SUPREME COURT OF INDIA

Tata Iron & Steel Co. Ltd.

Vs.

State of West Bengal

C.A.No.4464 of 1995

(S. Rajendra Babu and Doraiswamy Raju JJ.)

29.04.2002

JUDGMENT

Rajendra Babu, J.

1. In these appeals the validity of the *West Bengal Multi-Storeyed Building tax Act, 1979* [West Bengal Act XVII of 1979 (hereinafter referred to as `the Act') is challenged by the appellants.

2. The learned Single Judge of the High Court, who examined the matter in the first instance, rejected all the contentions put forth on behalf of the appellants and declared that the Act was a valid piece of legislation, except in regard to Section 25(2) of the Act which was held to be *ultra vires* and, therefore, the said Section was declared to be invalid. Against this order appeals were preferred to the Division Bench and the Division Bench affirmed the order may by the learned Single Judge and dismissed the appeals. Hence, these appeals by special leave.

3. The impugned Act imposes a tax on `multi-storeyed building' which expression is defined under the Act. On an earlier occasion, the *West Bengal Multi-storeyed Building tax Act, 1975* [hereinafter referred to as `the 1975 Act'] was enacted in 1975 which also provided for tax on every multi-storeyed building or a part thereof. The validity of the 1975 Act was challenged in several writ petitions filed before the Calcutta High Court wherein the High Court took the view the 1975 Act applied to all buildings equally in the matter of tax regardless of the cost of construction, their capacity to yield income, their use and their potentiality and thus the Legislature treated unequals as equals in their essential features as equals in the burden of taxation and held the law to be *ultra vires*. Thereafter, the Act was enacted in 1979 effecting several changes in the 1975 Act. The definition of the expression `owner' is now changed and Section 3, which is the changing Section, is substantially altered. These provisions were in challenged before the High Court as is done-before us now.

4. The contentions advanced before the High Court on behalf of the appellants are reiterated before us. It is contended that on a reading of the new definition of `owner' along with the charging Section, the intention of the Legislature is to tax the person in respect of the portion

occupied or possessed by him on the basis of the annual value and he is not responsible or liable to pay tax in respect of the portions occupied or possessed by others; that the intention is to assess buildings by parts whether they are occupied by deemed owners or actual owners and the Act contemplate separate assessment and filing of returns by each deemed owner and where there is no deemed owner by the owner himself and as such, owners are not liable for the payment of tax for portions let out or in the occupation of others; that the Act clearly contemplates separate assessments in respects of each part possessed by a deemed owner or the owner; that this is apparent from the definition of "owner" read along with Section 3(3) and Section 5 of the Act; that the unit of assessment changes from the entire multi-storeyed building to individual units occupied by deemed owner or occupier; that the Act seeks to tax every occupier of a building be he the owner or occupier in respect of the portion of the building in his occupation, the tax being on the covered space of such portion; that this being the purpose of the Act, the fact that such occupied covered space is in a multi-storeyed building or in any other building is not a relevant factor for classification; that the substance of the legislation must be ascertained from the relevant provisions of the statute and it is not disputed that the subject of the levy, the nature of which defines the quality of the levy is not to be confused with the measure of the liability, that is to say, the quantum of the tax; that if the levy is to be regarded as one in respect of multistoreyed building and the measure of the liability is defined in terms of the annual value of the floor area occupied by individual owners/occupiers, there must be a nexus between the two indicating a relationship between the levy on the multi-storeyed building and the criteria for determining the measure of liability; that if there is no nexus at all it can be inferred that the levy is not what it purports to be; that the statutory provisions for measuring the liability on account of the levy throws light on the general character of the tax; that the standard on which the tax is levied was a relevant consideration for determining the nature of the tax although it cannot be regarded as conclusive in the matter; that the standard laid down for measuring the liability must bear a relationship to the nature of the levy; that when the provisions of the impugned Act are examined in the totality, there can be found no such relationship or nexus; that there is no difference between an occupier of x square metre of covered space in a multi-storeyed building and an occupier of x square metre of covered space in a 4-storeyed building, when the tax is on the covered space occupied and not on the entire building; that the act, therefore, discriminates and offends Article 14 of the Constitution; that since Section 25(2) of the Act has been held to be unconstitutional and the 1975 Act was declared to be bad all tax collected under the 1975 Act should be in any event be directed to be refunded. In the additional submissions urged on behalf of the appellants it is contended that if a part of the multi-storeyed building is owned by any Diplomatic or Consular mission of a foreign State or if a notification is issued by the State Government in terms of Section 3(5) of the Act, then such part cannot be taxed but the other parts of the same building will be subject to tax; that is, therefore, appears that the unit of taxation is not linked with the multi-storeyed building as a while, but with the parts of the multi-storeyed building in the occupation of owners or deemed owners; that thus, for every unit of taxation, namely the area in the cupation of an owner or deemed owner, the annual value will have to be determined in the manner provided in Section 5 of the Act and they divided by the covered space of that unit to arrive at the annual value per square metre and they multiplying the total covered area of that unit by the appropriate rate of tax; that to conclude, under Section 5 of the Act, the annual value for the

purpose of levying of the tax has to be based on the annual value of the building or a part thereof andÐd the owner who occupies a part of a five storeyed building has also to bear the burden of the tax although he is in no better position than the owner of a four storeyed building; that as such the entire concept of imposition of the tax on multi-storeyed buildings becomes meaningless because the person is being assessed purely on what he possesses; that a multistoreyed building or a group housing society will have several flats and several owners of such flats and according to the scheme of the Act, each such flat will be taxed with reference to its own annual value, determined under Section 5; that the unit of taxation therefore is the individual flat and not the whole building and each owner is taxed, individually with reference to the space in his occupation.

5. Shri B. Sen and Shri Tapas Ray, the learned Senior Advocates appearing for the respondents, submitted that the appellants herein are owners of the entire building and hence the arguments advanced attacking the part-ownership will not be germane or relevant that the definition of `owner' under Section 2(f) of the Act would include such owners or persons as the appellants who own the entire building; that the tax is levied on the building and such taxation has adopted the mode of collection as is provided under the Calcutta Municipal Corporation Act; that buildings consisting of five floors or more fall into a special class and, therefore, the owners of such buildings constitute a separate category of tax payers; that such owners or persons being economically better off can afford to pay the tax and, therefore, the classification made and the mode of taxation adopted under the Act is perfectly justifiable and calls for no interference at our hands.

6. In order to appreciate the rival contentions it is necessary to briefly note the relevant provisions of the Act.

7. Section 3 is the charging Section which provides for (i) levy of annual tax; (ii) payable by the owner to the State Government; (iii) on the covered space of multi-storeyed building or part thereof, and (iv) at different rates on the annual value. The expression "annual value" is defined in Section 5 of the Act to the effect that if the annual value of any multi-storyed building or part thereof has been computed by a municipal corporation or a municipality or other local authority that computation divided by the covered space of such multi-storeyed building or part thereof shall be the `annual value' for the purpose of the Act and if the computation has not been made the `annual value' shall be deemed to be the gross annual rent at which the multi-storeyed building or part thereof might be reasonably expected to let from year to year with certain deductions for the cost of repairs and for other expenses. There is a special definition of the expression `owner' under the Act giving an extended meaning to cover different types of ownership including tenant occupying portions of multi-storeyed buildings who shall be deemed to be the owners of the part of the building for the purpose of collection of tax under the Act. On this analysis of the provisions of the Act we now proceed to consider the arguments advanced before us.

8. In the first place, the arguments advanced us on behalf of the appellants do not really fall for considerations inasmuch as from the facts extracted from the judgment of the learned Single Judge it is clear that the appellants own the buildings fully and, therefore, the question

of part-ownership or any discrimination arising thereto need not be examined at their instance at all.

9. The High Court has noticed the factual position in relation tot the appellants before this Court as follows:

> "The petitioner in Matter No. 288 of 1980 is., the Life Insurance Corporation of India. The Corporation owns various premises in Calcutta, about 29 of which are five storeyed or more than five storeyed. Some of the said premises are wholly or in part let out to various tenants and/or leased out to various lessees who from their respective tenanted or leased out premises, carry on trade or business of a commercial nature of use their respective portions for the purpose of residence. Some of the said premises or in part house the officers of the Corporation.
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> The Tata Iron and Steel Co.Ltd. and the Indian Tube Co. Ltd. are the first two petitioners in matter No. 1300 of 1980. They are the owners of a 18 storyed building at 43, Chowringhee Road, Calcutta popularly known as "Tata Centre". The petitioners use a portion of the building for their respective business and commercial activities and have let out other portions to various tenants who also use the for their business and commercial activities."

10. Even otherwise, the scheme of taxation, to which we have adverted to just now, is upon the entire multi-storeyed building or part thereof. However, in any given case, if a person is in occupation of a portion of a multi-storeyed building as tenant, who can also be deemed to be the `owner' of such multi-storeyed building, he will be liable to pay tax to the extent of portion which is his occupation and such levy of tax for portions let out or in the occupation of others will not impinge upon the provisions of Article 14 of the Constitution. The expression `owner', if read along with Section 3 and Section 5 of the Act, will cover the multistoreyed building and though for the purpose of taxation different units of the building are taken into consideration, the taxation is on the entire building. Therefore, the arguments that the unit of assessment changes from the entire multi-storeyed building to individual units occupied by deemed owner or occupier cannot be accepted. The argument that the taxation being on the covered space of a portion whether he be the owner or the occupier in respect of a portion of a building would not be a relevant factor if multi-storeyed building is brought to tax, but we do not think this position is correct. The levy is upon the multi-storeyed building is clear from the provisions of Section 3 of the Act, but if the distribution of the levy is made upon the owners and in some cases upon the occupiers it will not change the purpose of the Act to levy tax on the multi-storeyed building by reason of the fact that tax is levied on such occupied or covered area in the multi-storeyed building which is in possession of the owner or the occupier. This kind of classification has been not un-known.

11. The learned counsel for the appellants relied upon the decisions in *RE. A Reference under Government of Ireland Act, 1920*[1], *M/s. R.R. Engineering Company v. Zilla Parishad, Bareilly & Anr.*[2], and *The Hinger-Rampur Coal Co.Ltd. & Ors. v. The State of Orissa & Ors.*[3], to contend that the method of determining the rate of levy would be a relevant fact in

considering the character of levy and that the standard on which tax is levied is a relevant consideration in determining the nature of the tax although it cannot be regarded as conclusive in the matter. These decisions cannot be of any assistance to the learned counsel for the appellants because from the scheme of taxation in the present case it is clear that the levy is upon the multi-storeyed building or part thereof which may be in the occupation of the owner or a particular occupier who is deemed to be the `owner' thereof for the purpose of the Act. Therefore, the measure of taxation also does not vary in so far as the Act is concerned. We find no substance in this argument.

12. The argument- advanced on behalf of the appellants that if multistoreyed buildings are classified into five stories and above as against buildings having less than five floors it would offend the doctrine of equality has absolutely no basis. Apart from the fact that *somewhere limit* has to be drawn between different types of buildings and if Legislature thinks five floors and above should be subject to tax, no fault can be found with it. It cannot be said that those who live in these kinds of buildings which are subject to taxation upto fourth floor are similar to those who live in the buildings having less than five floors because it appears from the provisions of the Municipal Corporation Act and bye-laws thereto certain special amenities have to be provided in the buildings having five floors or more, as noticed by the High Court. Hence, this contention is rejected.

13. We do not find that there is any substance in the contention based on discrimination between two sets of buildings nor are we impressed with the other argument that there is discrimination because of want of appropriate relationship or nexus between the nature of levy and the classification of the building made under the Act.

14. Therefore, these appeals have no substance and stand dismissed. No costs.

[1]*1936(2) All ER 111*
[2]*1980(3) SCC 330*
[3]*1961(2) SCR 537*