The Lokmanya Mills

Vs

The Barsi Borough Municipality

Civil Appeals Nos. 125 to 129 of 1957

(J. C. Shah, J. L. Kapur JJ)

14.03.1961

JUDGMENT

SHAH, J. -

These five appeals raise a common question about the validity of Rule 2C framed by the respondent - the Municipality of Barsi under s. 58(j) of the Bombay Municipal Boroughs Act, 1925 - hereinafter called the Act. The Lokmanya Mills - hereinafter called the appellants - are a company registered under the Indian Companies Act holding an extensive area of land City Survey No. 2554 within the Municipal Borough on which are constructed buildings of the factory, ware-houses, bungalows and other structures appurtenant to the factory. The respondent, a Borough Municipality constituted under the Act is by s. 73, entitled to levy a rate on lands and buildings and also a water-rate. Under the rules framed by the Municipality, house-tax and water-tax were levied on buildings and non-agricultural lands on their annual letting value at uniform rates whether the purpose was residential, business or manufacturing.

In 1944, the Municipality resolved to enhance the assessment of lands and buildings within its area. After some correspondence with the Commissioner, Central Division, the General Body of the Municipality resolved that the rental value for levying rates on mills and factories within its limits be fixed at Rs. 40 for every 100 square feet. Notices of this resolution under s. 75(b) of the Act were issued and objections to the proposed enhancement were invited from the tax-payers, and after obtaining the approval of the Government of Bombay, the new rules were made operative from April 1, 1947. The rules relevant for the purposes of these appeals are :

> Rule 2A :- "The assessment of house-tax on all lands, buildings and non-agricultural lands, other then Government buildings coming under Proviso A of s. 73 of the Bombay Boroughs Act of 1925, at rates mentioned in the Schedule attached to these rules."
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> Rule 2B :- In case Government buildings coming under Proviso A of s. 73 of the Bombay Boroughs Act are used beneficially, the assessment of such buildings shall be made as specified in sub-s. 2 and 3 of s. 74.
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> Rule 2C :- As regards Mills, factories and buildings relating thereto, the annual letting value shall be fixed at Rs. 40 per 100 square feet or part thereof for every floor, ground floor or cellar and the tax shall be assessed on the said annual letting value, at the ordinary rate.

Explanation :- The words "buildings pertaining thereto" include buildings in the compound of the Mills such as ware-houses, godowns, shops of the mills etc. but does not include residential buildings that is to say bungalows and out-houses.

Note :- Assessment shall be made at the ordinary rate on buildings which are not taxed under rule 2C above.

The Municipality prepared an assessment list under the new scheme of taxation in respect of factory buildings and buildings relating thereto and issued notices of demand calling upon the appellants to pay house-tax and water-tax newly assessed thereon. The appellants paid under protest the tax demanded, and filed five suits in the court of the Civil Judge, Junior Division of Barsi to recover the amounts levied by the Municipality in excess of the amounts due under the old scheme. In all these suits, the principal issue raised was about the validity of rule 2C framed by the Municipality for levy of rates "on Mills, Factories and other buildings relating thereto". The trial court held that rule 2C was valid and within the competence of the Municipality and dismissed the suits for refund of house-tax and water-tax. The District Court at Sholapur in appeal declared rule 2C "illegal and ultra vires" and by injunction restrained the Municipality from making any claim or demand for house-tax and other taxes from the appellants on the basis of that rule. The High Court of Judicature at Bombay set aside the decree of the District Court disagreeing with the view that rule 2C was ultra vires.

In these appeals filed with special leave against the judgments of the High Court, the only question which falls to be determined is whether by rule 2C the Municipality is entitled to collect tax leviable as a rate after computing the annual letting value solely on the area of the factory and buildings related thereto. By s. 73, the Municipality is authorised subject to any general or special orders which the State Government may make in that behalf and to the provisions of ss. 75 and 76, to impose for the purposes of the Act any one or more of the classes of taxes, amongst which are include a rate on buildings or lands or both situate within the municipal borough and general water-rate which may be imposed in the form of a rate assessed on buildings or lands or in any other form. Section 75 prescribes the procedure preliminary to imposing a tax. The procedure for assessing the liability to rates lands and buildings is prescribed by ss. 78 to 84 of the Act which provide for preparation of the assessment list, its authentication and amendment. When a rate on building or lands or both is imposed, the Chief Officer causes an assessment-list of buildings or lands or lands and buildings in the municipal borough to be prepared containing inter alia the names of the owner, the valuation based on capital or annual letting value as the case may be on which the property is assessed and the amount of tax assessed thereon. The expression "Annual letting value" is defined in s. 3(1) of the Act as meaning the annual rent for which any building or land, exclusive of furniture or 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, insurance or other charges incidental to his tenancy.

By s. 78 sub-s (1) cl. (d) and Explanation to s. 75, rate to be levied on lands and buildings may be assessed on the valuation of the lands and buildings based on capital or the annual letting value. By the rules in operation prior to April 1, 1947, house-tax and water-tax were levied as rats in respect of all lands, buildings and non-agricultural lands on the annual letting value (except Government buildings). Even under the new rules, house-tax and water-tax continued to be levied in respect of all buildings and non-agricultural lands as rates : but the rate in respect of buildings falling within rule 2C was assessed on a valuation computed on the floor area of the structures, and not on the

capital value nor on the annual rent for which the buildings may reasonably be expected to let. This was clearly not a tax based on the annual letting value, for "Annual letting value" postulates rent which a hypothetical tenant may reasonably be expected to pay for the building if let. A rate may be levied under the Act on valuation made on capital or on the annual letting value. If the rate is to be levied on the basis of capital value, the building to be taxed must be valued according to some recognised method of valuation : if the rate is to be levied on the basis of the annual letting value, the building must be valued at the annual rental which a hypothetical tenant my pay in respect of the building. The Municipality ignored both the methods of valuation and adopted a method not sanctioned by the Act. By prescribing valuation computed on the area of the factory building, the Municipality not only fixed arbitrarily the annual letting value which bore no relation to the rental which a tenant may reasonably pay, but rendered the statutory right of the tax-payer to challenge the valuation illusory. An assessment list prepared under s. 78, before it is authenticated and finalised, must be published and the tax-payers must be given an opportunity to object to the valuation. By the assessment list in which the valuation is not based upon the capital value of the building or the rental which the building may fetch, but on the floor area, the objection which the tax-payers may raise is in substance restricted to the area and not to the valuation.

Counsel for the Municipality sought to rely upon The Madras and Southern Mahratta Railway Co., Ltd. v. The Bezwada Municipality [I.L.R. (1945) Mad 1.] decided by the Judicial Committee of the Privy Council, in support of the plea that the rate based on valuation in proportion to the floor area is validly levied. By s. 81 sub-s. (2) of the Madras District Municipalities Act, 1920, a tax for general purposes and a water and drainage tax were to be levied at such fractions of the annual value of lands or buildings or both as may be fixed by the Municipal Council. By s. 82 sub-s. (2) of that Act, the annual value of lands and buildings was to be the gross annual rent at which they may reasonably be expected to let, but by the proviso, it was enacted that in the case of any Government or Railway building, the annual value of the premises shall be deemed to be 6% of the total of the estimated value of the land and the estimated present cost of erecting the building subject to certain deductions. The Municipality of Bezwada levied property tax on a piece of vacant land belonging to the Madras and Southern Mahratta Railway Company on the annual value computed at 6% of its capital value. This method of taxation was challenged by the Railway Company on the contention that all methods of valuation other then the method prescribed by the proviso to s. 82(2) were by necessary implication prohibited. This contention was rejected because the generality of the substantive enactment was left unqualified except in so far as it concerned the particular subjects to which the proviso related. Open lands were not covered by the proviso and it was competent to the municipality to levy the tax under s. 82(2) on the annual value and that value would be determined by any of the recognised methods of arriving at the rent which a hypothetical tenant may reasonably be expected to pay for the lands in question. This case has in our judgment no relevance to the present case.

If the Municipality of Barsi had adopted any of the recognised methods of valuation for assessing the annual letting value, the tax would not be open to challenge, but the method adopted was not a recognised method of levying the rate.

The High Court relied upon its earlier judgment in The Borough Municipality of Amalner v. The Pratap Spinning Weaving and Manufacturing Co., Ltd., Amalner [I.L.R. (1952) Bom. 918.]. In that case, the court negatived the challenge to the validity of the rules similar to those impugned in these appeals. The Amalner Municipality had by rules framed under the Bombay Municipal Boroughs Act sought to levy a rate equal to a percentage of the annual letting value which was computed on the floor area of "mills and factories". The court held that the method of taxation adopted by the

Municipality had remained unchallenged for a long time, that the rules had been sanctioned by the Government and they were not shown to be "capricious, arbitrary and unreasonable" and that the valuation of the property by reference to the floor area was not altogether unknown to the law of rating. The High Court also observed that in assessing the rent which a hypothetical tenant may pay, several methods are open to the Municipality and if on examining the cases of all the factory buildings within their jurisdiction, the Municipality concluded that the rent which the hypothetical tenant may reasonably be expected to pay for those buildings fits in with the rent which they had fixed by adopting the flat and uniform rate, the principle of fixing the annual letting value on the basis of the floor area would not be open to challenge. It was assumed in that case that all factory buildings within the area of the Amalner Municipality were alike in essential features and were intended to be used for purposes which where alike, and that probably the Municipality may have been satisfied that the principal enunciated in the rule impugned worked out on the whole as a fair basis for determining the valuation of the building in question. In our view, this approach to a rating problem arising under the Act is not permissible. In any event, there is no evidence on the record of this case that the factories and "buildings relating thereto" such as ware-houses, godowns and shops of the Mills situate in the compound of the mills, may be separately let at the uniform rate prescribed by the Municipality. The vice of the rule lies in an assumed uniformity of return per square foot which structures of different classes which are in their nature not similar, may reasonably fetch if let out to tenants and in the virtual deprivation to the rate-payer of his statutory right to object to the valuation.

Another judgment of the Bombay High Court in Motiram Keshavdas v. Ahmedabad Municipal Borough [(1942) Bom. L.R. 280] calls for reference. It was held in Motiram's case that a water-tax imposed by the Ahmedabad Municipality as a rate not depending upon the value of the property assessed but in lump sum was not a rate for the purpose of s. 73(x) of the Bombay Municipal Boroughs Act, 1925 and the rule which authorised the levy of such a lump sum was ultra vires.

These appeals must be allowed and the decrees passed by the High Court set aside and the decrees passed by the District Court of Sholapur restored with costs in this court and the High Court. One hearing fee.

Appeals allowed.

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