Indian Oil Corporation Ltd vs Municipal Corporation & Anr on 7 April, 1995

Equivalent citations: AIR 1995 SUPREME COURT 1480, 1995 (4) SCC 96, 1995 AIR SCW 2254, (1995) 3 SCR 246 (SC), (1995) 3 JT 626 (SC), 1995 ALL CJ 1 516, 1995 ALL CJ 2 792, (1995) 2 CIVILCOURTC 431, (1995) 2 MAD LJ 35, (1995) 2 KER LT 28, (1996) 1 LJR 120

Bench: J.S. Verma, Sujata V. Manohar

PETITIONER:
INDIAN OIL CORPORATION LTD.

Vs.

RESPONDENT:
MUNICIPAL CORPORATION & ANR.

DATE OF JUDGMENT07/04/1995

BENCH:
J.S. VERMA & MRS. SUJATA V. MANOHAR, JJ.

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. Heard the learned Additional Solicitor General.

2. The impugned judgment by a Full Bench of the Madhya Pradesh High Court overrules the decision of a Division Bench in Municipal Corporation, Indore and Others v. Smt. Ratnaprabha Dhanda, Indore and Another, 1989 MPLJ 20. The challenge in this special leave petition is to the correctness of the Full Bench decision. The question involved relates to the construction of Section 138(b) of the Madhya Pradesh Municipal Corporation Act, 1956 (for short the "M.P. Act") which reads as under:-

> "The annual value of any building shall notwithstanding anything contained in' any other law for the time being in force be deemed to be the gross annual rent at which such building, together with its appurtenances and any furniture that may be let for use or enjoyment therewith might reasonably at the time of assessment be expected to be let from year to year, less any allowance of ten percent for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross annual rent."

(emphasis supplied)

3. In the High Court the matter was not res integra being concluded by the authority of the direct decision by a 3- Judge Bench of this Court in Municipal Corporation, Indore and Others v. Smt. Ratna Prabha and Others, 1977 (1) SCR 1017, on the correct construction of Section 138(b) of the M.P. Act. No other direct decision of this Court is to the contrary. However, the Division Bench of the High Court in a later case between the very same parties took a different view on the construction of the same provision placing reliance on some other decisions of this Court wherein the question arose for decision in the context of a similar provision in some other statutes applicable in the other States wherein there was no non-obstante clause as in the M.P. Act. The Division Bench took the view that the de- cision of this Court in Ratna Prabha (supra) was not binding on it even though it related to construction of the same provision, namely, Section 138(b) of the M.P. Act since it was in conflict with later decisions of this Court by co- equal Benches wan Daulat Rai Kapoor etc. etc. v. New Delhi Municipal Committee & Another etc. etc., 1980 (2) SCR 607 and Dr. Balbir Singh and Ors. etc. etc. v. Municipal Corporation, Delhi and Ors., 1985 (2) SCR 439. Accordingly, it proceeded on the basis that the decision of this Court in Ratna Prabha (supra) is no longer good law binding on it. This situation gave rise to the need for a Full Bench to consider the correctness of the view taken by the Division Bench. The Full Bench has overruled the decision of the Division Bench. In our opinion, the Full Bench was right in its view that the decision of this Court in Ratna Prabha (supra) binds the High Court. There is no ground to entertain this special leave petition which challenges the decision of the Full Bench of the High Court.

4.The only, direct decision of this Court on the construction of Section 138(b) of the M.P. Act, with which we are concerned, is Ratna Prabha (supra). It referred to the earlier decision in The Corporation of Calcutta v. Smt. Padma Debi and Others, 1962 (3) SCR 49 and distinguished it on the ground that Section 127(a) of the Calcutta Municipal Corporation Act, 1923 on which the decision in Padma Debi (supra) was based, did not contain a non obstante clause like that in Section 138(b) of the M.P. Act. The other earlier decisions of this Court in which construction of similar provision in other statutes was involved were also referred and distinguished in Ratna Prabha (supra); and it was then held as under:-

> "As has been stated, clause (b) of section 138 of the Act provides that the annual value of any building shall " notwithstanding anything contained in any other law for the time being in force" be deemed to be the gross annual rent for which the building might "reasonably at the time of the assessment be expected to be let from year to year". While therefore the requirement of the law is that the reasonable letting value

> should determine the annual value of the building, it has also been specifically provided that this would be so "notwithstanding anything contained in any other law for the time being in force". It appears to us that it would be a proper interpretation of the provisions of clause (b) of section 138 of the Act to hold that in a case where the standard rent of a building has been fixed under section 7 of the Madhya Pradesh Accommodation Control Act, and there is nothing to show that there has been fraud or collusion, that would be its reasonable letting value, but, where this is not so, and the building has never been let out and is being used in a manner where the question of fixing its standard rent does not arise, it would be permissible to fix its reasonable rent without regard to the provisions of the Madhya Pradesh Accommodation Control Act, 1961. This view will, in our opinion, give proper effect to the non-obstante clause in clause (b), with due regard to its other provision that the letting value should be reasonable ".

We have gone through the decision in Padma Debi's case (supra). There the premises were on rent and section 127(a) of Calcutta Municipal Corporation Act, 1923, did not contain a non-obstante clause. That the section provided, inter alia, was that the annual value shall be deemed to be the gross annual rent at which the land or building might at the time of assessment "reasonably be expected to let from year to year. " This Court examined the significance of the word "reasonable" and held that it would be incongruous to consider fixation of rent beyond the limits fixed by penal legislation as reasonable. That view was taken with reference to the provisions of the Rent Control Act which penalised the taking of a higher rent, and also made it irrecoverable. While, therefore, we are in agreement with the view taken in Padma Debi's case (supra) that it would not be reasonable to consider fixation of rent beyond the limits fixed by the Rent Control Act as reasonable, it would not be a proper interpretation of section 138(b) to hold that as no standard rent has been fixed so far in respect of die Viram Lodge, the Municipal Commissioner was justified in adopting another suitable criterion for determining the annual value of the building. There is in fact nothing in the Act to make it obligatory for the Commissioner to follow the provisions of the Madhya Pradesh Accommodation Control Act in spite of the non- obstante clause and to limit the annual value to any standard rent that the building might fetch under that Act.

xxx xxx xxx The High Court did not properly appreciate the difference between the wording of section 127 of the Calcutta Municipal Corporation Act, 1923, and section 138(b) of the Act, and committed an error in thinking that this was virtually similar to Padma Debi's case. "

(at pages 10 1 9-20 of SCR) (emphasis supplied)

5. In Dewan Daulat Rai (supra), an other 3-Judge Bench of this Court while construing a similar provision in the Punjab Municipal Act, 1911 referred to the decision in RatnaPrabha (supra) and distinguished it on the ground that there was n non-obstante clause in the relevant provision of the Punjab Municipal Act and therefore, the decision in Ratna Prab (supra) had no application. No doubt, i doing so, a reservation was expressed about the view taken in Ratna Prabha (supra) on the basis of the existence of the non-obstante clause in Section 138(b) of the M.P. Act but that cannot have the effect of overruling the decision of this Court in Ratna Prabha (supra) inasmuch as a later

co-equal Bench could not overrule it and could only refer it for reconsideration to a larger Bench, which it did not do.

6. In Dr. Balbir Singh (supra), after pointing out that the relevant provisions in the Delhi Municipal Corporation Act, 1957 and the Punjab Municipal Act, 1911 were almost identical, the decision in Dewan Daulat Rai (supra) was followed by another 3-Judge Bench. No reference was made therein to the decision of this Court in Ratna Prabha (supra).

7. Recently, another 3-Judge Bench of this Court in Morvi Municipality v. State of Gujarat and Ors., 1993 (2) SCR 803, dealt with the same question with reference to the provisions of the Gujarat Municipalities Act, 1963. It referred to the earlier decisions and indicated that the presence of the non-obstante clause "notwithstanding anything contained in any other law" in Section 138(b) of the M.P. Act distinguished the decision of this Court in Ratna Prabha (supra); and since in the Gujarat act there was no such non-obstante clause that decision had no application to the Gujarat Act.

8. It is thus clear that the decision of this Court in Ratna Prabha (supra) on the construction of Section 138(b) of the M.P. Act has all along been understood and justified on the basis of the presence of the non-obstante clause in Section 138(b) of the M.P. Act and the later decisions have distinguished it on that ground. That is the basis on which the decision in Padma Debi (supra) was distinguished in Ratna Prabha (supra) itself It is also obvious that a Bench of 3-Judges only in the later decisions could not overrule the decision of this Court in Ratna Prabha, 1977 (1) SCR 10 1 7 and, therefore, none of the later decisions could be so read to have that effect. The Division Bench of the High Court in 1989 MLJ 20 was clearly in error in taking the view that the decision of this Court in Ratna Prabha (supra) was not binding on it. In doing so, the Division Bench of the High Court did something which even a later co-equal Bench of this Court did not and could not do. The view taken by the Division Bench of the High Court in 1989 MPLJ 20 pro- ceeds on a total misunderstanding of the law of precedents and Article 141 of the Constitution of India, to which it referred. But for the fact that the view of the Division Bench of the High court proceeds on a misapprehensions of the law of precedents and Article 141 of the Constitution, it would be exposed to the criticism of an aberration in judicial discipline. The decision of the Division Bench of the High Court was, therefore, rightly overruled by the Full Bench in the impugned judgment.

9. The other submission of the learned Additional Solicitor General is a plea for reconsideration of the decision of this Court in Ratna Prabha, 1977 (1) SCR 1017, which can arise only in this Court and was not available in the High Court. The decision in Ratna Prabha (supra), the only direct decision of this Court on the construction of Section 138(b) of the M.P. Act has held the field for a long time and has formed the basis of assessment of the annual value in the State of Madhya Pradesh since then. That decision is based on the presence of the non-obstante clause in the M.P. Act and distinguishes the earlier larger Bench decision in Padma Debi (supra) on that ground. There can be no doubt that the view taken by this Court in Ratna Prabha (supra) is a reasonably permissible construction of Section 138(b) of the M.P. Act. In the later decisions of this Court, Ratna Prabha (supra) was invariably distinguished and not referred for reconsideration by a larger Bench. There is thus no ground now for reconsideration of the decision in Ratna Prabha (supra).

10. In The Keshav Mills Co. Ltd. v. Commissioner of Income- tax, Bombay North, 1965 (2) SCR 908, the correct approach in this behalf was indicated as under:-

> "..... In exercising this inherent power, however, this Court would naturally like to impose certain reasonable limitations and would be reluctant to entertain pleas for the reconsideration and revision of its earlier decisions, unless it is satisfied that there are compelling and substantial reasons to do so When it is urged that the view already taken by this Court should be reviewed and revised it may not necessarily be an adequate reason for such review and revision to hold that though the earlier view is a reasonably possible view, the alternative view which is pressed on the subsequent occasion is more reasonable. In reviewing and revising its earlier decision, this Court should ask itself whether in the interests of the public good or for any other valid and compulsive reasons, it is necessary that the earlier decision should be revised.....".

(at page 921 of SCR) (emphasis supplied)

11.In our opinion, the test indicated in Keshav Mills (supra) for reconsideration of a decision of this Court is not satisfied in the present case and, therefore, we are unable to entertain the plea for reconsideration of the decision in Rama Prabha.

12.The special leave petition is, therefore, dismissed for the above reasons.