Ahmedabad Manufacturing & Calico Printing Co., Ltd., Ahmedabad and Ors.

Vs

State of Gujarat & Ors.

Writ Petitions Nos. 12 and 17 to 21 of 1967

(CJI K. Subha Rao, M. hidayatullah, C. A. Vaidialingam, R. S. Bachawat, J. M. Shelat JJ)

10.04.1967

JUDGMENT

HIDAYATULLAH, J.

These are twelve Writ Petitions by diverse textile mills and other factories of Ahmedabad challenging the imposition of the Education Cess pursuant to the Gujarat Education Cess Act, 1962. As the contents of all petitions are the same, it will be sufficient if we refer to the petition filed by the Ahmedabad Manufacturing & Calico Printing Co. Ltd. (Writ Petition No. 12 of 1'967). Before we do so, we shall state the scheme of the Cess Act relevant to the present purpose.

On October 9, 1962, the Gujarat Education Cess Act, 1962 became law. It is an Act to provide for the creation of a fund to promote education in the State of Gujarat. The Act applies to the City of Ahmedabad as constituted under the Bombay Provincial Municipal Corporations Act, 1949. Under the Cess Act, education cess is levied on lands and buildings which have the education cess is levied on lands and buildings which have the meanings given to them under the relevant Local Authority Law, Municipal Corporation Act. "Land", however, includes things attached to earth or permanently fastened to anything attached to the earth. Education cess is collected either as a surcharge on lands assessed to land revenue or a tax on lands and buildings in urban areas and the charging section reads :

> "s. 3 : For the purpose of providing for the cost of promoting education in the State of Gujarat, there shall be levied and collected in accordance with the provisions of this Act an education cess which shall consist of.....
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> (a) a surcharge on all lands except lands which are included with a village site and not assessed to land revenue;
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> (b) a tax on lands and buildings in urban areas.

"Village Site" means the site of a village, town or city determined under s. 126 of the relevant Code which in this case in the Bombay Land Revenue Code, 1879 and "urban area" means an area which is for the time being included in the limits of a city, municipal borough, etc. The mode of calculation of the surcharge and of the tax and of their collection are contained in Chapters III and IV. Chapter III deals with surcharge on land and is divided into two parts A and B. Part A deals with surcharge on agricultural lands and part B deals with surcharge on lands used for non-agricultural purposes. Chapter IV deals with tax on lands and buildings. For the purposes of the present writ petitions, we shall have occasion to refer to s. 5 from Part A and s. 7 from part B of Ch. III and s. 12

from Ch. IV. Under s. 5, a surcharge is levied at the rate of 20 paise on every rupee of every sum assessed as land revenue on all lands (except lands which are assessed or held for the purpose of agriculture and not used for any purpose unconnected with agriculture. In simple language, it means the surcharge is 20% of the amount of land revenue assessed on land not within a village site, not assessed to land revenue, and not used for any purpose unconnected with agriculture. Under s. 7 the surcharge is additional to non-agriculture. Under s. 7 the surcharge is additional to non-agricultural assessment of agricultural lands used for non-agricultural purposes. The surcharge here ranges from 12 1/2% to 75% of the non-agricultural assessment depending on the kind of non-agricultural use of land. Under s. 12, a tax on lands and buildings situated in urban area is levied at varying rates depending on the use to which the lands of the annual letting value which means the ratable value or annual letting value or gross annual letting value of lands and buildings determined in accordance with the relevant deal law which as stated earlier is the Corporation Act. The rate applicable to lands and buildings used for purposes of trade, commerce, industry, profession of business is 3% of the annual letting value. It has now been rasied to 4.5% from October 1, 1965.

Annual letting value for the purpose of s. 12 is determined upon and pursuant to the preparation of an assessment book relating to the property section under the Corporation Act. According to the assessment book, the annual letting value for the purpose of levying property tax on textile mills, factories, buildings of universities, etc., is made on the basis of a flat rate of a monthly rental of Rs. 6-10as. for the processing portion and Rs. 5-4as. for the non-processing portion, per 100 sq. foot of the floor area of such property situated in the urban area. Education cess is calculated on the basis of the annual letting value determined in the assessment book by applying the percentage. The details of the working of the system are fully described by our brother Mitter, in his judgment in Writ Petitions Nos. 133, 156- 157, 159-171, 178, 206-209, 210 and 234 of 1966 decided on February 21, 1967, where these mills and factories have successfully challenged the assessment book. By the decision of this Court, the floor area method of determining the annual letting value of textile factories in Ahmedabad has been held to be bad, because the contractor's basis which is usually applied in such calculations was not applied and the system actually adopted was likely to lead to discrimination. The inclusion of plant and machinery has also been held to be illegal as the power of the State Legislature to tax lands and buildings does not include a power to tax plant and machinery and the powers of the Corporation are co-terminus with those of the State Legislature by reason of s. 127(4) of the Corporation Act.

It is will be noticed that education cess is of three separate kinds. It is (a) a surcharge on land revenue assessed on purely agricultural lands, or (b) a surcharge on non-agricultural assessment in respect of lands used for non-agricultural purposes of (c) a tax on lands and buildings which do not bear land revenue. The properties in Ahmedabad are in three zones which may be described as demarcated by' three concentric circles. In the inner zone are situated properties which do not bear land revenue and no surcharge is therefore payable in respect of lands and buildings. Properties in this zone were exempted from the payment of land revenue under s. 128 of the Bombay Land Revenue Code in Ahmedabad in common with other towns and cities in which there had been formerly a city survey. In the middle zone are situated lands which though originally agricultural lands have been diverted to non-agricultural use and the lands and buildings therefore bear both municipal tax and non-agricultural assessment. In the outer zone are lands which are purely agricultural and they bear land revenue but no other charge.

The textile mills of the petitioners are situated in the middle zone within the municipal limits of Ahmedabad and the main complaint in these cases is that by reason of their situation, these mills have to pay both the surcharge as well as the tax whereas the owners of property in the other two

zones bear either a surcharge on the land revenue or a tax on the annual letting value. It is also contended that the preparation of the assessment book having been struck down by this Court in the case cited earlier by us, the tax under s. 12 is no longer leviable and s. 12 having become inoperative, the Cess Act must fall as a whole.

The Cess Act does not provide for the procedure to arrive at the valuation of urban properties. It takes the valuation from the assessment book. There is, therefore, no doubt that the annual letting value or rateable value is not presently available since the decision of this Court has struck down the assessment book instead. This is conceded on behalf of the State of Gujarat. Similarly the decision of this Court that there is no power to include the value of plant and machinery in the rateable, value is binding for purposes of the Cess Act. The question is, does this make s. 12 to fail also ? In our judgment it does not Section 12 lays down that the tax on lands and buildings situated in urban areas shall be collected at the rate of 3% of the annual the purpose of trade, commerce, industry, profession or business. This rate is applicable to the annual letting value as determined under the Bombay Provincial Municipal Corporations Act. If as a result of the decision of this Court the assessment book needs revision or the principles on which valuation must be based have to be laid down afresh by the Legislature, the provisions of s. 12 of the Cess Act do not fail automatically. They will fasten on the new valuation when made. This cannot affect the validity of the section in the meantime. The section remains on the stature book to be worked into such assessment book as may hereafter emerge. The argument that s. 12 has failed must be rejected.

The second argument that there is discrimination between properties in the middle zone and the inner zone may now be considered. Chapter X of the Bombay Land Revenue Code deals with lands within the sites of villages, towns and cities. Under s. 126, the limits of sites of villages, towns and cities are the Bombay Exemptions from Land Revenue (No. 1) Act, 1863 and the Bombay Exemptions from Land-revenue (No. 2) Act, 1863 have been made applicable to all lands, within the limits of the site of any town or city, in which an inquiry into titles has been made under the provisions of Bombay Act IV of 1868 (now repealed), which had been ordinarily used for agricultural purposes only, but not to other lands. Section 128 of the Code then provides :

> "s. 128 : The existing exemption from payment of land revenue of lands other than lands which have hitherto been ordinarily used for purposes of agriculture only, situate within the sites of towns and cities in which an inquiry into titles has been made under the provisions of Bombay Act IV of 1868 shall be continued.....
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> First - if such lands are situated in any town or city where there has been in former years a survey which the State Government recognise for the purpose of this section, and are shown in the maps or other records of such survey as being held wholly or partially exempt from the payment of land revenue;
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> # . . . . . ."##

The exemption granted by s. 128 saves lands in the inner zone from the application of land revenue and the middle zone bears the non-agricultural assessment since it does not fall within this exemption. It is subjected to non-agricultural assessment by reason of the non-agricultural use to which it is put. The outer zone being outside the limits of village sites, town or city and composed of pure agricultural land is subjected to land revenue only.

The three zones are the result of the operation of different laws in rural and urban areas. Lands

subjected to city survey and assessed to property-tax are saved from the imposition of land revenue to which all lands are normally subject. This exemption is a hundred years old and is based on the fact that land in the heart of the city ceases to be agricultural. Similarly lands in the outer circle are free from municipal assessment because they are outside municipal limits and do not benefit from the municipal services. They are subject to land revenue only. The middle zone comes into being because the owners and holders of agricultural lands are not content to hold land for agriculture but divert it to other uses. In course of time the limits of the municipality which means that they begin to share in the municipal services. They are, therefore, assessed to municipal taxes as a return for the services rendered.

Now a cess is really a tax and it is generally imposed for passing money for time stated administrative purpose. It is usually collected as an addition to an existing tax. And so it is here. It is made as an addition to the tax already levied on lands and buildings. Since lands and buildings bear different kinds of taxes in the different zones, an attempt has been made to adjust the rates for the different zones presumably to make the levy, equitable, regard being had to the situation and advantages to be derived from the expenditure on education. No objection has been made in the case that the tax levied in any zone is not commensurate with the advantages which are likely to accrue or that the burden has been made unduly high in any particular zone. The only objections raised are three. The first and second are (a) that flat rate is applied in calculating the annual letting value and (b) that plant and machinery are included in lands and buildings. This has been corrected by the decision of our brother Mitter. The third is that middle zone bears both the surcharge and the tax. A double imposition by itself is not offensive to Art. 14 of the Constitution unless it can be shown that the double tax in one zone as compared with the single tax in the other zones falls more than the single tax. This is not attempted to be established except on the ground of flat rate above mentioned. Since that has been struck down already and will presumably be replaced by some more accurate and equitable valuation, we do not see any reason to interfere. The decision of our brother Mitter will lead to a readjustment of the assessment book and then only the ground that the rate of cess in the middle zone exceeds the rate in the other two zones can be considered. As at present situated it is sufficient to say that there is no discrimination because the method of calculation of cess in the three zones is different. Even if, in the middle zone, the surcharge and tax have to be paid, the rates, for aught we know, may be so adjusted that the cess falls equitably on all landholders regard being had to the advantages derived from the cess and the advantages derived from the situation of the lands.

Finally there is the argument that the Cess Act, in not providing its own procedure of assessment and in not giving the tax-payers an opportunity for putting forward their objections by way of representation, appeal or otherwise, before the tax is finally fixed, offends the principles of natural justice. This argument is not correct. The cess is nothing more than an addition to existing taxes. As it is a percentage of another tax, the determination of the cess is not by an independent assessment. It is an arithmetical calculation based on the result of assessment under other Act or Acts. Those Acts allow the raising of objections and provide for appeals. It is only the result of assessment after scrutiny, objection and appeals which forms the basis for the application of a percentage. There is no need for further scrutiny, objection or appeals. Nor is the Cess Act bad because it is not self-contained in the matter of assessment. In all cases of imposition of cesses for special administrative purposes (such as health cess, road cess, education cess, etc.) this method is followed. Being an addition to another tax this is the only method possible. The legislation on the subject of the imposition, levy and collection of a cess is made complete by incorporation of and reference to another piece of legislation. This practice is neither ineffective nor unconstitutional and cannot be said to be bad.

In the result we decline to issue a writ in these petitions. They will be dismissed but the costs will be borne as incurred.

Petitions dismissed.

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