Municipal Board, Saharanpur

Vs

Imperial Tobacco of India Ltd. and another

Civil Appeal No. 1218

(S. B. Majmudar, M. Jagannadha Rao JJ)

24.11.1998

JUDGMENT

S. B. MAJMUDAR, J. -

1. The Municipal Board, Saharanpur, the appellant herein, has filed this appeal against the decision of the Division Bench of the High Court of Judicature at Allahabad on a certificate of fitness granted to it by the High Court for appeal to this Court under Article 133 of the Constitution of India. The said certificate is granted on the ground that a question of law arises as to what is the concept and meaning of the words "common compound" used in the Uttar Pradesh Municipalities Act, 1916 (hereinafter referred to as "the Act"). A few relevant facts leading to these proceedings deserve to be noted at the outset to appreciate the grievance of the appellant-Municipal Board.

Backdrop facts

2. During the relevant period from 1-10-1959 to 31-3-1960, the respondent-Company was sought to be taxed by the appellant-Municipality by way of water tax levied under Section 128 sub-section (1)(x) of the Act. The case of the appellant was that the respondent-Company had erected a factory with a large number of ancillary buildings and residential houses occupied by its officers and staff within the municipal limits of the appellant-Board and that the entire complex of buildings owned by the respondent-Company was surrounded by a high wall for security reasons. The appellant-Board raised the bills of water tax on 13-8-1959 calling upon the respondent to note that as a result of a public water standpipe, the Company's property bearing all the factory buildings situated on Cigarette Factory Khalasi Line, being within a radius of 600 feet from the said pipe had come within the taxable area with effect from the month of May 1959 for the purpose of imposition of water tax. The respondent-Company, by its communication dated 19-12-1959 objected to the said imposition of water tax and submitted that the Company was not liable to pay water tax bills for the period from 1-10-1959 to 31-3-1960, as according to the respondent-Company, the bills were incorrectly made out in that they included all residential and factory buildings. It was further submitted that these buildings were not in a "common compound" and the residential bungalows should be treated as separate units in the same way as they have been treated as separate units in the case of house tax assessment. The respondent-Company further submitted that water tax bills might be reissued for only those buildings of the Company that fell within the radius of 600 feet from the water standpipe and the Company was objecting to pay water tax on buildings which did not fall within a radius of 600 feet from the water standpipe. The aforesaid communication by the respondent-Company did not find favour with the appellant. The appellant, by its letter dated 29-12-1959, informed the respondent that in view of Explanations (a) and (b) of Section 129 of the Act, all "buildings" and "common compounds" were assessable to water tax and, therefore, the bills had

been correctly worked out against the Company and the tax was payable.

3. This resulted into an appeal by the respondent under Section 160 of the Act to the District Magistrate who was the appellate authority. The appellate authority after hearing the parties, came to the conclusion that the respondent's houses situated in the Company's complex could not be said to have been situated in a "common compound" as the term "building" defined in Explanation (a) to Section 129 of the Act required a "compound to be a common appurtenance of several buildings". On the aforesaid reasoning, it was found that the whole plot of land of the Company containing a number of factory buildings and residential buildings could not be treated as one unit for the purpose of water tax and that only those buildings and plots of land which came within the radius of 600 feet of the nearest water standpipe from where water was made available to the public by the Board could bear the burden of water tax and accordingly, only three bungalows which came within the radius of 600 feet could be assessed to water tax by the appellant-Board and not all the residential bungalows and factory buildings which were outside the radius of 600 feet from the water standpipe. The Company's appeal was, accordingly, allowed and the appellant was directed to issue fresh water tax bills in the light of that order. This resulted into a writ petition by the appellant before the High Court of Judicature at Allahabad. The learned Single Judge of the High Court who heard the writ petition, after hearing the contesting parties, came to the conclusion that all the buildings belonging to the respondent-Company were standing in a "common compound" (even though that the Company might be subdivided into different sections), because the entire complex was surrounded by a common wall. Relying on the map which was supplied by the respondent-Company, it was held that the said map clinched the arguments of the appellant which showed that inside the residential area there was one road which was undeniably appurtenant to the factory, since it led from the main municipal road to the gate of the factory proper, and there was another road which provided access to the various residential houses and was, therefore, a common appurtenance of all those houses. The first of these roads consequently had to be treated as the "compound" of the factory, as defined in Section 2(5) of the Act; and similarly the second road was the compound of the residences. Both these roads started from a point quite close to the municipal standpipe; and a substantial portion of both the roads was lying well within the radius of 600 feet measured from the standpipe. Hence, the appellant was entitled to raise the water tax bills connected with all the structures situated within the compound. The writ petition was, accordingly, allowed and the order of the learned District Magistrate was set aside.

4. This decision of the learned Single Judge was challenged in special appeal by the respondent-Company before a Division Bench of the High Court. The Division Bench allowed the said special appeal by holding that the road lying in the entire compound was not appurtenant to the residential bungalows situated within the same and consequently, it could not be said that all these buildings were situated within the radius of 600 feet from the water standpipe. The Division Bench of the High Court came to the said conclusion heavily relying upon the definition of "compound" in Section 2(5) of the Act. It also observed that the learned District Magistrate found that only three of the residential bungalows fell within the 600-feet limit of the nearest water standpipe and that he was justified in relying upon the materials before him and hence, his order could not be said to be suffering from any error apparent or jurisdictional error. Therefore, both on merits as well as on the ground that there was no occasion for the learned Single Judge to interfere with the decision rendered by the learned District Magistrate, the special appeal was allowed; the order of the learned Single Judge was set aside and the writ petition of the appellant was dismissed with costs. Subsequently, on the request of the appellant, leave to appeal to this Court was granted by the Division Bench and a certificate of fitness was issued under Article 133 of the Constitution of India as noted earlier and that is how the appellant is before us in this appeal.

5. By an order dated 30-11-1976, this Court granted stay pending disposal of appeal and ordered expedition of this appeal.

Rival contentions

6. When this appeal reached final hearing before us, Shri Garg, learned counsel for the appellant, in the first instance, submitted that as per the letters patent applicable to the High Court of Judicature at Allahabad, no special appeal could be entertained by the Division Bench against the order of the learned Single Judge as the learned Judge had exercised in substance jurisdiction under Article 227 of the Constitution of India against the appellate order of the District Magistrate passed under Section 160 of the Act. On merits, it was submitted that the Division Bench had patently erred in law in applying the provisions of Section 2 sub-section (5) defining "compound" while interpreting Explanation (a) to Section 129 of the Act. He submitted that the term "building" for the purpose of the said section will have to be understood in the light of Explanation (a) to Section 129 and hence could include not only the structure or structures along with their compounds which may be appurtenant to them but the said term would also include in its meaning several buildings which are situated in a common compound, as in the present case, and consequently, all such buildings in the "common compound" together will be treated as "buildings" for the purpose of finding out a 600-feet distance from the nearest standpipe to such buildings as required under Section 129(iii) of the Act. Shri Garg further submitted that neither the District Magistrate nor the learned Single Judge and also not even the Division Bench of the High Court had kept this aspect of the matter in view. With the result that a question of "appurtenance" of compound land to the structures by invoking the definition of Section 2 sub-section (5) was wrongly considered. It was contended that on a conjoint reading of Section 128(1)(x) and Section 129(iii) Explanation (a), it ought to have been held that as all the buildings belonging to the respondent were situated in a "common compound", hence the imposition of water tax by the appellant was fully justified on account of the fact that from the nearest standpipe, the distance of a part of the common compound of the respondent was admittedly not more than 600 feet and consequently, the judgment and order of the Division Bench be set aside and the order of the learned Single Judge be restored though on a different reasoning as put forward by him for our consideration.

7. Shri R. F. Nariman, learned Senior Counsel for the respondent-Company, on the other hand, submitted that the certificate granted by the High Court itself is erroneous as no question of law arises in connection with the interpretation of the term "common compound" on the facts of the present case as the District Magistrate had come to a finding of fact that the buildings concerned were not situated within a radius of 600 feet from the nearest water standpipe; that such a finding of fact should not have been interfered with under Article 226 of the Constitution of India by the leaned Single Judge. Under these circumstances, the Division Bench could have allowed the appeal only on that ground without undertaking the further exercise of finding out whether on merits, the interpretation of the relevant provisions of the Act by the learned Single Judge was justified or not. He further contended that even that apart, as noted by the Division Bench in the impugned judgment, by notification of the Government of Uttar Pradesh dated 18-9-1958, the Board was authorised to assess water tax on those "residential buildings" which fell within a radius of 600 feet from a the nearest water standpipe under Section 129(a) of the Act; that the said notification naturally could not apply to the "factory premises" of the respondent. Consequently, the water tax bills issued by the appellant seeking to impose water tax on the factory premises and other non-residential buildings of the respondent-Company were ex facie unauthorised leaving aside any other questions.

8. On merits, it was submitted by Shri R. F. Nariman that on a correct interpretation of Section 128(1)(x) and Section 129 Explanation (a), the term "common compound" has to be construed as a place where the common compound land was having appurtenance to the buildings situated therein and in the land in that compound, the residents of the buildings should have a right of common use or enjoyment and that would make the said surrounding land a "common compound". Therefore, according to the learned Senior Counsel for the respondent, the concept of "appurtenance" of the compound land to the buildings in question was a relevant question and could not be said to be contraindicated, as in his view, Section 2 sub-section (5) which defines "compound" would squarely get attracted even in such a case. In support of his contention, he invited our attention to the word "common" as found in P. Ramanatha Aiyar's The Law Lexicon, Reprint Edition 1987, at p. 216-r. He also submitted that under Articles 226 and 227 of the Constitution of India, the learned Single Judge of the High Court had a limited jurisdiction and he could only revise any patent error of law that might have been committed by the authorities below and could not act as a court of appeal. In support of the aforesaid submission, he placed reliance upon the following decisions of this Court in Shri Ambica Mills Co. Ltd. v. S. B. Bhatt ((1961) 3 SCR 220, 227-229 : AIR 1961 SC 970 : (1961) 1 LLJ 1); Syed Yakoob v. K. S. Radhakrishnan ((1964) 5 SCR 64, 68-70 : AIR 1964 SC 477); Bhutnath Chatterjee v. State of W. B. ((1969) 3 SCC 675, 677); Mohd. Yunus v. Mohd. Mustaqim ((1983) 4 SCC 566, 570 : (1984) 1 SCR 211, 215-216); Harbans Lal v. Jagmohan Saran ((1985) 4 SCC 333, 335 : 1985 Supp (3) SCR 634, 636-637). He also invited our attention to the decisions of this Court and other courts for submitting that the word "appurtenance" connotes a nexus with the object which is sought to be connected therewith. He placed reliance on two decisions of this Court, namely, State of U. P. v. L. J. Johnson ((1983) 4 SCC 110, 118-122 : (1983) 3 SCR 897, 901-911); Larsen & Toubro Ltd. v. Trustees of Dharmamurthy Rao Bahadur Calavala Cunnan, Chetty's Charities ((1988) 4 SCC 260, 269-274 : 1988 Supp (2) SCR 755, 764-768). He also relied upon the decision of the Bombay High Court in Morarji Goculdas Deoji Trust v. Madhav Vithal Kudwa (AIR 1983 Bom 68, 71 : (1983) 1 Bom CR 272) and a decision of the court of appeal in England reported in Methuen-Campbell v. Walters ((1979) 1 All ER 606, 609, CA). Mr. Nariman also submitted that on the facts of the present case, the learned Single Judge of the High Court had patently erred in taking the view that the two private roads situated in the complex of the respondent, one leading to the factory and another leading to the residential complex could be said to be an "appurtenance" to these structures and as these roads were within a radius of 600 feet from the nearest water standpipe, the charge of water tax could be said to have settled on these structures. He further submitted that, in any case, if two views are possible in connection with the interpretation of the "common compound", then the view which supports the taxpayer rather than the taxing authority should be preferred as we are concerned with a taxing statute imposing water tax on taxpayers. In support of these contentions, he invited our attention to the decisions of this Court reported in Central India Spg. and Wvg. and Manufacturing Co. Ltd. v. Municipal Committee, Wardha (1958 SCR 1102, 1107 : AIR 1958 SC 341); CIT v. Kulu Valley Transport Co. (P.) Ltd. ((1970) 2 SCC 192, 201 : (1971) 1 SCR 452, 464); CED v. R. Kanakasabai ((1973) 4 SCC 169, 174 : 1973 SCC (Tax) 379 : (1973) 3 SCR 747, 753) and Polestar Electronic (P.) Ltd. v. CST ((1978) 1 SCC 636, 659 : 1978 SCC (Tax) 68 : (1978) 3 SCR 98, 116).

9. It was also submitted by Shri Nariman that as the learned Single Judge had exercised powers under Article 226 of the Constitution of India, the special appeal was maintainable and that as this objection was not raised by the appellant before the Division Bench, it should not be permitted to be raised at this late stage. In any case, he is entitled to challenge the decision of the learned Single Judge in the present proceedings.

10. In rejoinder, Shri Garg, learned counsel for the appellant, submitted that the District Magistrate

had patently erred in law in relying upon the definition of the term "compound" as found in Section 2 sub-section (5) of the Act, while interpreting Explanation (a) to Section 129 and in fact, the appellate authority completely by passed the said provision and wrongly relied upon the aforesaid definition of the word "compound" which had nothing to do with the second part of the said Explanation and as these provisions were completely ignored by the appellate court, it could be said that the decision rendered by the appellate court suffered from a patent error of law. Such an error could rightly be set aside by the learned Single Judge of the High Court under Articles 226 and 227 of the Constitution of India. He next reiterated his main contention on the scheme of the Act in support of the appeal and also submitted that the question regarding non-applicability of the government notification dated 18-9-1958 to the factory premises was never urged by the respondent before the appellate authority or even before the learned Single Judge or the Division Bench. Therefore, the said contention, which raises a mixed question of law and fact may not be permitted to be raised for the first time in this appeal. He further alternatively contended that if such a contention has to be entertained, the proceedings deserve to be remanded to the appellate authority for considering this mixed question of law and fact with a view to finding out whether the factory premises were covered by the sweep of Section 129 of the Act and whether there was any other government notification in that connection.

11. In view of the aforesaid rival contentions, the following points arise for our consideration :

> (1) Whether the term "common compound" as found in Section 129 Explanation (a) would cover all buildings situated within the land wherein the occupants of the buildings have a common right of usage by way of passage to and fro or even otherwise, a right to commonly use the said land wherein the cluster of these buildings is situated, especially when a part of the said common land was within a radius of 600 feet from the nearest water standpipe fixed by the appellant-Board;
>
> (2) Whether the term "common compound", as found in the aforesaid provision, would require the land comprised in such common compound to be appurtenant to each of such buildings situated therein;
>
> (3) Whether the learned Single Judge of the High Court was justified in interfering under Articles 226 or 227 of the Constitution of India with the decision of the appellate authority;
>
> (4) Whether the special appeal was maintainable against the decision of the learned Single Judge before the Division Bench of the High Court;
>
> (5) Whether the factory premises of the respondent-Company can be brought within the tax net of water tax under Section 129 of the Act read with Section 128(1)(x) in the light of the government notification dated 18-9-1958 which, it is alleged, covered only residential buildings; and
>
> (6) What final order ?

We will deal with these points seriatim.

Points 1 and 2

12. These two points raise common questions of law and fact and, therefore, they are being dealt

with together. The water tax which is in dispute between the parties could be imposed by the appellant as per the provision under Section 128(1)(x) of the Act which reads as under :

> "128. Taxes which may be imposed. - (1) Subject to any general rules or special orders of the State Government in this behalf, the taxes which a municipality may impose in the whole or any part of a municipality are -

#(i)-(ix) * * *##

> (x) a water tax on the annual value of buildings or lands or of both;"

13. Restriction in the imposition of water tax is found in Section 129 of the Act. The said provision, as it stood at the relevant time, reads as under :

> "129. Restrictions on the imposition of water tax. - The imposition of a tax under clause (x) of sub-section (1) of Section 128 shall be subject to the following restrictions on the imposition of namely, water tax -
>
> (a) that the tax shall not be imposed on land exclusively used for agricultural purposes, or, where the unit of assessment is a plot of land or a building as hereinafter defined, on any such plot or building of which no part is within a radius, to be fixed by rule in this behalf for each municipality, from the nearest standpipe or other water work whereat water is made available to the public by the board; and
>
> (b) that the tax is imposed solely with the object of defraying the expenses connected with construction, maintenance, extension or improvement of municipal waterworks and that all moneys derived therefrom shall be expended solely on the aforesaid object.

Explanation. - In this section -

> (a) 'building' shall include the compound (if any) thereof, and, where there are several buildings in a common compound, all such buildings and the common compound;
>
> (b) 'a plot of land' means any piece of land held by a single occupier, or held in common by several co-occupiers, whereof no one portion is entirely separated from any other portion by the land of another occupier or of other co-occupiers or by public property."

14. The terms "building" and "compound" are defined by Section 2 sub-sections (2) and (5) respectively as under :

> "2. (2) 'Building' means a house, outhouse, stable, shed, hut or other enclosure or structure whether of masonry bricks, wood, mud, metal or any other material whatsoever, whether used as a human dwelling or otherwise, and includes any verandah, platform, plinth, staircase, doorstep, wall including compound wall other than a boundary wall of the garden or agricultural land not appurtenant to a house but does not include a tent or other such portable temporary shelter.

* * *##

(5) 'Compound' means land, whether enclosed or not, which is the appurtenance of a building or the common appurtenance of several buildings."

A mere look at the aforesaid provisions shows that "building" will include any structure attached to earth and "compound" would mean any land, whether enclosed or open which is appurtenant to such building or which is a "common appurtenance" to several buildings, meaning thereby that if a building has got adjoining land may be as a side compound or a front compound or backyard which is exclusively attached to the building and which would be in the exclusive use of the occupier of the building, such land could be said to be its compound land. Similarly, if a cluster of buildings situated so close to each other and well-knit had common land attached only to such composite cluster of buildings for use and occupation of owners of such a cluster of buildings, then these buildings could be said to have a compound of their own attached as appurtenance to all of them. It is obvious that such compound land would be available for exclusive use of the occupiers of these buildings so closely situated to one another that their occupants could use this adjoining compound land being an appendage to their building. However, so far as the term "common compound" is concerned, it is not defined by the Act. When we turn to Section 128, we find that the municipalities have been authorised subject to general rules or special rules of the State Government to impose water tax on the annual value of buildings or lands or of both. Consequently, any building situated anywhere within the municipal limits along with its appurtenant compound as defined by Section 2 sub-section (5) could be subjected to water tax on the annual value of such buildings or lands or of both. However, Section 129 lays down restriction on the imposition of such water tax to the extent provided therein. Sub-clause (a) of Section 129 restricts the power of the municipality to impose water tax on any buildings of which no part is within the radius to be fixed by the rule in this behalf for each municipality from the nearest standpipe or other water works whereat water is made available by the Board. It is not in dispute between the parties that under the relevant notification issued by the State of Uttar Pradesh, the permissible radius for imposition of such water tax as measured from the nearest standpipe was 600 feet. Thus, buildings falling wholly or partially within the said radius would come within the sweep of the water tax levy. The question is for the purpose of imposition of this area restriction what type of buildings would be covered? For answering the above question, we have to examine Explanation (a) to the said section which enacts a separate definition of the terms "building" and "land" for the purpose of that section.

15. When we turn to the said definition of the term "building" as laid down in Explanation (a) to Section 129, we find that in the first part of this definition, the term "building" would include "compound", if any, thereof. The first part of the said Explanation, therefore, clearly includes the buildings as defined by Section 2 sub-section (5) along with the compound thereof, meaning thereby the compound forming part and parcel of that building being annexed thereto. For understanding the meaning of the said term "compound of the building" the definition of "compound" as found in Section 2 sub-section (5) becomes relevant. Such a compound whether enclosed or not should be appurtenant to such building or should have a common appurtenance to several buildings so situated near each other that they enjoy the common land as adjunct of such buildings. The phrase "compound if any thereof" expands the scope of the term "building" as found in the first part of the Explanation. It clearly indicates that such compound must be a part and parcel of that building. But the said phrase also gets covered by the definition of the term "building" as found in Section 2(2) of the Act which covers even boundary walls of such compound land appurtenant to such a building. Such compound land gets in its turn covered by the definition of the term "compound" as found in Section 2(5) of the Act. Thus the first part of Explanation (a) to Section 129 which defines

"building" can have a nexus with the definition of the terms "building" as found in Section 2(2) and "compound" as found in Section 2(5).

16. But when we turn to the second part of this Explanation, we find that it deals entirely with a different situation wherein none of the buildings are said to be situated in a "common compound". Thus, entirely a different legislative scheme is envisaged by the said second part which provides that where there are several buildings situated in a common compound, all such buildings in the common compound together will be treated to be forming one building for the purpose of finding out the permissible 600-feet radius from the nearest water standpipe, as mentioned in Section 129 main part. It becomes at once clear that Explanation (a) to Section 129 contemplates two types of compounds: (I) compound of the building which naturally remains compound land attached to the building or appurtenant to the building as defined by Section 2 sub-section (5), and (II) even apart from such compound appurtenant to the buildings, common compound land on which such buildings are situated together with their own adjoining compounds. It is, therefore, obvious that the term "common compound" has a wider coverage as compared to the term "compound" as defined by Section 2 sub-section (5). To be a compound to the building, the land must form an adjunct or appendage to the building or a cluster of buildings being available to the occupiers of such buildings for their exclusive use. They are individual compounds. While the concept of "common compound" will embrace open land whether bound by boundary or not which can be utilised by the residents of buildings situated in this common compound land who have a right to use this land in common for the beneficial enjoyment of their buildings situated in such a land. It is axiomatic to say that the term "compound" is different from the term "common compound". The former is the individual compound of a building, the latter is the common compound for all the buildings situated therein. If both these terms had the same meaning, then the legislature would be guilty of tantalising in mentioning "compound" in the first part of Explanation (a) to Section 129 and then again referring the same by way of "common compound" in the latter part. What is "common compound" must necessarily be something more than a "compound". It is, therefore, to be held that if a number of buildings are situated in open land wherein the occupants of the buildings have the right to make common use of the said surrounding land, then the question whether such surrounding land has a common boundary wall or not would pale into insignificance. All that would be required to bring such a cluster of buildings situated in a "common compound" within the sweep of Section 129(iii) for measuring the distance of the standpipe from such buildings is to find out whether any part of such common compound is within a 600-feet distance of the water standpipe. Then the entire complex of the buildings situated in such common land would be covered by the taxing net of Section 129 read with Section 128(1)(x) and the restriction would stand lifted qua such entire complex. It is difficult to appreciate how the learned Single Judge arrived at the conclusion that "common compound" was appurtenant to such buildings. In fact as seen earlier, the concept of appurtenance of compound land to buildings is not at all germane to the second part of Explanation (a) to Section 129. It is relevant for the first part thereof only. The term "common' is defined in The Law Lexicon by P. Ramanatha Aiyar, Reprint Edition 1987, at p. 216-r as an adjective to mean amongst others "shared among several". The aforesaid meaning of the term "common" read in the light of the term "compound" as an adjective makes it very clear that if the compound land is shared in common by occupants of a number of buildings situated therein, it would be a common compound for them. It has nothing to do with the question of being appurtenant to any one of those buildings. The phrase "appurtenant to the building" gets ruled out while considering the question of a "common compound" as contemplated by the second part of Explanation (a) of Section 129, as the phrase "thereof" as found in the first part is conspicuously absent in the second part. It is pertinent to note that the term "common compound" is not defined by the Act. It has to be given its dictionary

meaning or meaning understood in common parlance. Any land used in common by the occupants of buildings situated in such common land can be said to form a "common compound" covering all such buildings and once that conclusion is reached, Explanation (a) to Section 129 starts clicking and makes all those buildings along with the "common compound" land wherein they are located to fall within the sweep of the term "building" as contemplated by Section 129 for measuring the distance of the standpipe from any part of such building including the "common compound". It is not in dispute and is well established on record that all the buildings of the respondent-Company, whether residential or factory buildings, were situated in the "common compound" land available for approach to and fro and for common use of the occupiers of all such buildings though such land was not appurtenant to these buildings and if the distance from the standpipe put up by the Board on the public road nearby was to be measured up to the starting point of such a common compound, it would be within the permissible limits of a 600-feet radius of such a standpipe. The District Magistrate and even the learned Single Judge as well as the Division Bench have not considered this vital aspect of the definition of the term "building" as found in Explanation (a) to Section 129 for the purpose of measuring the permissible distance from the standpipe towards the respondent's buildings. They erroneously went at a tangent in importing the concept of "appurtenant land" for being treated as a common compound land by relying upon the definition of "compound" in Section 2 sub-section (5) of the Act for construing the term "common compound" when the said definition did not cover the said term. It must be held, especially in the light of the chart submitted by the respondent-Company itself before the authorities that all the residential buildings belonging to the respondent-Company were situated in common compound land belonging to the respondent-Company and in the said common land, different residential bungalows were situated but even that apart, there were other structures like swimming pool, nursery, canteen, kitchen, children's park etc. All these structures and buildings including the factory were situated in common land which was available for use of all the occupants of the various buildings and structures situated therein. It is not in dispute that the entire common land formed a building complex which belongs to the respondent-Company. Therefore, this entire area styled as Bungalow Park Area or for that matter, the factory area could be said to be comprising of buildings situated in a "common compound" so as to fall within the sweep of Section 129 read with Explanation (a). Once we reach the aforesaid factual conclusion on the scheme of the relevant provisions of the Act, the question whether the "common compound" land was appurtenant to any of the structures becomes irrelevant. Hence, we do not think it fit to burden this judgment by consideration of various decisions of this Court noted earlier for deciding the correct connotation of the term "appurtenant". The learned Senior Counsel for the respondent-Company, Shri Nariman, rightly invited our attention to the various decisions taking the view that for taxing purpose, if two views are possible on the construction of the provision, the view which supports the case of the taxpayer should be preferred as compared to the view which supports the taxing authority. However, on the express language of Section 129 Explanation (a), it must be held that no two views are possible but only one view is possible, namely, that the connotation of the term "common compound" is entirely different and wider in nature as compared to the connotation of "compound" as defined in Section 2 sub-section (5) as seen earlier. It is unfortunate that this express provision in all its aspects was not noticed by any of the courts below, though the Explanation to Section 129 was referred to both by the learned Single Judge as well as the Division Bench of the High Court. We may mention at this stage that it was not the case of the respondent-Company at any time that the occupants of the buildings situated in the Bungalow Park Area or factory area had no common right to pass and repass from or to use the open land in which the said structures were situated or that the occupants of the residential bungalows could not use the common children's park or swimming pool or kitchen etc. Their only contention was that because this common area was not an adjunct of or an area appurtenant to each of these buildings, the

buildings that came within the radius of 600 feet from the water standpipe only attracted the water tax levy. As we have discussed earlier, it is not possible to agree with this contention canvassed by learned Senior Counsel of the respondent-Company on the scheme of the Act. As a result of the aforesaid discussion, Point 1 has to be answered in the affirmative and Point 2 in the negative. Thus, the answers on both these points shall be in favour of the appellant and against the respondent.

Point 3

17. So far as this point was concerned, the learned Senior Counsel rightly contended that under Articles 226 and 227 of the Constitution of India, the High Court could not act as a court of appeal and only patent errors of law as found from the orders of the authorities below could be corrected in exercise of its jurisdiction. But on the facts of the present case, the jurisdiction of the High Court squarely got attracted as we will presently see. The writ petition before the learned Single Judge of the High Court was against the decision rendered by the appellate authority under Section 160 of the Act. While dealing with the question of imposing of water tax and the restrictions regarding the same as envisaged by Section 129(a) of the Act, the appellate authority in its judgment considered the definition of the term "building" as found in the Explanation to Section 129 and observed as under :

> "Compound means land, whether enclosed or not, which is appurtenance of a building or the common appurtenance of several buildings."

It was further observed that

> "if the factory premises are treated as a common compound, the question arises as to of which building or building it is an appurtenance. I, therefore, do not recognise the whole plot of land containing a number of factory buildings and residential buildings as one unit for the purpose of water tax ....".

A mere look at the reasoning of the appellate authority shows that it suffered from a patent error of law; while considering Explanation (a) to Section 129 which defines "building", the second part of the Explanation was completely ignored by the appellate authority. As seen earlier, the second part goes beyond the question of "compound" and embraces a wider field, namely, "common compound". As that part of the Explanation was completely ignored and as the appellate authority wrongly concentrated on the definition of the term "compound" as found under Section 2 sub-section (5), the entire reasoning adopted by the learned appellate authority became patently erroneous in law. The said glaring error of law, therefore, was rightly required to be set aside in writ jurisdiction by the learned Single Judge. Once this conclusion is reached, the preliminary objection of Shri Nariman to the certificate issued by the High Court does not survive. The question also about the correct connotation of the term "common compound" would certainly give rise to a substantial question of law. However, we may mention that the reasoning adopted by the learned Single Judge for upsetting the finding of the appellate authority is not accurate as the learned Single Judge also wrongly invoked the restricted definition of the term "compound" as found in Section 2 sub-section (5) and assuming that this definition applied, he went in search of appurtenant land being attached to such bungalows. Such exercise was not necessary on the clear scheme of the second part of Explanation (a) to Section 129 as seen earlier. However, by a wrong process of reasoning, ultimately the learned Single Judge reached the correct conclusion that a part of the "common compound" land which was to be termed as "building" for the purpose of Section 129, belonging to the respondent-Company was within the permissible limits of 600 feet from the water

standpipe so as to entitle the appellant-Municipality to impose water tax on the entire complex of the buildings situated in common land belonging to the respondent-Company. This point for consideration is, therefore, to be answered in the affirmative in favour of the appellant and against the respondent.

Point 4

18. This point for consideration strictly does not arise out of the certificate issued by the High Court in favour of the appellant-Municipality. We, therefore, do not deem it fit to consider this point. We are inclined to take this view for a more substantial and practical reason, namely, that this appeal is pending since 1976 in this Court on the certificate of fitness granted by the High Court. Even assuming that the learned counsel for the appellant is right that the special appeal was not maintainable under the letters patent applicable to the High Court of Judicature at Allahabad, the respondent would be entitled to urge before us that they may be permitted to challenge the order of the learned Single Judge directly before us under Article 136 of the Constitution since the entire period spent by them in the High Court and this Court up till now will get excluded under Section 14 of the Limitation Act, 1963. Consequently, at this late stage, we do not deem it fit to allow the appellant to take up this contention for voiding the decision of the Division Bench. Point 4 is, therefore, disposed of as not entertained and, therefore, not answered.

Point 5

19. So far as this point is concerned, the learned counsel for the appellant was right when he submitted that such a contention raising a mixed question of law and fact was never taken by the respondent-Company at any stage in the hierarchy of proceedings. No such contention was canvassed before the appellate authority as well as before the learned Single Judge nor before the Division Bench. However, in our view, this point goes to the root of the jurisdiction and authority of the appellant to tax non-residential premises by way of water tax. It, therefore, becomes necessary for us to consider this point. When we turn to the judgment under appeal, we find, as noted earlier, that the Division Bench has clearly mentioned that the notification of the Government of U.P. dated 18-9-1958 authorised the Board to assess water tax on residential buildings within a radius of 600 feet from the nearest standpipe under Section 129(a) of the Act. These recitals prima facie, showed that the appellant-Board was not authorised to impose water tax on non-residential buildings like factory premises.

20. In order to ascertain whether there was any other notification entitling the appellant-Board to recover water tax even on non-residential buildings, we posted these appeals by our order dated 30-7-1998 to a further date for enabling the learned counsel for the appellant to supply the information regarding notification dated 12-9-1958 and thereafter it stood further adjourned from time to time till it was listed on 17-11-1998 for hearing learned counsel for the parties only on this limited question pertaining to Point 5. Learned counsel for the appellant-Board in the meantime has filed an additional affidavit dated 3-11-1998 of one Badaru Zaman, presently working as Suit's Clerk in Nagar Palika Parishad, Saharanpur wherein it was averred that water tax was imposed pursuant to Rules framed by the Hon'ble Governor in exercise of power conferred under Section 296 of the U.P. Municipalities Act, 1916 which were published vide Notification No. 3218-S/IX-B-348-55 dated 12-9-1956 for the Saharanpur Municipality. The Hindi version of the said gazette notification was published in a booklet known as Nagarpalika Saharanpur's Bye-laws, Rules and Regulations in its edition dated 6-10-1973. Along with the affidavit, its English version is also enclosed. The said printed booklet was produced before us. The said booklet clearly shows that on 12-9-1956, relevant

rules were framed by the appellant-Municipality imposing amongst others, water tax which were subsequently got sanctioned by the government order dated 12-9-1958. The said Rules recited that in continuation of the government notification dated 24-7-1956, the Governor in exercise of the powers conferred under Section 296 of the U.P. Municipalities Act, 1916, has made the Rules for the assessment and collection of water tax of Saharanpur Municipality. Amongst others, Rule 8 read as under :

> "With reference to Section 129(a) of the Act, the radius governing the imposition of the water tax shall be 600 ft."

Along with the said affidavit was also produced an extract of the U.P. Municipalities Act, 1916. In the said extract published in 1957, Section 129 of the U.P. Municipalities Act as it then stood read as under :

> "129. Restrictions on the imposition of water tax. - The imposition of a tax under clause (x) of sub-section (1) of Section 128 shall be subject to the following restrictions, namely -
>
> (a) that the tax shall not be imposed on land exclusively used for agricultural purposes, or, where the unit of assessment is a plot of land or a building as hereinafter defined, on any such plot or building of which no part is within a radius, to be fixed by rule in this behalf for each municipality, from the nearest standpipe or other waterwork whereat water is made available to the public by the board; and
>
> (b) that the tax is imposed solely with the object of defraying the expenses connected with the construction, maintenance, extension or improvement of municipal waterworks and that all moneys derived therefrom shall be expended solely on the aforesaid object. Explanation. - In this section -
>
> (a) 'building' shall include the compound (if any) thereof, and where there are several buildings in common compound, all such buildings and the common compound;
>
> (b) 'a plot of land' means any piece of land held by a single occupier, or held in common by several co-occupiers, whereof no one portion is entirely separated from any other portion by the land of another occupier or of other co-occupiers or by public property."

A mere look at the said provision shows that in 1957, the Act authorised the appellant-Municipality to impose water tax under Section 128(1) clause (x) subject to the restriction that the tax shall not be imposed on any plot or building of which no part is within the radius prescribed for the municipality from the nearest standpipe or other waterworks. The Rules framed by the appellant-Municipality which came into force on 12-9-1958 amongst others, as noted earlier, included Rule 8 which with reference to Section 129(a) of the Act permitted the appellant-Municipality to impose water tax on lands or buildings which were within the radius of 600 feet from the nearest water standpipe. A conjoint reading of Section 129(a) and the aforesaid Rule 8 of the appellant's Rules leaves no room for doubt that after 1958, the appellant-Municipality imposed water tax on lands and buildings which fell within the radius of 600 ft. from the nearest water standpipe. There was no restriction under these Rules to show that the radius of 600 ft. was confined only to residential buildings as tried to be suggested by learned Senior Counsel, Shri Nariman for the respondent. It is of course

true that the District Magistrate in his order at p. 24 of Vol. II and the High Court in the impugned judgment at p. 6 have referred to notification dated 12-9-1958 pertaining to only residential buildings. But when the copy of the original notification as produced with the additional affidavit of Shri Badaru Zaman aforesaid is seen along with the relevant rules, no doubt is left in our mind that the said notification entitled the appellant-Municipality to impose water tax on lands and buildings of all types situated within the municipal limits and which were in the radius of 600 ft. from the nearest water standpipe. Shri Narirnan, learned Senior Counsel for the respondent, submitted that when the High Court has referred to notification dated 12-9-1958, the copy of the notification relied upon in this additional affidavit may refer to some other notification. The aforesaid contention cannot be sustained for the simple reason that a close look at the said notification shows that the sanction for imposition of water tax is pursuant to the government order dated 12-9-1958 but the draft rules appeared to have been framed on 12-9-1956. The High Court and the District Magistrate seem to have referred to 12-9-1958 as the date on which the relevant rules came into force. As the disputed assessment is for a period after 12-9-1958, the objection raised by Shri Nariman about any inconsistency regarding date of the Rules pales into insignificance. Shri Nariman, learned Senior Counsel for the respondent, then submitted that the gazette notification is still not produced and only a booklet is produced. But when we turn to the printed booklet, we do find that what is printed at p. 9 of the booklet does refer to the relevant notification as in terms the number of the relevant notification has been mentioned. There is nothing to indicate that the said notification would not have been gazetted in the same form in which it is printed in the booklet. Presumption under Section 114 of the Indian Evidence Act, 1872 regarding the performance of the official act therefore, would clearly get attracted in the facts of the present case. Nothing was pointed out to us by learned Senior Counsel for the respondent to indicate that there was any contrary gazette notification or that the gazette notification was laying down any different scheme as compared to the one which is printed in the booklet of 1973 which has stood the test of time for all these years. Consequently, Point 5 is answered against the respondent and in favour of the appellant by holding that the notification of 12-9-1958 also brought the factory premises of the respondent-Company within the tax net of water tax and the said notification did not cover only the residential buildings. This point is therefore, answered in favour of the appellant and against the respondent.

Point 6

21. As a result of the aforesaid finding on the relevant points, we set aside the order of the Division Bench and confirm the order of the learned Single Judge and allow the writ petition of the appellant-Municipality on the reasoning indicated hereinabove. It is held that the impugned levy of water tax on residential and non-residential buildings of the respondent-Company was perfectly justified in the facts and circumstances of the case. As the levy of the water tax for the relevant period is found to be well sustained, there will remain no question of refunding any amount collected by the appellant towards the said levy from the respondent.

22. The appeal is accordingly allowed. In the facts and circumstances of the case, there will be no order as to costs.