

BOMBAY HIGH COURT

Ramji Keshavji

Vs.

The Municipal Commissioner of Greater Bombay

Civil Reference No. 8 of 1954, in Municipal Appeal No. M/142 of 1953

(M.C. Chagla, C.J. and Shah, J.)

02.08.1954

JUDGMENT

M.C. Chagla, C.J.

1. This is a reference made to us by the learned Chief Judge of the Small Cause Court, and the question that arises for our determination is as to who is primarily liable under the Bombay Municipal Corporation Act to pay property-tax when land has, been leased to a tenant and the tenant has put up a structure upon that land.

2. The facts giving rise to this reference are very few and they are that the appellant, who is the landlord, let out an open plot of land to one Kanse for a period of one year from April 1, 1949, to March 81, 1950, on a monthly rent of ₹ 140 and the tenant constructed upon this plot a temporary asbestos shed. The Bombay Municipality treated the land and the shed as a single assessable unit and fixed the combined rateable value at ₹ 5,500 for the assessment period October 1, 1953, to March 81, 1954. After the rateable value was fixed, a bill was presented to the appellant on the basis of this assessment and the appellant filed the appeal before the learned Chief Judge contending that he was not primarily liable for the payment of tax in respect of the shed constructed by the tenant.

3. It should be made clear at the outset that the question raised in the reference only concerns the primary liability to pay property-tax; it is not concerned with the liability inter se the landlord and the tenant. The statute has fixed the primary liability with regard to property-tax in order to facilitate the collection of property-tax. The principle underlying this statute is that the Municipality should know whom it should hold liable and the Municipality should not be put to the difficulty of ascertaining the actual liability of different persons who may have interest in a particular property. The section we are concerned with is Section 146. Sub-section (7) deals with

the primary liability of an occupier who holds the premises immediately from the Government or from the Corporation or from a fazendar. That is not the case here. Sub-section (2) provides for all other cases (cases other than those falling under Sub-section (1)), and it provides that otherwise the said taxes shall be primarily leviable as laid down in the following sub-clauses; and sub-cl.(a) provides : "if the premises are let, from the lessor". Now, in this case, the premises are let and, therefore, the person primarily liable for the payment of tax on these premises would be the lessor, that is, the appellant. Subsection (3) is an exception to Sub-section (2)(a), and it provides that

"..if any land has been let for any term exceeding one year to a tenant, and such tenant has built upon the land, the property taxes assessed upon the said land and upon the building erected thereon shall be primarily leviable from the said tenant or his legal representative, whether the premises be in the occupation of the said tenant or of his legal representative, or of a sub-tenant.

Therefore, it is clear that, in every case where premises are let, the primary liability is upon the landlord except in the one case referred to in Sub-section (3), where the primary liability is upon the tenant and not upon the landlord. Admittedly this case does not fall under Sub-section (3) of Section 148. Therefore, in our opinion, it is clear that the primary liability in this case is upon the lessor.

4. Now, the difficulty arises by reason of the fact that in India the view has been taken that one person may be the owner of a land and another person may be the owner of a structure that is built upon the land. Consistently with that view, it is undoubtedly true that in this case the land belongs to the lessor and the asbestos shed put up by the tenant belongs to the tenant; and the contention of the landlord is that he should not be assessed to tax with regard to a part of the premises of which he is not the owner. But in putting forward this contention, the landlord overlooks the provisions of Section 147, which seems to give him the right of recovering from his tenant the amount of tax which he has paid in excess of the tax which the property is liable to pay on the basis of the rent recovered by the landlord. The learned Chief Judge also seems to have doubted the practice followed by the Municipality for a very long period of treating the land and the building constructed upon it as a single assessable unit. In this connection, we might look at the provisions with regard to the valuation of property assessable to property-tax and these provisions are to be found in Sections 154, 155 and 156. Section 154, Sub-section (1), provides that

"In order to fix the rateable value of any building or land assessable to a property-tax, there shall be deducted from the amount of the annual rent for which such land or building might reasonably be expected to let from year to year a sum equal to ten per centum of the said annual rent and the said deduction shall be in lieu of all allowance for repairs or on any other account whatever.

This determines the rateable value. This rateable value can be fixed either of a building or of land. The difficulty is caused by this, that whereas in Section 146 the Legislature has used the expression "premises", in Section 154(1) the expression used is "building or land." Then Section 155 provides for the right of the Commissioner to enable him to determine the rateable value of any building or land and the person primarily liable for the payment of any property-tax payable, in respect thereof, and to require the owner or occupier of such building or land to furnish him with the necessary information. Section 156 provides for the Commissioner maintaining a book called "the assessment-book", which book is to contain, among other things, a list of all buildings and lands in Greater Bombay distinguishing each, either by name or number, as he shall think fit. Now, in our opinion, these sections must be read in the light of Section 146. The object of these sections is to fix the rateable value and also to determine who is primarily liable. Therefore, if the primary liability under Sub-section (2) is upon the lessor where the premises are let, the information that would have to be gathered and the rateable value that will have to be fixed would be with regard to premises which would include both the land and the building, if a building was constructed upon the land. It would be untenable to suggest, that under Sections 154, 155 and 156 the Municipality should assess land separately from the building. If the Municipality were to do that, then it would be impossible to fix the primary liability as far as the building is concerned. It may also be pointed out that in the Bombay Municipal Corporation Act "land" is defined as land which is being built upon or is built upon, and, therefore, when Sections 154, 155 and 156 refer to "land", it would include any structure put up on the land. Therefore, in our opinion, the scheme of Section 146 and Sections 154, 155 and 156 clearly indicates that, when a land is let and the letting does not fall within the purview of Sub-section (3) of Section 146, and where the landlord is made primarily liable under Sub-section (2) of Section 146, the proper rateable unit is the land with the building standing thereon. The same view was taken of the right of the Municipality to assess land and building as one rateable unit in a reference that came before Mr. Justice Bavdekar and Mr. Justice Vyas in *Gopinath Krishna Pradhan v. Municipal Corporation of Greater Bombay*¹ decided by Bavdekar and Vyas JJ., on August 19, 1953 (Unrep.).

5. The question that has been submitted to us by the learned Chief Judge is whether the Municipality can hold the appellant primarily liable for the property-tax on the basis of the rateable value of the land together with the asbestos shed constructed thereon by his tenant, and the answer we propose to give to this question is in the affirmative.

6. No order as to costs.

Answer accordingly.

¹(1953) Civil Reference No. 2 of 1953