

(2000) 10 AHC CK 0010
In the Allahabad High Court
Case No : C.M.W.P. No. 33380 of 1999

Nagar Palika Parishad, Sardhana, Meerut and another	APPELLANT
Vs	
Chandra Prakash and another	RESPONDENT

Date of Decision : 18-10-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Consumer Protection Act, 1986 — Section 2
Uttar Pradesh Municipalities Act, 1916 — Section 140, 140(1), 160, 161

Citation : AIR 2001 All 52 : (2000) 4 AWC 3397 : (2000) 91 RD 759

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : P.S. Baghel, for the Appellant; S.C., Navin Sinha and Vipin sinha, for the Respondent

Judgement

O. P. Garg, J.—The moot point involved in the present writ petition under Article 226 of the Constitution of India is whether the annual value for the purposes of assessment of municipal taxes of premises No. 193, Gandhi Nagar, Sardhana in district Meerut owned by respondent No. 1 and under the tenancy of the State Bank of India is to be determined under the provisions of clause (a) or (b) of Section 140 (1) of the U. P. Municipalities Act (hereinafter referred to as "the Act"). This controversy has come up in the wake of the following facts.

2. It is an admitted fact that the building in question of which the respondent No. 1 is the owner is under the tenancy of the State Bank of India, Sardhana Branch at a monthly rent of Rs. 7,100. The annual rental value for the purposes of payment of municipal taxes has been assessed at Rs. 85,200 = (Rs. 7100 x 12). The total amount of the house tax calculated at the rate of the annual rent and the water tax comes to Rs. 8,520 on each of the two counts. It is alleged that the annual rental value was finalised after due service of the notices on respondent No. 1 but he failed to enter any response. Subsequently, the respondent No. 1 filed an appeal u/s 160 of the Act. This appeal was allowed by the Chief Judicial Magistrate, Meerut, by order dated 4.6.1999 with the direction

that the assessment of the annual rental value shall be determined with reference to the provisions of Section 140 (1) (a) of the Act and not under clause (b). It is against this order that the Nagar Palika Parishad, Sardhana, has come before this Court by filing the writ petition with the prayer that the impugned order dated 4.6.1999 directing the petitioner to calculate the assessment u/s 140 (1) (a) of the Act passed by the Chief Judicial Magistrate, Meerut, Annexure-5 to the petition be quashed.

3. Counter and rejoinder-affidavits have been exchanged.

4. Heard Sri P. S. Baghel, learned counsel for the petitioners and Sri Naveen Sinha, appearing on behalf of respondent No. 1.

5. It is an indubitable fact that the disputed property, which is located within the municipal limits of Nagar Palika Parishad. Sardhana, is under the tenancy of the State Bank of India. Sardhana Branch. It is accepted at all hands that the monthly rent which was being paid by the State Bank of India to the respondent No. 1 was Rs. 7,100 at the relevant time. The said building undoubtedly is subject to assessment for the purposes of municipal taxes. The Nagar Palika Parishad assessed the annual value of the building on the basis of its letting value of Rs. 7,100 per month, obviously by invoking the provisions of clause (b) of Section 140 (1) of the Act. Aggrieved, the respondent No. 1 preferred an appeal u/s 160 of the Act to challenge the basis of the determination of the annual value. According to respondent No. 1 the annual value should have been arrived at by invocation of clause (a) of Section 140 (1) of the Act not clause (b). The contention of respondent No. 1 was accepted by the appellate court below, i.e. Chief Judicial Magistrate. Meerut. On behalf of petitioner, Nagar Palika Parishad it was urged that the Nagar Palika Parishad has adopted a rational legal basis of determining the annual value on the strength of rental income from the building in question and that the order passed by the appellate court is illegal. It was also urged that the appeal filed by respondent No. 1 u/s 160 of the Act was not only barred by time, but was also not maintainable on account of failure of the respondent No. 1 to deposit the amount of tax, which was a prerequisite for entertaining the appeal as contemplated u/s 161 (b) of the Act. Sri P. S. Baghel pointed out that both these contentions raised by the petitioners were negatived by the appellate court without applying mind to the real controversy and since the appeal was not maintainable the impugned order could not be passed. Sri Naveen Sinha has repelled all these submissions.

6. The delay in filing the appeal was condoned. it is true that an appeal u/s 160 is maintainable only after depositing the amount of tax claimed from the respondent No. 1. The provision of Section 161 (b) is explicit and mandatory and admits of no exception. This aspect of the matter was ignored by the appellate court as no valid reasons could be assigned to entertain the appeal. The appeal obviously was incompetent as it was in flagrant violation of the mandatory provisions of Section 161 of the Act. Be that as it may, now the question is as to under what provision-whether clause (a) or (b) of Section 140 (1) the

assessment of the annual value of the building in question is to be made. Unmindful of the decision made in appeal and with a view to put an end to the controversy, I feel it proper to decide this question so that the parties may not toss about in the vortex of the legal quibblings. In order to appreciate the controversy, it would be worthwhile to reproduce the provisions of Section 140 of the Act, which run as follows :

"140. Definition of annual value.--(1) "Annual value" means,--

(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 Municipality is let for a sum less than its fair letting value, might reasonably be expected to let from year to year :

Provided that where the annual value of any building would, by reason of exceptional circumstances, in the opinion of the Municipality be excessive if calculated in the aforesaid manner, the Municipality may fix the annual value at any less amount which appears to it equitable."

A bare reading of the above provisions would make it clear that the buildings existing in the municipal area have come to be divided into two distinct categories. firstly those used as railway stations, hotels, colleges, schools, hospitals and factories including other such buildings and secondly those not used as such, but have been actually let out and if not actually let out it might reasonably be expected to let from year to year. The purpose of determining the annual valuation of building is the levy of taxes under the Act. If a building falls in any of the categories mentioned in clause (a), it cannot possibly fall within the ambit of clause (b). In other words, where clause (a) applies, clause (b) would not be attracted. Both the clauses are mutually exclusive and the former excludes the latter. This view was taken in the case of Nagar Mahapalika of the City of Kanpur v. Additional Commissioner. Allahabad 1963 ALJ 932. In another case in Godraj Dharji Shah Gandhi v. Municipal Board and another 1973 ALJ 476. a Division Bench of this Court took the view that clause (b) of sub-section (1) of Section 140 is the clause which applies to all buildings except which are covered by clause (a).

7. The simple submission of the learned counsel for the petitioner is that since the building in question had been let out to the State Bank of India, Sardhana Branch and is fetching rental Income at the rate of Rs. 7,100 per month it would, for the purpose for determination of annual value, fall within the ambit of clause (b) and not (a). Sri Naveen Sinha was vehement in his argument that since the

building in question is being used for housing a bank, which subserves public purpose, it would be covered by the expression "other such buildings" occurring in clause (a) of Section 140 (1) of the Act. The thrust appears to be that the expression "other such buildings" encompasses within its sweep the building which is being used for public purposes such as a bank, even though it has been let out and consequently outside the ambit of clause (b) Sri Naveen Sinha placed reliance on the decisions of this Court in *Municipal Board, Muzaffanagar v. District Magistrate. Muzaffanagar* and another AIR 1996 All 37 to support his contention that the user of the building is the dominant and determining factor. In that case the building which was subject matter of assessment consisted of godowns let out on a daily charge and not by the monthly or a longer unit of time. The District Magistrate, who was the competent authority in the matter, decided that the annual value of the building was to be computed on the basis provided under clause (a) and not under clause (b) of Section 140 (1) of the Act. It was held that the test applied by the District Magistrate was erroneous. In the said case, it was observed that the "annual value" is determined because under the 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. The tax imposed is on the "annual value" of a building and not a tax on the "annual value" of a railway station or a hotel or a college, etc. The incidence of the tax is made dependent on the existence of a building but the amount of that tax is determined by the use to which the building is put at the time of its levy. Clause (a) enumerates "railway stations, hotels, colleges, schools, hospitals, factories and other such buildings". The words "other such buildings" are to be construed ejusdem generis to include such buildings as by that rule, 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. This distinction between clause (a) and clause (b) is reflected in the basis for computing the annual value. In the former clause, 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" is dependent on the use to which the building is put and this, and not letting value. Is therefore, the basis adopted by the statute, for 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. Clause (b) covers all other buildings, where the letting value provides the referential basis for calculating the "annual value".

8. On the plank of the above observations. Sri Naveen Sinha argued that the State Bank of India undoubtedly caters to the public need, probably in much larger area and magnitude than a factory. A reference was made to the decision of the Apex Court in *Lucknow Development Authority Vs. M.K. Gupta*, . In which concept of social oriented legislation came to be considered with reference to the language applied in the Consumer Protection Act (Act No. 68 of 1986). The

expression "service" occurring in Section 2 (o) of the Consumer Protection Act, which means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply to electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other Information came to be expanded. It was held that the expression "service" is not only extended to actual users but those who are capable of using it are covered in the definition. The banking and financing were held to be wide-ranging activities in day-to-day life. They are discharged both by statutory and private bodies. When banks advance loan or accept deposit or provide facility of locker they undoubtedly render public service. On the strength of above observations a foundation was laid to suggest that since the bank caters to the public need, it would be covered by the expression "such other buildings" as incorporated in clause (a) of the Act meaning thereby the banking activities have to be taken at par with the purpose and objects which the establishments like railway stations, hotels, colleges, schools, hospitals and factories fulfil. This submission takes us to the interpretation of the principle of ejusdem generis in relation to the expression "such other buildings" used in clause (a) of Section 140 (1) of the Act.

9. The rule of ejusdem generis has come to be interpreted in the various decisions of the Apex Court in Assistant Collector of Central Excise v. Ramdev Tobacco Co.. 1199 12 SCC 119 : K. Veeraswami Vs. Union of India (UOI) and Others, ; G. Claridge and Company Limited Vs. Collector of Central Excise, Pune, ; M/s. Oswal Agro Mills Ltd. Vs. Collector of Central Excise and others etc. etc., ; Calcutta Municipal Corporation and others Vs. East India Hotels Ltd. and others, ; H.R. Adyanthaya Vs. Sandoz (India) Ltd., etc. etc., : Dipali Katia Chadha v. Union of India, (1996) 7 SCC 432; Housing Board of Haryana Vs. Haryana Housing Board Employees Union and others, ; G. Radhakrishna Murthy and Company and Others Vs. Commercial Tax Officer-IVB, Vijayawada and Others, ; The Commissioner of Income Tax, Lucknow Vs. U.P. Forest Corporation, ; State of Karnataka and Others Vs. Kempaiah, ; Kamlesh Kumar Sharma Vs. Yogesh Kumar Gupta and others, and M/s. Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad, The gamut of all these decisions is when particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified. This rule which is known as the rule of ejusdem generis reflects an attempt "to reconcile incompatibility between the specific and general words in view of the other rules of interpretation that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous" Tribhuban Parkash Nayyar Vs. The Union of India (UOI), The rule applies when "(1) the statute contains an enumeration of specific words ; (2) the subjects of enumeration constitute a class or category ; (3) that class or category is not exhausted by the enumeration ; (4) the general terms follow the enumeration ; and (5) there is no

indication of a different legislative intent" *Amar Chandra Chakraborty Vs. The Collector of Excise, Government of Tripura and Others, and Housing Board of Haryana v. Haryana Housing Board Employees Union*, (supra). If the subjects of enumeration belong to a broad based genus as also to a narrower genus, there is no principle that the general words should be confined to the narrower genus (*UPSEB v. Hari Shanker*. AIR 1979 SC 65).

10. It is essential for application of the *eiusdem generis* rule that enumerated things before the general words must constitute a category or a genus or a family which admits of a number of species or members. "it is requisite" said Chandrashekhar Alwar. J., "that there must be a distinct genus, which must comprise more than one species ;" (*State of Bombay v. Ali Gulshan* AIR 1995 SC 810 and "it is clearly laid down by decided cases." said Subbarao. J. "that the specific words must form a distinct genus or category" *Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others*, If the specified things preceding general words belong to different categories, this principle of construction will not apply *Dr. Indramani Pyarelal Gupta Vs. W.R. Nathu and Others*, ; *Hamdard Dawakhana (Wakf), Delhi and Another Vs. Union of India (UOI) and Others*, : *Raja Bhanupratap Singh Vs. Assistant Custodian Evacuee Property U.P.*, . Further. mention of a single species does not constitute a genus (See *United Town Electric Co. Ltd. v. A.G. for Newfoundland*. (1939) 1 All ER 423 (PC) ; referred to in *The Mysore State Electricity Board Vs. Bangalore Woollen, Cotton and Silk Mills Ltd. and Others*, ; *Jagdish Chander Gupta Vs. Kajaria Traders (India) Ltd.*, ; *Siddeshwari Cotton Mills (P) Ltd. Vs. Union of India (UOI) and Another*, . A building which has been let out by its owner and is admittedly fetching rent does not fall in the category of "other such buildings", which expression takes colour from the preceding words such as "railway stations, hotels, colleges, schools, hospitals and factories.

11. A close reading of the clauses (a) and (b) Indicate that the buildings which are ordinarily not capable of being let out and are used to cater the public needs have been grouped in clause (a), while those buildings. which have a definite and positive letting value are clearly within the sweep of clause (b) and outside the compass of the provisions of clause (a). The situation would have been entirely different if the State Bank of India would have been housed in its own building and then it could be argued that it was not capable of being let out. In the case of *Municipal Board, Muzaffarnagar* (supra), a conscious observation was made that the buildings of the nature mentioned in clause (a) and the purpose for which they are being used are obviously not open to let out and thus buildings which have been let out are covered under clause (b). The reliance on the decision aforesaid on behalf of respondent No. 1 is misplaced. If a building has actually been let out it has, of necessity, to be covered by clause (b), even though it may be used for a laudable purpose to cater the public need. If clause (b) applies to a particular building on account of its having a specific letting value, the provisions of clause (a) cannot apply to it . As stated above, both clause (a) and (b) are mutually exclusive. There is no *via media*. In this

connection reference may be made to a Division Bench decision of this Court in the case of Godraj Dharji Shah Gandhi, (supra) in which it was observed that the purpose of determining the annual value of the building is levy of taxes under the Act. Clause (b) of Section 140 (1) of the Act is the clause which applies to all buildings except those which are covered by clause (a). The view taken by the learned single Judge that clause (b) covers buildings which are often let out so as to yield rent and clause (a) deals with buildings which are seldom or never let out was confirmed in the special appeal by a Division Bench of this Court in the aforesaid case. It is thus clear that clause (a) deals with a special category of buildings which neither can nor normally are let out. Railway stations, hotels, colleges, schools, hospitals and factories can only seldom be let out. All other buildings are, therefore, covered by clause (b).

12. A complete answer to the submission of the learned counsel for respondent No. 1 is to be found yet in another decision of this Court in Nagar Palika, Aligarh v. Prescribed Authority and another. 1996 (3) UPLBBC 1830. In that case, a house was given on rent to a bank. The contention of the owner-respondent that the building though occupied by the bank as a tenant, it was not rented for the purposes of assessment, was negatived. Submission similar to the one made by Sri Naveen Sinha in the present case was advanced in the aforesaid case. It was held that the building in question. In which the bank was tenant, was not of one of the categories enumerated in clause (a) of Section 140 (1) of the Act. A bank does not come under any of the categories of the buildings occupied and used for railway stations, hotels, colleges, schools, hospitals, factories etc. It was held that clause (b) is the provision relevant to the building in question which was fetching rent and not clause (a), which applies to buildings other than those let out on rent.

13. The crux of the matter is that we are dealing with a private building owned by respondent No. 1, admittedly let out to the State Bank of India on a monthly rent of Rs. 7,100 at the relevant time. In view of this undisputed fact, the assessment of the annual value of the said building for the purposes of levy of taxes has to be made under clause (b). If a building, which has a letting value and as a matter of fact has been let out, is brought within the sweep of clause (a), the very purpose of the provisions contained in the two separate clauses would be frustrated as clause (b) shall become otiose or redundant.

14. The lower appellate court has without assigning any proper and justified reason, straightway passed order that the annual value of the building may be assessed under clause (a) of Section 140 (1) of the Act. This direction has been made by shutting the eyes to the realities of the matter. The direction was absolutely uncalled for and was violative of the provisions of clause (b) of Section 140 (1) of the Act. The building in question has been rightly assessed for purposes of municipal taxes to be paid by the petitioner under clause (b).

15. In the result the writ petition succeeds and is allowed. The impugned order dated 4.6.1999. Annexure-5 to the writ petition, passed in appeal filed by

respondent No. 1 u/s 160 of the Act is hereby quashed. The annual value arrived at by the Nagar Palika Parishad, Sardhana. Aligarh. under clause (b) of Section 140 (1) of the Act for the relevant period is hereby confirmed.