

(1979) 06 MAD CK 0051

In the Madras High Court

Case No : Writ Petition No's. 4132 to 4134 of 1975

Messrs. Sarada Binding Works, Madras and others

APPELLANT

Vs

The Assistant Commissioner of Urban Land Tax, Madras-84

RESPONDENT

Date of Decision : 12-06-1979

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1979) 06 MAD CK 0051

Hon'ble Judges : Ratnavel Pandian, J;Ramanujam, J

Bench : Division Bench

Advocate : M. Uthama Reddy, for the Appellant; K. Venkataswami, Addl. Govt. Pleader, for the Respondent

Judgement

Ramanujam, J.—All the above writ petitions raise a common question of law, and, therefore, they are dealt with together. The petitioners are the owners of door Nos. 1 to 3, Arcot Road, all situate in T.S. No. 5 of Kodambakkam in Madras city. All the said three door numbers had been purchased originally by Mr. B. Nagi Reddi, along with other items of lands in all measuring 13.22 acres, under a sale deed, dated 23rd April, 1961, at an average price of Rs. 1,560 per ground. The petitioners filed returns under S. 7(a) of the Tamil Nadu Urban Land Tax Act, on 17th November, 1971, giving the market value of the lands in their occupation on that basis. However, they were served with a notice, dated 30th April, 1975, by the respondent provisionally fixing the market value of the lands in their occupation at Rs. 8,000 per ground for the purpose of collecting Urban land tax. The petitioners have challenged the validity of the said notice on the following grounds--(1) The notice issued by the respondent under S.M.(1) of the Tamil Nadu Urban Land Tax Act 1966, is patently violative of the petitioners' fundamental rights as the levy of urban land tax on the market value of each urban land which is defined as a survey number or a sub-division number under the Act contravenes Art.14 of the Constitution in the same way as S.3 of the Madras Urban Land Tax Act, 1963, which levied a specified rate of tax on the average market value of the urban land in a sub-zone, operated unequally on

different owners of the same survey number or the same sub-division number; (2) The impugned notice issued by the respondent determining provisionally the market value of urban land of a total extent of 569 grounds on the basis of a solitary sale of a small extent of one ground and 900 sq.ft. in T.S. No. 74, which is nearly two miles away from the lands of the petitioners towards the heart of the city, is on the face of it illegal and arbitrary; (3) the notice issued by the respondent to the petitioner in W.P. No. 4132 of 1975 and two others who are not joint owners is on the face of it illegal and without jurisdiction; and (4) The respondent has acted illegally in ignoring the purchase price in 1961 of 13 acres and 22 cents including the urban lands in question, and in relying on a sale of small extent of 1 ground and 900 sq.ft. in T.S. No.74 in 1961 which is far away. In the counter affidavit filed by the respondent it has been, pointed out that the market value of the urban land was provisionally determined at Rs.8,000 after taking into consideration all aspect, such as, locational advantages, potential value, etc., that it was done strictly in accordance with the provisions of the Tamil Nadu Urban Land Tax Act 1966, that under the Act, the market value of each urban land has to be determined with reference to the survey number or sub-division number and it will be apportioned under the Act by the Collecting Agency, the Urban Land Tax Officer, in accordance with Rule 20 of the Tamil Nadu Urban Land Tax Rules, 1966. It is said that the market value of the land in question has been determined at Rs. 8,000 per ground taking the entire survey number as the basis, that such a basis is strictly in accordance with the provisions of the Act, that the fixing of market value of land at Rs. 8,000 per ground was done after considering all the aspects, such as locational advantages, etc., that the question of ownership could have been rectified had the assessee appeared on the enquiry date, the sale transactions of the year 1961 relating to the same survey number does not reflect the true market value, as the sale consideration might have been undervalued in order to avoid higher stamp duty.

2. Of these rival contentions the main question to be considered is as to whether the determining of the market value taking the land in a survey number or a subdivision number as a unit of valuation for the purpose of assessment to urban land tax, contravenes Art.14 of the Constitution of India, as imposing an unequal burden on the assesseees. The other questions urged by the petitioners, relating to the fixation of the market value of Rs.8,000 per ground by the authority based on the sale of 1900 grounds in T.S. No. 74, etc, need not be considered, as these contentions have to be canvassed in appeal under S.20 of the Act by the Urban Land tax Tribunal after the regular assessment is made based on the impugned notice.

3. The petitioner in W. P. No. 4132 of 1975 owns 1.33 acres in T.S. No, 5, the petitioner in W.P. No. 4135 of 1975 owns 4.89 acres and the petitioner in W.P. No. 4134 of 1975 owns 22.10 acres in the same T.S. No. T.S. No.5 consists of a large extent of lands of 24 cawmies, 22 grounds and 308 sq.ft. Portions of the T. S. number are separately owned by the three petitioners and 10 others. The entire T. S. number measuring 598--308 grounds had been provisionally valued

in the impugned notice at Rs.8,000 per ground on the basis of a sale deed, dated 13th November, 1961 relating to T. S. No. 74 in Block No.29 of Puliyur village, which fetched a price of Rs.6,500 per ground. According to the respondent, the urban lands comprised in T. S. No.5 are in a better commercial locality than T. S. No.74, and as the price of the lands has increased in this locality since 13th November, 1961, a percentage of increase has to be allowed on the sale price of Rs.6,500 fetched by T.S. No. 74. On this basis, the respondent fixed the market value of T. S. No.5 at Rs.8,000 per ground. After fixing the market rate at Rs.8,000 per ground, the said rate was applied to the extent of urban land held by each of the petitioners and ten others. There is no dispute as regards the facts stated above,

4. Mr. Uthama Reddy, the learned counsel for the petitioners, contends that the basis adopted by the respondent of fixing the average market price of the entire T. S. No. 5 at Rs.8,000 per ground and applying that rate to all the urban lands in that T. S. Number held by various persons is clearly arbitrary as it imposes unequal burden on the owners. It is said that out of the lands of 598-308 grounds comprised in T. S. 5, the portion abutting the road may be of considerable value, and the portions of the lands at the farther end of the road may not be so valuable. By adopting the average market value of Rs.8,000 per ground for all lands in T. S. No. 5 the owner of the portion adjoining the road and the owner of the portions situate farther from the road are both made to pay at the same rate of Rs.8,000 per ground and this results in an inequality in the incidence of tax. According to the learned counsel the definition of each urban land as meaning a survey number or a sub-division number, without reference to the extent of the lands comprised in the survey number or subdivision number and the person owing it has created such an untenable situation in the matter of levy of urban land tax and, therefore, the fixation of market value for each urban land under S.6 should be taken to be bad.

5. The learned counsel for the petitioners refers to the decision rendered by a Division Bench of this Court in *Buckingham Carnatic Co. Ltd. v. State of Madras* 1966-2 M.L.J. 172 which practically dealt with a similar situation arising under the provisions of the Madras Urban Land Tax Act, 1963. Under the said Act, the tax was levied on an urban land not on actual market value, but on the average value of land in a locality known as "sub-zone". The charging section expressly adopted the average market value of the urban land in a sub-zone as determined under S.7(2) of that Act, as the basis for determination of the extent of liability to tax on the urban land. It was contended before the Bench that the said Act offends Art. 14 of the Constitution, as it purports to impose on the same class of property similarly situated an incidence of taxation, which leads to obvious inequality. This contention was upheld by the Bench on the ground that the charging section expressly adopted the average market value of the urban land in a sub-zone as the basis for the determination of the tax liability on the urban land, that the tax is not based on the actual market value of the urban land which is taxed, that therefore, the burden which is unrelated to the actual

market value of the urban land thus falls unequally upon lands and consequently, on their owners or occupiers, that though the Legislature has ample discretion to make such classification as it chooses for the purpose of taxation it cannot resort to the system of average market price of land for the purpose of applying the rate of tax, which clearly leads to inequality in the incidence of tax and that the inequality is so patent ex facie in the charging section. In this view the Bench held Ss. 3, 6 and 7 of the Act to be bad as contravening Art. 14 of the Constitution. As without the charging section, the rest of the Act cannot independently exist and operate, the entire Act was struck down. The Bench gave the following illustration to demonstrate how a tax burden falls unevenly if the average market value of the urban land is adopted:

" If, for instance, a sub-zone consists of two pieces of urban lands owned by two different persons and the market value of one of which is Rs. 10,000 per ground and the other Rs. 5,000 per ground, the average market value is arrived at by adding the two figures and dividing the total by two. The result is that the average market value per ground in the sub-zone will be Rs. 7500 per ground. If the rate of 0-4 per centum of the average market value is applied the burden of incidence of tax on the land whose market value is Rs. 5000, is obviously heavier on the basis of the higher average market value and the burden is less for the other piece of land whose market value is higher than the average market value. The burden which is unrelated to the market value thus falls unequally upon lands and consequently on their owners or occupiers. Urban lands in the same sub-zone are made to bear unequal burden, unequal in the sense that the burden is not related to the market value of each urban land but on the average market value applied to it. Urban land of lesser market value has to pay a heavier tax than similar land but of higher value which bears on account of the averaging with the other land, a lower tax."

6. The learned counsel for the petitioners points out that though under the new Act, the zonal basis adopted in the earlier Act has been given up and a new system based on survey numbers or sub-division numbers has been introduced under the 1966 Act, the new basis also suffers from the same defect as was pointed out by the Division Bench in the above case. According to the learned counsel, except the re-placing of the word "zone" by a survey number, the defect pointed out by the learned Judges in that case had not been removed by the Legislature and even under the new Act if the portions of the same survey number or sub-division number having different locational advantages and potential value are owned by different individual, the assessment is made only by adopting an average market value and applying the said average rate to all portions of the land in the same survey number or the same sub-division number without there being no determination of the market value of the particular urban, land, which is taken for assessment.

7. On a fair reading of the provisions of the Tamil Nadu Urban Land Tax Act, 1966, and on a comparison of the said provisions with the provisions of the Act

of 1963, we cannot accept the view that the defect pointed out by the Bench in the above decision had not been cured at all, and the objection based on an unequal burden continues to exist even under the new Act.

8. S. 2 (1) defines "assessee" as a person by whom urban land tax is payable under the Act. S.2 (6) defines "each urban land" as a land comprised in a survey number or a subdivision number. S.2 (13) defines "urban land" as any land which is used or is capable of being used as a building site and includes garden or grounds, if any, appurtenant to a building but does not include any land which is registered as wet in the revenue accounts of the Government and used for the cultivation of wet crops. S. 5 is the charging section and it levies for each fasli year commencing from the date of the commencement of the Act, a tax on each urban land from the owner of such urban land. S. 6 provides for the determination of the market value of the urban land and it says that the market value of any urban land shall be estimated to be the price, which such urban land would have fetched or fetch, if sold in the open market on the date of the commencement of the Act. A close reading of the charging section along with the definition of "each urban land" under S. 2 (6) indicates that the levy of urban land is on each urban land comprised in a survey number or sub-division number held by the owner. If different portions of same survey number or sub-division number are owned by different individuals according to the charging section, tax has to be levied on each of such portions, that is, land held by the owner. In each survey number or sub-division number, is, to be taken as a unit for purposes of valuation and assessment and not his entire holdings as such. If a person owns two items of urban land comprised in different survey numbers, then he has to be assessed to tax taking the two items of urban land as two units of assessment. A conjoint reading of S. 5 and the definition of "each urban land" merely indicates that the land held by a person in a particular survey number should be taken as a unit of charge and the entire holding of the person cannot be treated as a unit of charge except when his entire holding is in one survey number. Thus, the levy under the Act is in respect of that urban land which is owned by an individual in a particular survey number. Take a case where a land comprised in a particular survey number is owned separately by ten individuals, As per the charging section tax has to be levied separately on the ten holdings by estimating the market value of the land in each holding if the owner has more than one item of urban land situate in more than one survey number, the entire holding of the owner is not taken as a unit, but the land owned by him in each survey number is taken as unit for purposes of valuation. Thus if urban lands in a survey number are owned by various individuals each portion of the survey number owned by different individuals is to be separately valued.

9. However, the basis adopted by the authorities constituted under the Act as is clear from the counter affidavit filed by the respondent in this case appears to be different. In the counter affidavit it has been stated that the market value of each urban land has to be determined with reference to each survey number or sub-division number and that the assessment under the Act is made survey

number wise. The determination of an average market value of the land situated in the same survey number as has been done now by the authorities under the Act, does not seem to have been contemplated by S. 6 which provides for the determination of the market value. S. 6 gives a mandate to the assessing Authority to determine the market value of any urban land at a price which it would have fetched or fetch, if sold in the open market on the date of the commencement of the Act. This section seems to suggest that the market value of each individual holding in a survey number has to be separately determined and the tax at the rate specified in the schedule has to be imposed on that market value. The rates given in the schedule to the Act which stand attracted by S. 5 also contemplate an individual holding in a survey number being a unit for assessment. As the rate of tax depends on the extent of the urban land held by the owner, there is no possibility of making any assessment on all the lands comprised in a survey number irrespective of its ownership or its extent. S. 5 uses the words "each urban land" and "each urban land has been defined as meaning the land comprised in a survey number or a sub-division. These provisions do not at all show that survey number or its sub-division has been treated as a unit for purposes of valuation as urged by the petitioners and as wrongly assumed by the respondent.

10. According to the petitioner's learned counsel, if S. 5 is interpreted without reference to the definition of "each urban land" in S.2 (6), it may not be open to any objection, as the levy can be made on each urban land held by the individual owner by determining its market value under S. 6, but the difficulty arises only when the definition of "each urban land" occurring in S. 2 (6) is imported in S. 5 and if S. 5 is read in the light of the definition of "each urban land", it will definitely lead to imposition of unequal burden on owners of properties. If, for instance a survey number consists of two pieces of urban land owned by two different persons and the market value of one is Rs. 10,000 per ground and the other Rs. 5,000 per ground, the average market value arrived at by adding the value per ground in the survey number will be Rs. 7,500 per ground. If the rate of tax mentioned in the schedule to the Act based on the market value is applied, the burden of incidence of tax on the land, whose market value is Rs. 5,000 per ground will be obviously higher on the basis of the higher average market value and the burden is less on the other piece of land, whose market value is higher than the average market value. Thus, the burden, which is unrelated to the market value falls unequally upon lands and consequently on their owners. Thus the urban lands in the same survey number are made to bear unequal burden, unequal in the sense that the burden is not related to the market value of each urban land, but on the average market value applied to it. There-suit is an urban land holder of lesser market value has to pay a heavier tax than the landholder of smaller land, and the urban land of higher market value bears a lower tax.

11. We are not, however, inclined to accept the petitioners' contention that the Legislature had resorted to the system of taking the lands situated in a survey number as the basis or unit for determining the market value, in the place of the

zone or sub-zone adopted in the earlier Act, and that, therefore, the charging section suffers from the same infirmity as was pointed out in the decision referred to above. We are not inclined to treat S.2(6) defining "each urban land" as lands comprised in a survey number of a subdivision as a mandate to take each survey number or sub-division as the basis or unit for purposes of valuation. But for the said definition all the items of urban lands held by the owner in different survey numbers will have to be taken as a unit for purposes of valuation. By virtue of the definition the urban lands held by the owner in each survey number will have to be taken as a unit for purposes of valuation and not the entire holding. Suppose a person owns an urban land comprised in ten different survey numbers. S.5 directs the urban land held by that person to be valued as per S. 6. There may be difficulty in determining the value of a bit of land situate in ten survey numbers and it is to avoid that difficulty, the definition of each urban land has been put in to enable the authorities to treat the lands situate in a survey number as a unit for purposes of valuation. We cannot, therefore, construe the said definition in the manner suggested by the learned counsel. The definition has been put in only for the purpose of treating a holding of a person as different units of urban land and not to treat a survey number as a unit irrespective of its ownership or its extent.

12. In the case before us, the survey number consists of 598-308 grounds and portions of it are separately owned by 13 persons, the petitioners and ten others. An average rate of Rs.8,000 per ground has been determined and the market value of such individual holding is notified on that basis in the impugned notice. There cannot be any dispute that the entire extent of land in T. S. No. 5 cannot be said to have the same advantage and therefore, they are of similar value. Adoption of same market rate for a large extent of lands, such as 598-308 grounds merely because it is comprised in the same survey number without reference to their ownership and without determining the market value of each holding, obviously results in an unequal burden on the various urban lands in different holdings and consequently on the various owners. It is in this view of the matter we feel that market value proposed in the impugned notice suffers from the defect pointed out by the Bench in the *Buckingham and Carnatic Co. Ltd. v. State of Madras* 1966-2 M.L.J. 172 as it results in an unequal burden on owners of urban lands. Such a wrong valuation has arisen not because of any defect in the charging section but because of an erroneous interpretation by the authorities of the definition in S.2 (6) defining "each urban land". We have no hesitation, therefore, in holding that S. 5 read with the definition of "each urban land" in S.2 (6), does not contravene Art. 14 of the Constitution as urged by the petitioners, but that the impugned notice proposing to value the lands held by the petitioners taking the entire survey number 5 as a unit for purposes of valuation infringes Art. 14 of the Constitution. As a matter of fact without the specific definition of "each urban land" as is contained in S. 2(6), the charging S.5 and S.6 can operate without infringing Art.14 of the Constitution. Though S.5 contains the word "each of urban land", without the specific definition in S. 2(6),

the words will refer only to the individual holding of urban land which comes up for levy and they will not refer to any survey number or sub-division number, The definition of "each urban land" in S.2(6) has to be understood as supplementing the charging section and not as nullifying the same. Thus the definition can be understood only as enabling the authority to split up the holding of urban lands of an owner on the basis of survey number or sub-division number for purposes of valuation. But for the said definition of "each urban land" the entire holding of a person has to be taken as a unit for the purpose of valuation under S.6 leading to considerable difficulty and complications in the matter of valuation. In any event, the definition in S.2(6) is severable from the other provisions of that Act and the Act can operate fully and effectively even without that definition. It is not, therefore, possible to invalidate Ss.5 and 6 as urged by the learned counsel for the petitioners. In this view of the matter, the writ petitions are allowed, and the impugned notices are quashed with a direction to the respondent to determine separately the market value of the holding of each of the petitioners with reference to its situational advantages and to finalise the assessment after giving notice to the petitioners and after considering the objections of the petitioners. The petitioners will be entitled to their costs; counsel's fee Rs.200 each.