(2001) 12 BOM CK 0069

Bombay High Court

Case No: First Appeal No. 4 of 1990

Nirlon Synthetic Fibres and Chemicals Ltd., Bombay and Another		APPELLANT
	Vs	
Municipal Corporation of Greater Bombay and Others		RESPONDENT

Date of Decision: Dec. 20, 2001

Acts Referred:

- Bombay Municipal Corporation Act, 1888 - Section 154, 155
- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 10B, 11, 5(10), 7, 8

Citation: AIR 2002 Bom 295 : (2002) 1 BOMLR 762 : (2002) 2 MhLj 807

Hon'ble Judges: R.M.S. Khandeparkar, J

Bench: Single Bench

Advocate: Manoj Sanklecha and M.A. Chunawala, instructed by Matubhai Jamietra, for the Appellant; M.D. Patil, for the Respondent

Final Decision: Allowed

Judgement

R.M.S. Khandeparkar, J.
Heard the learned advocates for the parties. Perused the records.

2. This appeal arises from the judgment and order passed by the Additional Chief Judge of Court of Small Causes, Bombay in Municipal Appeal No. M/1979 of 1985 on 18th November, 1988. By the impugned judgment, the Appellate Court has dismissed the appeal filed by the Appellants against the order dated 31st July 1985 by the Investigating Officer whereby the rateable value of the premises in question was modified to Rs. 8,65,850/- from Rs. 7,78,000/- per annum with effect from 1st April, 1982.

3. Few facts relevant for the decision are that the Appellants are the owners of a building known as "Nirlon House" at Worli consisting of basement, ground floor and five other floors. The construction of the building was completed in the year 1968 and a part thereof was let out whereas the remaining part was occupied by the Appellants. The rateable value of the building was fixed at Rs. 7,74,180/-. The notice under Sections 162 and 167 of the Bombay Municipal Corporation Act, 1888 (the nomenclature of the said Act has been subsequently changed to the Mumbai Municipal Corporation Act, 1888 and the same is hereinafter called as "the said Act") dated 23rd March, 1983 was issued inviting objections to the respondents decision to increase the rateable value with effect from 1st April 1982 at the rate of Rs. 8,87,145/- per annum. By letter dated 7th April 1983, the Appellants protested against the enhancement of rateable value. The Appellants filed their reply to the notice above referred on 18th October, 1984 and requested for personal hearing in the matter. By notice dated 27th July, 1985, the Appellants were afforded opportunity of being heard in the matter and thereafter on 31st July 1985 the respondent No. 3 passed an order enhancing the rateable value as stated above. The appeal filed against the same was dismissed and hence the present appeal.

4. In the course of hearing before the respondent No. 3, the Appellants examined two witnesses; one Mr. Ravee Sood on behalf of the Appellants and Anr. Architect by name Mr. Divecha. The Valuation report dated 12th August, 1988 was produced on record through Mr. Divecha. The respondents on their part examined the Deputy Superintendent Mr. Karnik. A Tabulated Ward Report dated 31st September, 1983 was placed on record by the respondents as Exhibit-2.

5. While assailing the impugned orders, the learned advocate for the Appellants submitted that the rateable value of the building has necessarily to be fixed on the basis of the standard rent in terms of the provisions contained in Section 154 of the said Act read with the provisions of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (hereinafter called as "the Rent Act") and not on the basis of the actual rent received by the landlord. The entire basis for enhancing the rateable value by the respondents being on the basis of increase in actual amount of rent by the landlord, the same is contrary to the provisions of the statutory taw as well as the law laid down by this Court and the Apex Court on the subject. A grievance was also made regarding the absence of a speaking order by the respondent No. 3 disclosing justifiable grounds for increase in the rateable value. Though in the memo of appeal, ground regarding non-consideration of expert"s opinion was made out, in the course of hearing, the same was specifically given up. Various decisions of this Court as well as the Apex Court were relied upon in support of the contentions, reference of which will be made in the course of the judgment. On the other hand, the learned advocate appearing for the respondents has submitted that the materials on record justify the increase in the rateable value. He has also referred to a circular dated 16th September, 1998 in support of justification for enhancement of the rateable value of the building in question and has further submitted that considering the decisions of the Apex Court as well as of this Court, no fault can be

found with the impugned order.

6. Section 154 of the said Act deals with the matters pertaining to the fixation of the rateable value of the building for the purpose of property taxes. Sub-section (1) thereof provides that in order to fix the rateable value of any building or land assessable to a property tax, there shall be deducted from the amount of the annual rent for which such land or building might reasonably be expected to let from year to year a sum equal to ten per cent of the said annual rent and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever. How to ascertain "reasonably expected annual rent" for the purpose of determination of the rateable value, is the point for determination which arise in the matter. In that connection, it will be worthwhile to refer to various decisions relied upon by the parties before arriving at any finding.

7. In Dewan Daulat Rai Kapoor v. New Delhi Municipal Committee and Anr. reported in 1980 ITR 700, while considering the provisions relating to the fixation of rateable value under Punjab Municipal Act, 1911 and Delhi Municipal Corporation Act, 1957, it was held that "what the landlord might reasonably expect to get from a hypothetical tenant, if the building was let from year to year, affords the statutory yardstick for determining the annual value. Now, what is reasonable is a question of fact and it would depend on the facts and circumstances of a given situation. The actual rent payable by the tenant to the landlord would, in normal circumstances, afford reliable evidence of what the landlord might reasonably expect to get from a hypothetical tenant, unless the rent is inflated or depressed by reason of extraneous considerations such as relationship, expectation of some other benefit, etc." After considering various earlier decisions including the decisions in the matter of The Corporation of Calcutta Vs. Sm. Padma Debi and Others, , Corporation of Calcutta Vs. Life Insurance Corporation of India, and The Guntur Municipal Council Vs. The Guntur Town Rate Payers" Association etc., , it was held thus :--

"It must be held that the annual value of the building governed by the Delhi Rent Control Act, 1958, must be limited by the measure of standard rent determinable under that Act. The landlord cannot reasonably expect to get more rent than the standard rent payable in accordance with the principles laid down in the Delhi Rent Control Act, 1958. It is true that the standard rent of the building not having been fixed by the Controller, the assessing authority would have to arrive at its own figure of standard rent by applying the principles laid down in the Delhi Rent Control Act, 1958, for determination of standard rent, but that is a task which the assessing authority would have to perform as a part of the process of assessment....."

It has been further ruled therein that:--

"When the Rent Control Legislation provides for fixation of standard rent, which alone and nothing more than which the tenant shall be liable to pay to the landlord, it does so because it considers the measure of the standard rent prescribed by it to be reasonable. It lays down the norm of reasonableness in regard to the rent payable by the tenant to the

landlord. Any rent which exceeds this norm of reasonableness is regarded by the legislature as unreasonable or excessive. When the legislature has laid down this standard of reasonableness, would it be right for the Court to say that the landlord may reasonably expect to receive rent exceeding the measure provided by this standard? Would it be reasonable on the part of the landlord to expect to receive any rent in excess of the standard or norm of reasonableness laid down by the legislature and would such expectation be countenanced by the Court as reasonable? The legislature obviously regards recovery of rent in excess of the standard rents exploitative of the tenant and would it be proper for the Court to say that it would be reasonable on the part of the landlord to expect to recover such exploitative rent from the tenant? We are, therefore, of the view that even if the standard rent has not been fixed by the Controller, the landlord cannot reasonably expect to receive from a hypothetical tenant anything more than the standard rent determinable under the Act and this would be so equally whether the building has been let out to a tenant who has lost his right to apply for fixation of the standard rent or the building is self-occupied by the owner."

8. In Corporation of Calcutta v. Padma Debi (supra), the question which arose in that case was whether the annual value of a building governed by the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 would be determined at a figure higher than the standard rent fixed under the provisions of that Act. The Apex Court pointed out therein that since it was not permissible for the landlord to receive any rent in excess of the standard rent fixed under the Act, the landlord could not reasonably expect to receive any higher rent in breach of the law. It is the standard rent alone which the landlord could reasonably expect to receive from a hypothetical tenant, because to receive anything more would be contrary to law. It was specifically observed therein that:--

"A law of land with its penal consequences cannot be ignored in ascertaining the reasonable expectations of a landlord in the matter of rent."

9. In Corporation of Calcutta v. Life Insurance Corporation (supra), the question which arose for consideration was whether the annual value of the building was liable to be determined on the footing of the standard rent or it could be determined by taking into account the higher rent received by the tenant from its sub-tenants. While following the law laid down in Padma Debt"s case, it was held that the annual value of the building could not be determined on a figure higher than the standard rent irrespective of the fact that there was no fixation of standard rent by the Controller u/s 9 and the statutory prohibition was only against receipt of rent in excess of standard rent fixed under the Act. It was pointed out that the standard rent determined the upper limit of the rent at which the landlord could reasonably expect to let the building to a hypothetical tenant. The argument that the annual value was limited to the standard rent only in those cases where the standard rent was fixed u/s 9 and since in that case before the Court the standard rent of the building was not fixed u/s 9, the proviso had no application and therefore, the assessing authority was not bound to take into account the limitation of the standard rent, was negatived by the Apex Court.

10. In Guntur Municipal Council v. Guntur Town Rate Payers'' Association (supra), the annual value was required to be determined under Madras District Municipalities Act, 1920 which was applicable to the city of Guntur. There was also in force in the city of Guntur, the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 which provided, inter alia, for fixation of fair rent of buildings. The question which arose for determination was whether the annual rent was to be assessed in the light of the provisions contained in the Rent Act prevalent in the territory. It was held that there was no distinction between the 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. The assessment of the 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.

11. In Dr. Balbir Singh and Others Vs. M.C.D. and Others, , referring to various relevant provisions of Delhi Municipal Corporation Act, 1957 and Delhi Rent Control Act, 1958, it was held that the definition of ''standard rent'' contained in Section 2(k) does not contain any reference to S. 9, Sub-section (4), and, therefore, any reference is made to standard rent in any provision of the Delhi Rent Act, it must mean standard rent as laid down in Section 6 or increased standard rent as provided in Section 7 and nothing more. Section 6 lays down the principles for determination of standard rent in almost all conceivable classes of cases and Section 7 provides for increase in the standard rent where the landlord has incurred expenditure for any improvement, addition or structural alteration in the premises. Section 9 as the definition in Section 2(k) clearly suggests and the marginal note definitely indicates, does not define what is standard rent but merely lays down the procedure for fixation of standard rent. The Apex Court has further held that if it is not possible to determine the standard rent of any premises on the principles set forth in Section 6, then Sub-section (4) of Section 9 provides that the Controller may fix such rent as would be reasonable having regard to the situation, locality and condition of the premises and the amenities provided therein and where there are similar or nearly similar premises in the locality, having regard also to the standard rent payable in respect of such premises. However, while doing so, it should not be forgotten that the basic condition for the applicability of Sub-section (4) of Section 9 is that it should not be possible to determine the standard rent on the principles set out in Section 6 it was specifically observed that:--

''Where such is the case, the Controller is empowered to fix such rent as would be reasonable having regard to the situation, locality and condition of the premises and the amenities provided therein. But even while fixing such rent, the Controller does not enjoy unfettered discretion to do what he likes and he is bound to take into account the standard rent payable in respect of similar or nearly similar premises in the locality. The standard rent determinable on the principles set out in Section 6, therefore again

becomes a governing consideration." And it was further held that:--

"The process of reasoning which the Controller would have to follow in fixing reasonable rent would, therefore, be first to ascertain what is the standard rent payable in case of similar or nearly similar premises in the locality, and then to consider how far such standard rent in its application to the premises needs adjustment having regard to the situation, locality and condition of the premises and the amenities provided therein. The reasonable rent so determined would be the standard rent of the premises fixed by the Controller. There may, however, be cases where there are no similar or nearly similar premises in the locality and in such cases guideline to the Controller would not be available and the Controller would have to determine as best as he can what rent would be reasonable having regard to the situation, locality and condition of the premises and the amenities provided therein."

It was further observed that the question in such case would be as to what would be the standard rent of the premises if they were let out to a tenant. Obviously, in such an eventuality, the standard rent would be determinable on the principles set out in Sub-section (1)(A)(2) (b) of Section 6 of the Rent Act. The standard rent would be the rent calculated on the basis of 71/2 per cent or 81/4 per cent per annum of the aggregate amount of the reasonable cost of construction and the market price of the land comprised in the premises on the date of commencement of the construction.

12. The Apex Court in East India Commercial Co. Pvt. Ltd. Vs. Corporation of Calcutta, , has held that:--

"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. 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 Retnaprabha case, then the determination of the annual letting value has to be according to the terms of the Municipal Act."

13. In Lt. Col. P.R. Chaudhary (Retd.) Vs. Municipal Corporation of Delhi, , it was held that :--

"It would depend on the size, situation, locality and condition of the premises and the amenities provided therein. All these and other relevant factors would have to be followed in determining the rateable value. That, however, cannot be in excess of the standard rent which would be the upper limit. But then considering the runaway prices of land and building materials if the standard rent were to be the measure of rateable value there would be a huge disparity between rateable value of old premises and those recently

constructed though they may be similar and situated in the same or even adjoining locality. Considering the same and similar services which are provided by the local authority if there is vast disparity between the rateable value of the old premises and the new premises that would be wholly illogical and irrational. To avoid such a situation Dr. Balbir Singh case laid the principles which have to be followed in arriving at the rateable value of the newly-constructed premises. Of course, rateable value cannot be the same but then at the same time a wide disparity would certainly be irrational, unreasonable and unfair which situation could be avoided by following the principles laid down by this Court otherwise the rateable value recording wide disparity would be struck down."

14. In the Commissioner v. Griha Yajamanula Samkhya and Ors. reported in AIR 2001 SCW 1956, it has been held that :--

"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 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 under writings 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."

15. From judgments referred to above, it is apparent that the Apex Court while referring to the Delhi Municipal Corporation Act and Punjab Municipal Act has held while determining annual value or the rateable value under those Municipal Acts, the provisions of those Municipal Acts are to be read along with the respective statute relating to the fixation of standard rent prevalent in the concerned States. It is only after reading both the statutes

together that the rateable value is to be determined and when such method is adopted, it would disclose what a landlord could reasonably expect to receive as rent of premises from a hypothetical tenant. It has been consistently observed that the provisions contained in Delhi Municipal Corporation Act, 1957 as well as in Punjab Municipal Act, 1911 are almost similar in nature and with minor differences therein. Under no circumstances, the annual rateable value of the value could be determined at a figure higher than the standard rent in view of the fact that the law of land prescribes penal consequences for expecting or receiving the rent higher than the standard rent prescribed under the Rent Legislation. It cannot be said that the landlord would have reasonable expectation for the rent higher than the standard rent. Considering these rulings of the Apex Court and referring to Section 154 of the said Act read with Section 5(1) of the Rent Act, it was sought to be argued on behalf of the Appellants that since the standard rent has been defined u/s 5(10) of the Rent Act, under no circumstances, the rateable value to be determined u/s 154 of the said Act can exceed the amount which can be ascertained u/s 5(10) of the Rent Act.

16. Section 5(10) of the Rent Act describes the "Standard rent" in relation to any premises to mean (a) where the standard rent is fixed by the Court and the Controller respectively under the Bombay Rent Restriction Act, 1939 or the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944 such standard rent; or (b) when the standard rent is not so fixed, subject to the provisions of Section 11, (i) the rent at which the premises were let on the first day of September, 1940, or (ii) where they were not let on the first day of September, 1940, the rent at which they were last let before that day, or (iii) where they were first let after the first day of September, 1940, the rent at which they were first let, or (iii-a) notwithstanding anything contained in paragraph (iii), the rent of the premises referred to Sub-section (1-A) of Section 4 shall, on expiry of the period of five year mentioned in that Sub-section, not exceed the amount equivalent to the amount of net return of fifteen percent, on the investment in the land and building and all the outgoings in respect of such premises; or (iv) on any of the cases specified in Section 11, the rent fixed by the Court. Apparently in cases where standard rent is not fixed either under the Bombay Rent Restriction Act or the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947, the standard rent is to be calculated on the basis of the definition given in Clause (b) of Section 5(10) of the Rent Act. Clause (b) visualises four different situations. In cases where the premises were let out on the first day of September, 1940, the standard rent should be the rent at which the premises were let out on that date. In cases where they were not let out on the first day of September, 1940, then the standard rent would be the rent at which they were last let out before the said date. In cases where the buildings have been let out for the first time after September, 1940, the standard rent has to be rent equivalent to the amount at which they were first let out. Apparently Section 5(10)(b) prescribes a specified formula for calculating the standard rent even in cases where the buildings were let out for the first time after September, 1940.

17. The decision of the Apex Court in Dr. Balbir Singh"s case makes elaborate reference to the various provisions in the Rent Act which were under consideration in the said decision. It refers to Sections 2(k), 6, 7 and 9 of the Delhi Rent Act. u/s 6(1) of that Act, the standard rent has been defined to mean in case of residential premises, where such premises were let out at any time before second day of June, 1944, as well as in any other case, the rent calculated on the basis of 71/2 per cent per annum of the aggregate amount of the reasonable cost of construction and market price of the land comprised in the premises on the date of commencement of the construction provided that when the rent so calculated exceeds Rs. 1200/- per annum, the said clause shall have effect as if for the words "seven and one-half per cent" had been substituted. In other words, in case of residential premises to which the Delhi Rent Act applies, the standard rent has to be calculated on the basis of 71/2 per cent per annum of the aggregate amount of reasonable cost of construction plus the market price of the land comprised in the premises on the date of commencement of the construction. Where the rent so calculated exceeds Rs. 1200/-, the basis shall be 81/2 per cent instead of 71/2 per cent. Clause (2) of Section 6 of the Delhi Rent Act provides that in case of any premises, whether residential or not, constructed on or after 2nd day of June, 1951 but before 9th day of June, 1955, the annual rent calculated with reference to the rent at which the premises were let out shall be deemed to be the standard rent for a period of 7 years from the date of completion of the construction and in case of any premises constructed on or after the 9th day of June 1955, including premises constructed after the commencement of the concerned Act, the annual rent agreed upon between the landlord and the tenant when such premises were first let out shall be deemed to be the standard rent for a period of 5 years from the date of such letting out. The Apex Court, in paras 9 and 10 of the decision, has made a specific reference to Section 9 and the fact of exclusion thereof from the definition clause of "Standard rent" in the Delhi Rent Act. Section 9 of the Delhi Rent Act provided that the Controller shall, on an application made to him in that behalf, either by the landlord or by the tenant, in the prescribed manner, fix in respect of any premises the standard rent referred to in Section 6 or the increase, if any, referred to in Section 7. Sub-section (2) of Section 9 provided that in fixing the standard rent of any premises or the lawful increase thereof, the Controller shall fix an amount which appears to him to be reasonable having regard to the provisions of Section 6 or Section 7 and the circumstances of the case.

18. It is apparent that under the Delhi Rent Act, the definition of "standard rent" does not include the fixation of such standard rent by the Controller u/s 9. There is a difference between the said provision and the provisions of the Rent Act in this State. The standard rent under the Rent Act includes the rent specified u/s 11 of the Rent Act. Section 11 of the Rent Act empowers the Court to fix the standard rent and the permitted increases therein and apart from taking into consideration the factors specified in Section 5(10)(b)(i), (ii) and (iii) of the Rent Act, it also specifies the situation where by reason of the premises having been let at one time as a whole or in parts and another time in parts or as a whole, or for any other reason, any difficulty arises in giving effect to this part, or

where any premises have been or are let rent-free or at a nominal rent or for some consideration in addition to rent as well as where there is any dispute between the landlord and tenant regarding the amount of standard rent. From these provisions in the Rent Act read with the decision of the Apex Court in Balbir Singh''s case and other cases referred to above, one can safely conclude that though basically for the purpose of arriving at a rateable value of a building, the principle that the annual rent which the owner of the premises expected to get if the premises were let out to a hypothetical tenant, is to be accepted, at the same time, various other relevant factors can also be taken into consideration without ignoring the restrictions imposed under the Rent Legislation in the State pertaining to the rent amount which can be demanded by the landlord from the tenant and the prohibition for demand in excess to standard rent to be calculated under the Rent Legislation in the State. Undoubtedly, this would be subject to the provisions contained in the Municipal Act inasmuch as where such Act provides for a method and manner of determination of rateable value in which case those provisions would be applicable and would have to be followed, and in that case, there can be no restriction for the rateable value to be equal or less than the standard rent. But in the absence of the method for fixation of the rateable value under the Municipal Act, the Authority cannot ignore the restrictions imposed upon the landlord against demand of anything in excess to the standard rent which can be calculated under the Rent Act.

19. Referring to the said Rent Act, therefore, though Section 5(10) provides for various situation wherein the standard-rent could be calculated and the formula for that purpose, it also includes the situation wherein there is a dispute about the standard rent to be determined by the Court u/s 11 of the Rent Act. Being so, in case of dispute between the landlord and the tenant regarding amount of the standard rent, the Court is bound to determine the same taking into consideration various factors without ignoring provisions of Section 5(10) of the Rent Act. Similarly, the Municipal Authorities also will have to determine the reasonable rent which the landlord could expect from a hypothetical tenant and considering the observations by the Apex Court in Dewan Daulat''s case, while agreeing with this earlier decision in Guntur Municipal Corporation''s case, it is to be held that the Municipal Authorities by doing so, would not usurp the function of the Court u/s 11 of Rent Act, but they would perform their function within the scope of jurisdiction of an assessing authority under the said Act.

20. It is therefore to be held that the authorities, while determining the rateable value u/s 154 of the said Act, have to bear in mind the provisions of the Rent Act and while deciding the rateable value have to take into consideration the provisions of the said Act as well as the Rent Act and considering the facts and materials placed before them, have to arrive at the figure pertaining to the rateable value of the premises. While doing so, in cases where the Court under the Rent Act has already fixed the standard rent for any such premises, undoubtedly the same will have to be considered for determining the rateable value of the building. However, in case no such standard rent has been fixed under the Rent Act, the reasonable amount of rent, which can be expected by the owner

from a hypothetical tenant, has to be arrived at by taking into consideration the provisions of Section 11 read with Section 5(10) of the Rent Act as also Sections 154 and 155 of the said Act. Section 155 of the said Act empowers the Commissioner to call for information and returns from the owner or enter an exigible premises. It should be also borne in mind by the authorities that whatever figure which can be arrived at shall be a reasonable amount of rent which can be expected by the owner from a hypothetical tenant; i.e. the amount so arrived at should not be more than the standard rent which can be calculated in terms of the provisions contained in Section 11 read with Section 5(10) of the Rent Act.

21. Records pertaining to the case in hand apparently disclose that the authorities below, merely because there is an increase in the rent amount in relation to the building in question by the Appellants, have accepted the said figure as the basis for determination of the rateable value. Certainly such a criteria cannot be adopted in view of the provisions contained in Section 11 read with Section 5(10) of the Rent Act read with Section 154 of the Rent Act. Mere increase in the actual rent received by the landlord cannot be a criteria for determination of the rateable value and the same cannot be accepted. The decision of the authority below therefore cannot be sustained.

22. As regards the changes in the rateable value, undoubtedly there are provisions in the Rent Act providing for a situation warranting alteration in the standard rent in the form of increase thereof on account of various circumstances enumerated under Sections 7 to 10B of the Rent Act. Once it is clear that the rateable value is to be determined by taking into consideration the provisions of the said Act as well as those of Rent Act, the authorities while exercising their jurisdiction regarding the assessment of the property tax under the said Act cannot ignore the above-referred provisions of the Rent Act which deal with the situation where the increase in the standard rent is permissible. Undoubtedly, Section 167 of the said Act empowers the authorities to increase or decrease the rateable value of the premises. Accordingly, in case of an increase in the rateable value, the authorities will have to take into consideration the provisions contained in Section 7 to 10B of the Rent Act, The impugned order nowhere discloses any application of mind by the authorities below to this aspect of the matter.

23. As regards the other decisions, which are sought to be referred to and relied upon, are not of much assistance in the case in hand. In Filmistan Private Ltd. Vs. The Municipal Corporation for Greater Bombay, , it was held that it cannot be gain-said that the rateable value to be fixed by the Municipal Corporation u/s 154 of the Bombay Municipal Corporation Act, 1888, cannot exceed the standard rent of the premises in respect of which the rateable value is fixed. But it is not correct to say that the standard rent which will be upper limit for the purpose of fixing the annual letting or rateable value must in all cases be such standard rent as would be notionally fixed on an application u/s 11 of the Bombay Rent Act, 1947. Until such an application u/s 11 is made, the standard rent of premises first let out after 1st September 1940 is the agreed rent within the meaning of Section 5(10)(b)(iii) of the Bombay Rent Act. It is however be noted that the Apex Court has specifically ruled that such amount of agreed rent cannot be the one

which can be said to be a standard rent as the Rent Legislation imposes limitation over the amount which can be expected to be received from a hypothetical tenant and provides for penalty for acceptance of amount over and above the standard rent.

24. In Harilal Shamalji Parekh v. The Jain Co-operative Housing Society Limited reported in 1957 ILR 217, the applicants before the Commissioner contended that on the principle of fair return to the landlord on his outlay or investment the cost or value of the land for the purpose of determining reasonable rents of the premises should be taken to be Rs. 9 per square yard which was the price paid by the respondents in 1947. The respondents on the other hand contended that the value of the land to be taken into account for the purpose of determining reasonable rent was the market value of the land on the date of the construction of the buildings. The Commissioner accepted the respondents contention and determined the market value of the building to be Rs. 600. On this report of the Commissioner, the applicants and the respondents filed their objections. The trial Judge was of the view that even if the objections of the applicants were allowed the fair rent of each building would come to Rs. 553 per month as against the contractual rent of Rs. 560 per month and he therefore, held that the contract rent of Rs. 560/- per month for each building was fair rent and fixed the same as the standard rent. The applicants appealed to the Appellate Bench of the Court of Small Causes. The Appeal Court dismissed the appeals. Apparently the issue involved therein was totally different than the one before the Court in the case in hand.

25. In Asstt. General Manager, Central Bank of India and Others Vs. Commissioner, Municipal Corporation for the City of Ahmedabad and Others, , it was held that the relevant provisions provided that where the standard rent is not fixed, the actual rent received shall be deemed to be the annual rent in which the property might reasonably be expected to let from year to year notwithstanding anything contained in any other law. Apparently there was specific provision in the relevant Act that where the standard rent is not fixed, the actual rent fixed should be deemed to be the annual rent, which could be reasonably expected by the landlord from any hypothetical tenant. Besides, there was non-obstante clause in relation to the said definition of "Standard rent" inasmuch as it was specifically provided that the same definition shall be accepted notwithstanding anything contained in any other law.

26. In Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad, , the Apex Court has ruled that Rule 350-A framed by the Municipal Corporation of Ahmedabad for rating open lands read with Rule 243 was ultra vires Sections 73 and 75 inasmuch as it permitted fixation of rate at percentage of capital value of the lands and not on their annual value. Since the statutory provisions provided for fixation of the rate of percentage of annual value, Rules providing for fixation of the rate at percentage of capital value were held to be beyond the scope of the statutory provisions.

27. Unreported decision of the learned Single Judge of this Court in First Appeal No. 988 of 1981 in the matter of Municipal Corporation of Greater Bombay v. Ranjitsingh

Gordhandas and Ors. decided on 3rd April 1998, is also of no much assistance as the same was delivered in the facts and circumstances of the said case.

28. With reference to the circular dated 18th September, 1998 relied upon by the learned advocate for the respondents, no statutory provisions have been pointed out which empowers the authorities to issue such a circular and based on such circular to calculate the rateable value of the buildings. In the absence of any such authority under the statute to issue such circular, no much value can be attached to the said circular. However, at the same time, it is to be made clear that from the contents of the circular, it is apparent that it contains the guidelines to be followed for the purpose of assessment of the letting rates in the areas specified therein and the same appears to be based on various data collected by the authority. Undoubtedly, the same can be of assistance to the respondents as a corroborative piece of evidence in case the respondents are able to place on record the materials which can fortify the figures which have been disclosed in the said circular as being the letting rates for the respective areas. But the circular by itself cannot be the basis for determination of the rateable value.

29. In the result, therefore, the appeal succeeds. The impugned orders are hereby set aside. The matter is remanded to respondent No. 2 to determine the rateable value in accordance with the provisions of law and the observations made hereinabove. In the facts and circumstances of the case, the respondents shall expedite the disposal of the proceedings and shall dispose of the same as early as possible. There shall be no order as to costs.