

(1964) 12 AHC CK 0026
In the Allahabad High Court
Case No : Civil Misc. Writ No. 3104 of 1963

Municipal Board

APPELLANT

Vs

District Magistrate and Another

RESPONDENT

Date of Decision : 09-12-1964

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 140(1)

Citation : AIR 1966 All 37

Hon'ble Judges : R.S. Pathak, J

Bench : Single Bench

Advocate : P.C. Gupta, for the Appellant; L.P. Naithain and S.C., for the Respondent

Final Decision : Allowed

Judgement

R.S. Pathak, J.—This petition under Article 226 of the Constitution raises a short but interesting question as to the interpretation of Section 140 of the U. P. Municipalities Act.

2. One Lala Jagdish Prasad the second respondent, owns a building which consists of twenty one godowns. The godowns are employed for the storage of goods and for this purpose have been let out to different parties. For the purpose of determining the "annual value" of the building under the U. P. Municipalities Act, the Tax Superintendent of Municipal Board, Muzaffarnagar made enquiries and submitted his report to the Executive Officer. On April 4, 1962, the Tax Committee of the Municipal Board determined the "annual value" of the building for the years 1958-59 to 1962-63 at Rs. 8,240 on the method of computation set out in Section 140 (1) (b) of the Act, holding it to be a building other than that falling within the provisions of Section 140 (1) (a). On this basis, house tax was fixed at Rs. 2,008.50. The second respondent preferred an appeal before the District Magistrate against the assessment and the latter came to the opinion that the "annual value" of the building fell to be computed on the basis provided under Clause (a), and not Clause (b), of Sub-section (1) of Section 140. He took

this view on the finding that the second respondent let out the godowns on a daily charge and did not charge rent by the month or a longer unit of time.

3. The Municipal Board, aggrieved by the order of the District Magistrate, has filed the instant petition for certiorari.

4. The only question for consideration is whether the circumstance that a daily charge is levied in respect of the godowns and that rent is not recovered on a monthly basis is a proper test in law for determining whether the building should be considered under Clause (a) or Clause (b) of Sub-section (1) of Section 140 for the purpose of computing its "annual value".

Section 140 (1) defines "annual value" as meaning:--

"(a) in the case of railway stations, hotels, colleges, schools, hospitals, factories and other such buildings, a proportion not exceeding five per centum to be fixed by rule made in this behalf of the sum obtained by adding the estimated present cost of erecting the building to the estimated value of the land appurtenant thereto; and

(b) in the case of a building or land not falling within the provisions of Clause (a), the gross annual rent for which such building, exclusive of furniture or machinery therein, or such land is actually let, or where the building or land is not let or in the opinion of the Board is let for a sum less than its fair letting value might reasonably be expected to let from year to year". The "annual value" is determined because under the U. P. Municipalities Act it is taken into consideration in the assessment of a tax on the annual value of building, in the assessment of water tax, and in the determination of a scavenging tax or a tax for the cleansing of latrines and privies. In order to determine the tax on the "annual value" of buildings, the Municipal Board causes an assessment list of the buildings to be prepared. This list contains several particulars including the annual letting value or other particulars determining the annual value and the amount of tax assessed thereon. The assessment list is published and objections are invited to the valuation and assessment. After the objections are disposed of and the resulting amendments, if any, have been made in the assessment list, the list is authenticated by the signature of the appropriate authority and is then deposited in the Municipal Office and thereupon declared to be open for inspection. Such an assessment list is ordinarily prepared once in every five years, and the valuation and assessment entered therein are valid from the date on which the list takes effect in the Municipality until the first day of April next following the; completion of the new list. The assessment list is open to amendment and alteration at any time in respect of a number of matters, among them being the revaluing or reassessing of the property the value of which has been increased by additions or alterations.

5. It must be remembered that the tax imposed is a tax on the "annual value" of a building. It is not a tax on the "annual value" of a railway station or a hotel or a college, etc. The building may be used as a railway station, hotel, college, etc.,

and the character of the user determines the basis on which the annual value of the building will be determined. If it is a building which is used as a railway station, hotel, college, etc., its "annual value" will be determined on the basis provided in Clause (a). If it is a building which is not being used as a railway station, hotel, college, etc., falling within the provisions of Clause (a) its "annual value" must be determined by reference to Clause (b). It is one thing to say that there is a building, it is quite another to say that the building is used as a railway station, hotel, college, etc. A distinction exists between the two ideas. The former connotes the nature of the object, which is fixed in mental concept and is not normally variable, the latter treats of the nature of its user which may vary according to circumstances. There can be little dispute that a building which is today used as a hotel or a college may at another time be used for the purpose of private residence. Accordingly, while the incidence of the tax is made dependent on the existence of a building, what should be the amount of that tax is determined by the use to which the building is applied at the time of the levy.

6. Now, Clause (a) enumerates "railway stations, hotels, colleges, schools, hospitals, factories and other such buildings". The phrase "other such buildings" will include such buildings as by the rule of *eiusdem generis* are related in kind to railway stations, hotels, colleges, etc., which precede that phrase. One quality common to all of them is that they refer to a use which caters to a public need. In all these cases, one conceives of a building applied to a purpose impregnated with the element of public utility. Whether it is a railway station, hotel, college, school, hospital or factory, it is the element of public utility, public welfare, public use, or, in other words, that which is related to a public need or the commonweal, which runs through Clause (a) in common emphasis. The phrase "other such buildings" must, therefore, refer to buildings whose user at the relevant time bears a character partaking of the same emphasis.

This distinction which divides Clause (a) from Clause (b) is reflected in the basis for computing the annual value. In Clause (a), the annual value is determined by reference to the present cost of constructing the building added to the estimated value of the appurtenant land. The quantum of the "annual value" being dependent on the use to which the building is put, this, and not letting value, is the basis adopted by the statute because it is difficult to conceive of a building when used as a railway station, hotel, college, school, hospital or factory being ordinarily open to letting out. All other buildings are covered by Clause (b) where the letting value provides the referential basis for calculating the "annual value".

7. In my judgment, these are the broad considerations upon which it must be determined whether the "annual value" of a building is to be computed under Clause (a) or Clause (b) of Sub-section (1) of Section 140.

8. The District Magistrate in the instant case applied himself to the question whether the godowns were let out on a daily charge or on rent for a longer unit of time. Holding that they were let out on a daily charge, he came to the conclusion that the building fell within the provisions of Clause (a). This test, it

seems to me, ignores the considerations underlying the classification envisaged in Clauses (a) and (b), to which I have adverted above. The impugned order must, therefore, be quashed.

9. Learned counsel for the second respondent contends that the petitioner is not entitled to relief because the impugned order does not contain any manifest error of law. The contention cannot be accepted. The District Magistrate, it is plain, proceeded to decide the case on a basis which was entirely erroneous and was not justified upon the provisions of Section 140 (1).

10. The petition is allowed. A writ in the nature of certiorari shall issue quashing the order dated May 14, 1963, made by the District Magistrate in Appeal No. 19 of 1962 (L. Jagdish Prasad v. Municipal Board, Muzaffarnagar). The District Magistrate shall now dispose of the appeal in accordance with law. The petitioner is entitled to its costs.