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INDIAN OIL CORPORATION LTD.

v

MUNICIPAL CORPORATION AND ANR.

APRIL 7, 1995

B

[J.S. VERMA AND SUJATA V. MANOHAR JJ.]

*Madhya Pradesh Municipal Corporation Act, 1956—Section 138(b)—House tax—Annual value of building—Non-obstante clause—Effect of the non-obstante clause.*

C

*Constitution of India—Article 141—Procedure—Whether the earlier decision of this Court can be overruled by a co-equal Bench of this Court.*

D

The Division Bench of the High Court by placing reliance on some other decisions of this Court on similar provision of other statutes of different State where there was no non-obstante clause as in Section 138(b) of the Madhya Pradesh Municipal Corporation Act, took the view that the decision of this Court in *Municipal Corporation, Indore and others v. Smt. Ratnaprabha and Others*, [1977] 1 SCR 1017 was not binding on it even though it related to the construction of the same provision.

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The Full Bench of the High Court overruled the decision of the Division Bench.

Being aggrieved by the full Bench's decision the Petitioner preferred the present Petition.

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Dismissing the Petition, this Court

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HELD : 1. The only direct decision of this Court on the construction of Section 138(b) of the M.P. Municipal Corporation Act is *Ratnaprabha's* case and it distinguishes the other decisions of this Court in which construction of similar provision in other statutes was involved on the ground that they did not contain a *non-obstante* clause like that in Section 138(b) of the M.P. Act. [248-H, 249-A, B]

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*The Corporation of Calcutta v. Smt. Padma Debi and Others*, [1962] 3 SCR 49; *Dewan Daulat Rai Kapoor Etc. Etc. v. New Delhi Municipal Committee and Another Etc. Etc.*, [1980] 2 SCR 607; *Dr. Balbir Singh and*

*Ors. Etc. Etc. v. Municipal Corporation, Delhi and Ors.*, [1985] 2 SCR 439 and *Morvi Municipality v. State of Gujarat and Ors.*, [1993] 2 SCR 803, referred to. A

2. A Bench of three Judges only, in the later decisions could not overrule the decision of this Court in *Ratnaprabha's* case and, therefore, none of the later decisions could be so read to have that effect. The Division Bench of the High Court was clearly in error in taking the view that the decision of this Court in *Ratnaprabha's* case was not binding on it. In doing so, the Division Bench of the High Court did something which even a later co-equal Bench of this Court did not and could not do. [251-F, G] B

3. The test indicated in *Keshav Mills Co. Ltd.* for reconsideration of a decision of this Court is not satisfied in the present case; therefore the plea for reconsideration of the decision in *Ratnaprabha's* case can not be entertained. [253-B] C

*Keshav Mills Co. Ltd. v. Commissioner of Income-tax, Bombay*, [1965] 2 SCR 908, referred to. D

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) 7504 of 1995.

From the Judgment and Order dated 28.9.94 of the Madhya Pradesh High Court in C.R. No. 405 of 1992. E

V.R. Reddy, Additional Solicitor General, S.K. Puri and H.K. Puri for the Petitioners. F

The following Order of the Court was delivered :

Heard the learned Additional Solicitor General.

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

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

(emphasis supplied)

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

H The only direct decision of this Court on the construction of Section

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

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

We have gone through the decision in *Padma Debi's* case (supra). There the premises were on rent and section 127(a) of Calcutta Municipal Corporation Act, 1923, did not contain a *non-obstante* clause. That the section provided, *inter alia*, was that the annual value shall be deemed to be the gross annual rent at

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

xxx

xxx

xxx

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

F (at pages 1019-20 of SCR)

(emphasis supplied)

In *Dewan Daulat Rai* (Supra), another 3-Judge Bench of this Court  
 while construing a similar provision in the Punjab Municipal Act, 1911  
 G referred to the decision in *Ratna Prabha* (supra) and distinguished it on  
 the ground that there was no *non-obstante* clause in the relevant provision  
 of the Punjab Municipal Act and, therefore, the decision in *Ratna Prabha*  
 (supra) had no application. No doubt, i.1 doing so, a reservation was  
 expressed about the view taken in *Ratna Prabha* (supra) on the basis of the  
 H existence of the *non- obstante* clause in Section 138(b) of the M.P. Act but

that cannot have the effect of overruling the decision of this Court in *Ratna Prabha* (supra) inasmuch as a later co-equal Bench could not overrule it and could only refer it for reconsideration to a larger Bench, which it did not do. A

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

Recently, another 3-Judge Bench of this Court in *Morvi Municipality v. State of Gujarat and Ors.*, [1993] 2 SCR 803, dealt with the same question with reference to the provisions of the Gujarat Municipalities Act, 1963. It referred to the earlier decisions and indicated that the presence of the *non-obstante* clause - "notwithstanding anything contained in any other law",- in Section 138(b) of the M.P. Act distinguished the decision of this Court in *Ratna Prabha* (supra); and since in the Gujarat act there was not such *non-obstante* clause that decision had no application to the Gujarat Act. C D

It is thus clear that the decision of this Court in *Ratna Prabha* (supra) on the construction of Section 138(b) of the M.P. Act has all along been understood and justified on the basis of the presence of the *non-obstante* clause in Section 138(b) of the M.P. Act and the later decisions have distinguished it on that ground. That is the basis on which the decision in *Padma Debi* (supra) was distinguished in *Ratna Prabha* (supra) itself. It is also obvious that a Bench of 3- Judges only in the later decisions could not overrule the decision of this Court in *Ratna Prabha*, [1977] 1 SCR 1017 and, therefore, none of the later decisions could be so read to have that effect. The Division Bench of the High Court in 1989 MPLJ 20 was clearly in error in taking the view that the decision of this Court in *Ratna Prabha* (supra) was not binding on it., In doing so, the Division Bench of the High Court did something which even a later co-equal Bench of this Court did not and could not do. The view taken by the Division Bench of the High Court in 1989 MPLJ 20 proceeds on a total misunderstanding of the law of precedents and Article 141 of the Constitution of India, to which it referred. But for the fact that the view of the Division Bench of the High E F G H

A Court proceeds on a misapprehensions of the law of precedents and Article 141 of the Constitution, it would be exposed to the criticism of an aberration in judicial discipline. The decision of the Division Bench of the High Court was, therefore, rightly overruled by the full Bench in the impugned judgment.

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

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

F "..... In exercising this inherent power, however, this Court would naturally like to impose certain reasonable limitations and would be reluctant to entertain pleas for the reconsideration and revision of its earlier decisions, *unless it is satisfied that there are compelling and substantial reasons to do so.* ..... When it is urged that the view already taken by this Court should be reviewed and revised

G it may not necessarily be an adequate reason for such review and revision to hold that though the earlier view is a reasonably possible view, the alternative view which is pressed on the subsequent occasion is more reasonable. *In reviewing and revising its earlier decision, this Court should ask itself whether in the interests of the public goods or for any other valid and compulsive reasons, it is*

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*necessary that the earlier decision should be revised. ...."*

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(at page 921 of SCR)

(emphasis supplied)

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

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

C

A.S.

Petition dismissed.