Asstt. Gen. Manager Central Bank Of ... vs Commissioner Municipal Corporation ... on 9 May, 1995

Equivalent citations: AIRONLINE 1995 SC 89, 1995 (4) SCC 696, (1995) 2 RENT LR 233, (1995) 1 GUJ LH 1153, 1995 HRR 515, (1995) 2 CUR CC 547, (1995) 2 REN CR 263, (1995) 2 GUJ LR 1189, (1995) 1 REN CJ 550, (1995) 4 JT 310, 1995 SCFBRC 319, 1995 BOM RC 290, (1995) 4 JT 310 (SC)

Author: B.P. Jeevan Reddy

Bench: B.P. Jeevan Reddy, Sujata V. Manohar

```
           CASE NO.:
Appeal (civil)  5405 of 1995

PETITIONER:
ASSTT. GEN. MANAGER CENTRAL BANK OF INDIA ETC.

RESPONDENT:
COMMISSIONER MUNICIPAL CORPORATION AHMEDABAD ETC. ETC.

DATE OF JUDGMENT: 09/05/1995

BENCH:
B.P. JEEVAN REDDY & SUJATA V. MANOHAR

JUDGMENT:
```

JUDGMENT 1995 (1) Suppl. SCR 63 The Judgment of the Court was delivered by B.P. JEEVAN REDDY, J. Delay condoned.

Leave granted. Heard S/Sri G.L, Sanghi, Rohinton Nariman, V.R. Reddy and Andhyarujina for the appellants and S/Sri F.S. Nariman, Soli Sorabjee, B.K. Mehta for the respondents.

These appeals are preferred against the judgment of the Gujarat High Court in a batch of first appeals. Two questions arise for consideration viz.,

(i) whether a tenant of a building is entitled to file and maintain an appeal against the order assessing the property tax under the provision of the Bombay Provincial Municipal Corporation Act, 1949 as applicable in the State of Gujarat and (ii) whether proviso (aa) to sub-clause (ii) of clause (1A) of Section 2 of the said Act is valid and effective. Clause (1A) defines the expression "Annual Letting Value". Proviso (aa) says that where in respect of any building or land or premises, standard rent is not fixed under Section 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1944 (Bombay Rent Act) "the annual rent received by the owner in respect of such building or land or premises shall, notwithstanding anything contained any other law for the time being in force, be

deemed to be the annual rent for which such building or land or premises might reasonably be expected to let from year to year with reference to its use". The Gujarat High Court has held on the first question that an appeal can be preferred only by the owner of the building and not by any other person including the tenant. On the second question, it has recorded its opinion on the meaning and effect of proviso (aa), Tenant right to object to assessment and his rent to file appeal:

> The contention of the learned counsel for the appellants-tenants is this:
>
> by virtue of the agreements entered into between the appellants and their respective landlords, the obligation to discharge the property taxes has been placed exclusively upon the tenants. The landlord receives the rent exclusive of the property taxes which means that any increase/enhancement of property taxes affects the tenant and tenant alone and not the landlord. The tenants, therefore, have a direct stake in determination/assessment of property taxes. Even apart from the agreements between the parties, Section 10 of the Bombay Rent Act empowers the landlord to increase the rent correspondingly where the rates or cesses payable in respect of the said premises (which includes the property taxes) are enhanced. Inasmuch as the liability to pay the property taxes is cast upon the tenants both by virtue of the agreement between the parties and also by virtue of the Bombay Rent Act, the landlords are not taking any interest nor are they filing complaints or taking other proceedings to have the property taxes correctly assessed. In many cases, the landlords are using the enhancement of assessment as a lever of pressure to make the tenant vacate the premises, Notwithstanding such direct interest of the tenant in the matter of determination/assessment of property taxes, the High Court has held that they have no right to file an appeal against the assessment of property taxes. This is causing grave prejudice to the tenants. They are being punished by uncalled for increases in property taxes while at the same time depriving them of the right to appeal and to question the enhancement. The scheme and provisions of the Municipal Corporations Act do enable the tenant to question the assessment or the enhancement in assessment, as the case may be, in respect of the premises occupied by him and also to file appeal and take other proceedings in that behalf. On the other hand, it is submitted by the learned counsel for the corporation that the Act makes the owner of the premises alone primarily liable for property taxes and it is that person alone who is entitled to file a complaint or appeal in case he feels aggrieved by the assessment or enhancement of the assessment. The Act does not confer any such right upon the tenant nor does it recognise any such right of the tenant impliedly. The learned counsel support the reasoning and conclusion of the Gujarat High Court in this behalf.

For a proper appreciation of this question, it is necessary to notice the relevant provisions of the Bombay Municipal Corporations Act as well as the Bombay Rent Act.

Section 127 of the Municipal Corporation Act obliges the corporation to impose the taxes specified in sub-section (1). The first and the foremost tax mentioned in the sub-section is "(a) property taxes".

Section 139 specifies the person who shall be primarily liable for property taxes assessed upon any premises. Section 139 reads as follows :

> "139. (1) Subject to the provisions of sub-section (2) property taxes assessed upon any premises shall be primarily leviable as follows, namely :
>
> (a) if the premises are held immediately from the Government or from the Corporation, from the actual occupier thereof:
>
> Provided that property taxes due in respect of buildings vesting in the Government and occupied by servants of the Government or other person on payment of rent shall be leviable primarily from the Government;
>
> (b) if the premises are not so held --
>
> (i) from the lessor if the premises are let;
>
> (ii) from the superior lessor if the premises are sub-let;
>
> (iii) from the person in whom the right to let the premises vests if they are unlet.
>
> (2) If any land has been let for any term exceeding one year to a tenant and such tenant has built upon the land, the property taxes assessed upon the said land and upon the building erected thereon shall be primarily leviable from the said tenant or any person deriving title from the said tenant by the operation of law or by assignment or transfer but not by sub-

lease or the legal representative of the said tenant or person whether the premises be in the occupation of the said tenant or person or legal representative or a sub-tenant:

> Provided that where the building so erected on the land is of a temporary nature or is unauthorised the property taxes upon the land and building shall be primarily leviable from the person in whom the right to let the land vests."
>
> Insofar as it relevant for our purposes, sub-section (1) says that where the premises are let, the property taxes in respect of that premises shall be primarily leviable upon the lessor. Sub-section (2), however, clarifies that where any land has been let for a term exceeding one year to a tenant and such tenant has build upon the land, the property taxes upon such land and building shall be primarily leviable from such tenant. The proviso to sub-section (2) says that if the construction made is of a temporary nature or is unauthorised, the primary liability continues to remain with the lessor. Section 140 provides the situations in which occupiers of premises are made liable for paying property taxes. Having regard to the contentions urged before us, it would be appropriate to quote the section in full:

"140. (1) If the sum due on account of any property tax remains unpaid after a bill for the same has been duly served under the rules upon the person primarily liable for the payment thereof and the said person be not the occupier for the time being of the premises in respect of which the tax is due, the Commissioner may serve a bill for the amount upon the occupier of the said premises, or, if there are two more occupiers thereof, may serve a bill upon each of them for such portion of the sum due as bears to the whole amount due the same ratio which the rent paid by such occupier bears to the aggregate amount of rent paid by them both or all in respect of the said premises.

(2) If the occupier or any of the occupiers fails within thirty days from the service of any such bill to pay the amount therein claimed, the said amount may be recovered from him in accordance with the rules.

(3) No arrear of a property tax shall be recovered from any occupier under this section which has remained due for more than one year, or which is due on account of any period for which the occupier was not in occupation of the premises on which the tax is assessed.

(4) If any sum is paid by, or recovered from, an occupier under this section, he shall be entitled to credit therefore in account with the person primarily liable for the payment of the same.

Sub-section (1) says that (a) where the property tax due in respect of a premises remains unpaid in spite of service of a bill upon the person primarily liable therefore and (b) if such person is not the occupier of the premises for the time being, (c) the Commissioner may serve a bill for the amount upon the occupier of the premises and (d) if the premises is occupied by more than one occupier, the bill shall be served upon each of the occupiers specifying the amount proportionate to the rent he pays to the total rent payable in respect of the said premises. Sub-section (2)says that if the occupier fails to pay the sum mentioned in the bill within thirty days of its service, such amount can be recovered from him in accordance with the rules. Sub-section (3), however, clarifies that (i) no arrear of a property tax shall be recovered from any occupier under Section 140 which has remained due more than one year and (ii) no tenant shall be called upon to pay taxes in respect of period he was not occupying the premises. Sub-section (4) confers upon the tenant a right to recover the amount paid by him under Section 140 from out of the rent payable by him to his lessor, It is obvious that the right given to the corporation by Section 140 to recover the taxes from the occupier (other than the person primarily liable) does not mean that the corporation's right to recover it from the person primarily liable for such taxes is in any way affected. The right to proceed against the occupier is an additional right given to corporation. Section 141 declares that property due under the Act shall be the first charge upon the premises subject to the priority of land revenue due, if any, thereon. It farther declares that the charge created by it shall also extend to movable properties found within or upon such premises and belonging to the person liable for such taxes - which may mean movables of the tenant of the premises in the manner and to the extent specified in Section 140.

Section 406 provides for appeals against fixation of any rateable value or taxes. The section does not specify the person who is entitled to file the appeal. It only says that appeals against rateable value or tax fixed or charged under the Act shall be heard and determined by a Judge - which means in the city of Ahmedabad, the Chief Judge of the Court of Small Causes or such other Judge of the Court as the Chief Judge may appoint in that behalf. [vide clause (29) of Section 2]. Sub-section (2) provides the conditions subject to which the appeals shall be entertained. It is appropriate to quote the section in full :

> "406.(1) Subject to the provisions hereinafter contained, appeals against any rateable value or tax fixed or charged under this Act shall be heard and determined by the Judge.
>
> (2) No such appeal shall be entertained unless --
>
> (a) it is brought within fifteen days after the accrual of the cause of complaint;
>
> (b) in the case of an appeal against a rateable value a complaint has previously been made to the Commissioner as provided under this Act and such complaint has been disposed of;
>
> (c) in the case of an appeal against any tax in respect of which provision exists under this Act for a complaint to be made to the Commissioner against the demand, such complaint has previously been made and disposed of;
>
> (d) in the case of an appeal against any amendment made in the assessment book for property taxes during the official year, a complaint has been made by the person aggrieved within fifteen days after he first received notice of such amendment and his Complaint has been disposed of;
>
> (e) in the case of an appeal against a tax, or in the case of an appeal made against a rateable value, the amount of the disputed tax claimed from the appellant, or the amount of the tax chargeable on the basis of the disputed rateable value, up to the date of filing the appeal, has been deposited by the appellant with the Commissioner;

Provided that where in any particular case the judge is of the opinion that the deposit of the amount by the appellant will cause undue hardship to him the judge may in his discretion, either unconditionally or subject to such conditions as he may think fit to impose, dispense with a part of the amount deposited so how-ever that the part of the amount so dispensed with shall not exceed twenty five percent of the amount deposited or required to be deposited."

According to sub-section (2), the appeal must he preferred within fifteen days "after the accrual of the cause of complaint". The expression "cause of complaint" is defined in Section 407, which reads as follows :

"407. For the purposes of section 406, cause of complaint shall be deemed to have accrued as follows, namely :

(a) in the case of an appeal against a rateable value, on the day when the complaint made to the Commissioner against such value is disposed of;

(b) in the case of an appeal against any tax referred to in a clause

(c) of sub-section (2) of the said section on the day when the complaint against the tax is disposed of by the Commissioner;

(c) in the case of an appeal against any amendment made in the assessment book for property taxes during the official year, on the day when the complaint made to the Commissioner by the person aggrieved against such amendment is disposed of;

(d) in the case of an appeal against a tax not covered by clause (b) above on the day when payment thereof is demanded or when a bill therefore is served."

According to clauses (a), (b) and (c) of Section 407, the cause of complaint arises when the complaint against the assessment/enhancement/ determination is disposed of by the Commissioner.

Chapter-VIII in Schedule-A to the Act sets out the Taxation Rules. It is necessary to notice a few relevant rules in this chapter. Rule 7 prescribes the manner in which rateable value shall be determined. Rue 8 empowers the Commissioner to call for information or return from the owner or occupier of the building, land or premises as also to enter and inspect the premises for the purpose of enabling him to determine its rateable value. Rule 12(2) says that if the person in occupation of the premises refuses to give true information necessary for determining the person primarily liable for the payment of property taxes, such person shall him self be liable until such information is obtained for all property taxes leviable on the premises of which he is in occupation. Rule 14 says that the assessment book shall be open to inspection by a person who claims to be either the owner or occupier of the concerned premises. Sub-rule (1) of Rule 15 says that where the assessment books are prepared in the manner prescribed in the rules, the Commissioner shall give a public notice specifying a day which is not less than fifteen days from the date of publication of such notice within which complaints against the amount of any rateable value entered in the assessment book will be received in his office. Sub-rule (2), upon which strong reliance has been placed by the learned counsel for the appellants, provides that where any premises is entered in the assessment book for the first time or where the rateable value of any premises is increased, "the Commissioner shall, as soon as conveniently may be after the issue of the public notice under sub-rule (1) give a special written notice to the owner or occupier of the said premises specifying the nature of such entry and informing him that any complaint against the same will be received in his office at any time within fifteen days from the service of the special notice". Rule 20 says that upon the representation of any person concerned or on the basis of any other information received by him during the official year, the Commissioner may amend the entries in the assessment book. Such amendment may relate to

the matters specified in the said sub- rule which include increase or reduction in the rateable value.

Section 10 of the Bombay Rent Act provides the situation in which the landlord is entitled to enhance the rent. Section 10 reads :

> "10, Increase in rent on account of payment of rates etc, excepted- Where a landlord is required to pay to a local authority in respect of any premises any rate, cess or tax imposed or levied for the purposes of such authority he shall be entitled to make an increase in the rent of the premises by an amount not exceeding the increase paid by him by way of such rate, cess or tax over the amount paid in the period of assessment which included the date of the coming into operation of this Act or the date on which the premises were first let, whichever is later and such increase in rent shall not be deemed to be an increase for the purposes of section 7."

According to this section, where there has been an increase in the rate, cess or tax imposed upon a premise after the premise has been let to the tenant, the landlord shall be entitled to enhance the rent correspondingly. Indeed, clause (7) of Section 5 defines the expression "permitted increase". It means, an increase in rent permitted under the provisions of this Act and Section 1.0 is one such provision.

A resume of the above provisions discloses (he rights as well as the obligations of the tenants of the premises. Section 10 of the Bombay Rent Act empowered the landlord to pass on the burden of increase in property taxes to the tenant. Having regard to the normal course of human conduct, we must presume that every landlord will invariably pass on the burden of enhancement to the tenant. Section 140 of the Municipal Corporations Act makes him liable to pay the property taxes in case the landlord fails to pay the same. No doubt, this liability is a limited one as explained above and he is also entitled to be reimbursed by the landlord in that behalf, even so it is a liability cast upon him by law. Certain rights arc also conferred upon the Rules aforementioned. Coupled with this is the fact that neither Rules 12 to 20 nor Section 406 contain any words indicating that the landlord alone can file the complaint and appeal. In such circumstances, it would not be just and equitable to deny to the tenant the right of appeal and the right to file the complaint. We are inclined to hold that in the scheme of the Municipal Corporations Act read with Section 10 of the Bombay Rent Act, the tenant does possess the requisite locus standi to file a complaint pursuant to public notice issued under Rule 35(1) or pursuant to special written notice issued under Rule 15(2) as well as the right to file an appeal under Section 406. This should be more so, if there is an agreement between the landlord and tenant whereunder the obligation to discharge and pay the property taxes in cast upon the tenant. IE is true that this is a private arrangement between the parties and cannot form the basis of a legal right but it is certainly an additional factor conferring the requisite locus standi upon the tenant. Even where the Bombay Rent Act is not applicable to a particular building, the existence and proof of such an agreement would enable the tenant to claim the requisite locus standi. Holding otherwise would be grossly unjust to the tenant. While he made liable, statutorily or by private treaty, for the enhancement in the property taxes, he is not being allowed to question the same. It is true, as contended by the learned counsel for the corporation, that no prudent owner of a building will allow the assessment to be enhanced unreasonably just to spite the tenant, it cannot at the same

time be said that the tenant has no right to file an appeal against the assessment or enhancement, as the case may be, when he is a person directly affected by such assessment/enhancement. There is yet another circumstance:

> any person proposing to file an appeal under Section 406 has to deposit the disputed tax as contemplated by Section 406(2)(e) as a condition for entertaining the appeal; since the landlord can pass on the on the enhanced burden to the tenant according to the Bombay Rent Act and also where there is a stipulation between him and the tenant whereunder the liability to pay the property taxes is exclusively placed upon the tenant, the landlord would not be minded to make the trouble of filing the appeal since he would be obliged to deposit the disputed tax; he may think - and probably legitimately - why should he deposit the disputed tax and file the appeal when the burden of the said tax is not falling upon him. This is also a relevant circumstance in favour of reading a right (to object and appeal) in the tenant. At the same time, it cannot be predicated that the special notice contemplated by Rule 15(2) has necessarily to be served upon the tenant. No such right can be claimed by the tenant nor such an obligation be cast upon the corporation. The tenant has to be vigilant. There will be a public notice under Rule 15(1) wherever an enhancement is proposed. Even the special notice under Rule 15(2) may, in the normal course, be served upon him because he is in occupation of the premises but that may or may not happen. (In a given case, the landlord may be residing in a portion of the same building; there may be more than one tenant b the building and so on.) Even if the special notice is not served upon him, he has to file the complaint within time prescribed by the notices and the Rules. He is equally bound to observe the conditions prescribed in sub-section (2) of Section 406 while filing an appeal. Inter alia, he is not only obliged in file the appeal within the prescribed period of limitation but also to make the deposit as contemplated by clause (e) of sub-section (2) of Section 406, subject, of course, to the proviso to the said clause.
>
> For all the above reasons, we find ourselves unable to agree with the High Court that the tenant cannot file an appeal and that it is only the owner/landlord of the premises who can file an appeal under Section 406 of the Act. The High Court has proceeded on the footing that since the owner of the premises is primarily liable for the property taxes and also because the Act does not specifically confer upon the tenant the right to object and file an appeal, the tenant has no such right. But, as explained hereinabove, the tenant is a directly affected party and it would not be just or equitable to deny him such a right unless the statute says so specifically. We have pointed out supra that it does not create any such bar even by implication. Nor is the right to file an appeal conditioned upon the filing of a complaint by the tenant. In other words, it cannot be said that since the tenant has to filed the complaint in a given case, he has no right to file the appeal. The right to appeal is governed by Sections 406 and 407, Section 407 speaks of disposal of complaint; it does not say that the complaint must have been filed by the person proposing to file the appeal. It may be noticed that the right of appeal conferred by Section 406 is more akin to the

right of appeal provided by Section 96 of the Code of Civil Procedure. It provides a right of appeal but does not say who can file the appeal. It means that any person who is affected by or who can be said to be aggrieved with the order is entitled to maintain an appeal so long as he complies with the conditions attaching the said appeal. Where the tenant lodges a complaint, he can directly file an appeal under Section 406 but where he himself has not filed a complaint, he has to file the appeal with the leave of the appellate court.

We do, however, recognised that the above holding gives rise to certain practical difficulties. We may elaborate. Where there is one tenant For one premises, no difficulty will arise in applying the above principle. (By one premises, we mean a unit for the purpose of assessment of property taxes.) But there may be cases where there is more than on tenant in one premises. There may indeed be cases where one premises is occupied by a large number of tenants in small portions. If only one or some of such tenants file an appeal, the decision obtained by them would no doubt apply to all but before the appeal can be filed, the tenants will have to deposit the disputed tax as contemplated by Section 406(e). In other words, the tenant or tenants filing the appeal would not only have to deposit the disputed tax proportionate to the premises occupied by them but the disputed tax with respect to the whole of the premises. This may be a little hard but looking to the schemes of the Act it is not possible for us to say that such tenant or tenants would be entitled to say that they would deposit the disputed tax proportionate to the portions occupied by them only or file an appeal only in respect of the portion of the property occupied by him. No such splitting can be thought of or permitted. Such difficulties, we must say, cannot include us to hold that the tenant has no right to prefer a complaint or to prefer an appeal. The circumstances mentioned in the preceding paragraphs are strongly suggestive of such a right in the tenant.

The meaning and effect of proviso (act) to clause (1A) in Section 2:

Proviso (aa) to sub-clause (ii) in clause (1A) of Section 2 of the Municipal Corporations Act provides that in cases where standard rent is not fixed under Section 11 of the Bombay Rent Act in respect of a building, land or premises, the actual rent received by the landlord shall be deemed to be "the annual rent for which such building etc. might reasonably be expected to let from year to year with reference to its use" within the meaning of and as contemplated by sub-clause (ii) in Clause (1A). The contention of the learned counsel for the appellants is that even where the standard rent is not fixed, it must be presumed that "the annual rent for such buildings or lands or premises might reasonably be expected to let from year to year with reference to its use" is the standard rent alone and not the actual rent received. The contention is that the corporation is not entitled to look to the actual rent received and that it is entitled to look only to standard rent because the landlord is not entitled in law to receive anything more than the standard rent. It is submitted that even where the standard rent is not fixed, an effort must be made by the

assessing authorities to ascertain the standard rent in accordance with the provisions of the Bombay Rent Act and then adopt it as "the annual rent for which such building, land or premises might reasonable be expected to let from year to year with reference to its use" for the purposes of determining Annual Letting Value. Indeed, the validity of proviso (aa) is also questioned (See the ground (A) in the grounds of appeal in Civil Appeal No. 5405 of 1995 arising out of S.L.P. (C) No. 21538 of 1994 filed by the Central Bank of India) though not urged before us. Strong reliance is placed upon the decisions of this Court in Corporation of Calcutta v. Smt. Padma Debi, [1962] 3 S.C.R. 49, Corporation of Calcutta v. Life Insurance Corporation of India, [1971] 1 S.C.R. 248, Guntur Municipal Council v. Guntur Town Rate Payers' Association etc,, [1971] 2 S.C.R. 423, Dewan Daulat Rai Kapoor v. New Delhi Municipal Committee & Anr., [1980] 2 S.C.R. 607 and the more recent decision in Morvi Municipality v. State of Gujarat & Ors., [1993] 2 S.C.C. 521. On the other hand, the contention of the learned counsel for the corporation is that the decisions relied upon by the appellants" counsel have no application and are clearly distinguishable on account of the non-obstante clause in proviso (aa) concerned herein. It is submitted that the words "notwithstanding anything contained in any other law for the time being in force" found in proviso (aa) were not to be found in the enactments dealt with in the aforesaid decisions. They rely upon the decision of this Court in Municipal Corporation Indore & Ors. v. Smt. Ratna Prabha & Ors., [1977] 1 S.C.R. 1017 rendered with reference to Madhya Pradesh Municipal Corporation Act, 1956 and Madhya Pradesh Accommodation Control Act, 1961 - and reaffirmed recently in Indian Oil Corporation Ltd. v. Municipal Corporation & Ors., (1995) 3 J.T. 626, rendered by J. S. Verma, J. and one of us (Sujata v.

Manohar, J.) - where a similar non-obstante clause occurred in Section 138(b) of the Municipal Corporations Act and on which basis the decisions aforesaid were distinguished.

For a proper appreciation of this contention, it is necessary to refer to a few provisions of the Municipal Corporations Act and the Bombay Rent Act.

Section 129(c) provides that a general tax of not less than twelve percent but not more than thirty percent of the rateable value of the building/lands may be levied if the corporation so determines a on a graduated scale. The expression "rateable value" is defined in clause (54) of Section 2 to mean, "the value of any building or land fixed whether with reference to any given premises or otherwise in accordance with the provisions of this Act and the rules for the purpose of assessment to property taxes". Rule 7 of the Taxation Rules framed under the Act prescribes the manner in which rateable value is to be determined. Rule 7(3) says that in order to fix the rateable value of any building, land or premises, there shall be deduction from the amount of the Annual letting value of such building a sum equal to ten percent of the Annual Letting Value and the said deduction shall be in lieu of all allowances for repairs or on any other account whatsoever. It is in this manner that the definition of "Annual Letting Value" assumes importance. The said definition, as already stated, occurs in clause (1A) in Section 2. Sub- clause (i) of the definition says that for the period prior to 1st April, 1970, Annual Letting Value shall mean the rent at which the premises can be reasonably be expected to be

let if the Bombay Rent Act were not in force. We are not concerned with this sub-clause. Sub-clause (ii), which is relevant for our purposes, says that "in relation to any other period, (Annual Letting Value shall mean) the annual rent for which any building or land or premises, exclusive of furniture or machinery contained or situate therein or thereon, might reasonably be expected to let from year to year with reference to its use and shall include all payments made or agreed to be made to the owners by a person (other than the owner) occupying the building or land or premises on account of occupation, taxes, insurance or other charges incidental thereto". The proviso appended to sub-clause (ii) is of crucial relevance herein and must, therefore, be set out in full:

> "(a) (I)n respect of any building or land or premises the standard real of which has been fixed under section 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the annual Rent thereof shall not exceed the annual amount of the standard rent so fixed;
>
> (aa) in respect of any building or land or premises, the standard rent of which is not fixed under section 11 of the Bombay Rents, Hotels and Lodging House Rates Control Act, 1947, the annual rent received by the owner in respect of such building or land or premises shall, notwithstanding anything contained in any other law for the time being in force , be deemed to be the annual rent for which such building or land or premises might reasonably be expected to let from year to year with reference to its use; (aaa) clause (aa) shall not apply to a case where the annual rent received by the owner in respect of such building or the owner in respect of such building or land or premises is in the opinion of the Commissioner less than the annual rent for which such building or land or premises might notwithstanding anything contained in any other law for the time being in force, reasonably be expected to let from year to year with reference to its use;
>
> (b) in the case of any land of a class not ordinarily let the annual rent of which cannot in the opinion of the Commissioner be easily estimated, the annual rent shall be deemed to be six per cent of the estimated market value of the land at the time of assessment;
>
> (c) in the case of any building of a class not ordinarily let, or in the case of any industrial or other premises of a class not ordinarily let, or in the case of a class of such premises the building or buildings in which are not ordinarily let, if the annual rent thereof cannot in the opinion of the Commissioner be easily estimated, the annual rent shall be deemed to be six per cent of the total of the estimated market value, at the time of the assessment, of the land on which such building or buildings stand or, as the case may be, of the land which is comprised in such premises, and the estimated cost, at the time of the assessment, of erecting the building or, as the case may be, the building or buildings comprised in such premises;"

Now let us see what does each limb of the proviso say. Proviso (a) says that where the standard rent has been fixed under Section 11 of the Bombay Rent Act in respect of any building or land, the

annual rent of such building/land shall not exceed the annual amount of the standard rent so fixed. Proviso (aa) says that where standard rent has not been fixed under Section 11 of the Bombay Rent Act in respect of any building, land or premises, the annual rent received by the owner in respect of such building etc. shall, notwithstanding anything contained in any other law for the time being in force, be deemed to be the annual rent for which such building etc. might reasonably be expected to be let from year to year with reference to its use, within the meaning of sub-clause (ii). Proviso (aaa) is in the nature of a proviso to proviso (aa). Where the Commissioner is of the opinion that the annual rent received by the owner is less than the reasonably expected rent, he can ignore the actual rent received. It is evident that proviso (aaa) is confined only to cases where the Commissioner is satisfied that the actual rent received, or said to have been received, by the owner is not genuine. Proviso (b) says that where the annual rent of any land cannot easily be estimated, the annual rent shall be deemed to be six percent of the estimated market value of such land at the time of assessment. Proviso (c) contains a similar provision with respect to buildings.

A few relevant provisions of the Bombay Rent Act may also be noted here.

The expression "standard rent" is defined in clause (10) of Section 5 in the following words:

> 10. "Standard rent" in relation to any premises means - -
>
> (a) where the standard rent is fixed by the Court and the Controller respectively under the Bombay Rent Restriction Act, 1939, (Bom. XVI of 1939) or the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944, (Bom. VII of 1944), such standard rent; or
>
> (b) where 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
>
> (iv) in any of the cases specified in section 11, the rent fixed by the Court."

Section 7 makes it illegal for any person to demand or received rent in excess of the standard rent.

Section 11 provides for fixation of standard rent and specification of permitted increase in the situations specified therein. Section 18 makes it punishable for the landlord to receive anything above the standard rent or permitted increases while Section 20 enables the tenant to recover the amount payable by him in excess of the amounts permitted by the Act.

It is true that the Bombay Rent Act defines what standard rent is, provides for fixation of standard rent by the Court and further provides that no landlord shall claim or receive any amount over and above the standard rent, making the same punishable with imprisonment and fine. Yet, the fact remains that Municipal Corporations Act says expressly that not with standing anything contained in any other law for the time being in force, the "annual rent received" - which means the actual rent received -in respect of buildings etc. for which standard rent is not fixed under Section 11 of the Bombay Rent Act shall be deemed to be the annual rent for which such building etc. might reasonably be expected to let from year to year with reference to its use. The validity of proviso (aa), though raised in the grounds of appeal in the special leave petition, has not been urged before us, probably advisedly. Being a taxing enactment and also because the proviso does not more than to treat the actual rent received as the annual rent, the reasonableness of the said provisions can hardly be questioned. Be that as it may, we see no reason why the express language and command of proviso (aa) is not respected. Both the enactments, viz.., Bombay Rent Act and Bombay Provincial Municipal Corporations Act are stated enactments. Indeed, the Municipal Corporations Act is a later enactment. In view of the express provision in proviso (aa), it must be held that for the purpose of the Municipal Corporations Act, the actual rent received is a annual rent for the purposes of determining the annual letting value. The counsel for the appellants say that it cannot be. They say that one State enactment cannot be read so as to defeat and nullify the provisions of another State enactment. The submission is that both must be read harmoniously. The said argument, in our opinion, would have been perfectly justified if the non-obstante clause were not there in proviso (aa). In its presence, acceptance of the said argument means that we ignore the non- obstante clause is proviso (aa) altogether. Such a course is not permissible to us. The court cannot treat any provisions in an enactment as superfluous much less can it ignore its existence. The learned counsel, however, rely upon certain decisions in support of their submissions to which a brief reference would now be in order.

The decision in Padma Debi concerned a building within the limits of Calcutta corporation. Section 127(a) of the Calcutta Municipal Act, 1923 provided that "the annual value of land and the annual value of any building erected for letting purposes or ordinarily let, 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, less,...". The building was governed by the West Bengal Premises Rent control (Temporary Provisions) Act, 1950. On a consideration of the definition of "annual value" and the provisions of the aforesaid Rent Control Act, a four-Judge Bench, speaking through Subba Rao, J., held:

> "A combined reading of the said provisions leaves no room for doubt that a contract for a rent at the rate higher than the standard rent is not only not enforceable but also that the landlord would be committing an offence if he collected a rent above the rate of the standard rent. One may legitimately says under those circumstances that a landlord cannot reasonably be expected to let a building for a rent higher than the standard rent. A law of the land with its penal consequences cannot be ignored in ascertaining the reasonable expectations of a landlord in the matter of rent. In this view, the law of the land must necessarily be taken as one of the circumstances obtaining in the open market placing an upper limit on the rate of rent for which a

building can reasonably be expected to let.

> It is said that S.127(a) does not contemplate the actual rent received by a landlord but a hypothetical rent which he can reasonably be expected to receive if the building is let. So stated the proposition is unexceptionable. Hypothetical rent may be described as a rent which a landlord may reasonably be expected to get in the open market. But an open market cannot include a 'black market', a term euphemistically used to commercial transactions entered into between parties in defiance of law. In that situation, a statutory limitation of rent circumstances the scope of the bargain in the market. In no circumstances, the hypothetical rent can exceed that limit."

According, it was held that the rental value of the building cannot be fixed higher than the standard rent under the Rent Control Act. This decision was followed in Life Insurance Corporation of India and Guntur Municipal Council. In the latter decision, it was clarified: "it may be that where the controller has not fixed 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 (Rent Control Act) for determination of fair rent".

In Ratna Prabha, a three Judge Bench was confronted with the above decisions in he the context of Madhya Pradesh Municipal Corporation Act, 1956 and Madhya Pradesh Accommodation Control Act, 1961. The definition of "annual value" in Section 138 (b) of the Municipal Corporation Act read as follows:

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

Section 7 of the M.P. Accommodation Control Act provides for fixation of standard rent. Section 5 bars recovery of any rent over and above the standard rent. Section 6 says no persons shall claim or receive any rent in excess of the standard rent while Section 43 makes receipt of "any rent in excess of the standard rent as specified in clause (1) of Section 7 or as fixed by the Rent Controlling Authority under Section 10" punishable with imprisonment and/or fine. In view of the said provisions and on the basis of the decisions aforementioned, it was urged by the respondent-house-owner that the annual value within the meaning of Section 138(b) cannot and shall not exceed the standard rent as contemplated by the Accommodation Control Act. This argument was rejected with reference to the non-obstante clause contained in Section 138(b). It is held :

> "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 that there has been fraud or collusion, that would be its reasonable letting value, but were 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'."

The decisions in Padma Debi, Life Insurance Corporation of India and Guntur Municipal Council were distinguished on the ground that the municipal enactments concerned therein did not contain a non-obstante clause like the one contained in Section 138(b) of the M.P. Act and that the said non-obstante clause makes all the difference.

Dewan Daulat Rai Kapoor arose under the Punjab Municipal Act, 1911 (as applicable to Delhi) and the Delhi Rent Control Act, 1958. A three-Judge Bench, speaking through P.N. Bhagwati, J., considered the aforesaid decisions and followed the ratio in Padma Debi, Life Insurance Corporation of India and Guntur Municipal Council in view of the fact that the definition of "annual value" in Section 3(l)(b) of the Punjab Municipal Act, 1911 was similar to those in the enactments considered in the above decisions; it did not contain a non-obstante clause as the one contained in M.P. Accommodation Control Act. When the decision in Ratna Prabha was cited, Bhagwati, J. distinguished by it saying that it is based wholly and exclusively upon the non-obstante clause found in the Madhya Pradesh Act and was, therefore, distinguishable. Having so said, the Bench expressed the following opinions as well: "We are not at all sure whether this decision represents the correct interpretation of Section 138(b) because it is rather difficult to see how the non obstante clause in that section can possibly affect the interpretation of the words 'annual value of any building shall.....be deemed to be the gross annual rent at which such building.....might reasonably.....be expected to be let from 'year to year.' The meaning of these words cannot be different in Section 138(b) than what it is in Section 127(a) of the Calcutta Municipal Corporation Act, 1923 and Section 82(2) of the Madras District Municipality Act, 1920 and the only effect of the non-obstante clause would be that even if there is anything contrary in any other law for the time being in force, that should not detract from full effect being given to these words according to their proper meaning." The learned Judge added further, "(B)ut it is not necessary for the purposes of the present appeals to probe further into the question of correctness of this decision, since there is no non-obstante clause either in Section 3(1)(b) of the Punjab Municipal Act, 1911 or in Section 116 of the Delhi Municipal Corporation Act, 1957 and this decision has, therefore, no application". We may mentioned that both Dewan Daulat Rai Kapoor and Ratna Prabha were decided by Benches of three learned Judges.

In Morvi Municipality, this Court was concerned with a building governed by the Gujarat Municipalities Act, 1963 and the Bombay Rent Act. The Bench followed and applied the ratio of the decisions in Padma Devi Life insurance Corporation of India and Dewan Daulat Rai Kapoor, and distinguished the decision in Ratna Prabha on the same basis as explained in Dewan Daulat Rai Kapoor, viz., the presence of non-obstante clause in the Madhya Pradesh Municipal Corporation Act and the absence of such a non- obstante clause in Section 2(1) of the Gujarat Municipalities Act,

which defines the expression "Annual Letting Value".

Though the Bench in Dewan Daulat Rai Kapoor expressed a doubt as to the correctness of the ratio in Ratna Prabha, we are unable to say that on that account the binding nature and effect of Ratna Prabha is whittled down in any manner. The basis on which the said doubt was expressed has also not been clearly - and in our respectful opinion, satisfactorily - articulated. We may mention that a similar view has been expressed by this Court in Indian Oil Corporation Ltd. (Supra) where it is observed :

> "5. In Dewan Daulat Rai (supra), another 3- Judge Bench of this Court while construing a similar provision in the Punjab Municipal Act, 1911 referred to the decision in Ratna Prabha (supra) and distinguished it on the ground that there was no non-obstante clause in the relevant provision of the Punjab Municipal Act and, therefore, the decision in Ratna Prabha (supra) had no application. No doubt, in doing so, a reservation was expressed about the view taken in Rama 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."

Indeed, a plea to reconsider the correctness of the ratio in Ratna Prabha was rejected in the following words:

> "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 the ground. There can be no doubt 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 Courts, 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)."

In this context, was may refer to the following observations of a three Judge Bench of which one of us (B.P. Jeevan Reddy, J.) was a member in Srikant Kashinath Jituri & Ors. v. Corporation of the City of Belgaum, (1994) 6 J,T, 496). It was observed :

> "Before parting with this appeal, we feel compelled to express our doubts as to the soundness and continuing relevance of the view taken by this Court in several earlier decisions that the property tax mast be determined on the basis of fair rent alone

> regardless of the actual rent received. Fair rent very often means the rent prevailing prior to 1950 with some minor modifications and additions. Property tax is the main source of revenue to the municipalities and municipal corporations. To compel these local bodies to levy and collect the property tax on the basis of fair rent alone, while asking them at the same time to perform all their obligatory and discretionary functions prescribed by the statute may be to ask for the impossible. The cost of maintaining, and laying roads, drains and other amenities, the salaries of staff and wages of employees - in short, all types of expenditure has gone up steeply over the last more than forty years. in such a situation, insistence upon levy of property tax on the basis of fair rent alone-disregarding the actual rent received - is neither justified nor practicable. None of the enactments says so expressly. The said principle has been evolved by Courts by a process of interpretation. Probably a time has come when the said principle may have to be reviewed. In this case, however, this question does not arise at this stage and, therefore, it is not necessary to express a final opinion on the said issued."

These observations emphasise the impracticality of the proposition that though the landlord may actually receive Rupees ten thousand per month as rent, the property tax in respect of the building can be levied only on the basis of say, Rupees five hundred, because that would be the fair rent/standard rent according to the relevant Rent Control Law, not- withstanding the fact that no such fair rent/standard rent had actually been fixed. Be that as it may, so far as the present case is concerned, the relevant provisions are clear. 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 be let, not with standing anything contained in any other law. The non-obstante clause prevents the application of the Bombay Rent Act to cases falling under proviso (aa) for determining the rent at which the property might reasonably be expected to be let. The provisions concerned herein are akin to the provisions considered in Ratna Prabha and not with the provisions concerned in the decision relied upon by the appellants.

In this view of the matter, the ratio of Ratna Prabha must be held to be applicable here rather than the ratio of the decision in Padma Debi et al. It is then pointed out that Ratna Prabha was concerned with a case where the owner herself was occupying the building and not with a building which was let out. The said fact, in our opinion, does not make any difference in principle. In truth, it goes against the contention of the appellants' counsel inasmuch as if the reasonable rent has to be ascertained without reference to the relevant Rent control enactment with respect to a building occupied by the owner herself, it should be all the more so in the case of a building let out. In the case of a building let out, the actual rent should be deemed to be the reasonable rent. No further enquiry would be necessary. This is the clear purport of proviso (aa), which of course applies only to cases where the building is let out.

Accordingly, we hold that proviso (aa) means what it says and has to be applied and followed in the cases covered by it. So far as the Municipal Corporations Act is concerned, the annual rent is the actual rent received where the standard rent is not Fixed under Section 11 of the Bombay Rent Act and it constitutes the basis for determining the annual letting value, rateable value and property

taxes. The is the plain effect and meaning of proviso (aa). So far proviso (aaa) is concerned, an apprehension was expressed that it would enable the Commissioner to question the actual rent received in every case and it would be an endless enquiry. In our opinion, however, the said provision is conceived to meet situations where the rent put forward as the actual rent received is not a genuine plea, i.e., where it is a false plea. A landlord may let out a building at less than market rent for many a reason, e.g., the tenant is a close friend or a close relative or because the tenant is a charitable or religious organisation. Proviso (aaa) does not enable the Commissioner to ignore such situations for, in such cases, the rent actually received is the genuinely stipulated one. This power is reserved to the Commissioner only with a view to ensure that by merely putting forward a figure which is not true, persons do not escape the correct levy.

We must deal with one another contention urged by Sri Rohinton Nariman. He submitted that the special notice issued in his case under Rule 15(2) of Chapter - VIII of Schedule - A is totally devoid of any particulars or grounds upon which the assessment was sought to be enhanced. He relies upon the general proposition that a show cause notice must contain the relevant particulars and grounds sufficient to put the person concerned on notice of the proposed action and it basis. Absence of such particulars and grounds in such show cause notice, he submits, vitiates the special notice itself. The High Court has rejected the contention in the following words:

> "Notice under Section 15(2) is issued after entry in the assessment book has been made. Sub-rule (2) of Rule 15 requires that the special written notice to the owner or the occupier shall specify the nature of such entry. In other words, the special notice must inform the owner about the entries mentioned in Rule 9, clauses (a), (b),(c) and (d) because the said Rule 15 has to be read with Rules 9 and 13. When a statute specified as to what should be the contents of a notice, and that is so specified in Rule 15(2), the general principles enunciated by the aforesaid decisions and of the other High Courts would not be applicable. For the purposes of giving an opportunity to an owner or an occupier to file a com-plaint, all that he has to be informed is what the Commissioner has entered in the assessment book. One of the items, which is entered, is the rateable value. The Commissioner is under no obligation to inform as to how the rateable value, which is entered in the assessment book, has been arrived at. It is for the owner to complain if he finds the rateable value to be high. The principles for fixation of rateable value are well-known. Ordinarily, a rateable value will be arrived at after particulars had been given by the owners or occupiers under Rule 8 of the said Rules. On the receipt of the notice, it will be for the complainant to lead evidence and prove as to what should be correct rateable value. A hearing is contemplated by Rule 18 and if the assessee requires any classification with regard to the entry made in the assessment book, we see no reason as to why this classification would not, ordinarily, be given. Be that as it may, Rule 15(2) does not require the giving of any particulars in addition to what is slated therein. The aforesaid decisions of various Courts therefore, can be of no assistance to the respondents."

We agree with and affirm the reasoning of the High Court and accordingly reject the contention.

For the above reasons, the appeals are allowed in part. Regarding the maintainability of the appeals, we hold, disagreeing With the High Court, that the appeals filed by the tenants were maintainable provided the appeals are filed in accordance with the complying with the conditions prescribed in Sections 406 and 407 of the Municipal Corporations Act, as explained hereinabove. Insofar as the meaning and effect of proviso (aa) to the definition of "Annual Letting Value" in Section 2(1A) is concerned, it shall be given effect to the followed as explained in this judgment.

Appeals allowed.