

Godhara Borough Municipality

Vs

Godhara Electricity Co. Ltd.

Civil Appeals Nos. 631 and 632 of 1965

(J. C. Shah, G. K. Mitter JJ)

20.03.1968

JUDGMENT

MITTER J.-

These are two appeals by special leave against the judgment and order dated January 8, 1963 of the Gujarat High Court dismissing Civil Revision Applications 116 and 117 of 1961 filed by the appellant and allowing similar applications Nos. 173 and 174 of 1961 filed by the respondent against the common judgment dated December 1, 1960, passed by the District and Sessions Judge of Panchmahals.

The matter arises out of assessments made by the appellant constituted under the Bombay Municipal Boroughs Act, 1925 on the respondent under section 73 of the Act. The respondents are an electricity company owning inter alia, properties bearing several numbers in the municipal borough of Godhra. For the years 1956-57 and 1957-58 the appellant had fixed the valuation of the properties belonging to the respondent at Rs. 3,25,000/-. On appeal by the respondent, the Judicial Magistrate fixed the valuation of the properties at Rs. 90,000/-. On the appellant going in revision, the Sessions Judge fixed the valuation at Rs. 1,25,000/-. As a result of the High Court's decision the valuation stood reduced to Rs. 90,000/-. The present appeals are by the Municipality.

Under s. 73(1) of the Bombay Municipal Boroughs Act, 1925 (hereinafter referred to as the 'Act'):

"Subject to any general or special orders which the State Government may make in this behalf and to the provisions of sections 75 and 76, a municipality may impose for the purposes of this Act any of the following taxes, namely -

(i) a rate on buildings or lands or both situate within the municipal borough."

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The procedure preliminary to imposing tax is laid down in s. 75 and s. 78 deals with the preparation of an assessment list. Section 58 empowers the municipality to make rules prescribing the taxes to be levied in a municipal borough for municipal purposes, etc. Rules 4, 5, and 7, relevant for our purpose, read as follows :

"4. Modes of valuation : (1) For the purpose of determining tax the following properties shall be valued on the capital basis :-

(a) All open lands, buildings, and yards belonging to the Railway Administration.

(b) All buildings and lands other than those which are actually used for residential purposes belonging to Mills and Factories to which the Indian Factories Act, is applied.

(2) All properties other than those mentioned above shall be valued on the basis of the annual letting value as defined in section 3(1) of the Act.

5. Mode of determining capital value : The capital value of properties mentioned in rule 4(1) shall, in each case, be determined on such reliable data as the Railway Authorities and the Agents of the mills and the factories may furnish when called upon from time to time to do so and in the absence of any such trustworthy reliable data, it shall be determined by the Chief Officer or by expert valuers employed by the municipality for that purpose.

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7. Amount of tax : (1) in case of properties which as stated above, are valued on the capital basis the tax to be levied shall be assessed at Rs. 0-8-0 per cent of the capital value and it shall be a direct tax thereon provided however that any fraction of hundred in excess of fifty rupees shall be taken as the next higher hundred and any fraction of fifty rupees or less be taken as the lower hundred.

(2) In case of properties which, as stated above, are valued on the annual letting value the tax to be levied shall be assessed as shown in the appendix annexed hereto."

Under rule 4(1)(b) above, the buildings of the respondent had to be valued on the capital basis. Under R. 5 the capital value of properties had to be determined on such reliable data as the respondent might furnish and in the absence thereof, it would be the duty of the Chief Officer to determine the same. Before the Judicial Magistrate, one R. R. Tewari, an Assistant Secretary of the respondent who had affirmed an affidavit showing that the approximate value of the seven items of property on which tax was sought to be imposed as per the books of the company was Rs. 41,541-12-9. He sought to rely on the balance sheets and accounts of the company audited under the Companies Act for the purpose. The Judicial Magistrate observed that the properties were 40 years old and according to Tewari the life of the office buildings was 50 years while that of others was only 30 years. Acting on the admission of Tewari that the price of building materials had increased three times the original figures in 1956-57 and taking into consideration the properties were over 40 years old, the Magistrate assessed the capital value at Rs. 90,000/-.

The Sessions Judge dealt with the matter in greater detail and noted that neither party had given him real assistance in determining what should be the proper assessment. According to him the assessment papers preceding the bills had not been produced and neither party had led any evidence as to how the capital value was to be arrived at. He, however, felt that the capital value could not mean merely the book value shown in the books of account of the assessee. He noted that according to the balance sheet for 1955-56 the property and assets under the head "buildings" was shown as below :

# Buildings. Cost up to 31st March, 1955	Rs.	1,72,866-5-11
Additions during the year		12,398-10-3

Total Rs.

1,85,265-0-2

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The said figure included the value of all the buildings of the company but those which were to be assessed were only seven out of which two residential bungalows and servants quarters were to be assessed on the rental value. The Sessions Judge therefore inferred from the above figures that Rs. 1,85,265/- included at least Rs. 1,00,000/- as the cost up to 31st March, 1955 of the factory buildings in question. The Sessions Judge found himself unable to accept the contention that the depreciated selling value of the property was the capital value for the purposes of assessment of house tax. He also did not accept the municipality's contention that the cost of construction of buildings had gone up five times since 1920. Considering the rival contentions he fixed the capital value at three times the figure shown by the company, viz., Rs. 41,541/- and rounded the same off to Rs. 1,25,000/-.

Taking the view that it was not open to "a judge in India to base his judgment as a whole or in part or his conclusion upon either Halsbury's Laws of England or Bean and Lockwood's book on Rating Valuation Practice" on the ground that these books were irrelevant under the Indian Evidence Act, the learned Judge of the High Court held that "capital value" might possibly bear four different meanings but the meaning given to the expression in Halsbury's Laws of England was "not appropriate in the context of the Indian enactment and the Indian Rules". Referring to the rules made by the Godhra Municipality he observed that it could not be said that the municipality had adopted the capital value as one of the methods of ascertaining the rental value or that the municipality had adopted the rental value as one of the methods of ascertaining the capital value. According to the learned Judge,

"capital value' has to be treated as meaning the value of the building treated as capital at the time of the assessment; in other words, the original cost of construction minus the depreciation or at the most the original cost of construction without depreciation."

Accepting the figure of Rs. 41,541-12-9 as the cost of construction of the building in 1920 as found by the courts below, he observed that the capital value should be "either Rs. 41,541-12-9 or something less after deducting depreciation." According to him "the assessee has not come in revision against the order of the Magistrate fixing the value at Rs. 90,000/-. Both the courts have erred in considering the probable cost of construction of a new building." He therefore held that the courts below had committed a material mistake in the exercise of jurisdiction in relying upon the probable cost of constructing a new building of a similar type in order to estimate the capital value as contemplated by the Godhra Municipality and accordingly reduced the capital value fixed by the Sessions Judge to Rs. 90,000/-.

We find ourselves unable to accept the views expressed or the reasoning given in the judgment of the High Court. Section 73 empowered the municipality to impose a rate on buildings or lands. Now

the word 'rate' had not been defined in the Act but it has a well known meaning. As observed in *Patel Gordhandas Hargovindas v. Municipal Commissioner, Ahmedabad* [[1964] 2 S.C.R. 608 at 616.] the word "has come to our country for the purpose of local taxation from England." In that case this Court examined various statutes bearing on the English Rating Law and held that the word "rate' was used with respect to a tax which was levied on the net annual value or rateable value of lands and buildings and not on their capital value. It would therefore not be wrong to say that in the legislative history and practice in England up to 1925, 'rate' for the purpose of local taxation meant a tax on the annual value of lands and buildings liable to such taxation."

The Court went on to examine the methods in use for the purpose of ascertaining the rateable value which were generally three. It was said :

"Where the land or building was actually let, the valuation was based on the rent at which it was let. Where, however, the land or building was not let, two methods were evolved for the purpose of finding out the rateable value. The first was to assume a hypothetical tenancy (such as where the same person is the owner and occupier) and find out the rent at which the premises would be let. The second was based on the capital value of the premises. but the tax was not levied on the capital value itself; the capital value was determined on the structural value of the building to be assessed by what was known to be contractor's method or contractor's test in addition to the market value of the land. Sometimes the words "effective capital value" were also used since in most cases the actual capital cost of the building plus the market value of land might for some reason or the other be ineffective, i.e., it might not be rent producing. Having arrived at the effective capital value it was necessary to apply percentages thereto in order to arrive at the annual value."

When legislatures in this country enact statutes which closely resemble statutes in England and have the same purpose and object in view, then unless the expressions used in the Indian Statutes are defined, courts of law cannot go wrong in interpreting them in the way English Judges have done. Further, the words which have acquired a particular shade of meaning in England may be given the same meaning unless there is anything in the statute itself which would be contra indicative. In *Patel Gordhandas's case* [[1964] 2 S.C.R. 608.] the statute which this Court had to interpret was the same Act which is before us in this case. Consequently, that decision affords us a good guide in forming our own conclusions in this case. Section 75 of the Act has an Explanation introduced in 1966 which reads as follows :

"Explanation - For the purposes of a rate on buildings or lands, the basis of valuation may be -

(i) the annual letting value;

(ii) the annual value;

(iii) the floor area, in the case of Mills, Factories and buildings and lands connected therewith;

(iv) the capital value, in the case of vacant lands."

The Explanation is deemed always to have been substituted for the original by the Maharashtra Act No. 3 of 1966, s. 3(b).

Rule 4 of the Godhra Municipal Rules shows what properties are to be valued on the capital basis. What the capital basis is is not defined. The capital value however can be determined in the way laid down in Patel Gordhandas's case [[1964] 2 S.C.R. 608.] by adopting the contractor's method. What that method is has been explained in Ryde on Rating (Eleventh Edition) Chapter 20. In R. v. School Board for London [(1885) 55 L.J.M.C. 33; 17 Q.B.D. 738 C.A.] Cave, J. applied the contractor's test to schools. Ryde points out that it was tacitly recognised as applicable in various other cases. The principle on which the contractor's basis rests are given by the author at page 439 and the method of its application is given at page 442. The learned author notes that in "applying the contractor's basis it is possible to discern five stages. The first stage is the estimation of the cost of construction of the building." There is a difference of view as to whether it is better to take the cost of replacing the actual building as it is, or the cost of a substitute building on the same plan as the actual building but otherwise in an up-to-date form. The second stage is "to make deductions from the cost of construction to allow for age, obsolescence and any other factors necessary to arrive at the 'effective capital value'." The third stage is to estimate the cost of the land. The fourth stage is to apply the market rate or rates at which money can be borrowed or invested to the effective capital value of the building and the land. The fifth stage is to consider whether the result of the fourth stage really represents what the hypothetical tenant would pay for the annual tenancy on the statutory terms, and to make any adjustments necessary to ensure that no higher rent is fixed as the basis of assessments than that which it is believed the owner would really be willing to pay for the occupation of the premises.

Rule 5 of the Godhra Municipal Rules lays down that the capital value is to be determined in each case on reliable data furnished by the Mills and the Factories when called upon to do so and in the absence thereof is to be determined by the Chief Officer or expert valuer. The learned counsel for the respondent contended that here there were reliable data in that the balance sheet of the company showing the value of these properties for the purpose of the Companies Act and there was no reason why the same figures should not be adopted as the capital value of the lands and buildings within the jurisdiction of Godhra municipality. This clearly is fallacious as under section 211 of the Companies Act, 1956 the balance sheet of a company has to be drawn up in the form prescribed by Schedule VI. Under the said Schedule, Part I, the value of fixed assets has to be shown "distinguishing as far as possible between expenditure upon (a) good-will, (b) land, (c) buildings, (d) leaseholds, (e) railway sidings, (f) plant and machinery, (g) furniture and fittings, (h) development of property etc. The fourth column of the form which gives the instructions in accordance with which assets should be made out shows under each head "the original cost and the additions thereto and deductions therefrom during the year, and the total depreciation written off or provided up to the end of the year is to be stated." It will therefore be noticed that the figures given in the balance sheet are merely statements in terms of the form given in Schedule VI. They have no relevance in determining the capital value of property for the purpose of assessment to a rate.

It appears to us therefore that the true method of determination of the capital value was not adopted in the courts below. We therefore set aside the judgment and order of the High Court and remand the matter back to the District Judge for him to determine the capital value in the light of the observations made by us after giving an opportunity to the parties to adduce evidence on the subject. The costs will abide by the decision of the District judge.

# Appeal allowed and case remanded.##

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