
(1944) 03 BOM CK 0021

In the Bombay High Court

Case No : Civil Revision Application No. 370 of 1943

Ahmedabad Municipality

APPELLANT

Vs

Kalyanbhai

RESPONDENT

Date of Decision : 17-03-1944

Acts Referred:

Citation : AIR 1945 Bom 78 : (1944) 46 BOMLR 733

Hon'ble Judges : Rajadhyaksha, J;N.J. Wadia, J

Bench : Division Bench

Final Decision : Allowed

Judgement

N.J. Wadia, J.—These are three revision applications filed against the decisions of the Small Cause Court Judge, Ahmedabad, in three suits, Nos. 4006, 4005 and 4034 of 1941, The plaintiff in suits Nos. 4006 and 4005 was the same person, Kalyanbhai Haribhai, and the plaintiff in suit No. 4036 was his brother, Nanubhai Haribhai, AH the three suits were filed against the Ahmedabad Municipality for refund of certain amounts recovered by it from the plaintiffs as drainage tax for the years 1939-40 and 1940-41. The learned Judge passed decrees in favour of the plaintiffs in all the three suits, and against those decrees the Ahmedabad Municipality and the Administrator of the Municipality have applied in revision. The points involved in all the three suits were the same, and the judgment given in suit No. 4006 which is the subject of Revision Application No. 370 governs all the three suits.

2. The plaintiffs jn the three suits were the owners of buildings within the municipal limits of Ahmedabad which consisted of several tenements. Each tenement was given a separate census number. Within the compounds of each of the three buildings, there is a general provision made for1 the disposal of the waste water |of each of the tenements, and there is also a water closet or urinal in each of the compounds. But each separate tenement is not actually connected with the municipal drainage system; nor is there a separate water closet or urinal attached to each tenement.

3. The separate tenements are used for shops, godowns and offices, but not for residential purposes. The Municipality made a claim on the owners of each of the three buildings for drainage tax, calculating it on the separate letting value of each of the tenements. The contention [of the plaintiffs in each case was that the Municipality was entitled to levy the tax on the total rental value of the buildings as a whole, but not separately on the letting value of each tenement in the building. As under Rule 353 the drainage tax on buildings and lands is leviable at the rate of five and a half per cent, on the net annual letting value up to the valuation of Rs. 100 or part thereof, and at five per cent, on the excess over Rs. 100, the Municipality is able to recover a larger amount of tax if it levies it on each of the tenements separately than it would be able to do if it imposed it on the letting value of the building as a whole.

4. Rule 351 of the rules of the Ahmedabad Municipality runs as follows :-

The drainage tax is leviable as a rate on all buildings and lands and parts thereof within the Municipal Borough which are either actually connected or deemed to be connected with the municipal drainage system; and shall be assessed on the net annual letting value in the case of all buildings and lands referred to in Clause (1) of Rule 322 and on the valuation based on capital in the case of all buildings and lands referred to in Clause (2)" of that rule.

Rule 352 which has been recently amended provides that

a building or land and every tenement therein, and in the case of mills and factories all buildings and lands within the premises of a mill or factory, shall be deemed to have been connected with the municipal drainage system, when a gully trap chamber has been constructed near its outermost limits so as to make it possible for the owner thereof to connect such building, tenement or land with the gully trap chamber.

6. There are two exceptions which run as follows :

(1) When a tenement is assessed on the annual letting value and is used as a shop, office, store-room or godown, it shall not be deemed to be connected with the drainage system so long as it is used as such shop, office, store-room or godown unless arrangements are made for the waste water to pass from it to the gully trap chamber. (2). When one premises or compound having a gully trap chamber at its entrance or at any other end of its limits contains several tenements owned by different persons, only those tenements which have an arrangement for the discharge of the waste water into that chamber shall be deemed to be connected with the drainage system.

Then follow two other clauses which provide that

(2) when there is a general provision made in one part of the premises for the disposal of waste water of the inmates of all the tenements in the premises; or
(3) when a water closet or urinal on such buildings or land or any part thereof is connected with the municipal drainage system, the building or land and every

tenement therein shall be deemed to have been connected with the municipal drainage system.

7. The view taken by the learned Judge was that the Municipality was not entitled to levy the tax separately on the individual tenements within each building, but could only levy it on the building as a whole. This view appears to us to be wrong. The learned Judge in putting] this interpretation upon Rules 351 and 352 has failed to take notice of the words " and parts thereof " in Rule 351, and of the words " and every tenement therein " in Rule 352. Rule 351 provides that the tax is leviable not merely on all buildings and lands but also on parts thereof; and Rule 352 provides that not only the building or land as a whole, but every tenement therein shall be deemed to have been connected with the municipal drainage system, when there is a general provision made in any part of the premises for the disposal of the waste water of the inmates of all tenements in the premises, or when a water closet or urinal on such buildings or lands or any part thereof is connected with the municipal drainage system. It is true that under these rules the Municipality could, if it chose, levy the drainage tax on the building as a whole, treating the building as a unit. But the rules expressly enable the Municipality to treat each part of a building which is a separate tenement as a separate unit for levying the tax.

8. The question involved in these applications has come before this Court on several previous occasions. In *Shah Vadilal Dalsukkram v. The Municipal Borough of Ahmedabad* (1940) C.R.A. No. 173 of 1939, decided by N.J. Wadia J., on January 17, 1940 (Unrep.) the dispute between the parties related to the right of the Ahmedabad Municipality to levy drainage tax on a building the ground-floor of which was used for shops and the first-floor for offices and godowns. The Municipality claimed that it was entitled to do so under Rules 351 and 352 of its rules. The case of *Municipal Borough of Ahmedabad v. Vadilal Dalsukhbhai* (1940) C.R.A. 420 of 1939, decided by Broomfield J. on January 26, 1940. arose out of a suit filed by the same person who was the petitioner in Civil Revision Application No. 173 of 1939, and the dispute turned on the same point, viz. the right of the Municipality to levy the drainage tax on a building belonging to the plaintiff the ground-floor of which was used for shops and the upper floor of which was used for offices and godowns, Civil Revision Application No. 179 of 1939 was heard by me and No. 420 by Mr. Justice Broomfield. In both these cases, we took the view that the Municipality was not entitled to levy drainage tax on the buildings because the tenements in each case were not separately connected with the gully trap chamber ; nor was there a separate water closet or urinal attached to each tenement. These decisions were followed by Beaumont C. J. in four other Revision Applications, *Shah Vadilal Dalsukhram v. The Municipal Borough, Ahmedabad* (1940) C.R.A. Nos. 462 and 508 of 1939, decided by Beaumont C.J. on April 12, 1940 (Unrep.). It had been contended before Mr. Justice Broomfield in Civil Revision Application No. 420 of 1939 on behalf of the Municipality that the exceptions were not intended to apply to Clause 3 of the rules, viz. that dealing with a water closet or urinal, which had been then

recently added. Mr. Justice Broomfield observed that there seemed to be no particular reason why exception (1) should operate in cases where cl. 3 of the rule applied, and that it may very well be that it was the intention that Clause 3 should operate in any case and should not be governed by the exception. But he felt bound to apply the rule as it stood and to hold that the exceptions applied to all the three clauses of Rule 352. Subsequent to our judgments Rule 352 has been amended with the result that exceptions (1) and (2) now follow immediately after Clause 1 of the section. Clauses 2, 3 and 4 come after the exceptions and are clearly not governed by them. The view which was taken by Mr. Justice Broomfield, by Beaumont C.J. and myself would therefore no longer be correct in view of the amendment made in Rule 352. After the amendment, which came into force on April 1, 1939, the identical point arose again in *The Municipal Borough, of Ahmedabad v. Vadilal Dalsukhram* (1943) C.R.A. Nos. 326 and 327 of 1942, decided by Lokur J., on July 28, 1943, (Unrep.) and *The Municipal Borough of Ahmedabad v. Vadilal Dalsukhram* (1943) C.R.A. Nos. 596 of 1942 and 10 of 1943, decided by Lokur J., on November 17, 1943 (Unrep.) all decided by Mr. Justice Lokur. The plaintiff, in those suits was the same person who was the plaintiff in the revision applications before me and Mr. Justice Broomfield. The Municipality had levied the drainage tax in respect of the ground-floor and the first-floor tenements in a building known as the German-Silverwala Market. The building in all the cases contained bath-rooms, privies and water closets connected with the municipal drainage system. It was contended in all the applications that the tenements which were used as shops and warehouses and which were not separately connected with the municipal drainage system were not liable to be taxed. The trial Judge in all the cases allowed the plaintiff's claims for refunds; and held that the levy of the tax by the Municipality was wrong, ultra vires and illegal. In doing so, he relied upon the decisions of this Court in the earlier revision applications to which reference has been made above. He was of opinion that the method of assessment followed by the Municipality was wrong and that "for the purposes of Rules 351 and 352, a building taken as a whole (inclusive of all lands and tenements therein) must be taken as one unit for assessment, and that the tax should be assessed on the aggregate net annual letting value of the whole building, taken collectively and not on the letting value of each tenement taken separately." Mr. Justice Lokur in both the sets of revision applications differed from this view and held that since the shops, and godowns taxed were parts of a building, and there were water closets or urinals, in parts of the building, which were connected with the municipal drainage system, every tenement in that building, that is to say, all the shops and godowns in such building, could be deemed to be connected with the municipal drainage system, and were/therefore, liable to the drainage tax under r. 351.

9. We are, with respect, of opinion that the view taken by Mr. Justice Lokur in these revision applications is correct. Under Rule 352, as amended, every tenement in each building is separately liable to the drainage tax, even though it

is not connected with the municipal draining system, because under the provisions of els. 2 and 3 of Rule 352, which are not subject to the exceptions, each tenement must be deemed to have been connected with the municipal drainage system as there is a general provision made in one part of the premises for the disposal of waste water of the inmates of all the tenements in the premises, and as there is a water closet or urinal in the compound of the buildings which is connected with the municipal drainage system.

10. It was contended by Mr. Thakor for the opponents in the three applications that Rule 351 does not expressly refer to (tenements. The word "tenement" is not defined in the Act. It is defined in Rule 321,; Sub-rule (2), as; " including every building or part of a building which is occupied or is capable of being occupied by a family separately for itself, and of which other families have no common use." This rule occurs under ch. I of the Taxation Rules of the Municipality dealing with water rates and charges. Rules 351 and 352 occur in ch. II dealing with the drainage tax. Mr. Thakor's contention f\$ that Rule 351, which is the rule by which the tax is imposed, must be strictly construed and since tenements are not referred to in that rule they cannot be held liable to the tax. The rule does, however, expressly refer to buildings and parts thereof, Tenements are referred to in Rule 352. The reason why Rule 351 refers only to " buildings and parts of buildings " while Rule 352 to " buildings and tenements therein " seems to be that it was not the intention of "the Municipality that parts of buildings should, in all cases, be liable to the tax. The necessity for providing that a part of a building should be deemed to be connected with the municipal drainage system if there was a gully trap chamber or a general provision for the disposal of waste water or a water closet or urinal in any part of the building would arise only in the case of tenements within a, building, i.e. parts of the building occupied by separate families. Where the different parts of a building are occupied by the same family, all the occupants would use the facilities provided anywhere in that building and every part of the building could, therefore, be treated as connected with the municipal drainage system.

11. It is difficult to understand why the definition of the word " tenement" has been included in ch. I dealing with, water rates and charges, with the i result that it may be contended, as it has been contended before us, that the definition does not apply to the word " tenement" when used in other chapters. We think that the definition is intended to apply to the word " tenement" wherever it is used, not merely in ch. I but also elsewhere. But even if that definition is not applied to the word " tenement " used in Rule 352, we would be entitled to apply the ordinary dictionary meaning of the word " tenement", and even in that sense a tenement is a building or part of a building or even a single room tenanted as a separate dwelling, or separately leased.

12. The view taken by the learned trial Judge in all the three suits was, in our opinion, wrong. We, therefore, make the rules absolute in all the three applications, set aside the orders for refund made in each case, and dismiss the

suits with costs throughout.