SUPREME COURT OF INDIA

State of Kerala

Vs.

Haji K. Haji K. Kutty Naha

(J. C. Shah, V. Ramaswami and A. N. Grover, JJ.)

13.08.1968

JUDGEMENT

SHAH, J.:-

1. This group of appeals arises out of an order passed by the High Court of Kerala holding that the Kerala Buildings Tax Act 19 of 1961 is ultra vires the Legislature in that it infringes the equality clause of the Constitution. The State of Kerala has appealed against the decision with special leave granted by this Court.

2. The material provisions of the Kerala Buildings Act, 1961, may be briefly set out. The Act extends to the whole of the State of Kerala: Sec. 1 (2), and shall be deemed to have come into force with effect from March 2, 1961: Section 1 (3). An "assessee" is defined by Section 2 (b) as meaning a person by whom building tax or any other sum of money is payable under the Act and includes every person in respect of whom any proceeding under the Act has been taken for the assessment of building tax payable by him. Section 2 defines building" as meaning a house, out-house, garage or any other structure or part thereof whether of masonry, bricks, wood, metal, or other material but does not include any portable shelter or any shed constructed principally of mud, bamboos, leaves, grass or thatch or a latrine which is not attached to the main structure. "Floorage" is defined by Section 2 (e) as meaning the area included in the floor of a building, and where a building has more than one floor of a building has more than one floor of a building, the aggregate area included in all

the floors together. By Section 3 buildings owned by the State Government, the Central Government or any local authority and buildings used principally for religious, charitable, or educational purposes or as factories or workshops are exempt from payment of tax under the Act. By Section 4 it is provided that there shall be a charge to tax in respect of every building the construction of which is completed on or after March 2, 1961, and which has a floor area of one thousand square feet or more, and that the building tax shall be payable by the owner of the building. The Schedule to the Act sets out the rates of building tax. Buildings having a total floor area of less than 1000 sq. ft. are not liable to pay tax.

3. The Act, on a bare perusal, discloses some singular provisions. The liability to tax in respect of buildings having total floor area between 1000 and 2000 sq. ft. varies between Rs, 100 to Rs. 200; for buildings with a floor area between 2000 to 4000 sq. ft. it varies between Rs. 400 to Rs. 800; for buildings having total floor area between 4000 to 8000 sq. ft. it varies between Rs. 1200 to Rs. 2400; for buildings with total floor area of 8000 to 12000 sq. ft. it varies between Rs. 3200 to Rs. 4800; and in respect of buildings having total floor area exceeding 12000 sq. ft. a rate of 50 np. per sq. ft. i. e. Rs. 6000 or more per annum. For determing the quantum of tax the sole test is the area of the floor of the building. The Act applies to the entire State of Kerala, and whether the building is situate in a large industrial town or in an insignificant village, the rate of tax is determined by the floor area it does not depend upon the purpose for which the building is used, the nature of the structure, the town and locality in which the building is situate, the economic rent which may be obtained from the building the cost of the building and other related circumstances which may appropriately be taken into consideration in any rational system of taxation of building. Under the Seventh Schedule List II Entry 49, the State Legislature has the power to legislate for levying taxes on lands and buildings. But that power cannot be used arbitrarily and in a manner inconsistent with the fundamental rights guaranteed to the people under the Constitution. No tax may, be levied or collected under our constitutional set-up except by authority of law and the law must not only be within the legislative competence of the State, but it must also not be inconsistent with any provision of the Constitution. It has been frequently said by this Court that the validity of a taxing statute is open to qestion on the ground that it infringes fundamental rights. In K. T. Moopil Nail v. State of Kerala, (1961) 3 SCR 77 = (AIR 1961 SC 552) Sinha, C. J. delivering the judgment of the majority observed at p. 89 (of SCR) = (at p. 557 of AIR):

"Article 265 imposes a limitation on the taxiing power of the State in so far as it provides that the State shall not levy or collect a tax, except by authority of law, that is to say, a tax cannot be levied or collected by a mere executive fiat. It has to be done by authority of law, which must mean valid law. In order that the law may be valid, the tax proposed to be levied must be within the legislative comptence of the Legislature imposing a tax and authorising the collection thereof and, secondly, the tax must be subject to the conditions laid down in Article 13 of the Constitution. One of such conditions envisaged by Article 13 (2) is that the Legislature shall not make any law which takes away or abridges the equality clause in Article 14, which enjoins the State not to deny to any person equality before the law or the equal protection of the laws of the country. It cannot be disputed that if the Act infringes the provisions of Article 14 of the Constitution, it must be struck down as unconstitutional." Similar observations were made in Khandige Sham Bhat v. Agricultural Income-tax Officer, (1963) 3 SCR 809 = (AIR 1963 SC 591),

4. The principles which have been expounded by this Court in determining whether there has been denial of equal protection of the laws are also well settled; see Ram Krishna" Dalmia v. Shri Justice S. R. Tendolkar, 1959 SCR 279 = (AIR 1958 SC 538). It is true that in the application of the principles, the Courts, in view of the inherent complexity of fiscal legislation admit a larger discretion to the Legislature in the matter of classification, so long as it adheres to the fundamental principles underlying the doctrine of equality. The power of the Legislature to classify is, it is said, of "wide range and flexibility" so that it can adjust its system of taxation in all proper and reasonable ways: (1963) 3 SCR 309 = (AIR 1963 SC 591).

5. But in enacting the Kerala Buildings Tax Act no attempt at any rational classification is made by the Legislature, As already observed, the Legislature has not taken into consideration in imposing tax the class to which a building belongs, the nature of construction, the purpose for which it is used, its situation, its capacity for profitable user and other relevant circumstances which have a bearing on matters of taxation. They have adopted merely the floor area of the building as the basis of tax irrespective of all other considerations. Where objects, persons or transactions essentially dissimilar are treated by the imposition of a uniform tax, discrimination may result, for, in our view, refusal to make a rational classification may itself in some cases operate as denial of equality. This Court in a recent judgment has decided that the levy of tax in exercise of the power under Entry 49, List II of the Seventh Schedule in respect of factory buildings in a municipal area based on floor area was illegal: New. Manek Chowk Spinning and Weaving Mills Co. Ltd. v. Municipal Corporation of City of Ahmedabad, (1967) 2 SCR 679 = (AIR 1967 SC 1801). The Court held in that case that the method of adopting a flat rate for a floor area for determining the annual value adopted by the Corporation of Ahmedabad in exercise of the powers conferred upon it by the Bombay Provincial Municipal Corporation Act 49 of 1949 was against the provisions of the Act and the Rules made thereunder as well as all recognised principles of valuation for the purpose of taxation. If levy of tax in a municipal district based on floor area in respect of a factory building violates Article 14 of the Constitution when the tax is sought to be levied by the Municipal Corporation, we see no reason to uphold the tax imposed under the impugned Act when the state in exercise of legislative authority conferred by Entry 49, List II Sch. VII, imposes liability to tax buildings solely on floor area. The vice of the Act in the present case is more pronounced than it was in New Manek Chowk Spinning and Weaving Mills case, (1967) 2 SCR 679= (AIR 1967 SC 1801); in that case the Rules under which the tax was sought to be levied on the basis of floor area were restricted in their operation to factory buildings within the Corporation limits of Ahmedabad, whereas Act 19 of 1961 which is challenged in the present case applies to the whole State of Kerala in respect of building completed on or after March 2, 1961, whatever may be the nature or class of the building, the use to which it is put, materials used in its construction and the extent of profitable user to which the building may be put, its cost and its economic rental. It is unnecessary in the circumstances to consider whether imposition of a tax only on buildings constructed after March 2, 1961 and exempting buildings completed before that date may not violate Article 14 of the Constitution.

6. The High Court was, in our judgment, right in holding that the charging section of the Act is violative of the equality clause of the Constitution.

7. The appeals therefore fail and are dismissed with costs. Parties appearing in different groups of appeals through the same Advocate in this Court will be entitled to one hearing fee.

Appeals dismissed.