

SUPREME COURT OF INDIA

Indian Oil Corporation Ltd.

Vs.

A.P Industrial Infrastructure Corporation Ltd. & Ors.

C.A.1041of 2008

(A.K. Sikri and Rohinton Fali Nariman, JJ.)

09.12.2015

JUDGMENT

A.K. Sikri, J.

1. Indian Oil Corporation Limited (hereinafter referred to as the 'IOC') has challenged the common judgment rendered by the High Court of Judicature, Andhra Pradesh at Hyderabad in the two writ petitions which were filed by the IOC impugning the order dated 14.12.2002 coupled with demand notice dated 10.07.2002 and order dated 14.10.2002 coupled with demand notice dated 12.06.2003 respectively. By the aforesaid orders, respondent No.1, which is Andhra Pradesh Industrial Infrastructure Corporation Limited, had taken the stand that IOC is liable to pay the property tax on the value of storage and water tanks of the IOC situated in the industrial development area of Cuddapah (A.P.) and in the demand notices, specific demand was made for payment of the property tax on the said storage tanks. The property tax was demanded under The Andhra Pradesh Panchayat Raj Act, 1994 (hereinafter referred to as the 'Act'). Thus, identical relief was claimed in the two writ petitions and the occasion for filing two writ petitions was that the demand notices calling upon the IOC to pay the property tax related to four different years. Assessment Years 2000-01, 2001-02 and 2002-03 were covered by the demand notice dated 10.07.2002 and demand notice dated 12.06.2003 pertained to Assessment Year 2002-03. This was the reason for the High Court to dispose of the two writ petitions by the common decision. The High Court has, by reason of the said judgment, dismissed the writ petitions of the IOC holding that property tax is payable under the provisions of the aforesaid Act.

2. We may mention at the outset that though the impugned demand was challenged on number of grounds which, inter alia, included the ground that the demands were violative of the principles of natural justice as well as provisions of the Act itself, there was no challenge to the vires of any provision of the Act. The question that fell for consideration before the High Court, thus, was as to whether the aforesaid storage and water tanks could be termed as 'building' within the meaning of Section 2(3) of the Act and be covered by the definition of 'house' contained in Section 2(19) of the Act as the tax is payable on the 'house'.

After the High Court had given its judgment, another demand notice dated 03.07.2007 was issued, creating demands of property tax for the Assessment Years upto 2006-07 and challenging the said demand notice on the same grounds, IOC has also filed Writ Petition (C) No. 499/2007 in this Court directly under Article 32 of the Constitution. This is how the appeal and writ petition touching upon the identical issue, as enumerated above, have been taken up for hearing.

3. Having regard to the nature of issue involved, though it may not be necessary to traverse through the facts in detail, those minimal facts which are to be kept in mind while deciding the issue, are recapitulated below:

The IOC is a Central Government undertaking, which is in the business of marketing products including petrol, high speed diesel, liquified petroleum gas, lubricants etc. For the purpose of efficient distribution of its products, the IOC has storage depots and LPG bottling plants at various places. One such LPG bottling plant of the IOC is situated in the industrial development area, Cuddapah. This bottling plant is spread over a large extent of land and consists of various building, machinery and LPG storage tanks. The entire bottling plant falls within in the jurisdiction of the Chinnachowk Grama Panchayat.

4. The Andhra Pradesh Panchayat Raj Act, 1994 was enacted which deals with various facets of Panchayati Raj. It also provides for provisions for levy of property tax and machinery for collection thereof. Under the aforesaid provisions, the Chinnachowk Grama Panchayat initially fixed the property tax for the Assessment Year 1998-99 at Rs.9,11,380.60. This property tax was collected on the basis of cost of machinery equipment, which according to IOC do not form part of any 'building'. The aforesaid entire area was handed over to the first respondent which was also vested with all necessary powers conferred on the Gram Panchayat under the Act. Respondent No.1, thus, assumed jurisdiction over the area with power to collect the property tax. On the assumption of such powers, respondent No.1 issued demand notice dated 10.01.1999 to the IOC demanding tax to the tune of Rs.9,11,380.60 for the Assessment Year 1998-99. However, this demand was revised on the representation by the IOC pointing out the mistake committed in the calculation of the property tax and was reduced to Rs.7,14,393. The IOC paid the aforesaid amount of tax.

5. In the year 2001, IOC approached respondent No.1 for further reduction of property tax on the ground that LPG storage tanks consisting of Horton Sphere and 3 bullets cannot be taken into consideration for calculation of the tax as these structures do not answer the description of 'building' and 'house' as defined under the Act. Vide order dated 08.12.2001, this request of the IOC was rejected by respondent No.3. Thereafter, demands were made for other Assessment Years and representations of IOC against those demands were also rejected. This is how, challenging the said demands, the two writ petitions were filed by the IOC, as already noted earlier.

6. The case of the IOC was that the value of LPG storage tanks which amounts to Rs.557 lakhs and the value of the water storage tanks which amounts to Rs.35 lakhs, do not fall for levy of property tax. The LPG storage tanks are the sphere and bullets which are pressure vessels fabricated out of special materials to store liquefied petroleum gas and have fittings like safety relieve valve, high level alarm, fixed tube gauge, liquid inlet and outlet pipes, manhole cover, Servogauge, differential pressure gauge and other fittings which are mandatory under the safety guidelines of the Chief Controller of Explosive and Oil Industry safety norms. These structures are pressure vessels, in which no human being can enter or stay. These structures are also operated for long period of time. It is only after a lapse of more than a few years, humans enter the structure for cleaning. Similarly, the water storage tanks are normally filled with water or use in case of emergencies. These tanks also cannot be inhabited by human being during their normal operation. These tanks are also cleaned after a lapse of few years only.

7. In the aforesaid backdrop, the question that arises for consideration is as to whether the storage tanks which store LPG can be considered as 'house' within the meaning of the Act as the taxes are leviable, inter alia, on houses. The material provisions which have to be taken into consideration are the definition of the terms 'building' and 'house' which are defined by sub-section (3) of Section 2 of the Act and sub-section (19) of Section 2 of the Act. These are as follows:

“**Section 2(3)** : 'building' includes a house, out-house, shop, stable, latrine, shed (other than a cattle shed in an agricultural land), hut, wall and any other such structure whether of masonry, bricks, wood, mud, metal or other material whatsoever;

Section 2(19) : 'House' means a building or a hut fit for human occupation, whether as a residence or otherwise and includes any shop, factory, workshop or warehouse or any building used for garraging or parking buses or as a bus-stand, cattle shed (other than a cattle shed in any agricultural land, poultry shed or dairy shed);”

Before proceeding further, we would also take note of some other provisions of the Act which were pointed out by the learned counsel for the parties. These are:

“Section 2(20) : 'Hut' means any building which is constructed principally of wood, mud, leaves, grass, or thatch and includes any temporary structure of whatever size or any small building of whatever material made, which the gram panchayat may declare to be a hut for the purposes of this Act;

Section 60 - Taxes leviable by gram panchayats

(1) A gram panchayat shall levy in the village,

(a) a House-tax;

(b) kolagaram, or katarusum that is to say, tax on the village produce sold in the village by weight measurement or number subject to such rules as may be prescribed;

(c) such other tax as the Government may, by notification, direct any gram panchayat or class of gram panchayats to levy subject to such rules as may be prescribed; Provided that no such notification shall be issued and no such rule shall be made except with the previous approval of the Legislative Assembly of the State.

(2) A duty shall also be levied on transfers of property situated in the area under the jurisdiction of the gram panchayat in accordance with the provisions of Section 69.

(3) Subject to such rules as may be prescribed the gram panchayat may also levy in the village,-

(i) a vehicle tax;

(ii) a tax on agricultural land for a specific purpose;

(iii) a land-cess at the rate of two naya paise in the rupee on the annual rental value of all occupied lands which are not occupied by or adjacent and appurtenant to, buildings;

(iv) fees for use of porambokes or communal lands under the control of the gram panchayat;

(v) fees for the occupation of building including chavadies and sarais under the control of the gram panchayat.

(4) Every gram panchayat may also levy a duty in the form of a surcharge on the seigniorage fees collected by the Government on materials other than minerals and minor minerals quarried in the village:

Provided that the rate at which such duty shall be levied shall be fixed by the gram panchayat with the previous approval of the Government.

(5) Every gram panchayat may, with the previous approval of the prescribed authority also levy, in respect of lands lying within its jurisdiction, a duty in the form of a surcharge at such rate, not exceeding twenty-five naya paise in the rupee, as may be fixed by the gram panchayat-

(a) in the Andhra Area, on the land cess, leviable under Section 78 of the Andhra Pradesh (Andhra Area) District Boards Act, 1920 and on the education tax leviable under section 37 of the Andhra Pradesh Education Act, 1982;

(b) in the Telangana area, on the local cess leviable under section 135 of the Andhra Pradesh (Telangana Area) District Boards Act, 1955 and on the education tax leviable under section 37 of the Andhra Pradesh Education Act, 1982.

(6) Any resolution of a gram panchayat abolishing an existing tax or reducing the rate at which a tax is levied shall not be carried into effect without the previous approval of the Section 61 - House-tax

(1) The house-tax referred to in clause (a) of sub-section (1) of section 60 shall, subject to such rules as may be prescribed, be levied on all houses in the village on any one of the following basis, namely:

(a) annual rental value, or

(b) capital value, or

(c) such other basis as may be prescribed:

Provided that no house tax shall be levied on poultry sheds and annexes thereto which are essential for running the poultry farms.

(2) The house-tax shall, subject to the prior payment of the land revenue, if any due to the Government in respect of the site of the house be a first charge upon the house and upon the movable property, if any, found within or upon the same and belonging to the person liable to pay such tax.

(3) The house-tax shall be levied every year and shall, save as otherwise expressly provided in the rules made under sub-section (1) be paid by the owner within thirty days of the commencement of the year. It shall be levied at such rates as may be fixed by the gram panchayat, not being less than the minimum rates and not exceeding the maximum rates, prescribed in regard to the basis of levy adopted by the gram panchayat.

(4) The Government may make rules providing for—

(i) the exemption of special classes of houses from the tax;

(ii) the manner of ascertaining the annual or capital value of houses or the categories into which they fall for the purposes of taxation;

(iii) the persons who shall be liable to pay the tax and the giving of notice of transfer of houses;

(iv) the grant of exemptions from the tax on the ground of poverty;

(v)the grant of vacancy and other remissions; and

(vi)the circumstances in which, and the conditions subject to which houses constructed, reconstructed or demolished, or situated in areas included in, or excluded from the village, during any year, shall be liable or cease to be liable to the whole or any portion of the tax.

(5) If the occupier of a house pays the house- tax on behalf of the owner thereof, such occupier shall be entitled to recover the same from the owner and may deduct the same from the rent then or thereafter due by him to the owner. Section 62 - Levy of House-tax on a direction by Government

(1) The Government may, by order published in the Andhra Pradesh Gazette, for special reasons to be specified in such order direct any gram panchayat to levy the house-tax referred to in clause (a) of sub-section (1) of section 60 at such rates and with effect from such date not being earlier than the first day of the year immediately following that in which the order is published, as may be specified in the order.

Such direction may be issued in respect of all buildings in a gram panchayat or in respect of only such buildings belonging to the undertakings owned or controlled by the State Government or Central Government and the buildings belonging to the State Government as may be specified therein.

(2) When an order under sub-section (1) has been published, the provisions of this Act relating to house-tax shall apply as if the gram panchayat had, on the date of publication of such order, by resolution determined to levy the tax at the rate and with effect from the date specified in the order, and as if no other resolution of the gram panchayat under Section 60 determining the rate at which and the date from which the house-tax shall be levied, had taken effect.

(3) A gram panchayat shall not alter the rate at which the house-tax is levied in pursuance of an order under sub-section (1) or abolish such tax except with the previous sanction of the Government.”

8. From the aforesaid definition of 'building' contained in Section 2(3) of the Act, it becomes apparent that very expansive meaning is assigned to the expression 'building' which inter alia includes a 'house'. Apart from some specific nature of structures, namely, out-house, shop, stable, latrine, shed etc., other 'such structures' are also covered by the definition. Of course, in this process, other structures are qualified by the word 'such' which means that they have to be read ejusdem generis with the earlier part of the definition that mentions specific kind of structures. The case set up by the IOC, is that though the term 'building' is very broad and 'house' is only one of the structure qualifies as building, the text in question is to be on 'house' and not on all other kinds of buildings. In this process, it was argued that the structures in

question, namely, LPG storage tanks may be 'building' but they are not 'house', as every building is not a house. It was argued that the term 'house' is to take its flavour from the purpose for which 'house' is used, namely, the one which is fit for human occupation as the definition of 'house' itself specifically provides. It was argued that storage tanks were not at all fit for human occupation and they could not even be visited by the humans. It was submitted that these structures are pressure vessels in which no human being can enter or stay. It is only after a lapse of more than a few years that human beings enter these structures that too for the purpose of cleaning only. Similarly, water storage tanks are normally filled with water in case of emergencies and these tanks also cannot be inhabited by the human beings during their normal operation. These tanks can be cleaned after a lapse of few years only.

9. It is difficult to countenance the aforesaid submissions of the learned senior counsel for the appellant. As was rightly argued by the learned counsel for the respondents, the definition of 'house' is in two parts. First part of this definition refers to building or a hut fit for human occupation, whether as a residence or otherwise. In this context, house means a building or a hut. Therefore, in the first instance, it has to qualify as a building or as a hut. However, the second part of the definition is inclusive in nature as it starts with the word 'includes' and mentions so many other types of buildings and makes all those kinds of buildings qualify as house even when used for garaging or parking buses or as a bus stand or cattle shed.

10. It cannot be disputed that structures in question are building. The term 'building' as defined in Black's Law Dictionary, 10th Edition mentioned it to be a structure with walls and a roof, esp. a permanent structure. Even Mr. Guru Krishnakumar, learned senior counsel for the IOC accepted that the storage tanks and water tanks would qualify as buildings. 'Storage' is described in the Black's Law Dictionary as 'the act of putting something away for future use; esp., the keeping or placing of articles in a place of safekeeping, such as a warehouse or depository. Black's Law Dictionary also gives the description of warehouse as 'a building used to store goods and other items'. Oxford Dictionary also explains warehouse as combination of ware plus house and assigns the meaning as under:

“A building or part of a building used for the storage of merchandise; the building in which a wholesale dealer keeps his stock of goods for sale; a building in which furniture or other property may be stored; a government building where goods are kept in bond.”

11. More significant is the manner in which P. Ramnath Aiyar's Advanced Law Lexicon, 4th Edition gives the description of storage and warehouse. It is as follows:

“Storage and warehousing. “Storage and Warehousing” includes storage and warehousing services for goods including liquids and gases but does not include any service provided for storage of agricultural produce or any service provided by a cold storage. [Finance Act (32 of 1994), S. 65(1)(87)].”

12. The above definition makes it clear that the goods which are meant for storage and warehousing services include liquid and gases as well. In *Bijaya Kumar Agarwal v. State of Orissa*¹ this Court made the following observations which are apt in the context:

“The dictionary meanings suggest that ‘storing’ has an element of continuity as the purpose is to keep the commodity in store and retrieve it at some future date, even within a few days. If goods are kept or stocked in a warehouse, it can be immediately described as an act of ‘storage’. A vehicle can also be used as a storehouse. But, whether in a particular case, a vehicle was used as a ‘store’ or whether a person had stored his merchandise in a vehicle would be a matter of fact in each case. Carrying goods in a vehicle cannot per se be ‘storing’ although it may be quite possible that a vehicle is used as a store. Transporting is not storing. Section 3(2)(d) of the Act extracted earlier in the judgment uses the expressions ‘storage’ and ‘transport’ as two separate acts which could be regulated by licences, permits or otherwise. The Order could as well prohibit transporting of large quantities of rice or paddy within the sanction of Section 3 of the Act. Was it the intention of the framers of the Order to prohibit ‘transport’ per se? Unless the facts in a particular case reveal that the vehicle was used not merely for transporting the goods but also for ‘storing’ as understood in the English language or even in common parlance, it is difficult to hold in the affirmative.”

13. When we read the definition of 'house' in the context of meaning that is to be assigned to 'warehouse', it is clear that a place where goods are stored would be 'warehouse' which is specifically mentioned in the definition of house contained in Section 2(19) of the Act. It would, thus, follow that it may not be necessary that such a place is capable of frequent visits by the human beings or fit for human occupations. The High Court has rightly pointed out that as per the said definition, the requirement that a house should be fit for human occupations is only for huts which is defined under Section 20 of the Act.

14. The Legislature has provided a particular definition to 'house' and levied property tax thereupon. It is this fictional definition of 'house' which is to be kept in mind for the purpose of levy of tax.

15. We, thus, do not find any merit in this appeal as well as writ petition which are accordingly dismissed with cost.

Judgment Referred.

¹(1996) 5 SCC 0001