Municipal Corporation of Greater Bombay

Vs

Royal Western India Turf Club

Civil Appeal No. 15 of 1965

(J. C. Shah, S. M. Sikri, J. M. Shelat JJ)

13.09.1967

JUDGMENT

SHELAT J. -

This appeal by certificate obtained from the High Court at Bombay involves the question as to the true meaning of s. 154 of the Bombay Municipal Corporation Act. III of 1888 and the correct rateable value to be assessed thereunder.

The respondent-Club runs two race courses, one in Bombay and the other at Poona. We are concerned in this appeal with the Bombay race-course which is comprised of land and certain structures standing thereon. The said land is the property of the appellant-corporation given on lease to the Club for a period of 30 years commencing from June 1, 1944 at an annual rent of Rs. 3,75,000. The said structures thereon have been built by and belong to the Club. The Club has obtained a licence from the Government of Maharashtra permitting the Club to hold race meetings at both the Courses and for which it paid a sum of licence fees between the two Courses in the ratio of 2:1 and thus licence fees between the two Courses in the ratio of 1:2 and thus the share of the Bombay Course came to Rs. 8,66,666. The rating year in question is 1954-55. The assessment was made on the basis of the Club's accounts for the year 1953-54 that being the year concluded before the assessment. According to these accounts the gross receipts of the Club came to Rs. 117 lacs and odd and the expenses of Rs. 124 lacs and odd; the accounts thus showed a loss of Rs. 7 lacs and odd. The Deputy Municipal Commissioner who is the assessing authority disallowed expenses totaling Rs. 22 lacs and odd as having been wrongly included in the working expenses and determined Rs. 13,22,430 as the gross annual rent and deducting therefrom the 10 per cent. deduction allowable under s. 154 of the Act assessed the net rateable value at Rs. 11,90,187. The respondent-Club thereupon filed an appeal before the Small Cause Court, Bombay, under s. 217 of the Act. The Club claimed in all 19 items of expenses which according to it ought to have been allowed. The Club, however, conceded that items 1, 2, 4, 5, 15, 16 and 18 were rightly disallowed. The remaining items were :

3. Bombay Course upkeep and repairs

6. Track sand and Murum

7. Legal charges

8. Licence fee

9. Totalisator upkeep and repairs

10. Bombay Course salaries and wages

11. Motor lorry expenses

12. Grass and charges for maintenance of horses and bullocks

13. Insurance and garden expenses

14. Spares for tractors and machinery parts

19. Painting.

Out of these, items 3, 9 and 19 were wholly disallowed by the Deputy Municipal Commissioner while the rest were partially allowed. As regards Item 19, that is, painting, Counsel for the Club stated before us that he would not press that item. We are therefore no longer concerned, with that item. The Small Cause Court agreed with the Deputy Municipal Commissioner in totally disallowing expenses under Items 3 and 9. It allowed however item 7, that is, legal charges which were disallowed by the Deputy Municipal Commissioner. Regarding Item 6, the view of the Small Cause Court was that only 7/12th and not 50 per cent. deducted by the assessing authority ought to have been allowed. It was also of the view that only 7/12th and not 50 per cent. of the expenses under Item 10, 12, 13, and 14 ought to have been allowed by the assessing authority. As regards the licence fees the Club had, as aforesaid, allotted Rs. 8,66,666 to the Bombay Race Course. The small Case Court confirmed the deduction of 50 per cent. only of this amount allowed by the assessing authority. So far as water tax and wheel tax were concerned the Small Cause Court confirmed the deduction of 3/4th of the these taxes made by the authority. The Small Cause Court held that the profits basic method employed by the assessing authority was properly employed and further held that the Club had failed to prove that the net rateable value of Rs. 11,90,185 determined by the assessing authority was excessive.

Before the High Court the Club agitated the same objections. The High Court was of the view that considering the unique nature of the use of the premises by the Club, the proper method for determination of the annual rent was the profits basis method but upheld the Club's objections as regards the disallowance of the several items of expenditure. The High Court held that the gross rateable value of the property would after these deductions be Rs. 2,15,750 and after deducting therefrom the statutory deduction of 10 per cent. the net rateable value would come to Rs. 1,94,175 a figure, no doubt, less than the actual annual rent of Rs. 3,75,000 payable by the Club under the said lease. The appellant - corporation challenges the correctness of these deductions allowed by the High Court.

Before we proceed to consider the contentions urged before us on behalf of the Corporation, we may first look at some of the provisions of the Act. Under s. 139 the Corporation is required to levy property taxes, tax on vehicles and animals, theatre tax and octroi. Section 140 provides that property taxes mean water tax, halalkhor-tax and general tax of not less than 8 per cent. and nor more than 26 per cent. of the rateable value of lands and buildings, education cess and betterment charges. Section 154 is concerned with the valuation of property assessable to property taxes and provides how the rateable value of such property is to be determined Sub-section (1) runs as follows :-

> "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 percentum 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 section provides only for the determination of the annual rent (not the actual rent paid by the tenant) for which such land or building might reasonably be expected to let from year to year and then to fix the rateable value after deducting therefrom 10 per cent. of such annual rent in lieu of all allowances for repairs or any other account whatever. The annual rent has to be worked out on the basis of what a hypothetical tenant would be willing to pay as rent for the premises to a hypothetical landlord who is prepared to let the premises from year to year as they stand having regard to all the advantages and disadvantages relating to such premises, such as, the situation, the nature of the property, the obligations and liabilities attached thereto and other features, if any, which enhance or decrease their value to such a tenant. The section simply enjoins upon the Municipal Corporation to determine the annual rent and the rateable value of the property therefrom but does provide for any particular method of rating out of the several well known methods usually followed in such assessments, such as the comparative method, the contractor's method, the unit method and profits basis method, that is, profit-making capacity or valuation by reference to receipts and expenditure. (See Ryde on Rating 11th ed., 398 and Faraday on Rating 5th ed. p.24) The profits basis method which the assessing authority has adopted in the present case consists in ascertaining the net annual value of the premises which has to be worked out from the profits which are made or which are capable of being made out of the premises. The gross receipts from the starting point of the calculation and they are those shown in the assessee's accounts for the account year concluded last before the making of the proposal. When these have been ascertained, the next step is to deduct therefrom the expenses of earning those receipts, the cost of repairs, insurance and other expenses necessary to maintain the premises in a state to command to hypothetical rent. The remaining balance is divisible between the tenant, that is, the tenant's share, the landlord, that is, the hypothetical rent or net annual value and rates. The tenant's share is often estimated by applying a percentage to the tenant's capital or it may be directly taken as a proportion of the divisible balance or by applying a percentage to the receipts. (See Halsbury's Laws of England, (3rd ed.,), Vol. 32, 87 - 88). It must be remembered that it is not the profits which are rateable; they serve to indicate the rent at which the premises might reasonably be expected to let, particularly where profit is the motive of the hypothetical tenant in taking the hereditament. This method at one stage used to be adopted in the case of public utilities only. But there are a number of decisions which show that at a later stage it began to be employed to other premises also such as foot all stadia, markets, race-courses, etc. One of the earliest cases where this method was applied to undertakings which are not public utilities is the case of R. v. Verall ([1875] Q.B.D. 9) which was a case of a race-course. In Sanddown Park Case ((1954) 47 R&T 351 (CA) (quoted in Ryde on Rating. 11th ed. 523) the Court of Appeal held that in cases where actual receipts and expenditure are accepted as relevant factors for the ascertainment of gross value, sums reflecting the tenant's reasonable profit, risk and interest on capital should be together treated as a charge on the divisible profits in priority to other deductions. The profits basis method has also been applied to such premises as gray hound race tracks. Briefly stated, the profits basis method is no more than a calculation base on the profit earning capacity of the premises and as stated by Lord Birkenhead L.C. in Port of London Authority v. Assessment Committee ([1920] A.C. 273 at p. 281) :

> "By this reckoning the amount of the gross receipts is ascertained, and from such amount are deducted the expenses of earning such receipts, the deductions provided

> for by statute, interest on tenant's capital and the estimated amount of tenant's profit. The figure so ascertained would give the rating authority a valuable indication as to the rent which the hypothetical tenant would be likely to give for the right to occupy the hereditament in question and therefore would enable them to form an opinion as to the correct amount of the net annual value for the purpose of rating."

In the instant case, the profits basis method has been adopted for the last several years and approved by the Small Causes Court in several appeals by the respondent Club. It appears that at one stage the respondent Club raised an objection regarding its application to the present case. We need not go into the comparative merits of the different methods or into the question whether it can suitably be applied in the present case or not, as Counsel for the Club stated before us that he was not pressing that objection. We therefore proceed on the footing that this method was properly adopted by the assessing authority. But that does not end the controversy, for, even though the principles on which the profits basis method is worked out are fairly well-understood, there is nevertheless bound to be controversy in regard to actual working expenses shown in the assessee's accounts. A question would often arise whether these expenses are the hypothetical landlord's burden or that of the hypothetical tenant. If they are of the former class, they cannot obviously be claimed as deductible expenses for the hypothetical tenant would not take them into account while offering the rent at which he would take the premises on lease.

We now proceed to examine the contentions in regard to the items of expense in controversy in the light of these principals. The first of these items is Item No. 3 of Rs. 1,07,414 for expenses for upkeep and repairs of the race-course. The contention on behalf of the Municipal Corporation was that the 10 per cent. statutory deduction allowed by s. 154(1) covers all expenses for repairs and therefore deduction of costs of repairs and upkeep, if allowed, would mean a duplicate deduction. Even if 10% statutory deduction were considered inadequate looking to the present rate of prices, the legislature has fixed that percentage as a matter of policy and it is found to be inequitable or otherwise it is for the legislature and not for the Court to alter it. The question, however, is not the inadequacy of deduction allowed in section 154(1) but as to which are the costs of repairs contemplated by the sub-section. Under s. 108(m) of the Transfer of Property Act the lessee is required to use the leased premises as a person of ordinary prudence would use them if they were his own and must keep them in as good a condition as he found them and must yield them up in the same condition subject only to fair wear and tear and irresistible force. There would thus be to implied covenants in a lease : (1) to keep in repair and (2) to restore in repair. It would therefore be the obligation of the tenant to maintain the premises in good repair and in the same condition at all times during the term of the lease. The lessor bears the burden only in respect of dilapidation to the premises caused by reasonable wear and tear and extraordinary cause such as storm, flood or accidental fire. It will however be seen that the deed of lease under which the respondent Club took the land on lease expressly excludes the applicability of cl. (m) of section 108. That being so the question as to whether it is the lessor or the lessee who would be liable to pay for repairs cannot be resolved by the provisions of section 108(m). But the expenses in question are not expenses for the upkeep and repair of either the land or the structures standing on it which have been put up by the Club. Costs of these repairs may conceivably be the landlord's burden. Item 3 represents expenses for the maintenance in good repair of the track which is the source of receipts earned by the Club. It is manifest that the track together with all its fitments has to be maintained properly if the Club were to earn the receipts and secure the largest possible attendance of persons willing to bet at the races and to attract likewise as many horses and their owners to participate in the race meetings held by the Club. A well maintained track is obviously one of the principal attractions inducing as large an attendance as possible. Therefore it would be in the interest of the tenant who taken on lease a race

course with profit-making motive to maintain the course efficiently and in good order. Disbursements for the upkeep of the course and all its adjuncts consequently are proper outgoings incurred for earning the receipts. They are thus not the landlord's liability and are not part of or included in the statutory deduction of 10 per cent. The statutory deduction in section 154(1) is in lieu of the cost of repairs, insurance, etc. incurred by the lessor. There is therefore no question of any duplication if expenses incurred by the Club for the maintenance of the Course were to be allowed as a proper deduction. The High Court was therefore right in deducting those expenses from the gross receipts.

Next is Item 9 which comprises expenses for the upkeep and repairs of the totalisator set up by the Club. The totalisator is an apparatus or a mechanical device for registering and showing the total operations and the number of tickets sold to betters on each horse in a race. Obviously it is maintained to ensure efficient and expeditious working of the races. It does mechanically the work which if done by human labour would necessitate employment of a large number of persons. It is almost an indispensable adjunct of a modern race course and is necessary to declare within the short time available to the betters which are the horses on which heavy betting has been done in a particular race and the total amount of getting on each of the competing houses in that race. The expenses incurred in the upkeep and repair of such as adjunct necessary to an efficient race course must necessarily be regarded as the outgoings of the business. The Corporation's contention that it is a machinery and its value therefore is not to be included in rating under s. 154(2) has no merit as it is part of the necessary equipment of a good race course and its upkeep goes to the making of receipts.

The next items incontroversy are items 6, 10, 11, 12, 13 and 14, that it cost of sand and moorum, salaries and charges of employees, motor lorry expenses, stores and charges for maintenance of horses and bullocks, manure and garden expenses, spares of tractors and other machinery and lastly the wheel tax and water tax. The only ground on which the Small Cause Court partially allowed these expenses was that since race meetings were held in Bombay for 6 months in a year only, these expenses would partly be borne by the Club and partly by the lessor. The High Court disagreed with this view and rightly allowed the deduction of the entire amount. In our view, it is not possible to find any principle on which it would be possible to hold that if the race meetings are held for 6 months only in Bombay the burden of these disbursements would be on the tenant for 6 months and for the remainder on the lessor. There is nothing in the lease which would show that the lessor had to maintain the track during the time that race meetings were not held in Bombay. Since it is the Turf Club which ran the race meeting it would be the Club's obligation and not that of the lessor to look after the track's upkeep and maintenance and therefore it would be the Club which would bear the costs of its maintenance even during the period when race meetings were not held in Bombay. The distribution of these expenses between the tenant and the landlord made by the assessing authority and the Small Cause cannot therefore be supported on any principal nor can it be sustained on the mere ground that race meeting were held in Bombay only for part of the year. The measure in arriving at the net rateable value under s. 154(1) is what hypothetical tenant would pay as rent and that would depend upon the amount of profits earned from race-meetings held on the race-course. To arrive at the correct amount of such profit all expenses reasonably and property incurred which go to the making of the receipts have to be deducted from the gross receipts. There was no challenge at any stage that these expenses were not property incurred for the upkeep and maintenance of the race course. The High Court therefore was right in allowing the deduction of these expenses also.

For the relevant year the Club had allotted Rs. 8,66,666 out of the licence fee of Rs. 13 lacs to the Bombay race-course. Counsel urged that the Club was entitled to a deduction of Rs. 4,33,333 only

as the licence was for a dual purpose, viz., for the premises as a race course and for permission to conduct race meetings on the race-course. It was argued that for the first the burden would be on the lessor and for the second on the tenant. The licence Ex. B shows that it was granted to the Committee of the respondent Club. The licence is not a joint licence in favour of the Corporation and the Club. The application for it was made by the Committee on behalf of the Club and not by the Municipal Corporation. If the licence was for a dual purpose prima facie the landlord would either apply separately or join the Club in the application. The licence shows that the application was for "horse racing in the race courses leased by them" at Mahalaxmi, Bombay and in the Cantonment at Poona. The licence is "granted to the licenses"....."to hold horse race on the said race courses." Condition 1 of the licence prescribes that the Club could hold only 36 race meetings in a year out of which not more than 16 should be allotted to the Poona race-course. The licence is clearly permission to run race meetings on the two race-courses and not an instrument licensing the premises as a race-course. It is manifest that since it is the tenant who would hold the race-meeting the fees payable for the licence is his burden and not that of the lessor. Mr. Desai, however, contended that the scheme of the Bombay Race-Course Licensing Act, III of 1912 is to licence the premises and then to licence the person who runs races on such premises. He relied strongly on the long title of the Act which states that it was an Act to provide for the licensing of race-course in the State of Bombay. Reliance was also placed on section 3(1) which provides that no horse-race shall be held on a race-course for which there is no licence for horse-racing in force. But the charging section is section 4 under which the owner, the lessee or the occupier of a race-course can apply for a licence for horse racing on a race-course. The licence for horse racing and the obligation to obtain it and to pay the fee therefor is on the person who conducts the business of running the race-course for horse-racing. Such a person can be either the owner, the lessee or the occupier of such a race-course. What section 3 does is to prohibit horse-racing on a race-course unless a licence for horse racing has been obtained in accordance with the provisions of the Act. There is no provision in the Act which Mr. Desai Could point out which lays down any licence fee for a race-course. There is therefore nothing in the Act to warrant the construction that the licence obtained under section 4 has a dual purpose as contended. Therefore there can be no justification for dividing the burden of the licence fees between the tenant and the landlord. Mr. Desai, however, argued that even so, the respondent Club was not entitled to claim the deduction of the licence fees because it was not the Club but its Committee which applied for and obtained the licence. The Articles of Association empower the Committee to act in all matters on behalf of the Club. The Committee applied for the obtained the licence on behalf of and as the agent of the Club. The fees were expended on behalf of the Club and as expenses of its business and it is the Club and not the Committee which is licensed to run horse racing on the race-course. The Club was therefore entitled to treat the licence fees as its own expenses and claim deduction therefor on the footing that the fees were expenses incurred by it to earn the recipes.

As regards the wheel tax and the water tax there is no justification in distributing them on the ground that during the time race-meetings were not held in Bombay it would be the landlord's obligation to pay those taxes. In our view there is no basis for disallowing a part of these taxes. These again were expenses incurred by the Club in the ordinary course of its business and were as necessary as other expenses in connection with its business.

Counsel for the Corporation lastly urged that if these expenses were allowed to be deducted the net rateable value arrived at would be less than the actual rent of Rs. 3,75,000 payable by the Club to the Corporation and that such a result cannot be contemplated under any method of assessing the rateable value. It is true that the net rateable value as calculated by the High Court comes to Rs. 1,94,175 but the rateable value need not always be equal to the actual rent. As aforesaid, the

measure is what a hypothetical tenant is expected to pay for a lease from year to year taking the property as it exists with all its privileges, advantages and burdens. The leased premises no doubt consist of a large track of land but it must be remembered that under cl. (i)(f) of the lease the Club is in exclusive possession of only certain portions and the remainder has to be kept open to the public except on race days and when training of horses is held. A large portion of the land has thus to be kept open for being used as playgrounds for the public. It is therefore not surprising that the rateable value as determined by the High Court comes to an amount less than the actual rent payable by the Club.

The appeal fails and is dismissed with costs.

R.K.P.S.

Appeal dismissed.

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