there was a drastic change in fixation of the property tax based on ratable value.

47. It is further argued on behalf of the respondents that the appellant failed to suggest alternate rate or even produce documents to support and substantiate its claim. That the rate of Rs. 7150/- per 10 Sqr.Mtr. for offices occupied on leave and license basis and Rs. 11,910/- per 10 Sqr.Mtr. for banks are adopted taking into consideration the available leave and license compensation, the locality, user and rates in the vicinity which are fair and reasonable. That from these commercial units the owners are making huge amount of rental income and they are duty bound to pay taxes as levied. The Appellant building is commercial premises and at a locality which is regarded as one of the most expensive official areas in Mumbai and therefore the rates in respect of rentals are always high commercial premises.

48. That the Investigating Officer has considered all the relevant points and fixed the Ratable Value, uniformly applied depending upon the user is correct and cannot be challenged without supporting document/evidence.

49. The Ld. Advocate for the respondents in support of the arguments, placed reliance on following cited cases on behalf of the respondents.

(a) Relying on the case of ***Government Co-operative House Building Society Ltd. (supra),*** it is argued that the order passed by the Investigating Officer is reasonable one and the Investigating Officer has discarded the compensation amount of the units occupied on the basis of leave and license as it was found to be exorbitant and had applied double the rate of ULR of the residential premises to the premises which are exempted under Section 3(1)(b) of the MRC Act.

(b) **Municipal Corporation of Greater Bombay V/s. Dalamal Towers reported in 2012(6) Mah.L.J. 856**, specifically paragraph 43 of this judgment which is reproduced below -

> *"43. In the circumstances and for the reasons indicated in this judgment, the reference is answered in the affirmative, with the following clarifications :*
>
> *(1) Where the premises are exempt from the operation of the Maharashtra Rent Control Act, 1999, by the provisions of Section 3, the assessing authority in determining the annual rent at which the premises might reasonably be expected to let from year to year under Section 154(1) is not constrained by the outer limit of the standard rent determinable with reference to the provisions of the Rent Act;*
>
> *(2) Where the premises are exempt from the provisions of the Maharashtra Rent Control Act, 1999, it is not unlawful for the landlord to claim or receive an amount in excess of the standard rent since the provisions of Section 10 would not be attracted. In such a case, the actual rent received by the landlord is in the absence of special circumstances a relevant consideration which may be borne in mind by the assessing authority while determining the rateable value for the purposes of municipal taxation under Section 154(1) of the Mumbai Municipal Corporation Act, 1888. The assessing authority must have regard to all relevant facts and circumstances while applying the standard of reasonableness under Section 154(1), including the prevalent rate of rents of lands and buildings in the vicinity of the property being assessed, the advantages and disadvantages relating to the premises, such as, the situation, the nature of the property, the obligations and liabilities attached thereto and other features, if any, which enhance or decrease their value."*

(c) **India Automobiles (1960) Ltd. Vs. Calcutta Municipal Corporation reported in AIR 2002 SC 1089** wherein it is observed that, "*the rent received from the sub-tenant cannot necessarily be accepted. Two categories of premises – one governed by Rent and other to which Rent Control Act is not applicable".*

50. In this background of counter arguments of parties, if the order passed by the Investigating Officer is scrutinized in the background of facts and circumstances that admittedly most of the premises of the appeal building are occupied on leave and licence basis and the owner members were at relevant period of assessment were getting compensation at different rates which have not been declared under Section 155 of the MMC Act. In its addition, they have received the security deposits. The premises occupied subject to leave and licence agreements are exempted under Section 3(1)(b) of Maharashtra Rent Control Act, 1999 and the Investigating Officer accordingly had not accepted the criteria of standard rent in respect of these premises to arrive at rateable value for the purposes of levy of property tax.

51. In reference to the comparative instances of fixation of rateable value of the premises situated adjacent in the vicinity of the appeal building are not shown to be with similar amenities and facilities that of the appeal building. Undisputedly, the premises of the Nariman Point in the city of Mumbai were constructed in the era of 1970 and onwards and are of one and same kind of structure engineering. However, it does not necessarily be accepted that the premises therein are of similar area and with capacity to receive profit at rate of one and the same amount of compensation uniformly for each and every unit of these buildings situated at Nariman Point.

52. The amount of compensation charged by the owner member may differ for various reasons including the necessity of the licensees to acquire the premises at relevant time and its capacity to pay the compensation amount may be under circumstantial compulsions. For whatever reasons, if the licensee of one premises is paying the higher

rate of compensation, it should not be made applicable or assumed to have been received by all other owner members for their units. If this analogy is applied to the comparative circumstances placed on record by the appellant vide Exh-39, 40 & 41, then it is to be logically accepted that for different area of units and in absence of evidence on record regarding kinds of amenities and facilities provided to the licensees of the units in the appeal building and other buildings. It is not proper to accept the rateable value fixed by the Investigating Officer in the given circumstances before him at relevant time of passing of order and it is without taking in to consideration the reasonable rate of standard rent or hypothetical rent which landlord may receive.

53. The above discussed aspects needs to be considered to arrive at a reasonable rent as contemplated under Section 154(1) of the MMC Act, in the light of the criteria laid down by the Hon'ble Apex Court reported in **2013(1) Bom.C.R. 426** in the case of **Municipal Corporation of Greater Mumbai V/s. Dalamal Tower Premises Co-operative Society Ltd.** specifically in paragraph 41 of this judgment it is held that -

> *"41. The regime of exemption under the erstwhile Rent Act of 1947 has undergone a change in the Maharashtra Rent Control Act,1999. Section 3(1)(b) has been enacted and brought in to force for the first time because the State Legislature was of the considered view that certain categories of premises did not require the protection of the Rent Act. The Legislature was entitled to take all relevant factors in legislating an exemption from the Rent Act, including that the unduly restrictive provisions of a post World War II enactment of 1947 had an adverse effect on the housing stock. Once the regulatory constraints of rent law no longer apply to certain premises that is a relevant and germane circumstance which should be borne in mind by the*

assessing authority for the purpose of Municipal Taxation. To hold otherwise would be to deprive the Municipal Corporation of the revenue which it legitimately needs for providing essential civic amenities an services."

54. On application of this ratio, the submission of the appellant that units which are occupied on leave and license basis on 3rd floor by Government i.e. Income Tax Department and Special Bureau (Government of India) needs to be assessed at the same rateable value and the similar rates which were applied by the respondent in the previous years of assessment is found to be without merits. The exemption to certain premises given on the basis of leave and licence agreement to the Government or it's departments are not exempted from the levy of property tax. It is settled for such premises that the amount of monthly compensation and the other extraneous circumstances will governed the rate of assessment of ratable value tax, however, in present case in hand there are no such circumstances or disclosure of amount of monthly compensation paid to the owner of the premises is disclosed to justify the liberty to be granted to the appellant from assessment of tax as proposed and affirmed by Investigating Officer for the appeal period.

On the other hand I am of the opinion that the Investigating Officer in the impugned order has rightly discarded the exorbitant compensation rate of leave and license agreement and had applied the rates on independent assessment of the rateable value in consideration of the facts and circumstances.

55. Upon scrutiny of the impugned order of the investigating officer, in present case in hand, in my view the revision and modification of the assessment of rateable value with regard to the

relevant facts and circumstances, have been considered to apply the standard of reasonableness as expected under the provisions of Section 154(1) of the MMC Act.

56. It is to be noted that none of the circumstances are there to consider as extraneous one to grant deductions to appeal premises at par with the rateable value fixed of the building of comparative instances as per Ex-40, 41, & 42. Thus, no evidence favourable to the appellant is available on record to support the claim of the appellant for extraneous circumstances and deductions thereon.

57. The claim of the appellant of increase in the rateable value when there has been no change in the circumstances or facilities provided by the respondents has to be dealt with the settled proposition of law that the levy of tax and payment of tax cannot remain static for years together. The change in circumstances of the appeal premises in detail been noted in TWR and has been discussed in the pleadings of the respondents which has not been controverted by the appellant. It is also not evident on record that there was no change of the rate of compensation or the rent of the units occupied on the basis of leave and licence agreement and on tenancy basis. In this view, the arguments advanced on behalf of appellant in this regard are not convincing.

58. In this view of the matter, I find no merits in the prayer of the appellant for quashing and setting aside the order of the respondents passed in ACR/223 of 2008-09 and ACR/224 of 2009-10 fixing the rateable value of the appeal premises of the appellants and for fixing the rateable value of the appeal premises by this Court and prayer to issue direction to the respondents to revise the rateable

value for the period from 01.04.2008 to 31.03.2010 on the same basis as fixed for the period 01.04.2010 to 31.03.2011.

59. This conclusion leads to the findings that no arbitrariness or unreasonable rise or escalation in the assessment of the property tax on the part of respondents is pointed out. Therefore, in the given facts and circumstances, revision and modification of rateable value tax assessment of the appeal premises by the respondents is justified and the appellant is not entitled for relief claimed. Hence, I answer Point No.1 in the negative and in answer to point No.2, I proceed to pass the following order -

ORDER

The appeal stands dismissed.

TRUPTI GOVINDAPPA MITKARI

Digitally signed by TRUPTI GOVINDAPPA MITKARI
Date: 2023.10.13 17:23:31 +0530

(T. G. Mitkari)
Addl. Chief Judge.
C. R. No.18
10.10.2023

Judgment dictated on	10.10.2023
Judgment typed on	10.10.2023
checked & signed on	13.10.2023

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