The Tata Engineering and Locomotive Company Ltd.

Vs

Gram Panchayat, Pimpri Waghere

Civil Appeal No. 2238 of 1969

(CJI A.N. Ray, M.H. Beg, Jaswant Singh JJ)

23.8.1976

JUDGMENT

RAY, C.J. -

1. This appeal by certificate turns on the meaning of the expression "house" as used in Section 89 of the Bombay Village Panchayat Act, 1933 (hereinafter referred to as the Act).

2. The respondent is a village panchayat constituted under the provisions of the Act. In exercise of powers conferred on it for imposition of taxes on house under Section 89 of the Act, the respondent by a resolution dated February 24, 1952 imposed tax on houses within its jurisdiction. The resolution of February 24, 1952 decided to levy a tax on house at the rate of annas - /4/- for every Rs. 100. The resolution further decided that the basis for valuation for a room of old house would be Rs. 100, for a room of new house Rs. 125 and for verandah (padvi) Rs. 25.

3. By another resolution dated August 10, 1964 the respondent revised the tax on house at the rate of 40 np for Rs. 100. The resolution further said that for factories as a concession the tax would be 25 np for Rs. 100 on capital value.

4. The appellant has factory buildings. The respondent by a notice dated January 10, 1969 made a demand of taxes on the factory building of the appellant for the years 1967-68 and 1968-69. The respondent charged at the rate of 25 np for Rs. 100. The respondent did not charge the appellant at the rate of 40 np for Rs. 100 which was the increased rate pursuant to the resolution dated August 10, 1964. The respondent thereafter made a demand in the year 1969-70. The aggregate tax involved in this appeal comes to Rs. 1,34,763 for the years 1967-68, 1968-69 and 1969-70.

5. The appellant contended that in 1952 when the resolution was passed by the respondent levying taxes on houses the respondent was not empowered to levy tax on factory buildings. The principal reason advanced by the appellant is that only in 1954 the word "building" was substituted for the word "house", and, therefore, the respondent would have no power to impose taxes on the factory buildings by the resolution in 1952.

6. The other contention on behalf of the appellant is that if the resolution dated February 24, 1952 be held to be valid levying a tax on factory premises the resolution was replaced by the resolution of August 10, 1964. Here the contention of the appellant is that the resolution of 1964 is not valid because it was not passed in accordance with the Act and the Rules. The appellant, therefore, contends that if the resolution in 1964 is void the resolution in 1952 would not be operative to support the tax.

7. The provisions contained in Section 89 of the Act are as follows :

> Levy of taxes and fees by Panchayat. - (1) Every Panchayat shall levy in such manner and it such rates as may be prescribed such of the taxes or fees specified in sub-section (2) as may be necessary for the proper discharge by the Panchayat of its duties under this Act.
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> (2) Taxes or fees which are leviable by Panchayat under sub-section (1) are :-
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> (i) a tax upon the owners or occupiers of houses and lands within the limits of the village;
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> (ii) a pilgrim tax;
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> (iii) a tax on fairs and festivals;
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> (iv) a tax on sales of goods;
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> (v) octroi;
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> (vi) a tax on marriages, adoptions and feasts;
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> (vii) any other tax which may have been approved by the district local board and sanctioned by Government.

8. Section 89 of the Act was amended by Amendment Act No. 18 of 1939 as follows :

> (a) For sub-section (1) the following shall be substituted, namely :
>
> (i) Every panchayat shall levy a tax upon the owners or occupiers of houses and lands which are not subject to payment of agricultural assessment within the limits of the village in such manner and at such rates as may be prescribed. The rules made for the levy of such tax may provide that the payment of such tax may be made either in cash or by the rendering of work and labour.

9. Sub-section (2) was amended as follows :

> It shall be competent to a panchayat to levy all or any of the taxes or fees at such rates and in such manner as may be prescribed, namely, clause (i) shall be deleted.

10. In 1945 Section 89 was amended as follows : Sub-section (1) of Section 89 was substituted by the following :

> (1) Every panchayat, other than a panchayat in the districts of Kolaba, Ratnagiri and Canara, shall levy a tax upon the owners or occupiers of houses and land which are not subject to payment of agricultural assessment within the limits of the village in such manner and at such rates as may be prescribed.
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> (1A) Every panchayat in the district of Kolaba, Ratnagiri and Canara shall levy a tax upon the owners or occupies of house including farm buildings whether or not subject to payment of agricultural assessment and of lands which are not subject to

payment of agricultural assessment, within the limits of the village in such manner and at such rates as may be prescribed.

(1B) The rules made for the levy of the tax specified in sub-section (1) and (1A) may provide that the payment of such tax may be made either in cash or by the rendering of work and labour.

11. In 1947 Section 89 was amended as follows :

(1) Every panchayat shall levy a tax upon the owners or occupiers of houses including farm buildings whether or not subject to payment of agricultural assessment and of lands which are not subject to payment of agricultural assessment, within the limits of the village, in such manner, at such rates and subject to such exemptions as may be prescribed.

(1A) Where an owner of a house or land has left the village or cannot otherwise be found, any person to whom such house or land has been transferred shall be liable for the tax leviable under sub-section (1) from such owner.

(1B) The rules made for the levy of the tax specified in sub-section (1) may provide that the payment of such tax may be made either in cash or by rendering of work and labour.

12. Again, in 1947 in sub-section (2) after clause (vi) the following new clause was inserted :

(vi)(a) a tax on shops and hotels.

13. In 1952 Section 89(2)(vi)(b) was amended as follows :

a tax on premises where machinery is run by steam, oil, electric power or manual labour for any trade or business and not for an agricultural or domestic purpose.

14. In 1954 Section 89 was amended and the word "building" was substituted for the words "houses including farms buildings" in sub-section (1) thereof. Again in sub-section (1A) of Section 89 for the word "house" wherever it occurred the word "building" was substituted. In sub-section (2) of Section 89 for clauses (vi)(a) and (b) the following clause was substituted :

(vi)(a) subject to the provisions of Article 276 of the Constitution, a tax on the following professions, trades and callings, namely :

(a) shop keeping and hotel keeping;

(b) any trade or calling (other than agriculture) which is carried on the help of machinery run by steam, oil, electric power or manual labour.

15. In 1959 the Act was repealed. The Bombay Village Panchayats Act, 1958 being Act No. III of 1959 came in to existence. The relevant section of the 1959 Act necessary for the purpose of the present appeal is Section 186(8) which is as follows :

> 186. Notwithstanding the repeal of the said laws and the foregoing provisions of this Act :
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> (8) any appointment, notification, notice, tax fee, order, scheme, licence, permission, rule, bye-law, or form made, issued, imposed, or granted in respect of the said villages and in force on the date of the commencement of this Act shall in so far as they are not inconsistent be deemed to have been made, issued, imposed or granted under this Act, in respect of the village and shall continue in force until it is superseded or modified by any appointment, notification, notice, tax, fee, order, scheme, licence, permission, rule, bye-law or form made, issued, imposed or granted under this Act.

16. There is no dispute that the resolution of 1952 was validly passed in exercise of powers conferred on the respondent by Section 89(1) of the Act. The principal contention of the appellant is that the word "house" means dwelling house. The appellant relied on the decision in Wimbledon Urban District Council v. Hastings ((1902) 87 LT 118 : 67 JP 45) and Lewin v. End (1906 AC 299 : 75 LJ KB 473 : 22 TLR 504) in support of the proposition that the expression "house" means a dwelling house. The appellant sought to support the contention by reference to the fact that the word "house" which occurred in Section 89 of the Act was substituted by the word "building" in 1954 indicating that factory buildings would not be within the meaning of the word "house".

17. The word "house" is not defined in the Act. This Court in Ramavatar v. Assistant Sales Tax Officer, Akola ((1962) 1 SCR 279 : AIR 1961 SC 1325 : (1961) 12 STC 286) said that the correct approach is to construe the word in that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it. Counsel for the respondent rightly contended that the word "house" would in its ordinary sense include any building irrespective of its user. To ascertain the meaning of the word "house" one must understand the subject-matter with respect to which it is used in order to arrive at the sense in which it is employed in a statute. Formerly, houses were built so that each house occupied a separate site. In modern times a practice has grown up of putting separate houses one above the other. They are build in separate flats or storeys. For legal and ordinary purposes they are separate houses. Each is separately let and separately occupied. One has no connection with those above or below, except in so far as it may derive support from those below instead of from the ground as in the case of ordinary houses (see Yorkshire Insurance v. Clayton ((1881) 8 QBD 421 : 51 LJ QB 82 : 45 LT 697) and Grant v. Langston (1900 AC 383)).

18. It may be stated generally that the word "house" is a structure of a permitted character. It is structurally severed from other tenements. It is not necessary that a house if adapted for residential purposes should be actually dwelt in (see Daniel v. Coulsting ((1854) 14 LJ CP 70 : 135 ER 53)). A building in Covent Garden had formerly been a dwelling house but was converted into a fruitstore warehouse and offices in which no one slept and was held to be a "house" as regards assessment to the rector's rate within the provisions of the relevant statute.

19. The idea of the varieties of meanings can be had from the subject-matter of the stature. A consecrated church was treated as a house as regard the Building Line which a local authority has a right to prescribe. (See Folkestone v. Woodward ((1872) LR 15 Eq 159 : 42 LJ Ch 782 : 27 LT 574)). Under the Public Health Act, 1875 "house" was not limited to an ordinary dwelling house and included a day school having no boarders and where none of the staff resided. See Wimbledon v. Hastings (supra). Under the Compulsory Purchase Act, 1965 "house" has been extended to a building which is used for business purposes and is not restricted to mere dwelling houses (see

Ravenseft Properties v. London Borough of Hillington ((1969) 20 P & CR 483)).

20. The weight of judicial opinion is conclusively in favour of the view that the word "house" extends to a building which is used for business and should not be restricted to a mere dwelling house (see Land Law, Cases and Materials by R. H. Mandsley and E. H. Burn, Third Edition, p. 832).

21. In Corpus Juris Secundum, Vol. 41, page 364 it is said that in a legal sense, the word "house" is more comprehensive, but is not limited to a structure designed for human habitation, and may mean a building or shed intended or used as a habitation or shelter for animals of any kind, a building in the ordinary sense or any building, edifice, or structure enclosed with walls and covered, regardless of the fact of human habitation. Again in Corpus Juris Secundum, Vol. 41, page 365 it is said that under particular circumstances, the terms has been held equivalent to and interchangeable or synonymous with "building", "dwelling" and "dwelling house" and sometimes "premises".

22. The 1952 resolution of the gram panchayat in the present case is to be understood in the background of the provisions contained in Section 89 of the Act and the rules framed under Section 108 of the Act. The rules were placed before the legislature for approval. The rules framed in 1934 used the words "lands and buildings" instead of the words "lands and houses". The rules are a legitimate aid to construction of the statute as contemporanea expositio (see Craies on Statute Law, 6th Edition p. 157).

23. The rules framed in 1943 defined "house" as any building or set of buildings within the same enclosure. In the Amending Act of 1945 the expressions "farm buildings" and "houses" are used without distinction. The Act in 1933 conferred power upon the panchayat to levy tax upon owners or occupiers of houses and land. This expression "houses and lands" continued unchanged till the year 1952. It is significant that the tax is not on houses alone but on lands as well. It is unsound to hold that a land which is admittedly taxable would be intended to be exempt when a building housing a factory is built upon it. The Act as initially enacted conferred power upon the panchayat to levy any one of the taxes enumerated in sub-section (2). The first of these was tax on houses and lands. Section 89(1) of the Act as it stood did not mention any particular tax. The 1939 amendment changed the scheme. Section 89(1) of the Act made it obligatory on panchayats to levy tax on houses and lands. In 1933 Section 89(1) of the Act conferred optional power on panchayats to levy taxes. In 1939 Section 89(1) of the Act made it compulsory for panchayats to levy tax on owners or occupiers of houses and lands which are not subject to payment of agricultural assessment. The six other taxes mentioned in Section 89(2) of the Act starting from clauses (ii) to (vii) namely, a pilgrim tax, a tax on fairs and festivals; a tax on sales of goods, octroi; a tax on marriages, adoptions and feasts; and any other tax which may have been approved by the district local board and sanctioned by Government were made optional. A tax upon owners or occupiers on houses and land which figures in clause (i) of Section 89(2) of the Act was deleted, by the Amendment Act of 1939 inasmuch as taxes on houses and land became a compulsory power of taxation under Section 89(1) of the Act.

24. Reference may be made to the addition of clause (vi)(a) in Section 89(2) of the Act which was introduced in 1947 as conferring power on panchayats to levy tax on shops and hotels. This indicates that the tax was on the business of shops and the business of hotel. The tax was not on the houses where such business was run. Section 124 of the 1959 Act which came in place of Section 89 of the Act shows that "shop keeping" and "hotel keeping" are considered to be trades and callings.

25. The amendment of the year 1945 shows that a separate provision was made for taxing farm buildings in three districts of Kolaba, Ratnagiri and Canara, where farm buildings were constructed on agricultural land. The idea was to being such farm buildings within the province of assessment.

26. The amendment in 1952 added a tax on premises where machinery is run by steam, oil, electric power or manual labour in trade or business and not for agricultural or domestic purposes. The addition of clause (vi)(b) to Section 89(2) of the Act illustrates one more kind of optional tax as different from obligatory tax on houses and lands within Section 89(1) of the Act.

27. The amendment of 1954 where the word "building" was substituted for the word "house" does not help the appellant to suggest that factories will be included only within buildings and not within houses. The appellant referred to statement of objects and reasons which said that the village panchayat could not levy a tax on buildings, and, therefore, the word "buildings"was substituted for the word "houses". The statement of object and reasons is ordinarily not used as aid to construction of a statute. A statement is sometimes referred to for the limited purposes of finding the object of the legislature in enacting the statute where all other methods of interpretation fail.

28. The words "houses and lands" as used in Section 89 of the Act mean all buildings, and factory buildings would be included within that meaning. The use of expression "buildings" in place of the words "houses including farm buildings" made explicit what was implicit in the statute. Having regard to the nature of the word "houses" as used in taxing legislations and municipal legislation and the nature and purposes of the stature in the present case it is manifest that the legislature used the word "house" so that the village panchayat would be in a position to levy taxes on all buildings situated in the village. The rule-makers made no distinction between the dwelling houses and buildings.

29. The second contention of the appellant is unacceptable. The resolution of August 10, 1964 did not supersede or modify the resolution of February 24, 1952. No levy was actually imposed pursuant to the resolution of August 10, 1964. Further the bills served on the appellant were pursuant to the levies imposed under the resolution of February 24, 1952. In 1964 a tax on factory buildings was not raised. The tax on houses was raised. Even if the resolution of August 10, 1964 be invalid the demands made by the respondent under the 1952 resolution are valid and legal for two reasons. First, the resolution of 1952 has never been superseded; and second, Section 186(8) of the 1959 Act indicates that any tax imposed shall in so far as they are not inconsistent be deemed to have been made under the 1959 Act shall continue in force until they are superseded or modified. There is nothing to show that the tax is inconsistent with the 1959 Act, nor was it argued to be so.

30. For these reasons the contentions of the appellant fail. The appeal is dismissed. There will be no order as to costs.

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