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(1977) 09 BOM CK 0025

In the Bombay High Court

Case No : Special Civil Application No. 1017 of 1971

Akola Municipal Council APPELLANT

Vs

Nilkanth Anant Athalye RESPONDENT

Date of Decision : 13-09-1977

Acts Referred:

Government of India Act, 1935 — Section 154
Transfer of Property Act, 1882 — Section 105

Citation : (1979) 81 BOMLR 171 : (1977) MhLj 773

Hon'ble Judges : Masodkar, J;Ginwala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Masodkar, J.—The present petition has been filed by the Municipal Council, Akola, seeking to recover and assert the right to collect the tax imposed u/s 4 of the Maharashtra Education (Cess) Act, 1962 (hereinafter referred to as the Act) from respondent Nilkanth Athalye who is the owner of the building located within the municipal limits of Akola but having let out the same to the State Government for running a Deaf and Dumb School and Hostel, is not the occupier of the said building. When the demand was raised, the said Nilkanth Athalye preferred an objection successfully before the Judicial Magistrate, First Class, Akola, that the provisions of Section 7(&) of the Act were attracted as the building was let out to the State Government and it was, therefore, exempt from the imposition. Challenge by the present petitioner Municipal Council to that view before the Additional Sessions Judge, Akola, failed as is evident from the order dated July 8, 1969 made by that Court. After that the Municipal Council filed a revision application in this Court which was eventually permitted to be treated as a special civil application by a Bench of this Court by an order made on July 20, 1970.

2. As stated above, the facts are not in dispute and they are bare; in that the respondent''s building located in the town of Akola has been leased out to the

State of Maharashtra and the said building is Used by the State as such for public purposes. The lease, it is said, is month to month. The only point is whether by virtue of the lease of the building in this manner in favour of the State Government, can it be said that the said building vests in the State Government as contemplated by Section 7 (b) of the Act? Both the Magistrate who heard the appeal of the respondent and the Additional Sessions Judge who heard the revision of the petitioner Municipal Council have found that the word "vest" is wide enough to cover the cases of lease under which the building in possession vests in the lessee.

3. Though there had been much debate before us, the substantial submission for the petitioner Municipal Council before us is that "vesting" for the purpose of Section 7(6) of the Act necessarily means vesting in ownership right and nothing less than that. In other words, it is contended that buildings do not get vested in the State Government under a lease. On the other hand, for the respondent it is submitted that the term "vesting" has been used to connote in reality the property in the possession of the State Government and subject to use contemplated by Clause (b) as relevant for the purpose of exemption.

4. It may be mentioned at the outset that the provisions of the Maharashtra Education (Cess) Act were constitutionally upheld by this Court as validly enacted primarily having reference to entry 49 of the State List: Ramchand v. Malkapur Municipal Council [196P] Mh. L.J. 540 : 72 Bom. L.R. 240. That entry permitted the imposition of tax on lands and buildings. This Court, after examining the scheme of the Act, found that the incidence of the tax under the provisions of the present Act was on lands and buildings. Section 4(a) of the Act provides for the levy of tax on lands and buildings in a municipal area at the rates specified in Schedule A annexed to the Act. Section 5 gives the mode of assessing education cess and refers in Sub-section (1) to a person owning more than one land or building in the municipal area and directs that the tax on lands and buildings should be assessed on the annual letting value of all such lands and buildings. For the purpose of assessment a mode is prescribed qua the owner of more than one land or building. Chapter III is titled as "Provisions relating to collection of tax on lands and buildings." It is, however, apparent that Section 7 carves out exemptions from the levy of the tax. Section 8 fixes the primary responsibility for payment of tax. Section 11 makes it a first charge on the property. Section 12 permits recovery and s,, 13 further permits recovery of the tax paid from the occupier. The provisions of Section 7 in this chapter are distinct from the other provisions and really will have to be read along with Section 4 of the Act. Having provided for the imposition and levy on lands and buildings of the education cess, Section 7 exempts certain; lands and buildings from the payment of tax. In this context, we may now quote the debated clause of Section 7 which reads as follows:

7. The following lands and buildings shall be exempt from payment of the tax on lands and buildings, that is to say:-''

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(b) lands and buildings vesting in the State Government or belonging to a municipality, a Zilla Parishad or a Cantonment Board and used exclusively for public purposes, and not used or intended to be used for purposes of profit;-

(Italics ours).

As we indicated above, there is no debate for the purposes of the present petition, about the use of the building concerned and the debate is narrowed so as to find out whether the building, by reason of the lease taken by the State Government, could be said to be a building that vests in the State Government.

5. Now, this being the enacting part of the taxing statute, we take it primary that the words used by the Legislature are meant to convey the common meaning thereof to everyone including the layman and the lawman and we would lean in favour of that meaning to be attributed to these words which is attributable in common parlance. The debated words are "vesting in", and we find that the terms "vest" simply mean "to clothe with legal rights": see Concise Law Dictionary, fifth edn., by P. G. Osborn, p. 328, and "vested" indicates an estate in possession when it gives a present right to the immediate possession of property (p. 328, ibid). Stroud''s Judicial Dictionary, fourth edn., pp. 2938 to 2942, refers to the varied import of the term "vest" as has been found and upon several debates available in the history of interpretation. It has a common and general meaning: so also a special and articulate significance in the context. Generally, the term "vest" means to give the property in. Historically, it has been found that the word "vest" acquired a definite meaning, carrying with it definite legal consequences: see Cloverdale v. Charlton (1878) 48 Q.B. 128 . In Webster''s Third International Dictionary, the meaning of this word is "to give to a person a legally fixed immediate right of present or future enjoyment." So also Black''s Law Dictionary understands the meaning of the word as to give an immediate fixed right of present or future enjoyment, or to clothe with possession, or to deliver full possession of land, or estate, or to give seisin. No doubt, there is another equally sound use of this word indicating the legal transfer of the right, title and interest of one person in another person and the legal effect described above is vesting: see Kripa Nath and Another Vs. Ganga Prasad and Others, The elasticity of the various connotations of this term has been noticed by the Supreme Court in Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust, and the Court pointed out that the term "vesting" had a variety of meaning and the particular meaning has to be gathered from the context in which it has been used. It may mean full ownership or possession for a particular purpose, or clothing the authority with the power to deal with the property as the agent of another person or authority (para. 11). Vesting may be in title or may be in possession or may be in a limited sense as may be indicated by a particular piece of legislation (para. 19).

6. Thus there is no warrant for holding that whenever the word "vest" is used or the Legislature uses the phrase in relation to immovable property like land or building "vesting in", it must necessarily connote the full ownership, that is, title

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and possession to the property. It may indicate "vesting in" possession having immediate rights of enjoyment or it may further indicate possession of the property given for a particular purpose and as such annexed with obligation.

7. The decision of the Federal Court in the case of AIR 1949 121 (Federal Court) turned on different facts and in the context, of Section 154 of. the Government of India Act, 1935, the Court found that the structure built by the Government on requisitioned property did "vest" in the Government. That is no authority to restrict "vesting" to read "ownership". When, however, the law of tax expressly provided that property let to the Crown would be subject to the incidence of business tax to be recovered from the owner, exemption on the footing that property belonged to the Crown was found to be not available: see City of Halifax v. Fairbanks'' Estate [1928] A.C. 117 holding against the owner because the provisions of Section 394 of the charter who claimed exemption from payment of business tax imposed on the occupier by the Legislature of the Province of Nova Scotia. This decision of the Privy Council illustrates the clear principle that statute may enact incidence of tax on the owner of-property though the same may be occupied by other person or even by the Government Therefore, what could be a valid consideration for finding incidence of imposition of tax can also be valid to find exemptions from it.

8. For all purposes, the distinctive determinant of lease is the demise. In law and in fact, demise of the object of lease i.e. of the species of property like land and/ or building carries within it the legal as well actual consequence of investment of such property till the lease survives in favour of the holder of the lease. Such investment involves rights of immediate possession and rights of enjoyment. Only because lease is the product of transfer of property inter vivos, consequent vesting of rights in property cannot nonetheless be the vesting of building or land in the holder of leasehold rights called lease. Such form of vesting of property by the device of lease is recognised and known to law. In relation to property, therefore, when the words "vesting in" are used, those clearly connote the state of possession coupled with legal rights to enjoy or to utilise the same for a specified purpose if vesting is for such a purpose. The land or building leased would form the part of the contemplation of such a phrase "vesting in". Legal possession of property and entitlement to enjoy are by themselves interests in property and the lessee of immovable property by virtue of his lease is clothed with it.

9. Thus viewed, the controversy further constricts, for in the clause quoted above, lands and buildings vesting in the State Government are to be found out so as to be entitled for exemption from the present tax. The effect of the lease of immovable property like the building is the demise thereof which is brought about by the transfer of the right to enjoy such property: Section 105 of the Transfer of Property Act. Though the leasehold rights do not confer absolute estate by the law of property, it is recognised that it involves the transfer of a right to enjoy that property: see Byramjee Jeejeebhoy (P) Ltd. Vs. State of

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Maharashtra, and Giridhari Singh v. Megh Lal Pandey (1917) L.R. 44 LA. 246. Lease is not mere contract but something more, for it involves a transfer of interest in the land or building and creates a right in rem: Ragoonathdas Gopaldas v. Morarji Jutha ILR(1892) 16 Bom. 568. The right so held is a vested right and by itself is a right to property.. It is good against the whole world, subject, however, to the right of reversion reserved in favour of the lessor. The further estate of the lessee is the estate subject to succession and can vest in the heirs of the lessee: Gobind Lal Roy v. Hemendra Narain Roy Chowdhry (1889) ILR 17 Cal. 686, P.C.; M. Tej Chund Bahadur v. Sri Kanth Ghose (1844) 3 M.I.A. 261 and Venkatesh v. Bhujaballi AIR[1933] Bom. 97 : 35 Bom. L.R. 60. The transfer of property contemplated by Section 105 of the Transfer of Property Act thus clothes the lessee with immediate rights to possession and to enjoy the property. The concept of lease properly takes in a conveyance or a transfer by a person having an estate in the land conveying a portion of the interest therein to another. For a valid lease, there must be the minimum right to exclusive possession of the property which would take in possession in the legal and factual sense. The right to enjoy property depends upon and flows from the right to possess the same. Thus, in the context of the law of lease as operating upon lands and buildings, it has the effect of conveying or transferring the immediate fixed rights of person for future enjoyment and to clothe the person called the lessee with possession of the property.

10. This being the legal as well factual effect of creation of lease, we have no manner of doubt that the words "vesting in" available u/s 7(6) of the Act would cover the case where the building is taken by the State Government upon lease and the State Government under the lease is in possession.

11. That being the plain position, we find no merit in the present petition. The petition thus stands dismissed. No order as to costs.

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