CASE NO.:
Appeal (civil) 2452 of 2000

PETITIONER:
MUNICIPAL CORPORATION OF GREATER MUMBAI AND ANR.

RESPONDENT:
KAMLA MILLS LTD.

DATE OF JUDGMENT: 11/07/2003

BENCH:
RUMA PAL & B.N. SRIKRISHNA

JUDGMENT:
JUDGMENT

2003 Supp(1) SCR 500

The Judgment of the Court was delivered by

SRIKR1SHNA, J. The central issue involved in both these appeals is: When a building constructed upon land previously assessed to Municipal lax is demolished for construction of new building, is it open to the Municipal Corporation to assess the rateable value of the land till the construction of the building by taking the market value of the land?

Facts:

The facts relevant for appreciating the controversy, shortly stated, are as under :

The respondent is a company whose main business was running of a textile mill known as M/s Kamla Mills Limited in Mumbai. It owned a large area of land comprising approximately 38,000 sq. mtrs. In the city of Mumbai on which structures were standing. The entire property (i.e. land & buildings) was assessed under Ward No. G/S 1955 (1) at rateable value of Rs. 370,505.

The prolonged general strike of the textile workers in Bombay affected financial position of all the textile mills in Mumbai and a policy decision was taken by the Government of Maharashtra to permit construction of residences in the industrial zone in the Bombay Metropolitan Region. As a result of the newly adopted policy, textile mills which had extensive land, and were hitherto not permitted to build thereupon, were granted permission to demolish old structures upon the land and construct residential buildings and sell them on condition that the finances thereby generated would be utilized for paying off the dues of the textile employees. Taking advantage of this liberalised industrial policy, the respondent company demolished some of the old structures standing on a part of its land in or about June, 1995 and got plans approved for construction of a new building complex thereupon consisting of three wings A. B and C.

On 31st January, 19%, the Investigating Officer of the appellant - Corporation made a Tabulated Ward Report (TWR) No. 441 proposing a revision of the assessable value of the respondent’s property. The appellant was of the view that the land under the demolished structures forms a suitable buildable plot of land whereupon construction work of the building in phases had been started, and considering the building potential of the land which had become available, the appellant bifurcated the entire plot of land falling within Ward No. G/S 1955 (1) into two plots. By another Tabulated Ward Report No. 442 of 31.1.1996 it was proposed that the land under the demolished structures formed from June, 1995 a buildable vacant plot of 15014 sq. mtr. on which construction had commenced. It was proposed to "treat the whole plot of land admeasuring 15014 sq. mtr. as plot of land under construction" and to revise its rateable value to Rs. 53, 50,990 by

adopting a rate of Rs. 3300 per sq. mtr. Consequently, the rateable value of the residual plot was reduced from Rs. 3,70,505 to Rs. 2,36,130. The respondent filed complaints objecting to the proposed revision of the rateable value in respect of both the plots. These complaints were heard by the appropriate officer. By an order made on 12.2.1998, the concerned officer reduced the rateable value by adopting the rate at Rs. 3,000 per sq. mtr. He also assessed the property in two parts i.e., 'A' Wing "as plot of land under construction" and 'B' & 'C' Wings "as plot of land". He adopted the uniform rate of Rs. 3,000 per sq. mtr. for both the plots and assessed the rateable value at Rs. 31,1 1,595 w.e.f. 1.12.1995. By another order made on 11.3.1998. the appropriate officer of the appellant - Corporation fixed the rateable value w.e.f. 1.10.1996. The order made by the appropriate officer of the appellant - Corporation records that during the hearing of the complaints though the respondent suggested that the value of the land be determined by taking the rate of Rs. 2500 per sq. mtr., the respondent did not adduce any evidence or reasons for reducing the market rate of the buildable vacant land from Rs. 3000 per sq. mtr. to Rs. 2500 per sq. mtr. Consequently, this suggestion of the respondent was not accepted and the concerned officer fixed the rateable value of both the plots of land at Rs. 31,11,595 w.e.f. 1.6.1995 by adopting the market rate of land at Rs. 3000 per sq. mtr.

The respondent filed two appeals before the Small Causes Court. Municipal Appeal No. 367 of 1998 was directed against the order of the Investigating Officer dated 11.3.1998 passed in Complaint No. 140 of 1996/97 fixing the rateable value w.e.f 1.10.1996. Municipal Appeal No. 370 of 1998 was directed against the order of the Investigating Officer dated 12.2 1998. The Small Causes Court heard the appeals and by a common judgment In Id that the appellant - Corporation was not entitled to revise the rateable value by adopting the market rate. It was also held that the Investigating Officer had failed to follow the principle laid down by this Court in the case of the Municipal Corporation of Greater Bombay v. M/s. Polychem Ltd., [I974] 2 SCC 198, that the rate adopted by the Investigating Officer was excessive and exorbitant, and that the proper rate of assessment should be Rs. 654 per sq. mtr.

After setting aside the order of the Investigating Officer dated 11.3 1998, the Small Causes Court determined the rateable value of wing 'A' at Rs. 26,96,355 w.e.f. 1.10.1996, and for wing'B'&'C'(as vacant land) at Rs. 89,396, w.e.f. the same date. The appellants were directed to issue fresh bills accordingly with a direction to refund the excess amount paid alter adjusting against taxes due.

The appellant - Corporation challenged the judgments of the Small Causes Court before the High Court by filing two appeals. First Appeal No. 660/99 against the judgment in Municipal Appeal No. 370/98 was summarily rejected on the ground that no interference was called for. First Appeal No. 659/99 directed against the judgment of the Small Causes Court in Municipal Appeal No. 367/98 was also rejected by taking the view that in Dewan Daulat Raj Kapoor v. New Delhi Municipality, AIR (1980) SC 541 this Court has laid down that the annual value at which the building can reasonably be experted to let must be limited to the measure of standard rent determined under the Rent Act and cannot be determined on the basis of the higher rent actually received by the landlord from the tenant.

Being aggrieved by the said two judgments of the High Court the appellant is before this Court. The appellant filed an application for producing certain additional documents before this Court vide I.A. No. 2 of 2000. It was pointed out that in response to notices issued by the appellant - Corporation under Section 155 of the Bombay Municipal Corporation Act, the letters dated 16.12.1999 and 24.12.1999 were received from National Stock Exchange of India Limited and National Securities Depository Ltd., respectively, indicating the actual amounts paid by them for occupation of certain portions of the building known as "Trade World" which had been constructed by the respondent after demolition. Since these documents

became available after the High Court had delivered its judgment, the appellants craved leave to rely upon them. This application was allowed by an order dated 3.4.2000 made by this Court.

Contentions:

The appeals pertain to two different aspects. One pertains to the completed building 'A' wing and the other pertain to the vacant land. With regard to the completed building 'A' wing, learned counsel for the appellant contends that the assessee deliberately failed to furnish the particulars of leave and license / rent at which the premises had been given to the occupants. It is only after the notice issued under Section 155 that the appellant was able to gather information that at the material time National Stock Exchange of India Limited was paying Rs. 53,92,049.46 to the respondent for occupation of basement and three upper floors and similarly National Security Depository Ltd. was using and occupying 4th and 5th floors of 'A' wing on ownership basis. The learned counsel contends that the judgment of this Court in Polychem (supra) merely holds that when a building on land, previously rated, is demolished, and new construction is commenced, the land upon which the construction is being made, should continue to be rated as vacant land. However, this Court has not laid down that its rateable value should be the same as prior to the demolition of the building. It is contended that even if the rateable value of a building is to be held limited to the standard rent, and the assessment of the rateable value has to be done on the said basis, the evidence on record clearly shows that the building was being assessed for the first time and, therefore, the actual letting value of the premises has to be taken as the basis for working out the rateable value irrespective of the fact that it was styled as 'leave and license compensation'. The actual amount paid by the National Stock Exchange India Limited and National Securities Depository Limited must be taken as the basis for working out the rateable value of the land under construction from 1.10.1996 onwards.

With regard to the assessment for rating of the vacant land, the learned counsel for the appellant contends that, after demolition of the structures on the land, the character of the land changed inasmuch as its building potential increased tremendously. Since the land as such had not been assessed previously, it had to be assessed for rateable value on the basis of "Contractor's Method" by taking a suitable percentage of the market value, which was one of the known methods of assessing the rateable value. Hence, from 1.10.1996 the appellant had rightly proposed the rateable value on the basis of the market value of the land at Rs. 3300 per sq mtr. while the respondent had made a counter suggestion that it should be 2500 sq. mtr. as fair and reasonable value without producing any evidence in support. In the circumstances, the appellant's orders that the rateable value should be worked out by taking market value of land at Rs. 3,000 per sq. mtr. was not liable to be disturbed. The learned counsel contends that both the Small Causes Court and the High Court have misunderstood the judgment of this Court in Polychem (supra). In Polychem (supra) this Court has merely laid down that once the building is demolished, the land does not cease to have rateable value (as the doctrine of sterility does not hold good in India), but continues to be rateable as "vacant land". This Court has nowhere laid down that the land should be rated only at the rate prevalent prior to the demolition of the structures Since "contractor's method" is a known method of assessing the rateable value of land, no fault could be found with the rateable value arrived at by the appellant - Corporation.

The learned counsel for respondent urged the following propositions of law to support the judgments of the courts below:

(i) The rateable value of land and building is limited by the measure of standard rent arrived at by the assessing authority by applying the principles laid down in the Bombay Rent Act and cannot exceed the figure of the standard rent so arrived at by the assessing authority.

(ii) The standard rent of premises (land or land & building) is based on allowing the landlord a reasonable return on his investment. It is linked to the capital investment of the landlord and not linked to the market value of the premises. Under the Bombay Rent Act the standard rent of premises always remains fixed

(iii) As the standard rent (of premises land or building) remains fixed under the Bombay Rent Act, the Corporation could not have revised the rateable value of land under construction, even if" it is treated as vacant land under the ratio of the judgment in Polychem case, on the basis of the current market value of the land or the current market value of the building.

"to-

According to the learned counsel for the respondent, Polychem holds that once the building is demolished and reconstruction is commenced on the land, the land must be treated as vacant land for the purpose of rateable value and its rating has to remain frozen at what it was earlier unless there has been additional investment or improvement therein. In the instant case, what was being assessed for rateable value was subject to the limit of standard rent applicable under the Bombay Rent Act and merely because the land had building potential, The Corporation was not entitled to revise the rateable value.

Both sides cited a large number of authorities in support of their respective cases which we shall presently notice.

Law:

Under Section 139 of the Bombay Municipal Corporation Act, the Corporation is inter alia empowered and obligated to impose property taxes. The property taxes comprise general tax, water tax, sewage tax and so on. All these taxes are leviable at such percentage of the rateable value as determined by the Municipal Corporation. The manner of determination of rateable value, therefore, becomes crucial to the debate before us. The material portion of Section 154 of the Mumbai Municipal Corporation Act relevant for our discussion reads as under:

"Section 154(1) - In order to fix the rateable value of any building or land assessable to a property tax, there shall be deducted from the amount of the annual rent for which such land or building might reasonably be expected to let from year to year a sum equal to ten per centum of the said annual rent and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever."

The key words of Section 154(1) are "the amount of the annual rent for which such land or building might reasonably by expected to let from year to year" (emphasis added). Considerable forensic skill and judicial talent have been expended to ascertain the meaning of these words. Depending upon whether the area in question is subject to Rent Restriction Legislation or not, the Courts have answered the question differently.

Counsel placed reliance on the following judgments in support of the proposition that the rateable value of a premises is limited by the standard rent determined or determinable under the provisions of the Rent Restriction Legislation.

1. [1998] 6 SCC 381. Govt. Servant Coop. House Building Society Ltd. v. Union of India

2. [1998] 4 SCC 368, East India Commercial Co. (?) Ltd. v. Corpn. of Calcutta.

3. [1995] 4 SCC 696, Asstt. G.M., Central Bank of India v. Commr. , Municipal Corpn. For the City of Ahmedabad.

4. [1995] 4 SCC 96, Indian Oil Corpn. Ltd. v. Municipal Corpn

5. [1994] 6 SCC 572, Srikant Kashinath Jituri v. Corpn. of the- City of Belgaum.

6. [1985] 1 SCC 167, Balbir Singh (Dr.) v. MCD.

7. [1980] 1 SCC 685, Dewan Daulat Rai Kapoor v. New Delhi Municipal Committee

8. [1976] 4 SCC 622, Municipal Corpn., Indore v. Ratnaprabha

9. [1970] 2 SCC 803, Guntur Municipal Council v. Guntur Town Rate Payers' Assn.

10. [1970] 2 SCC 44, Corpn, of Calcutta v. L1C of India.

11. AIR (1962) SC 151, Corpn. of Calcutta v. Padma Debi.

We are, fortunately, spared the effort of having to analyse these judgments in detail and ascertain their ratios, as two judgments of this Court have already anticipated and carried out this task for us.

In East India Commercial Co. (P) Ltd. v. Corpn of Calcutta, [1998] 4 SCC 368 all these judgments were analysed by this Court and the position in law was neatly summed up as under:

"From the aforesaid decisions, the principle which is deducible is that when the Municipal Act requires the determination of the annual value, that Act has to be read along with Rent Restriction Act which provides for the determination of fair rent or standard rent. Reading the two Acts together the rateable value cannot be more than the lair or standard rent which can be fixed under the Rent Control Act. I he exception to this rule is that whenever any Municipal Act itself provides the mode of determination of the annual letting value like the Central Bank of India case relating to Ahmedabad or contains a non obstante clause as in Ratnaprabha case then the determination of the annual letting value has to be according to the terms of the Municipal Act. In the present case, Section 168 of the Municipal Act docs not contain any non obstante clause so as to make the Tenancy Act inapplicable and nor does the Act itself provide the method or basis for determining the annual value. This Act has, therefore, to be read along with Tenancy Act of 1956 and it is the fair rent determinate under Section 8 (1) (d) which alone can be the annual value for the purpose of property tax." (Vide paragraph 17).

Since that was a case pertaining to the Calcutta Municipal legislation, the reference therein is thus to Section 8(1) (d) of the West Bengal Tenancy Act, 1956.

Despite the law having been thus clearly laid down in East India Commercial Co, (P) Ltd. (Supra), thanks to ingenuity of counsel, the issue was reagitated before this Court in India Automobiles (I960) Ltd \. Calcutta Municipal Corpn., [2002] 3 SCC 308. This Court once again carried out a survey of the judgments and culled out the law as under (vide paragraph 21):

"A perusal of various judgments, relied upon by the learned counsel for the parties, clearly shows that this Court has taken a consistent view regarding the determination of annual value of land or building for the purposes of determination of taxes under the Municipal Acts. On the basis of various statutes relating to the determination of the annual value for the purposes of the Municipal Acts, this Court has devised two distinct

groups. One such group deals with the municipal laws of some States which do not expressly exclude application of the Rent Restrictions Acts in the matter of determination of annual value of a building for the purposes of levying municipal taxes and the other group deals with the municipal laws which expressly exclude application of the rent Restriction Acts in the matter of determination of annual value of land or building on rental method. Whereas in the first category of cases the determination of annual value has to be made on the basis of fair or standard rent notwithstanding the actual rent, even if it exceeds the statutory limits. In the other group where the restriction in the rent Acts has been excluded, the determination of annual value of the building on rental method is referable to the method provided under the relevant Municipal Act. Whereas Padma Debi case, LIC case, Guntur Town Rate Payers case and Dewan Daulat Rai case deal with the first group of municipal laws, the cases in Ratnaprabha case, AGM, Central Bank of India case. East India Commercial Co. case, Balbir Singh case, Indian Oil Corpn. Case and Srikant case deal with the second group. As already noticed, this Court in LIC case dealt with the first category as in Section 168 of the Calcutta Municipal Corporation Act, there existed no non obstante clause. The observations of the Bench of this Court which dealt with the case on 10.10.2001 cannot be taken in isolation."

It was further observed (vide paragraph 23):

"As already noticed even without specific determination, the standard rent was held to have been statutorily determined under Section 2(10) (b) of the Rent Act. Upon analysis of the various municipal laws and the judgments of this Court it is held that in cases where the municipal laws exclude the applicability of the Rent Acts by incorporating non obstante clause in the taxing statute, the powers of the authorities under the Municipal Acts are not circumscribed by the limits indicated in Padma Debi case and followed in that group of cases. In cases where the fair rent payable by the tenant has been determined and there is no justification for refusing to accept that fair rent as rental value of the premises, the municipal authorities should generally accept the standard rent fixed, notwithstanding the non-applicability of the Rent Acts because such a view would be a reasonable guideline to determine the rate of rent at which such land or building might, at the time of assessment, be reasonably expected to let from year to year. The rent which the tenant is receiving from his subtenant is also an important statutory consideration for determining the rent at the time of assessment to which the property might reasonably be expected to be let from year to year. Such a consideration is also justified on the principles of reasonableness. We cannot agree that in all cases, notwithstanding the non obstante clause the annual rental value cannot be fixed beyond the standard rent determined or determinable under the rent statute. We also find it difficult to hold that in all cases the rent actually paid by the sub-tenant to the tenant be taken as a sole criterion for determining the annual value on the assumption that such land or building might, at the time of assessment, is reasonably expected to get the aforesaid amount of rent if let from year to year."

Now that the law has been culled out to the exercise of applying it.

The case before us is governed by the provisions of a Rent Restrictions Legislation viz. The Bombay Rent Act. The Bombay Municipal Corporal ion Act neither contains a statutory definition of 'rateable value', nor does it lay down the manner in which the rateable value has to be computed, as distinguished from the situation in Commissioner v Griha Yajmanule Samkya and Ors., [2001] 5 SCC 561. The Bombay Municipal Corporal on Act neither contains a defining clause, nor a non-obstante clause, which would hold the field, notwithstanding the definition of 'standard rent' in the Bombay Rent Act. Therefore, prima facie, this would be a case which would all within the general principle laid down by the series of judgments commencing Padma Devi (supra) and ending with Srikant Kashinath Jituri (supra).

The contention of the learned counsel for the respondent that the rateable

value to be fixed under Section 154(1) of the Bombay Municipal Corporation Act is limited by the measure of the standard rent within the meaning of Section 5 (10) of the Bombay Rent Act appears to be justified, particularly in view of the fact that Section 7 of the Bombay Rent Act makes it illegal to claim of any rent or any licence fee in excess of the standard rent. Thus, in determining what would be the "amount of the annual rent for which such land or building might reasonably be expected to let from ’ear to year" for the premises, meaning thereby land or building, since both are included in the definition of the premises in Section 2 (3) (g), one has to I eep in mind that determining anything contrary to law could not be "reasonable" as a hypothetical tenant would hardly be inclined to pay a rent in excess of the standard rent, though, on account of circumstances which may be peculiar to the property, the reasonable rent which may be offered by the hypothetical tenant could even be less than the standard rent.

Mr. Singhvi, learned counsel for the appellant, urged that this contention cannot be accepted for several reasons. First, he urged that such a contention was never raised at any stage of the proceedings either before the Investigating Officer, Small Causes Court, or even before the High Court. He contends that ’standard rent’ is a pure question of fact, or, at any nite, a mixed question of law and fact, and ought not to be permitted to raise before this Court first time. He, therefore, urged upon us to decline permission for this ground to be raised. Though, as a normal rule, this Court does nut permit in appeal the raising of a totally new ground, particularly when wider r; mifications may arise, we are inclined to permit raising this ground for more than one reason. First, that the proposition of law that rateable value is limited by the amount of the standard rent, per se does not require actual invesigation. as it appears to be well settled by catena of decisions of this Court Secondly, we find that the High Court and the courts below focused the r attention merely on the ratio laid down in the judgment by this court in Polychem (supra) without adverting to this proposition of law which appears to be well established. Thirdly, substantive justice requires over-looking of the rigid rule, particularly when the contention, if permitted to be urged, does not cause prejudice to the opposite party.

Mr. Singhvi then contended that under Part-II of the Mumbai Rent Act, which contains the provisions with regard to the standard rent, the restrictions imposed under Section 7 would apply in respect of the premises only if they are let. He contended that entire Part - II of the Rent Act would not apply to the premises of Kamla Mills since the premises was never let out at any time earlier and, therefore, the restrictions under Section 7 of the Mumbai Rent Act would not apply. In our view, the argument is untenable. What we are required to consider is what would a hypothetical tenant be willing to offer as reasonable rent for the premises in question. Upon the premises being offered to be let, there would be hypothetical tenant; that hypothetical tenant would look at the restrictions applicable under the rent legislation and make a reasonable offer. Section 6 in Part-II of the Mumbai Rent Act, therefore, is hardly of relevance. We may examine the question from another angle. It surely cannot be contended that no rateable value can be fixed in respect of the premises occupied by the owner himself. In fact, Section 154 (I) of Mumbai Municipal Corporation Act would apply equally to such premises. Even in such a situation, the reteable value has to be ascertained on the basis of what a hypothetical tenant would offer for it as reasonable rent. If Mr. Singhvi’s argument that Section 6(1) of the Mumbai Rent Act makes the provisions of Part-II inapplicable to such premises is accepted, then no taxes would be payable by any owner for self-occupied property. We, therefore, reject this contention.

It is next contended by Mr. Singhvi that Bombay Municipal Corporation Act, 1888 is a complete code for determination of the rateable value and is not subject to the provisions in the Bombay Rent Act, 1947. Our attention was drawn to the fasciculus of Sections 139, 140, 146, 147, 154, 155. 156 to

167 and 217 of Bombay Municipal Corporation Act in support of the contention. In our view, the contention is unsustainable. No doubt the Bombay Municipal Corporation Act is a legislation for fixing of the rateable value and imposing of property tax, but it nowhere defines what 'rateable value' is, except in general terms under Section 154 (1). If the statute had defined 'rateable value' in specific terms, then the argument may have been sustainable, as sustained in Griha Yajmanule Samkhya and Ors. (supra). It must be remembered that the principle of 'standard rent' has not been invoked by reason of any requirement or declaration under the Municipal Corporation Act. but by reason of the fact that if the rateable value is the reasonable annual rent at which the property may be expected to be let, then we must consider what a hypothetical tenant would be willing to offer as rent for the oroperty let. As has been pointed earlier, the concept of reasonableness would necessarily include the concept of an owner and a tenant who are both law abiding and do not indulge in "black marketing". If there is a rent restriction legislation which imposes a limit on the rent which can be charged, then the concept of "reasonableness" would include that restriction also. This is the reason why in a series of judgments of this Court it has been laid down that the rateable value is limited by the standard rent determined or determinable under the provisions of the Rent Restriction Legislation. The only exception made was in a situation like Griha Yajmanule Samkya and Ors. (supra), where the Municipal Corporation Act has a detailed method to fix the rateab e value. As already noticed by the judgments of this Court, barring the two exceptional cases of Municipal Legislation containing non-obstante clause or deeming clause with regard to the rateable value, it must necessarily be held to be limited by the standard rent determined or determinable under the applicable rent control legislation.

We are unable to accept the contention of Shri Singhvi that this case falls within the ratio of Griha Yajmanule Samkya and Ors. (supra). In that case the municipal legislation in Hyderabad specifically contained detailed provisions for fixation of monthly or yearly rent. Examining the statute before it, this Court took the view that the statutory provisions required the tax to be levied on the basis of rateable value as fixed by the Corporation and there was further provision in the Act as to the method or manner of determination of the rateable value. Hence, this Court observed (vide paragraph 35), "the act mandates that the Commissioner shall determine the tax to be p lid by the person concerned in the manner prescribed under the statue and the rules. It is our view that the Act and the Rules provide a complete code for assessment of the property tax to be levied upon buildings within the Municipal Corporation. There is no provision in the statute that the fair rent determined under the Rent Control Act in respect of a property is binding on the Commissioner. The legislature has wisely not made such a provision because determination of annual rent depends on several criteria". We are, therefore. unable to accept the contention of Shri Singhvi in this regard.

It is next contended by Shri Singhvi that Section 5 (10) (b) and Section 11 of the Mumbai Rent Act, 1947 have been declared to be ultra vires Article 14 of the Constitution by this Court in Malpe vishwanath Acharya and Ors. v. State of Maharashtra and Anr., [1998] 2 SCC 1. It is undoubtedly true that this Court held the aforesaid provisions of the Bombay Rent Act to he unreasonable and liable to be struck down as unreasonable and arbitrary. However, this Court refrained from striking down the same in view of the fact that the existing Act was to lapse on 31.3.1998. Hence, this Court made the following directions:

"We however refrain from striking down the said provisions as the existing Act elapses on 31.3.1998 and we hope that a new Rent Control Act will be enacted with effect from 1.4.1998 keeping in view the observations made in this judgment insofar as fixation of standard rent is concerned. It is, however, made clear that any further extension of the existing provisions without bringing them in line with the views expressed in this judgment, would be invalid as being arbitrary and violative of article 14 of the

Constitution and therefore of no consequence. The respondents will pay the costs."

This judgment need not detain for another reason. We are concerned with the period prior to 31st March, 1998, at which time, admittedly, the concerned sections were not held to be bad, by this Court despite noticing the infirmity in the sections. For this reason also, we are unable to accept the contention.

Shri Singhvi then contended that the appeals must fail for failure to place the requisite evidence on record. He contends that there is no warrant for the assumption and assertion of the respondent that the rateable value for the property of the respondent for the years 1994-95 and 1995-96 was based on "standard rent", nor is there any warrant for the assertion that the land had been separately valued as contended. There appears to be merit in this contention. While the material on record shows that prior to 1994-95 the rateable value of the entire property before the demolition was fixed at Rs. 3,70,505, there is no evidence on record to show either that this was based on standard rent or that there was any assessment of the land and structures separately. Learned counsel relied on the judgment of this Court in National and Grindlays Bank Ltd. v. The Municipal Corporation of Greater Bombay, [1969] 1 SCC 541, a case arising under the Bombay Municipal Corporation Act, 1888 itself, in which the court observed that the Act was passed in the year 1888 and Municipal Corporation had a practice for a very long time of treating the land and the building constructed upon it as single unit and charging the property tax upon the owner of the land in a case where the land is let for a period of less than one year to a tenant who has constructed a building thereupon, approving the observations made by the Division Bench of the Bombay High Court in Ramji Keshavji v. Municipal Corporation for Greater Bombay, [56 Bom. LR 1132]. Relying on this judgment the learned counsel for the appellant contended that, far from there being material to suggest that rateable values were fixed separately for land and building, judicial notice has been taken of the fact that the land and buildings were rated as a composite unit by the Bombay Municipal Corporation is matter of practice. Placing reliance on the judgment of this Court in AGM, Central Bank of India v. Commr. Municipal Corporation, [1995] 4 SCC 696 it is urged that once the Commissioner of the Corporation has fixed the rateable value, the burden is upon the tenant to show as to what should be the correct rateable value. In the present case the respondent failed to lead any evidence to show why Rs. 3,000 per sq. mtr. was not a reasonable market value, nor did it adduce any evidence to show that Rs. 2500 per sq. mtr. was the reasonable market value. In the circumstances, Shri Singhvi contends that taking the market value at Rs. 3,000 per sq. mtr. was perfectly justified for assessing the rateable value.

It is next contended by the appellant that even if we assume that the provisions of Bombay Rent Act apply, 'standard rent' is different y defined by the Bombay Rent Act. Section 5(10) (b) defines standard rent as under:

"Section 5 (10) (b) - When the standard rent is not so fixed - subject to the provisions of Section 11,

(i) the rent at which the premises were let on the first day of September, 1940 or

(ii) where they were not let on the first day of September, 1940, the rent at which they were last let before that day, or

(iii) where they were first let after the first day of September, 1940, the rent at which they were first let, or

[(iii-a) notwithstanding anything contained in paragraph (iii) the rent of the premises referred to in sub-section (1-A) of Section 4 shall, on expiry of the period of five years mentioned in that sub-section, not exceed the

amount equivalent to the amount of net return of fifteen per cent, on the investment in the land and building and all the outgoings in respect of such premises; or]

(iv) on any of the cases specified in section 11, the rent fixed by the court; Section II contemplates that the Court may fix the 'standard rent' in certain cases which are indicated by clauses (a) to (e) of sub-section) (I) and sub-section (2), when an application for fixing the standard rent is made Section 11 reads as under:

"Section 11(1) - [Subject to the provisions of Section IIA in any of the following] cases the Court may, upon an application made to it for that purpose, or in any suit or proceedings, fix the standard rent .at such amount as, having regard to the provisions of this Act and circumstances of the case, the Court deems just -

(a) where any premises are first let after the first day of September, 1940 and the rent at which they are so let is in the opinion of the Court excessive; or

(b) where the Court is satisfied that there is not sufficient evidence to ascertain the rent at which the premises were let in any one of the cases mentioned in [paragraph (i) to (iii) of sub-clause (b) of clause (10)] of section 5; or

(c) where by reason of the premises having been let at one time as a whole or in parts and at another time in parts or as a whole, or for any other reason, any difficulty arises in giving effect to this Part; or

(d) where any premises have been or are let rent free or at a nominal rent or for some consideration in addition to rent; or

(d-1) without prejudice to the provisions of sub-section (A) of Section 4 and paragraph (iii-a) of sub-clause (b) of clause (10) of Section 5, where the Court is satisfied that the rent in respect of the premises referred to therein exceeds the limit of standard rent laid down in the said paragraph (iii-a); or]

(e) where there is any dispute between the landlord and the tenant regarding the amount of standard rent."

"Section - 11(2) - If there is any dispute between the landlord and the tenant regarding the amount of standard rent."

Section 11 read with Section 5(10) (b) of the Bombay Municipal Act, 1947 makes it clear that where premises were let before, on or after the first September, 1940 the first letting rate shall be the standard rent subject to the provisions of Section 11. In the present case, as to whether the premises in question were let before first September, 1940, or thereafter, and, if so, what was the first letting rate, is not ascertainable from the record. In the circumstances, Shri Singhvi submits that the other alternative method of finding out the standard rent is "contractor's method" which has been judicially approved. Under this method the market value of the land has to be ascertained and reasonable return fixed thereupon to determine the standard rent. This is precisely what was done by the assessor and Collector by taking the market value Rs. 3,000 per sq. mtr. as a fair value with a reasonable return of 12% thereupon, in fact, even the respondent suggested only Rs. 2500 per sq. mtr. as the fair market value and did not raise any dispute with regard to the fair return. The Bombay High Court in Harilal Parekh v. Jain Coop. Housing Society, AIR (1957) Bom. 207 and Saipansaheb Wd. Dawoodsaheb v. Laxman Venkatesh Naik, 57 BLR 413, pointed out that under Section 5 (10) (b) (1) the first letting on first September, 1940 becomes the standard rent subject to the provision of Section 11 of the Act and, when the occasion arises, the Court has the jurisdiction to re-determine it under Section 5 (10) (b) (1), where the

case falls under Section 11 (1) (e) of the Bombay Rent Act. It was also pointed in Harlal Parekh (supra) that the premises were first let after first September, 1940 and the rent shall be equivalent to 6% on the valuation of land and 8.2/3% on the valuation of building.

It is true that Section 11 of the Rent Act provides that even standard rent can be altered and re-fixed if there is any structural alteration or change in the amenities. It is urged by Shri Singhvi that demolition of tre building and increasing the building potential of the land is one such change contemplated by Section 11 (a). This contention, we are unable to accept. Section 11 (a) is intended to enable the Court, upon an application n any suit or proceeding, to modify the standard rent as a result of structural alteration or change in the amenities involving further capital investment of I he owner. We do not think that demolition of a building is one such contingency contemplated by Section 11 (a) of the Act.

In the result, though we accept the proposition urged by the respondent that in the facts of the present case the standard rent would be the limit of the rateable value, we find that there was no material produced on record at any stage by the respondent to show what the standard rent was either in respect of the vacant land or in respect of the land on which the building was constructed and demolished, or in respect of the building after it was constructed. We accept the contention of the appellant that the hurden of proving this fact, while objecting to the rateable value fixed by the Commissioner, is always on the respondent-assessee. We also accept the contention of the appellant that the respondent was less than fair to the appellant in not disclosing that its property had been occupied by National Stock Exchange of India Ltd. and National Security Depository Ltd. and in not disclosing the amounts paid by them. The respondent ought to have disclosed the fact, fairly and fully, and urged the legal contentions open to it based thereupon. These facts would have justified our allowing the appeal fully and restoring the assessment orders made by the appellant officers. However, we are not inclined to do so for the reason that the attention of the parties has not been focused on the core issue, as a result of which, perhaps, there was failure to produce relevant material before the assessor to show what was the standard rent. The interests of justice would require that the issue be reconsidered after giving an opportunity to the respondent to discharge the burden placed upon it under law.

In the result, we allow the appeals and set aside the judgments of the High Court and Small Causes Court. The concerned proceedings are restored before the Assessor and Collector who shall hear and dispose the complaints after giving an opportunity to the respondent to produce such material as they may desired in support of their objections to the assessments made by the appellant.

In the circumstances of the case, the appeals are thus allowed with costs quantified at Rs. 50,000.