(1982) 02 CAL CK 0033

In the Calcutta High Court

Case No : Civil Revn. No. 1531 (W) of 1978

Parshava Properties Ltd. and Another APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 03-02-1982

Acts Referred:

Constitution of India, 1950 — Article 14, 285
West Bengal Urban Land Taxation Act, 1976 — Section 4

Citation : AIR 1982 Cal 202 : 86 CWN 420

Hon'ble Judges : G.N. Ray, J

Bench : Single Bench

Advocate : D.P. Gupta, B.P. Gupta, Samir Chakraborty and A.K. Dey, for the Appellant; Pulak Mondal, for the Respondent

Judgement

G.N. Ray, J.—In the instant Rule the petitioners have asked for appropriate writs commanding the respondents not to give any effect to the West Bengal Taxation Laws (2nd Amendment) Act, 1977, in so far as the same amends the former Act in the matter of payment of land tax or urban land tax by the petitioners in respect of the properties as set out in the writ petition. The petitioners contend that the provisions of the said West Bengal Taxation Laws (2nd Amendment) Act, 1977 is ultra vires Articles 14 and 19 of the Constitution. The petitioners contend that the West Bengal Urban Land Taxation Act, 1976 and the West Bengal Taxation Laws (2nd Amendment) Act, 1977 in so far as the latter Act amends the former Act and in particular Section 4 thereof makes hostile discrimination offend Article 14 of the Constitution, inasmuch as the tax sought to be imposed by way of amendment is arbitrary and exorbitant without making any provision for passing any liability to or sharing of the same by the tenants. The said Acts, according to the petitioners, will ultimately deprive the petitioners of their capacity to hold and earn profits and income from the property. It is contended by the petitioners that the Act imposes tax not only on the building but on the area of the land occupied by such building and the land appurtenant to such building. There is no attempt at classification in the provisions of the Act and such lack of classification has created a gross inequality and the Act is also discriminatory in nature and such discrimination is also hostile. The petitioners further contend that the provisions of the Act bear no reasonable nexus with the object the Act seeks to achieve and the levy of urban tax ought to have been based upon some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained. The petitioners contend that for determining the quantum of tax, a flat rate is sought to be imposed and the sole test for such imposition of tax is the area of land occupied by any building and the land appurtenant to such building. The Act has been made applicable in the entire State of West Bengal and whether the building is situate in a large industrial town or in any insignificant village but falling within the same category of urban agglomeration, the tax is sought to be determined by the land occupied by the building and the land appurtenant to such building. It does not depend upon the nature of the structure, the town and locality in which the building is situated, the economic rent which may be obtained from the building, the cost of the building and other related circumstances which may appropriately be taken into consideration in any rational system of taxation of buildings. The buildings which are dissimilarly situated and are unequal have been treated on equal basis. According to the petitioners there is total lack of classification when such classification was necessary, expedient and reasonable in the facts and circumstances of the case. The petitioners contend that although it is a common knowledge that old buildings and buildings situate in a less important place do not fetch as much profit or rent as new buildings or buildings situate in a more important place of business fetch. By the impugned provisions, a flat rate is sought to be imposed for all buildings situated within any category of urban agglomeration irrespective of their date of construction and irrespective of the situation of such agglomeration from the commercial point of view. In support of the said contentions, Mr. Gupta, the learned counsel appearing for the petitioners has relied on a decision of this court made in the case of State Bank of India v. State of West Bengal reported in 1979 (1) Cal LJ 363 : 1979 Tax LR 133 . In the said decision, the vires of the West Bengal Multi-storeyed Building Tax Act, 1975 was under challenge. In the said case, the vires of the said Act on the ground of Article 14 was also agitated. It has been held by this Court in the aforesaid decision that the West Bengal Multi-storeyed Buildings Tax Act is a tax on multi-storeyed building in West Bengal and the Act is not a legislation to control multi-storeyed building or anything like that. It has also been held that if the tax in question ignores the vital factors which are germane for imposition of tax on buildings and lands, then the Act in question will suffer from the vice of inequality. Under Sections 2 (b) and 2 (c) read with Section 3 of the said Multi-storeyed Buildings Tax Act, all multi-storeyed buildings i.e. building on any land in an urban area consisting of five storeys and above have been subjected to the levy of tax at uniform rate without taking into consideration the area where the multi-storeyed building has been constructed, the year of construction, the yield and capacity to yield income, their use and potentiality. To treat all the multi-storeyed buildings of five storeys alike would be to treat unequals in their essential features as equals in the burden of taxation. The act is, therefore, ultra vires, void and unenforceable. Mr. Gupta contends that for the selfsame reasons, the West Bengal Taxation Laws (2nd Amendment) Act, 1977 in so far as it amends the former Act is also unconstitutional and the same offends Article 14 of the Constitution. Mr. Gupta submits that ''Tax at uniform rate has been sought to be enforced without considering the year of construction, the yield, the capacity to yield income, the use and potentiality of the building.

2. Mr. Mondal, the learned counsel appearing for the State, however, submits that the provisions of both the Acts are not similar and as such the decision made in the case of State Bank of India v. State of West Bengal is not applicable to the facts and circumstance of the case. Mr. Mondal submits that the tax has been sought to be imposed at flat rate only within the urban agglomeration and not on other buildings. He submits that buildings situated at urban agglomeration have some distinctive features and as such tax has been sought to be imposed at flat rate on such buildings. It is, therefore, not correct to contend that unequals have been treated as equals. I am, however, unable to accept the said contention of Mr. Mondal. "In Schedule I of the Urban Land (Ceiling and Regulation) Act, 1976 various urban agglomerations in different States of India have been mentioned. Entry No. 15 of the said Schedule I enumerates the three urban agglomerations in the State of West Bengal and different areas have been brought within the urban agglomeration and both municipal, non-municipal areas have been included within such urban agglomeration. Many of the areas included in the urban agglomeration in West Bengal are comparatively small places and not developed towns and cities. They are also not equally important from the standpoint of trading and/ or commercial activities. The said areas also are not industrial towns, It is quite evident that the potentiality to earn rent from the buildings situated in various units of the urban agglomeration in West Bengal as referred to in the Entry No. 15 of Schedule I, is not the same. In the circumstances, the imposition of tax on building situated within the said urban agglomeration cannot be held to be reasonable." By no stretch of imagination, the potentiality to fetch rent of a building within the limits of the Calcutta Corporation will be the same as of a similar building situated in Banupur or panpur, or Narayanpur or Deulpara etc. etc. although all the said places find place in Entry No. 15 of Schedule I comprising the urban agglomeration in the State of West Bengal. It does not however appear that the Act has imposed any unreasonable restriction to hold the building within the urban agglomeration and it cannot, therefore, be said that the Act is violative of Article 19 of the Constitution. The Rule, therefore, succeeds and is made absolute upon a declaration that the "West Bengal Urban Land Taxation Laws (2nd Amendment) Act, 1977 in so far as it amends West Bengal Urban Land Taxation Act, 1976 is unconstitutional and void."

3. There will be no order as to costs in this Rule.

4. The petitioners will be entitled to withdraw the sum deposited by them in

terms of the interim order passed by this Court on 20th March, 1978.

5. Let the operation of the judgment be stayed for a period of four weeks from date as prayed for by Mr. Mondal appearing for the State-respondents.