
(1959) 11 MP CK 0013
In the Madhya Pradesh High Court
Case No : M.P. No. 313 of 1958

Central Provinces Manganese Ore Company, Ltd.	APPELLANT
Vs	
Head Quarters Deputy Collector, Balaghat	RESPONDENT

Date of Decision : 27-11-1959

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1960) J LJ 369 : (1959) MPLJ 265

Hon'ble Judges : P.V. Dixit, C.J.; N.M. Golwalker, J

Bench : Division Bench

Advocate : A.S. Bobde and K.K. Dube, for the Appellant; R.P. Verma for opposite party No. 2, for the Respondent

Final Decision : Allowed

Judgement

P.V. Dixit, C.J.

By this application under Articles 226 and 227 of the Constitution of India the Petitioner challenges the validity of assessment made by the Gram Panchayat, Bharweli, in respect of certain property within its area liable to tax u/s 41 of the C. P. and Berar Panchayats Act, 1946, and the rules made thereunder, and seeks a writ of certiorari to quash the determination of the Gram Panchayat regarding the assessment.

The matter for our consideration arises in this way. The Petitioner is a limited company doing the business of extracting manganese ore from lands situated in mauza Bharweli, tahsil and district Balaghat. It owns several buildings in the area, some of which are in the occupation of its employees, officers and workers. The Respondent No 2, Gram Panchayat, Bharweli, which is a body constituted under the Act, is required u/s 41 to impose a tax in respect of all buildings and non-agricultural lands within its area. The tax is payable by the occupier and where there is no occupier by the owner. The tax is imposed according to the rate and the method of assessment prescribed by the State Government under

the rules framed u/s 41 of the Act. These rules are contained in Clause XXIV of the Central Provinces and Berar Panchayats Rules, 1948. For the purpose of taxation, the Gram Panchayat valued separately the several buildings owned by the company but which were unoccupied. In some cases the buildings were divided into sections and valued accordingly for the purpose of assessment. The company objected to this method of assessment contending that the Gram Panchayat ought to have taxed all the buildings owned by it as one unit and that the maximum payable by the company was only Rs. 80 in respect of all the buildings owned by it and unoccupied and that, at any rate, the Gram Panchayat was not justified in dividing for the purpose of taxation a building entity into portions and value it accordingly. These contentions were negated by the Gram Panchayat; and the Deputy Collector, Balaghat, agreed with the method of assessment adopted by the Panchayat in an appeal preferred by the company.

Section 41 of the Central Provinces and Berar Panchayats Act, 1946 upon which the question of the method of assessment turns, runs as follows:

41 (1) (a) Except as provided in Clause (c) of this Sub-section the Gram Panchayat shall impose a tax in respect of all buildings and non-agricultural lands within the Gram Panchayat area.

(b) Such tax shall be payable by the occupier and where there is no occupier by the owner.

(c) The State Government shall prescribe the rate (or rates) of such tax and the method of assessment according to the value of building or land, and may prescribe a minimum value below which an assessment shall not be made.

The material rule of clause XXIV of the Rules is Rule 1 which provides:

In the first fortnight of the month of October preceding the year for which assessment is to be made, the Gram Panchayat shall prepare in the following form a list of occupiers and, where there are no occupiers, a list of owners possessing or owning, as the case may be, buildings and non-agricultural lands situated within the Gram Panchayat area.

Then comes a form containing six columns. The first and second columns relate to name of village and serial number. The third column is headed "name, father's /husband's name, and age of the Assessee". The headings of the fourth, fifth and sixth columns are reproduced below:

Particulars of buildings and non-agricultural lands occupied or owned by him/her within the Gram Panchayat area.

Value of the buildings and non-agricultural lands.

Amount of assessment.

The rule then goes on to say-

"The Secretary of the Gram Panchayat shall fill or get filled under his supervision

columns (1) to (i) of the above form and place the list before the Gram Panchayat. At a special meeting called for the purpose the Panchayat shall assess the value of the buildings and non-agricultural lands and assess the tax at the rates given below and fill in columns (5) and (6) of the above-mentioned form:-

Value of buildings or lands Amount of annual tax

Rs.

Rs.

300

or below

Rs.

301

to Rs.

500

2

Rs.

501

to Rs.

1,000

4

Rs.

1,001

to Rs.

2,000

7

Rs.

2,001

to Rs.

5,000

15

Rs.

5,001

to Rs.

10,000

30

Rs.

10,001

to Rs.

15,000

60

Above Rs.

15,000

80

Explanation: For calculating the value of a house, value of the superstructure and the value of the lands it stands on will be calculated.

This rule was amended in 1955 and after the amendment it was made clear that for the purposes of taxation the Gram Panchayat shall assess the value of each building and non-agricultural land separately and assess the tax at the rates given above.

It would be seen from the above provision that the tax is against a building and non-agricultural land dependent on its valuation, and it is payable by the occupier of the property and where there is no occupier by the owner himself. The unit of assessment is a building or a piece of land and not the owner or the occupier. The tax is not in the nature of a fixed or graduated levy on the ownership or occupancy of the property. The provision that the tax shall be payable by the occupier and where there is no occupier by the owner has been made with a view to providing a convenient mode for the realization of the tax by the Gram Panchayat. It is not a provision making the individual owner or occupier as the unit of assessment and making the valuation dependent upon the aggregate value of the property owned or occupied by him. This being the nature and import of the tax imposed by the Gram Panchayat on all buildings and lands within its area, it follows that for the purpose of taxation each building and each piece of non-agricultural land has to be valued separately and the owner or occupier, as the case may be, is liable to pay the tax in respect of each item of property so valued. The matter does not admit of any doubt after Rule 1 was amended in 1955 as stated earlier.

The assessment in question was for a period after the amendment that is to say, for the year 1958-59, and we should have thought it impossible to contend successfully that in respect of all buildings owned by the Petitioner-company and

unoccupied the tax payable by the company was on the aggregate value of all such buildings and that as the value exceeded Rs. 15,000, the total sum payable by the company was Rs. 80 only. But the argument that was presented before us by Shri Bobde, Learned Counsel appearing for the Petitioner, was that the words "shall impose a tax in respect of all buildings and non-agricultural lands" which occur in Clause (a) of Sub-section (1) of Section 41, read with Clause (b), as also the heading of columns (3), (4) and (5) of the form in Rule 1, indicate that a single tax is payable by a person in respect of all buildings owned by him and not occupied according to their aggregate value only; and that the amendment made in Rule 1 in 1955 was only for the purpose of separate assessment of buildings on the one hand and non-agricultural lands on the other.

We are unable to accept this contention which does not at all accord with the clear nature and import of the tax contemplated by Section 41(1). The expression "the Gram Panchayat shall impose a tax in respect of all buildings and non-agricultural lands" means no more than this that the Gram Panchayat shall impose a tax on all buildings and non-agricultural lands without exception. The indefinite article "a" used with the word "tax" has not the force of "one". The form in Rule 1 no doubt mentions "name, of the Assessee", "particulars of buildings and non-agricultural lands occupied or owned by him", and "value of the buildings and non-agricultural lands". The use of the plural word "buildings" along with the singular word "him" or "Assessee" may well be a defect in the drafting of the Act. But we cannot admit the proposition that the meaning to be given to Section 41 (I) has to be derived from the form prescribed by the State Government under its rule-making power. Scheduled forms are always a dangerous guide to the meaning of a statutory provision and the particular form in Rule 1 is no guide at all. Taking Section 41(1) by itself, we are of the opinion that if rationally and justly construed, it only leads to the conclusion that for the purpose of taxation the occupier or owner is liable to pay tax in respect of every building or non-agricultural land separately valued. It was to make this meaning of the provision further clear that the amendment was introduced in 1955. Its object was not to effect separate valuation of buildings on the one hand and of lands on the other, which is implicit in the scheme of the tax itself. The Gram Panchayat was, therefore, right in valuing each building separately and asking the Petitioner-company to pay in respect of each building so valued.

Learned Counsel for the Petitioner placed before us a decision of the Bombay High Court (Nagpur Bench) in *The Gram Panchayat Khairi v. The C. P. Manganese Ore. Company Ltd., Nagpur* and another S. C. A. No. 301 of 1957 decided on 21-1-1958. in which the view has been taken that though the tax u/s 41(1) is in respect of buildings, the rules in clause XXIV intend that whenever an owner or occupier owns or occupies and possesses more than one building, the value of all such buildings should be taken as a unit and the assessment should be made on such total valuation according to the rate prescribed. With all due deference to the learned Judges we are unable to agree with this view which proceeds more on a construction of the form in Rule 1 than on the provisions of Section 41 itself.

The learned Judges have not noticed the amendment made in 1955 in Rule 1.

The next submission which counsel for the Petitioner made was that the Gram Panchayat had valued some buildings in sections for the purpose of assessment, and that neither Section 41(1) nor Rule 1 gave the Gram Panchayat any authority to divide a building notionally into sections and assess it in parts. The question whether the Gram Panchayat has any right or discretion to tax a building in parts depends entirely on the true meaning of the word "building" in the context of Section 41(1) and Rule 1. Section 2 (1) (i-a) of the Panchayats Act, 1946, defines "building" as including in it "a hut, shed, house, shop, warehouse or workshop". These words enlarge the ordinary and natural meaning of the word "building" which is a thing composing of the fabric of the building and the ground that the fabric rests upon and encloses. The superstructure, which constitutes a building, is, according to its natural import, a concrete entity. By the definition given in the Act of the word "building", structure whether it is in the nature of a hut or a house or a shed or whether it is used or intended for a shop or a warehouse or a workshop would be none-the-less a building. The claim of the Gram Panchayat to assess separately parts of one entire and distinct building rests on the inclusion of "house" in the definition of "building". Now, the word "house" has no definite and fixed meaning. It takes its colour from the provisions in which it has been used. It may be used for dwelling, or may be not inhabited but used for the purpose of any trade or business or calling. It may be, as the inclusive definition itself indicates, a distinct structure or part of a building under one roof. The ambiguity of the word "house" was the subject-matter of discussion by the House of Lords in *Grant v. Langston* 1900 A. C. 383. In that case, which related to revenue on houses and tenements u/s 13 of the Customs and Inland Revenue Act, 1878, Lord Chancellor Earl of Halsbury said:

A hundred years ago there was not much difficulty in saying what was a "house", but builders and architects have so altered the construction of houses, and the habits of people have so altered in relation to them, that the word "house" has acquired an artificial meaning, and the word is no longer the expression of a simple idea; but to ascertain its meaning one must understand the subject-matter with respect to which it is used in order to arrive at the sense in which it is employed in a statute.

I think the original idea of an inhabited house was that of a building inhabited by one person (with his family) responsible for the tax, who was himself the inhabitant of the whole of the house. But very soon questions began to be raised as to what constituted the unity of a house; one side of a whole street is in one sense structurally one building, but the separate unity of each of the structures with all its arrangements for occupation by one family and its head was of course recognised as a house separately liable to the tax. Even semi-detached houses were always recognised as two houses, although they were structurally one and protected by one roof;

The Lord Chancellor and Lord Brampton cited with approval the opinion

expressed by Jessel M. R. in *Yorkshire Fire and Life Insurance Co. v. Clayton* 8 Q. B. D. 421. that:

Formerly, houses were built so that each house occupied a particular site, but in modern times a practice has grown up of putting separate houses one above the other. They are built in separate flats or storeys, but for all legal and ordinary purposes they are separate houses. Each is separately let and separately occupied, and has no connection with those above or below, except in so far as it may derive support from those below instead of from the ground as in the case of ordinary houses.

These observations offer a useful light in determining the question whether for purposes of taxation u/s 41(1) and Rule 1, it is permissible to divide a building nationally into sections or parts. It will be seen that u/s 41(1)(b) the occupier in the first instance is the person to be taxed, and where there is no occupier then the owner is taxed. The occupation spoken of in this provision is in the sense of rateable occupation and the effect of the provision is to give the Gram Panchayat an easy and a simple way to collect the tax where a building is occupied in parts. If a part of a building is so distinct and exclusive as to be capable of being a separate property or a distinct subject of lease, then it would be a "house" and a "building" for purposes of Section 41(1) and Rule 1 although it is not structurally distinct and divided and is part of a building under one roof. One must look to the building and its parts and have due regard to the purpose for which it is being used or is capable of being used in order to ascertain whether any part of the building is so separate from the rest of it as to be capable of being a distinct property or a distinct subject of lease so as to form an entirely separate house by itself. In order that a part of a building be a house, it is not necessary that it should be severed structurally from the rest of the building. If then the Gram Panchayat valued and assessed separately different parts of any building occupied by various workers, it cannot be contended that the Gram Panchayat was not justified in so dividing the building for purposes of taxation. The Gram Panchayat, no doubt, separately assessed various wards and rooms in hospital buildings. If the wards and the hospital rooms are parts of one entire and distinct building, then it must be said that the Gram Panchayat carried the matter much too far in separately assessing these wards and rooms. It is not possible to say anything here as to which building the Gram Panchayat should have taxed as one entire and distinct building and which it should have taxed in parts. As we have said above, the question has to be determined on the nature of the particular premises.

On behalf of the Gram Panchayat it was urged that the Petitioner was not entitled to any relief under Article 226 of the Constitution as the Deputy Collector, Balaghat, had, accepting the valuation put by the company itself on buildings, directed the Gram Panchayat to make a fresh assessment, and, therefore, there was no final assessment; that the petition had been filed nearly six months after the decision of the Deputy Collector, and that the Petitioner had the alternative

remedy of a suit. None of these grounds are, in our opinion, sufficient in the instant case to decline to exercise the power under Article 226 of the Constitution for quashing the decisions of the Deputy Collector and of the Gram Panchayat in so far as they relate to the assessment of certain buildings on a notional division. The delay in the filing of the petition has been sought to be explained by saying that it was due to the time taken by the head-office of the Petitioner-company in London in deciding whether they should move this Court under Article 226 of the Constitution. It is true that the Deputy Collector has directed the Gram Panchayat to make a fresh assessment. But what is really impugned in the present case is the principle of assessment and as has been shown above both the Gram Panchayat and the Deputy Collector went wrong in holding that in certain cases the division of a building for assessment was permissible. The matter of assessment under the Act is a recurring one and if one of the principles adopted by the taxing authorities is wrong, then it would not be proper for this Court to refuse to quash the decision of the taxing authorities based on a wrong principle merely on the ground of delay or the existence of an alternative remedy.

For these reasons, the decisions of the Gram Panchayat and that of the Deputy Collector, Balaghat, in so far as they relate to the division of certain buildings into parts for the purpose of assessment are quashed and the Gram Panchayat is directed to value these buildings for assessment in the light of what has been said above. Having regard to the nature of the question raised, and to the circumstance that on an important point as to the valuation of the buildings as one unit, the Petitioner's contention has not been successful, we think there should be no costs for any of the parties here. The outstanding amount of the security deposit shall be refunded to the Petitioner.