(1968) 11 BOM CK 0026

Bombay High Court

Case No: Letters Patent Appeal No. 130 of 1964

Polychem Ltd.		APPELLANT
	Vs	
The Municipal Corporation of Greater Bombay		RESPONDENT

Date of Decision: Nov. 4, 1968

Acts Referred:

- Bombay Municipal Corporation Act, 1888 - Section 139, 140

Citation: (1969) 71 BOMLR 398 : (1969) MhLj 784

Hon'ble Judges: Wagle, J; Patel, J

Bench: Division Bench

Judgement

Patel, J.

This appeal arises out of a rating dispute between the appellant and the Municipal Corporation for Greater Bombay.

2. The appellant is a limited company having its factory at Goregaon. It purchased a piece of land measuring 6652 sq. yds. in 1960 for Rs. 1,00,000. The relevant, period for which the rateable value has been assessed in the present case is from July 8, 1961 to December 31, 1961 and January 1, 1962 to March 31, 1962. By a notice dated December 14, 1961 the rateable value was fixed at Rs. 2,170 for the first period and by a notice dated March 17, 1962 the rateable value was fixed at Rs. 2,330 for the second period. The appellant filed an appeal u/s 217 of the Bombay Municipal ''Corporation Act (hereinafter called "the said Act") to the Chief Judge of the Small Cause Court. He confirmed the rateable value fixed by the Municipal Corporation. The appellant filed an appeal to this Court which was heard by a single Judge who dismissed it summarily. The appellant files the present Letters Patent Appeal.

3. Initially Mr. ''Chitale contended that an appeal under Clause 15 of the Letters Patent against the judgment of a single Judge cannot lie except by his certificate that the case is fit one for appeal. This contention must be rejected in view of the

provisions of Section 218 of the Act which show that the decision of the Chief Judge of the Small Cause Court is to be treated for the purpose of an appeal as a judgment of original Court and an appeal lies to the High Court as if it were a decree in exercise of its original jurisdiction. Though, therefore, the proceeding before the Chief Judge of Small Cause Court is spoken of as an appeal, it is really in the nature of a dispute being brought to a persona designate/, who decides it as an original dispute from which an appeal is provided u/s 217. The question is also decided against Mr. Chitale by a decision of this Court in Muljee Sicka & Co. v. Municipal Commissioner (1967) 70 Bom. L.R. 327

4. It is an admitted fact that out of the total land measuring 6652 sq. yds., 450 sq. yds. fall within the set back line and, therefore, that much area has to be omitted from consideration while fixing the rateable value that has been done. It also appears that for the period commencing from January 1, 1962 i.e. for the later period, 1060 sq. yds. were being built upon and the open land was only 5142 sq. yds. The assessing authority assessed the value of the land at Rs. 10 per sq. yd. and fixed its rateable value on the basis of 3| per cent, return for the first period. For the second period, in respect of the land measuring 1060 sq. yds. he fixed the value of the land at Rs. 10 per sq. yd. but fixed the rateable value on the basis of 5 per cent, return and with respect to the rest of the land, he fixed the rateable value on the basis of 3| per cent, return. It is contended by Mr. Nariman that the assessing authority was not justified in assessing the rateable value of open land at a flat rate of 3 1-2 per cent, of the capital value since lands may vary in their productivity because of their condition, situation, conveniences etc. It is also argued that in any case land which is being built upon cannot be rated at all as it is not capable of beneficial utilization as required by law. Before considering these contentions we will reproduce relevant sections of the Bombay Municipal Corporation Act.

5. Section 3, Clause (r) of the Act defines "land" to include land which is being built upon or is built upon or covered with water, benefits to arise out of land, things attached to the earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over any street. "Building" is defined in Clause (s) of Section 3 to include a house, out-house, stable, shed, hut and every other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatever. Section 139 of the Act requires the municipality to impose among others property taxes and Section 140 provides what taxes have to be levied. Section 140 reads thus:

The following taxes shall be levied on buildings and lands in Greater Bombay and shall be called ''property taxes'', namely :-

(a) a water tax of so many per centum of their rateable value as the corporation shall deem reasonable for providing a water supply for Greater Bombay ;

(b) a halalkhor-tax of so many per centum, not exceeding five of their rateable value as will, in the opinion of the Corporation, suffice to provide, for the collection, removal and disposal, by municipal agency, of all excrementitious and polluted matter from privies, urinals and cesspools and for efficiently maintaining and repairing the municipal drains constructed or used for the reception or conveyance of such matter, subject however, to the provisos that the minimum amount of such tax to be levied in respect of any one separate holding of land, or of any one building or of any one portion of a building which is let as a separate holding, shall be six annas per month, and that the amount of such tax to be levied in respect of any hotel, club or other large premises may be specially fixed u/s 172 ;

(c) a general tax of not less than eight and not more than twenty-six per centum of their rateable value, together with not less than one-eighth and not more than three-quarters per centum of their rateable value added thereto in order to provide for the expense necessary for fulfilling the duties of the corporation arising under Clause (k) of section 01 and Chapter XIV;

(ca) the education cess leviable u/s 195E ;

(d) betterment charges leviable under Chapter XII-A.

Section 154 relating to valuation of the property assessable to property-taxes, so far as is material, reads as follows:

(1) 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 centum of the said annual rent and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever.

Sub-section (2) of Section 154 exempts machinery from valuation. Sub-section (3) is not relevant for the present purposes.

6. Section 154 and similar sections in the other municipal statutes have come up for discussion before this Court and the Supreme Court on a few occasions. In Motichand v. Bombay Mun. Corp. (1967) 70 Bom. L.R. 327 it is said (p. 329) :

...It is a well recognised principle in rating that both gross value and net annual value are estimated by reference to the rent at which the property might reasonably be expected to let from year to year.,.. The rent which a tenant could afford to give is calculated rebus sic stantibus, that is to say, with reference to the property in its existing physical condition and to the mode in which it is actually used. The hypothetical tenant includes all persons who might possibly take the property including the person actually in occupation, even, though he happens to be the owner of the property. The rent is that which he will pay in the ''higgling of the market'', taking into account all existing circumstances and any relevant future trends. If the property affords the opportunity for the carrying on of a gainful trade,

that fact also must be taken into account. The property is assumed to be vacant and to let and the material date for the valuation is that of the proposal which gives rise to the proceedings. ... It is also well recognised that while valuing the property in question every intrinsic quality and every intrinsic circumstance which tends to push the rental value up or down must be taken into consideration. In other words, in estimating the hypothetical rent ''all that could reasonably affect the mind of the intending tenant ought to be considered'' (Carlwright v. Sculcoates Union [1900] A.C. 150, ... The measure for purposes of rating is therefore the rent which a hypothetical tenant, looking at the building as it is, would be prepared to pay.

7. It is argued in the first instance that the valuation made by the authorities at a flat rate of 3J per cent, of capitalized value is, therefore, not justified under the provisions of is. 154 which postulates that there is a willing tenant who would be prepared to take from the willing landlord this property, that is, the open land in the same condition in which it is from year to year. Inasmuch as the advantages and disadvantages of the property have not been considered, the valuation is highly improper.

8. Mr. Chitale has argued, and, in our view rightly, that the assessing authority fixed the value of the property at Rs. 10 per sq. yd. on the basis of its then condition though it has been purchased for a higher amount. The architect of the appellant who appeared before the assessing officer stated that the property was comparatively at a lower level than properties round about and that in rainy season some water accumulated on it. These facts were placed before the assessing authority and the assessing authority thereafter valued the property at Rs. 10 per sq. yd,, It is not, therefore, possible to hold that this aspect of the matter was not taken into account by the assessing authority who fixed the capital value of the property at a far lower figure than what was paid in 1960 for purchasing the property. In any event, it was the appellant who took the matter to the Chief Judge of the Court of Small Causes in. Bombay and it was for him to show by placing positive material before the learned Judge that the valuation was improper and that it should have been valued at a lesser amount. Except for making general statements nothing has been stated by the architect who went into the witness-box and deposed about the condition of the property. It is true that if the rateable value has to be found by considering the question what a hypothetical willing tenant would be prepared to pay from year to year to a willing landlord, the fundamental assumption underlying it is that the property is capable of being let and a tenant would come forward to take it. If there was any material from which the Court could be satisfied that the property was such, either because of its situation or because of its condition, that there could be no possible tenant who would be prepared to take the land, we would have remitted the matter for reconsideration of the learned Judge. However, having regard to the circumstances of the case, in particular the admission that this land is situated hardly within a mile of the Railway Station, Malad, that it is on Marve Road and round about there are buildings, and the fact

that there was a bungalow in this very land, it seems to us futile to remit the matter for reconsideration, because there can be no doubt that the land was capable of being let and there would be a tenant who would be prepared to take the land from year to year. The percentage for fixing the value may be uniform but since the value of the land is fixed after taking into account all factors, it cannot be said that the rateable value is uniform. Therefore, so far as the question of assessment of rateable value of the open land is concerned, the appellant''s contention cannot be upheld.

9. The second question that is more important one and that has been urged before us is whether that portion of the land which is in the course of being built upon can be taxed. On the principle that there .must be a willing tenant to take the land in the condition in which it is, from year to year, it is argued that a piece of land which is in the course of being built upon would not get a tenant from year to year. On the other hand, it is argued by Mr. Chitale that the taxing Sections 139 and 140 of the Act do not differentiate between open land, land being built upon and a building, and inasmuch as several modes of valuation are open to be adopted by the Municipal Corporation, it is impossible to hold that such land which is in the course of being built upon is not liable to be rated.

10. Evidently, the land which is in the course of being built cannot be regarded as a building in the popular sense of the word. If, however, one has regard to the definition of the word "building" in Section 3(s), any construction whatsoever made on land must amount to "building". However, during the period that the foundations are being built and the walls are being raised, or it is being completed it is impossible that there would be any tenant who would be prepared to take it in the condition in which it is from year to year. It is impossible to let it from year to year in its then condition. Moreover, u/s 353A(2) of the Act, until there is a completion certificate, a building- cannot be beneficially occupied. Though, therefore, it is true that lands and buildings are liable to tax, the liability is not absolute for the obvious reason that its liability to being taxed depends upon the amount of rent which a hypothetical tenant willing to take the property in the condition in which it is would pay for it to a willing landlord. If there cannot be a tenant who is prepared to take the property from year to year in this condition, it must obviously mean that the rating value in that condition of the property is zero, and the tax, therefore, must be assessed on zero. It is on this principle that some of the cases decided by English Courts have proceeded.

11. Now, under the English statutes also, the liability to rating depends upon the annual rent that a hypothetical tenant would pay for the property in the condition in which it is. The language of similar statutes in England is similar. There is only one fundamental difference between English statutes and our statutes, and it is that, under the English statutes it is the occupier who pays the tax while under the Indian statutes it is the owner who pays the tax. The principle of taxation however depends

upon the beneficial occupation of the property, in both cases. We may refer with advantage to Ryde on Rating, 11th edn., Chap. XVII, p. 374, where the following observations occur:

...The rateable quality of land is not to be determined by what it once was, or by what it may hereafter become; it must be determined by what it was at the time the rate was made. So that the tenant of an exhausted coal mine is not rateable, though he may continue to pay rent under his lease. One must ''ascertain the rateable value of a hereditament in a particular parish by ascertaining what that hereditament would let for in its then condition from year to year''. And consequently a house in course of construction cannot be rated.

At p. 51 under the heading ''Acts which do not give rise to occupation'' the author says:

It has always been accepted that buildings and works in course of construction or alteration are not rateable, because there is no occupier of them within the meaning of the Poor Relief Act, 1601.

12. It is undoubtedly true that some of the decisions proceed on the footing that where the property is in an antecedent condition to its being beneficially occupied for a purpose for which certain things are. being done, the property is not liable to rate because there is no occupier and these decisions may not be of use under our Acts since it is the owner who is liable under the Act to pay the taxes. That apart, the fundamental principle that there must be a tenant who would take the property in the condition in which it is from year to year exists in our statutes as much as in the English Statutes, If, therefore, there can be no tenant who would be prepared to take the property in that condition, evidently the rateable value would be nil and consequently the tax also nil.

13. That all and every property is not rateable irrespective, of its being capable of producing beneficial utility either to the landlord or to someone else who would be prepared to take it on rent is clear from the other provisions in the statute. For example, the Act provides that in ease where a building remains vacant for more than 60 days in a year continuously the Corporation has to refund 2/3rd of the taxes collected on the property. With that purpose in View, u/s 152 an obligation is cast upon the owner of the property to inform the Municipal Corporation when a vacant building is actually occupied. These provisions would not have been made in the Act if the liability to property taxes was absolute irrespective of its being capable of beneficially enjoyed or not.

14. Mr. Chitale drew our attention to the decision of the Supreme Court in Municipal Corporation of Greater Bombay Vs. Royal Western India Turf Club, and such other cases which have taken the view that there are various methods of valuation for the purposes of rating such as contractor''s method, the unit method or the profit method. He argues from this that the liability to tax must be irrespective of the

capacity of the property for beneficial enjoyment by any person. It is impossible to accept this contention. As has been made clear by the Supreme Court in the above case, these various methods no doubt do exist but the purpose of those methods is to find out what a willing tenant would pay for the property from year to year as rent in its present condition and not more. As observed earlier, if there is no tenant who would be prepared to take the property from year to year in its then condition, evidently there can be no tax on the same.

15. We are, therefore, of the view that the learned Chief Judge of the Small Cause Court was right when he upheld the valuation of the open land u/s 154, but he was not right when he held that the land which was being built upon was liable to payment of tax. Order accordingly. Having regard to the partial success of each side, we direct that there will be no order as to costs of these proceedings.