Morvi Municipality vs State Of Gujarat And Ors.Withjunagadh ... on 31 March, 1993

Equivalent citations: 1993 AIR 1508, 1993 SCR (2) 803, AIR 1993 SUPREME COURT 1508, 1993 (2) SCC 520, 1993 AIR SCW 1476, 1993 SCFBRC 427, (1993) 2 SCR 803 (SC), (1993) 2 JT 529 (SC), (1993) 1 RENCR 572, (1993) 116 TAXATION 40, (1993) 112 CURTAXREP 448, (1993) 2 GUJ LH 607, (1993) 2 GUJ LR 1326, (1993) 2 RRR 233

Author: P.B. Sawant

Bench: P.B. Sawant, Jagdish Saran Verma, N.M. Kasliwal

PETITIONER:
MORVI MUNICIPALITY

Vs.

RESPONDENT:
STATE OF GUJARAT AND ORS.WITHJUNAGADH NAGARPALIKAV.STATE OF

DATE OF JUDGMENT31/03/1993

BENCH:
SAWANT, P.B.
BENCH:
SAWANT, P.B.
VERMA, JAGDISH SARAN (J)
KASLIWAL, N.M. (J)

CITATION:
1993 AIR 1508 1993 SCR (2) 803
1993 SCC (2) 520 JT 1993 (2) 529
1993 SCALE (2)380

ACT:
Municipalities: Gujarat Municipalities Act 1963.
Sections 2(1), 2(17), 53, 99, 99(1), 99(1)(i), 99(1)(e), 105 to 112/Rules 2(7), 4, 5--Municipalities--Property tax--Annual letting value of building or land or both--To be determined on the basis of annual standard/fair rent under Rent control Act
Assessment--Procedure--Limitation-Municipality to complete the authentication of the assessment list before 31st July-Whether directory in nature.
Gujarat Municipalities Rules:
Rules 4 and 5-Validity of.

HEADNOTE:
Some tax-payers of the appellant-Municipality filed a writ petition in the High Court challenging the validity of the rules made by it for the levy of consolidated property tax on lands and buildings and also the assessment list prepared and authenticated by the Municipality for the year 1967-68, 1968-69 and 1969-70. It was contented before the High Court that Rules 2(7), 4 and 5 of the Rules of the consolidated property tax on the lands and buildings were ultra vires section 99(1) (i) and the proviso (e) to it read with section 2(1) of the Act, and that the assessment lists for the years 1967-68, 1968-69 and 1969-70 were invalid since they were prepared without following the procedure laid down in Sections 105 to 112 of the Act.
The High Court upheld the validity of Rules 2(7) and 4 and struck down the validity of Rule 5. It also declared that the tax collected by the 803
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Municipality for the assessment years 1968-69 and 1969-70 in excess of the amounts which may be determined in accordance with the principles laid down was without the authority of law and struck down the assessment list for the year 1967-68 on the ground that it was not prepared in compliance with the procedure I aid down in Sections 105 to 112 of the Act.
Being aggrieved by the High Court's decision the appellants preferred the present appeals.
Allowing the appeals, this Court,
HELD: 1. It is not the value of occupation of the property to the tenant, but the rental income from it to the owner which is to be taken into consideration while estimating the reasonable return that a landlord can expect from his property. While estimating or calculating the annual rent which might reasonably be expected from such property, the provisions of such legislation have to be taken into consideration. Different rent restriction legislations have described the maximum rent recoverable under them differently such as standard rent, fair rent etc. Hence the annual letting value of the building or land or both to which the rent restriction legislation is applicable cannot exceed the annual standard or fair rent. It is the annual standard/fair rent which alone, therefore, can form the basis of the assessment of the property tax by the local authority. [809 E-G]
1.2. Since there is no non-obstante clause in the Gujarat Municipalities Act, 1963, this Court refrains from going into the question of non-obstante clause in the provisions of the Act levying property tax.
[810-C]
13. If the expression 'annual letting value' in rule 4 is read as the annual letting value as determined by the outer

limit prescribed by the standard or fair rent under the rent restriction legislation applicable to the premises, which in the present cast is the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the validity of the said rule cannot be assailed. [811-B]

1.4. Rule 5 mandates the actual rent received to be taken into consideration for fixation of the annual letting value, even if it is in excess of the standard rent fixed under the rent restriction legislation, which is contrary to the interpretation placed by this Court on the expression 'annual letting value". The correct mode of getting over the difficulty is to

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amend Rule 5 itself suitably to take care of such properties Instead of keeping it on the rule book as it is. There is nothing to prevent the Municipality from introducing a new rule in place of the said rule.

[812B-E]

1.5. Even without Rule 5 and on the basis of Rule 4 as it is, the annual letting value can be calculated on the basis of the standard rent where the rent restriction legislation is applicable. Where it is not applicable, nothing prevents the Municipality from assessing the properties on the basis of the actual rent received under the same Rule 4 itself.

[811-F]

1.6. Rule 5 is to be read as being applicable only to the properties which are not governed by the provisions of the Rent Control Act. As far as the properties which are amenable to the provisions of the Rent Control Act are concerned, their annual letting value will be calculated only on the basis of the standard rent determined or determinable under tile said Act. Where the standard rent is determined by the Civil Court, of course under the rent restriction legislation, the annual letting value will be determined on the basis of such standard rent. The rule, however, goes further and says that in other cases, viz., (1) where the standard rent is not determined and (2) even if it is determined, where actual rent charged is in excess of the standard rent, it is the actual rent, which will be taken as the basis for calculating the annual letting value. The latter two situations do not make distinction between the properties to which the rent restriction legislation is applicable and the properties to which it is not applicable. In other words, under the rule, even where the rent restriction legislation is in force, it is the actual rent which will be taken as the basis for calculating the annual letting value if the standard rent is not determined by the Court. [817-D, 818 E-F]

1.7. Rule 5, to the extent it enables the authorities to take the actual rent as the basis for calculating the annual letting value, will apply to the properties to which the rent restriction legislation. which in the present case is the Bombay Rent, Hotel and Lodging Housing Rates Control

Act, 1947, does not apply. [819-B]
The Corporation of Calcutta v. Smt. Padma Debi and Others, [1962] 3 SCR 49; Corporation of Calcutta v. Life Insurance Corporation of India, [1971] 1 SCR 248, Guntur Municipal Council v. Guntur Town Rate Payers
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Association [1971] 2 SCR 423 and Dewan Daulat Rai Kapoor and Others
v. New Delhi Municipal Committee & Others, [1980] 1 SCC 685, relied on.
Municipal Corporation Indore v. Smt. Ratnaprabha and Others, [1976] 4 SCC 622, referred to. [809-D]
2. Section 112 in the context in which it appears is both directory and enabling in nature insofar as it requires the Municipality to authenticate the list before 31st July of the official year. That the provisions are no more than directory is clear from the fact that they provide that if the Municipality fails to do its duty, the State Government way complete the work by appointing person(s) to do it. This is as it should be since the ,various provisions of the Act show that the revenue and the expenditure of the Municipality, among others, is controlled and regulated by the State Government Further the Section requires that the Municipality should complete the authentication of the assessment list before a particular date which, in the present case happens to be, 31st July of the year. It was necessary to incorporate in the section the said provision to give enough time to the State Government to step in and authenticate the list before the end of the official year. The official year is the same for the Municipality as well as the State Government and for the purposes of budgeting, the provision that the assessment list should be authenticated by the particular date was necessary to be incorporated. In any case neither the Municipality is prevented from authenticating it beyond 31st July nor is the person or persons appointed by the State Government prevented from doing so beyond 31st March of the official year. [816 E-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1374 of 1974 From the Judgment and Order dated 13/14-2-1974 of the Gujarat High Court in Special Civil Application No. 220 of 1970.

WITH From the Judgment and Order dated 21.4.1980/2.5.1980 of the Gujarat High Court in Special Civil Application No. 942 of 1976.

B.K. Mehta and H.S. Parihar for the Appellant.

Dave, Ms. Meenakshi Arora, Anip Sachthey for the Respondents.

The Judgment of the Court was delivered by SAWANT, J. Civil Appeal No. 1374/1974 Some tax-payers of the appellant Morvi Municipality [the 'Municipality'] had filed a writ petition in the High Court challenging the validity of the rules made by it for the levy of consolidated property tax on lands and buildings and also the assessment lists prepared and authenticated by the Municipality for the years 1967-68, 1968-69 and 1969-70. There is no dispute that the concerned rules have been made by the Municipality under Section 271 (1) read with Section 99 (1) of the Gujarat Municipalities Act, 1963 [the 'Act']. The relevant contentions of the writ petitioners who are the respondents before us, before the High Court were as follows

1. Rules 2 (7), 4 and 5 of the Rules of the consolidated property tax on the lands and buildings were ultra vires Section 99 (1) (i) and proviso (e) to it read with Section 2 (1) of the Act.

2. The assessment lists for the years 1967-68, 1968-69 and 1969-70 were invalid since they were prepared without following the procedure laid down in Sections 105 to 112 of the Act.

The High Court upheld the validity of Rules 2 (7) and 4. No appeal is preferred against that part of the High Court's decision. We are, therefore, concerned in this appeal only with the validity of Rule 5 which has been struck down by the High Court. The High Court has also declared that the tax collected by the Municipality for the assessment years 1968-69 and 1969-70 in excess of the amounts which may be determined in accordance with the principles laid down by it in the judgment under appeal, was without the authority of law. So far as the assessment lists for the said two years are concerned, we are concerned in this appeal only with the validity of the excess amount. However, as far as the assessment list for the year 1967-68 is concerned, it has been struck down in its entirety by the High Court also on the ground that it was not prepared in compliance with the procedure laid down in Sections 105 to 112 of the Act. Hence, we have to consider the validity of the entire assessment for the said year.

Rules 4 and 5 have obviously been made by the Municipality to give effect to Section 99 (1) (i) which provides for imposition of taxes on buildings or lands situate within its limits. That section reads as follows:

> "99. Taxes which may be imposed. (1) Subject to any general or special orders which the State Government may make in this behalf and to the provisions of sections 101 and 102, a municipality may impose for the purposes of this Act any of the following taxes, namely :-
>
> (i) a tax on building or lands situate within the municipal borough to be based on the annual letting value or the capital value or a percentage of capital value of the buildings or lands or both;"

Further, Clause (e) of the second proviso to sub-section (1) of Section 99 reads as follows:

> "(e) the municipality in lieu of imposing separately any two or more of the taxes described in clauses (i), (vii), (ix) and (x) except a special water-rate may impose a consolidated tax assessed as a tax on buildings or lands or both situated within the municipal borough."

Since the Municipality has chosen to impose the tax on the basis of the "annual letting value" of the buildings and lands and not on the basis of the capital value or percentage of capital value, we have to ascertain in the present case the precise connotation of the expression "annual letting value". Section 2 (1) of the Act defines the expression "annual letting value" as follows:

> "(1) 'annual letting value' means the annual rent for which any building or land, exclusive- of furniture of machinery contained or situate therein or thereon might reasonably be expected to let from year to year, and shall include all payments made or agreed to be made by a tenant to the owner of the building or land on account of occupation, taxes under any law for the time being in force, insurance or other charges incidental to his tenancy"

The crucial expressions in the above definition are "might reasonably be expected to let' and 'all payments made or agreed to be made by a tenant to the owner on account of occupation." Shri Mehta, the learned counsel for the Municipality contended that the said expressions unmis- takably indicate the actual rent received by the landlord from his tenant. According to him, the reasonable rent means the rent which a willing tenant will pay to the willing owner and the agreement between the parties would indicate the same and no more and no less. He further argued that the standard rent under the rent restriction legislation was only one of the factors relevant for the estimation of the reasonable expectation of the rent from the property and was not the sole basis of such rent and hence the assessment can be made on the basis of the actual rent received.

2. It is not necessary for us to go into a detailed discussion of the 'pros and cons of the question since the question is no longer res Integra. The decisions of this court rendered in The Corporation of Calcutta v. Smt. Padma Debi and others, [1962] 3 SCR 49, Corporation of Calcutta v. Life Insurance Corporation of India, [1971] 1 SCR 248, Guntur Municipal Council v. Guntur Town Rate Payers Association [1971] 2 SCR 423 and Dewan Daulat Rai Kapoor and Others v. New Delhi Municipal Committee and Others, [1980] 1 SCC 685 have consistently held that it is not the value of occupation of the property to the tenant, but the rental income from it to the owner which is to be taken into consideration while estimating the reasonable return that a landlord can expect from his property. It has also been held there that wherever the rent is restricted on account of the operation of the rent restriction legislation, the outer limit of the reasonable rent that can be expected from the property stands defined by such restriction. Hence, while estimating or calculating the annual rent which might reasonably be expected from such property, the provisions of such legislation have to be taken into consideration. Different rent restriction legislations have described the maximum rent recoverable under them differently such as standard rent, fair rent etc. Hence the annual letting value of the building or land or both to which the rent restriction legislation is applicable cannot exceed the annual standard or fair rent. It is the annual standard/fair rent which alone, therefore, can form the basis of the assessment of the property tax by the local authority. It is true that

although a four-judge Bench of this Court as early as in Padma Debi's case [Supra], had taken this view which has been reiterated in the other decisions cited above, a three-Judge Bench of this Court in a decision in Municipal Corporation Indore v. Smt. Ratnaprabha and Others, [1976] 4 SCC 622 has held that the actual annual rent received by the owner of the property notwithstanding the application of the rent restriction legislation can provide a basis for assessment of the property tax. However, this view taken in the above case has been explained in Dewan Daulat Rai Kapoor's case [Supra], which is the latest decision of this Court on the point. It has been pointed out there that the said view in the case of the Municipal Corporation, Indore [supra] turned on the presence of the non obstante clause 'notwithstanding anything contained in any other law" in the provisions of the Act levying the property tax there. Since in the present Act, namely, the Gujarat Municipalities Act, 1963, there is no such non obstante clause, the view taken there would not apply to the present case. Shri Mehta, learned counsel appearing for the Municipality did not press his further contentions that the presence or the absence of such non obstante clause would not make any difference to the proposition laid down there that the annual letting value should always be based upon the actual annual rent received and not on the standard or fair rent under the rent restriction legislation. We, therefore, refrain from going into the said question in the present case and leave the point open for consideration, if necessary, in future cases. For our purpose, it is sufficient to proceed on the footing that the annual letting value has to be determined, as held in the aforesaid three decisions of this Court, keeping in mind the outer limit down in the rent restriction legislation.

Rule 4 of the Municipality is as under:

> "4. The tax on open lands and buildings shall be levied in accordance with the following rate.
>
> 1. The buildings which are used for residential purpose shall be levied on the annual letting value by the percentage as follows:-
>
> x x x x x x
>
> 2. The buildings which arc used for non-

residential purpose shall be levied on the annual letting value by the percentage as follows:-

> x x x x x x It merely prescribes that the tax that may be levied on buildings used both for residential and non-residential purposes will be on the basis of the annual letting value by the percentages prescribed therein, Hence if the expression "annual letting value' in the said rule is read as the annual letting value as determined by the out limit prescribed by the standard or fair rent under the rent restriction legislation applicable to the premises, which in the present case is the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the validity of the said rule cannot be assailed. The High Court has, therefore, rightly upheld it.

3. However, Rule 5 with the validity of which we are concerned here, reads as follows:

"5 (a). The rental actually realised in each case of the buildings, shops and lands which are let, shall be considered to be the annual letting value, but if the assessment officer has reasons to believe that the rent shown in the rent note or in account, does not represent the correct letting value, then the case of such properties he [officer] shall assess the reasonable annual letting value according to his own decision.

(b) In the case of buildings which are sublet, the rent paid by the occupier shall be taken as annual letting value.

(c) In the case of the buildings used by the owner himself, the annual letting value, shall be fixed with the rent derived from the properties [buildings] which are let nearby.

The assessment officer will not assess the annual letting value more than 6-1/4% of the capital value in the case of the properties noted in sub-rule C."

It will be apparent that the rule seeks to lay down the mode of working out the annual letting value of the property. According to the rule, it is to be worked out by taking the actual rental realised as the basis. However, where the assessment officer has reason to believe that the rent shown in the rent note or in the accounts does not represent the correct letting value, the rule permits the officer to assess the reasonable annual letting value according to his own decision. In clause (c) the rule states that so far as the buildings used by the owner himself are concerned, the annual letting value should be fixed with reference to the rent derived from the properties which are let nearby.

It is clear that to the extent the rule mandates the actual rent received to be taken into consideration for fixation of the annual letting value, even if it is in excess of the standard rent fixed under the rent restriction legislation, it is contrary to the interpretation placed by this Court on the expression "annual letting value". It is for this reason that the High Court has struck down the whole of the said rule. Shri Mehta does not dispute the premise that where the rent restriction legislation is applicable, Rule 5 will have to be read down to mean that the annual letting value is to be fixed only on the basis of the annual standard rent. However, he contends that it is not necessary to strike down the said rule for there may be properties which are not governed by the rent restriction legislation and their annual letting value can be determined unrestricted by the provisions of the rent restriction legislation. His grievance is that since the High Court has struck down the rule, instead of reading it down to bring it in conformity with the judicial decisions, the Municipality is hampered in assessing the properties to which the rent restriction legislation does not apply. Shri Mehta may be right there, if there are such properties within the limits of the Municipality. The correct mode of getting over the difficulty is to amend Rule 5 itself suitably to take care of such properties instead of keeping it on the rule book as it is. There is nothing to prevent the Municipality from introducing a new rule in place of the said rule. Even without Rule 5 and on the basis of Rule 4 as it is, the annual letting value can be calculated on the basis of the standard rent where the rent restriction legislation is applicable. Where it is not applicable, nothing prevents the Municipality from assessing the properties on the basis of the actual rent received, under the same Rule 4 itself. However, pending the framing of the new rule, Rule 5 as it can be interpreted as being applicable

only to such properties which are not governed by the rent restriction legislation. Hence the decision of the High Court will have to be modified to the extent the High Court has struck down the said rule instead of allowing it to remain on the rule book confining its operations only to those properties which are not governed by the, Rent Control Act.

4. Coming now to the assessment list for 1967-68 which is struck down in its entirety by the High Court, we are afraid that the High Court has misinterpreted the provisions of Sections 105 to 112 of the Act which relate to the assessment of taxes on properties. Section 105 provides for preparation of an assessment list containing the particulars mentioned therein such as the address and description of the property, the name(s) of the owner, the valuation based on the annual letting value, of the amount of tax assessed thereon etc. Section 106 indicates the person(s) primarily liable for tax and the procedure to be followed when the name of such person cannot be ascertained. Section 107 provides for the publication of notice when the assessment has been completed and the right of the owner or occupier of the property included in the list or any agent of such person, to inspect the list, and to make extracts therefrom. Section 108 then provides for a public notice of a date before which the objections to the valuation or assessment in the assessment list, shall be made and of the hearing of objections. Sub-section (3) of Section 108 provides for the hearing of objections by the Executive Committee of the Municipality constituted under Section 53 of the Act. Upon hearing of the objections and disposing them of, the Executive Committee is required to cause the result thereof to be noted in the book kept for the purpose. The Executive Committee is also empowered to amend the assessment list, if necessary, in accordance with the result of the hearing. However, before any amendment is made in the assessment list, the reasons thereof are required to be recorded in the book concerned. This sub-section also provides that the powers and duties of the Executive Committee under it, may be transferred to any other committee appointed by the Municipality or with the permission of the Development Commission to any officer or pensioner of the Government. Sub-section (4) of the said section provides that as and when in respect of any property the objections made under the section have been disposed of and the amendment required by sub-section (3) have been made in the assessment list, the said list, so tar as such properties are concerned. shall be authenticated by the signature of the Chairman and at least one other member of the Executive Committee. If the Executive Committee's powers and functions under sub- section (3) have been transferred to any other committee or to an officer or pensioner of the Government, the authentication is to be made by the signatures of not less than 2 members of such Committee or of the officer or pensioner as the case may be. The person or the persons so authenticating the list have to certify that no valid objection has been made to the valuation and assessment of the property contained in the list except in the cases in which amendments have been made therein. Sub-section (5) of the said Section then provides that the lists so authenticated shall be deposited in the Municipal Office and shall be open for inspection to an owners and occupiers of the property entered in the list or to their agents. Sub- section (6) states that subject to such alterations made therein under the provisions of Section 109 and to the result of any appeal or revision under that Section, the entries in the assessment list so authenticated and deposited shall be accepted as conclusive evidence (i) for the purposes of the Municipal taxes and of the valuation of the annual letting value and [ii] for the purposes of the tax for which such assessment list has been prepared and the amount of the tax leviable on such properties in any official year in which the fist is in force.

Section 109 gives power to the Executive Committee to amend the assessment list if any entry in respect of any property has been either omitted from or erroneously made therein through fraud, accident or mistake. It also gives power to the Executive Committee to amend the list if any building has been constructed, altered or reconstructed either in whole or part, after the preparation of the assessment list. Section 110 provides that where any building or any portion of such building which is liable to payment of tax is demolished or removed otherwise than by an order of the Executive Committee, the person primarily liable for the said tax has to give notice to the Chief Officer of the Municipality.

Section 111 states that it shall not be necessary to prepare a new assessment list every year subject to the condition that the assessment list shall be completely revised every four years. The Chief Officer is given power to adopt the valuation and assessment contained in the list for any year such alteration as may be deemed necessary for the year immediately following. However, the provisions of Sections 107, 108 and 109 are applicable to the said list as if a new assessment list has been completed at the commencement of the official year.

The 'official year' has been defined in Section 2 (17) of the Act to mean the year commencing on the first day of April.

Section 112, then gives power to the State Government to appoint a person to authenticate the assessment list in case of default by the Municipality in authenticating it. It states that where in any year, a new assessment list is prepared or a list is revised or the valuation and assess- ment contained in the list for the year immediately preceding is adopted with or without alterations, such new, revised or adopted assessment list shall be authenticated in the manner provided by Section 108 at any time not later than 31st of July of the official year to which the list relates. If the list is not so authenticated, then the State Government shall appoint such person or persons as it thinks fit, to prepare, revise or adopt and authenticate the assessment list. Such person or persons have to authenti- cate such list at any time before the last day of the official year, i.e., 31st March of the year to which the list relates. The section also states that Sections 105 to 108 and Section 111 shall, so far as may be necessary, apply to the preparation, revision or adoption of the list as the case may be by the person or persons appointed by the State Government.

5. Section 99, among others, of the Act to which we have already made a reference earlier, empowers the Municipality to impose various taxes, fees and cesses as a source of revenue for discharging its duties and functions. The tax on buildings or lands or both, is only one of such taxes. This tax can be recovered separately or as the consolidated tax along with general water rate and lighting tax as provided in Clause (e) of the second proviso to sub-section (1) of Section 99. The provisions contained in Sections 105 to 112 above only relate to the preparation of an assessment list of properties which are liable to such tax. They are procedural in nature and the charging section for the tax is Section 99 of the Act. Section 99 itself does not provide for any limitation of time on the imposition of tax. The High Court has, however, read limitation of time in Section 112 on the authentication of the assessment list. According to the High Court, the period of limitation for the Municipality to authenticate the list is upto 31st July of the official year to which the list relates, and in default by the Municipality. the period of limitation for the person appointed by the State

Government is upto the 31st March of the said official year. What is further. according to the High Court, the Municipality cannot authenticate the assessment list beyond 31st July of the official year and it is the person (s) appointed by the State Government alone who can do so and that too upto 31st March of that official year. It is difficult to accept this reasoning. According to us, the High Court has erred in reading in the provisions of H Section 112 an intention by the legislature to lay down a period of limitation either for the Municipality or for the person or persons appointed by the State Government. It is obvious that Section 112 in the context in which it appears is both directory and enabling in nature insofar as it requires the Municipality to authenticate the list before 31st July of the official year. That the provisions are no more than directory is clear from the fact that they provide that if the Municipality fails to do its duty, the State Government may complete the work by appointing a person(s) to do it. This is as it should be since the various provisions of the Act show that the revenue and the expenditure of the Municipality, among others, is controlled and regulated by the State Government. Further the Section requires that the Municipality should complete the authentication of the assessment list before a particular date which, in the present case happens to particular date which, in the present case happens to be, 31st July of the year. It was necessary to incorporate in the section the said provision to give enough time to the State Government to step in and authenticate the list before the end of the official year. The official year is the same for the Municipality as well as the State Government and for the purposes of budgeting, the provision that the assessment list should be authenticated by the particular dates was necessary to be incorporated. However, even Section 112 which is procedural in nature, does not state that the list which is authenticated by the Municipality after 31st July of the official year and by the person appointed by the Government after 31st March of the same official year would be invalid. On the contrary, when the Municipality fails to authenticate the assessment list till 31st July of the official year, the section empowers the State Government to appoint a person or persons to authenticate the same. It was also necessary to prescribe some time limit for the authentication by the person so appointed and hence the section provides that person(s) so appointed shall authenticate it by 31st March of the official year. In any case, neither the Municipality is prevented from authenticating it beyond 31st July nor is the person(s) appointed by State Government prevented from doing so beyond 31st March of the official year. In the present case, there was an additional factor which was relevant to be taken into consideration. The Municipality had levied the property tax for the first time in the official year 1967-68 and the State Government felt that it should be given time to authenticate the same before 31st March, 1968. That is the reason why the State Government did not appoint a person to authenticate the list after 31st July 1967, even though the Mun- cipality had failed to do so. Instead, the State Government had extended the time for the Municipality to do so, till 31st March, 1968. The step taken by the government was in conformity with the interpretation of the provisions of Section 112 which, as stated earlier, are only directory and enabling in nature. The High Court has, therefore, erred in holding that the Municipality could not authenticate the assessment list after July, 1967 and it is only the State Government which could do it. This the High Court did, as stated earlier, by reading 31st July, 1967 as the period of limitation for the Municipality to authenticate the list for the official year 1967-68. There is no dispute that the Municipality authenticated the list by 28th March, 1968. The finding of the High court that the assessment list for the year 1967-68 is void and illegal is, therefore, clearly wrong.

6.In the result, we set aside the finding of the High Court that Rule 5 is ultra vires the Act and hold that 'the same is to be read as being applicable only to the properties which are not governed by the provisions of the Rent Control Act. As far as the properties which are amenable to the provisions of the Rent Control Act are concerned, their annual letting value will be calculated only on the basis of the standard rent determined or determinable under the said Act. We, further, set aside the decision of the High Court striking down the assessment list for 1967-68 and hold that the said assessment list is validly authenticated and the taxes can be recovered on the basis of the same. The appeal is allowed accordingly with no order as to costs.

7. In the present case, Rule 5 of the rules made by the appellant Junagadh Municipality ['the Municipality] under Section 271 (1) and Section 99 (1) (i) of the Act has been struck down by the High Court to the extent it provides for calculating the annual letting value on the basis of actual rent, as being ultra vires Section 99 (1) (i) read with Section 2(1) of the Act. The relevant portion of the said Rule 5 reads as follows:

> "In the case of buildings or lands. which are let. the rent which is the actual rent, or in the case where the standard rent is determined by the Civil Court, the same shall in such case be considered to be the annual letting value, unless the executive committee or the special committee on the Chief Officer or his delegate entrusted with the work of valuation has reasons to believe that the rent shown in the rent note or account does not represent the correct letting value or is collusive or is not determined by the Court on merits as the case may be in which case reasons for such belief shall be stated in the decision provided that in case rent actually charged is in excess of the rent as determined by the Court at any time the rent actually charged shall be considered to be the annual letting value.'

8. It is not necessary to repeat what we have discussed on the subject in the accompanying appeal, viz., C.A. No. 1374 of 1974. Suffice it to say that in the present case, the rule itself has provided that where the standard rent is determined by the Civil Court, of course under the rent restriction legislation, the annual letting value will be determined on the basis of such standard rent. The rule, however, goes further and says that in other cases, viz., [1] where the standard rent is not determined and 121 even if it is determined, where actual rent charged is in excess of the standard rent, it is the actual rent, which will be taken as the basis for calculating the annual letting value. The latter two situations do not make distinction between the properties to which the rent restriction legislation is applicable and the properties to which it is not applicable. In other words, under the rule, even where the rent restriction legislation is in force, it is the actual rent which will be taken as the basis for calculating the annual letting value if the standard rent is not determined by the Court. The High Court has, therefore, rightly struck down the rule to the extent that it applies to properties to which the rent restriction legislation is applicable. In view of what we have stated in the accompanying appeal, we see no reason to take a different view.

However, Shri Mehta appearing for the Municipality is right in contending that it is not necessary to declare the rule ultra vires Section 99(1) read with Section 2 because it also provides for assessing the annual letting value of property on the basis of the actual rent. That part of the rule which

enables the authorities to take the actual rent as the basis for calculating the annual letting value can be read down to apply only to those properties to which the rent restriction legislation does not apply. We agree with him there, if there are such properties within the limits of the Municipality.

9. We, therefore, allow the appeal set aside the decision of the High Court striking down the part of the rule which enables the authorities to adopt actual rent as the basis for calculating the annual letting value of the properties. Instead, we declare that Rule 5, to the extent it enables the authorities to take the actual rent as the basis for calculating the annual letting value, will apply only to the properties to which the rent restriction legislation which in the present case is the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, does not apply. The appeal is allowed accordingly with no order as to costs.

V.M. Appeal allowed.