
(1955) 04 BOM CK 0009

In the Bombay High Court

Case No : Second Appeal No's. 1562 to 1564 of 1952

State of Bombay

APPELLANT

Vs

Nagindas Maneklal and Another

RESPONDENT

Date of Decision : 13-04-1955

Acts Referred:

Bombay Finance Act, 1932 — Section 21, 22, 23, 3
Bombay Finance Act, 1946 — Section 47
Bombay Municipal Boroughs Act, 1925 — Section 73

Citation : AIR 1956 Bom 89 : (1955) 57 BOMLR 913 : (1956) ILR (Bom) 31

Hon'ble Judges : Gokhale, J;Chainani, J

Bench : Division Bench

Advocate : V.S. Desai, Asst. Govt. Pleader, for the Appellant; N.G. Shah, for the Respondent

Judgement

Chainani, J.—These are three appeals by the State of Bombay against the decree passed by the Joint Civil Judges, S.D., Ahmedabad, and confirmed in appeal by the Extra Assistant Judge, Ahmedabad, restraining the Ahmedabad Municipality and the State of Bombay "from recovering urban immovable property tax from the plaintiffs on the basis of their properties being considered one building only." The appeals have been heard together, as they involve a common point of law relating to the interpretation -of Section 22, Bombay Finance Act, 1932.

2. These three appeals arise from three different suits. The plaintiffs in these suits are cousins and are owners of three properties, which form parts of one building. The land, on which this building stands, was purchased in 1940. The whole building was built at one time and thereafter it was divided into three portions, which were given different Municipal Census Nos. 2347, 2348 and 2348A. A portion in front of the entire building was kept joint for use as a common passage. Each of these three portions is separately owned and separately assessed to property tax by the Ahmedabad Municipality.

Each portion has got a ground floor and two upper floors and a separate stair-

case. There is one continuous terrace on the top of the building, but it has demarcating lines. The three properties are shown as belonging to different persons, the plaintiffs in the three suits, in the property Register and in the Municipal records. The plaintiffs' case is that each of these properties was separately assessed for the urban Immovable property tax leviable u/s 22, Bombay Finance Act up to 1946-47 on the annual letting value of that property.

In the bills for 1947-48 and 1948-49, the tax was, however, claimed at the higher rate of 7 1/2 per cent, on the total annual letting value of all the three properties. In 1950 the plaintiffs therefore filed three suits, in which they prayed for injunctions against the Ahmedabad Municipal Corporation, defendant 1 and the State of Bombay, defendant 2, directing them to prepare separate bills for each property on the basis of its annual letting value alone. Defendant No. 1 the Municipal Corporation of the City of Ahmedabad did not appear and the suits against it were heard ex parte.

The suits were defended by the State of Bombay. The contention of the State was that all the properties were parts of one building and that consequently under the second proviso to Section 22, Bombay Finance Act, the urban Immovable property tax could be assessed on the annual letting value of the building as a whole. This contention has not been accepted by both the lower Courts. The State of Bombay has therefore come in appeal.

3. Section 22, Bombay Finance Act, 1932, is in the following terms:--

"There shall, subject to the provisions of Section 23, be levied and paid to the State Government a tax on buildings and lands, hereinafter called the "Urban Immovable Property tax" at such rate not exceeding seven per cent, of the annual letting value of the buildings or lands in such area or areas as may be notified by the State Government in the Official Gazette:

Provided that

(1) such tax shall be levied and paid to the State Government at such rate not exceeding three and half per cent of the annual letting value of the buildings or lands not exceeding such amount and in such area or areas as may be specified by the State Government by notification in the Official Gazette;

(2) that if any building consists of more than one tenement and such tenements are separately assessed to the property tax, the urban immovable property tax shall be assessed on the annual letting value of the building as a whole;

(3) where more than one building or land in the same locality is owned by the same person, the urban immovable property tax shall be assessed on the annual letting value of all such buildings or lands;

(4) if any building owned by a Co-operative Housing Society or the members thereof consists of more than one tenement, the urban immovable property tax shall be assessed on the annual letting value of the tenement or tenements

owned by, or occupied by each member separately, as if it were a building whether- such tenement or tenements are separately assessed to the property tax or not."

Under proviso 2 to, this section, if a building consists of more than one tenement and such tenements are separately assessed to the property tax, the urban Immovable property tax is to be assessed on the annual letting value of the building as a whole. The expression "Property tax" is defined in Clause 7 of Section 21. The Act as it stood in 1947 defined the property tax, in the City of Ahmedabad, where the suit properties are situated, to mean a tax or rate on buildings or lands or a tax or rate in the form of such tax or rate on buildings or lands levied under the Bombay Municipal Boroughs Act, 1925.

Under Section 73, Bombay Municipal Boroughs Act, any Borough Municipality may impose a rate on buildings or lands or both situated within the municipal borough. This section also empowers the Municipality to impose a general water rate or a special water rate in the form of a rate assessed on building and lands. From the provisions of the Municipal Boroughs Act relating to the preparation of the assessment list and the persons primarily liable to pay the municipal tax, it appears that each property separately owned is recognised as a separate building for the purpose of assessing the municipal tax.

This, however, cannot be the basis for assessing the urban Immovable property tax, for proviso 2 to Section 22 expressly states that this tax shall be assessed on the annual letting value of the building as a whole; if it contains tenements which are separately assessed to the property tax. The properties of the three plaintiffs are separately assessed to property tax. The question for consideration therefore is whether they are three buildings or whether they are three tenements in one building within the meaning of proviso 2 to Section 22, Bombay Finance Act.

The answer to this will depend on the meaning to be given to the words "building" and "tenement" used in this proviso.

4. Clause (2) in Section 21, Bombay Finance Act states that "building and lands" have the same meanings as they have in the corresponding Municipal Act. which in this case was the Bombay Municipal Boroughs Act. Clause (2) of Section 3 of the, latter Act states that the word "building" shall include any hut, shed, or other enclosure whether used as a human dwelling or for any other purpose, and shall also include walls, verandahs, fixed platforms, plinths, doorsteps and the like.

This definition is not therefore of much assistance in determining the meaning to be given to the word "building" used in proviso 2. The word "tenement" is not defined either in the Bombay Finance Act or in the Bombay Municipal Boroughs Act. According to the Webster's Dictionary, this word has more than one meaning. It is defined as (p. 2127):

"(1) that which is the subject of tenure; hence, land, or any of the various forms of incorporeal property treated like land, held by a person of another, whatever the nature of the tenants' interest therein, or held as owners:

(2) Hence: (a) a dwelling house, a rented house or one intended to be rented.

(b) An apartment, or suite, or set of rooms, used by one family;

(3) dwelling; abode, inhabitation."

5. In Stroud's Judicial Dictionary also various meanings of this word are given. In note (7) it is stated, "'tenement' sometimes receives its popular meaning of 'house'. The common people still use the word, as in the days of Blackstone, to mean a house, or it may, even now, sometimes be the equivalent of 'dwelling house'." And in note 19 cases are cited in which the word "tenement" in the expression "house or tenement" was interpreted to mean "a part of a house so structurally divided and separated as to be capable of being a distinct property or a distinct subject of a lease."

In Wharton's Law Lexicon, it is stated that local authorities some times refer to separately rated parts of houses or flats as tenements. The word "tenement" does not therefore necessarily imply that the property must be let or intended to be let. It may also mean a house or a part of the house, which is occupied by one family. In proviso 4 to Section 22, Bombay Finance Act, the words used are "tenement or tenements owned by, or occupied by each member separately." The word "tenement" as used in this proviso therefore means a house or a part of a house which is separately owned or which is occupied separately.

It does not mean a house or a part of it which is let. The ordinary rule of interpretation is to give the same meaning to the same word when it is used in different parts of an enactment. The word "tenement" should therefore be given the same meaning both in provisos 2 and 4 and if this is done the word "tenement" in proviso 2 must be held to mean a house, apartment, suite of rooms or a room, which is separately owned or which is occupied as a separate unit.

6. The lower appellate Court has held that proviso 2 applies only when the different tenements are owned by the same person. No such words of limitation are contained in the proviso. We do not also think that the Legislature could have intended to limit the proviso only to cases, where all the tenements belong to the same person. An illustration will probably make this clear. Let us consider the case of a house, which has a ground floor and some upper floors. This is originally occupied by one family.

It is therefore, regarded as one building and so assessed to urban Immovable property tax. Subsequently it is partitioned between different members of the family, one of whom is allotted the ground floor, another the first floor and so on. According to the view taken by the learned Judge, each of the floors would then be a separate building. This will be contrary to the meaning ordinarily given to

the word "building". Such an interpretation will also defeat the object of the Legislature in enacting proviso 2.

7. That the Legislature intended that the tenements separately owned should also come within the scope of the second proviso is also clear from the 4th proviso, which is really an exception to provisos 2 and 3 to Section 22. This 4th proviso states that if any building owned by a Cooperative Society or the members thereof consists of more than one tenements, the tax shall be assessed on the annual letting value of the tenement or tenements owned by or occupied by each member separately, as if it were a building. In this proviso the Legislature has therefore laid down that where there are several tenements in a building belonging to a Co-operative Society, which are owned by different persons, the tax should be assessed on the letting value of each tenement separately.

It would not have been necessary to enact this proviso, if proviso 2 was applicable only to tenements belonging to the same owner. The fact that the Legislature considered it necessary to enact this 4th proviso also, shows that in order that different tenements may be regarded as one building for the purposes of proviso 2, it is not necessary that they should be owned by the same person.

8. The rate of urban Immovable property tax increases with the letting value of the property. In exercise of the powers conferred upon it by Section 29, the State Government has remitted the tax on properties, the annual letting value of which is below certain prescribed amounts. In the case of properties situated in Ahmedabad, the exemption, limit is Rs. 200. If therefore different tenements or properties are treated as one building, the tax on each would be higher than what it would be if they are regarded as separate buildings. Mr. Shah has urged that the Legislature could not have intended that a person should become liable to pay the tax or to pay it at a higher rate merely because his property happens to form part of a larger property or building.

But this is exactly what the Legislature seeks to do in proviso 2. The Legislature also probably wanted to prevent the evasion of the tax by one property being divided into several units and tenements and a claim being then made that the tax thereon has been remitted or that each should be assessed separately on its letting value alone.

9. In our opinion, the question whether different tenements do or do not form one building is a question of fact, which must be decided in each case on its own facts. If three buildings are put up at the same time on three adjoining plots by three different persons, they would not constitute one building, merely, because they were constructed at the same time or because they have common dividing walls. On the other hand, if a building is constructed on a plot originally owned by one person, occupied as one unit and taxed on that basis, it would not cease to be one building, merely because it is subsequently partitioned or because a part of it is sold and separately owned.

10. So far as the present case is concerned, the evidence shows that the plot, on which the three suit properties stand, was purchased as a single plot in 1940. The three suit properties were also constructed as one unit at the same time from joint funds. They have also one continuous terrace. The built portion of the plot was subsequently partitioned between the plaintiffs in the three suits, but a strip of land was kept joint I for common use. On these facts, in our opinion, the three suit properties must be regarded as three tenements in one building.

11. The appeals must, therefore, be allowed. The decrees passed by the trial Court and confirmed in appeal by the Extra Assistant Judge are set aside and the suits will be dismissed. In the circumstances of these cases, we direct that the parties should bear their own costs throughout.

12. Appeals allowed.