

(1957) 08 BOM CK 0011

In the Bombay High Court

Case No : Second Appeal No's. 253, 254 and 255 of 1956

The State of Bombay

APPELLANT

Vs

Amratlal Ambaram Modi

RESPONDENT

Date of Decision : 21-08-1957

Acts Referred:

Bombay Finance Act, 1932 — Section 22

Citation : (1957) 59 BOMLR 1129

Hon'ble Judges : Dixit, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dixit, J.—These three appeals raise a common question about the proper construction of the second proviso to Section 22 of the Bombay Finance Act, 1932. It would be enough to state the facts in S.A. No. 253 of 1955 in order to understand the question.

2. One Amratlal Ambaram Modi, who is respondent No. 1 to this appeal, purchased on May 21, 1931, certain property comprised in Municipal Census Nos. 2049, 2050 and 2050/1 from the original owner. Amratlal has two brothers, Cbiraanlal and Narandas. Chimanlal is respondent No. 1 to appeal No. 254, while Narandas is respondent No. 1 to appeal No. 255. Like Amratlal, Chimanlal purchased on the same day property comprised in Municipal Census Nos. 2142 and 2142/1 from the original owner, while Narandas purchased on the same day certain property comprised in Municipal Census Nos. 2143 and 2143/1 from the original owner. These properties stood in the municipal records in the names of the respective brothers. Till the year 1947 the Urban immovable Property Tax was assessed separately according to the valuation made by the Ahmedabad Municipal Corporation at the rate of 3 1/2 per cent, on the rental value. After 1947-48, however, the tax was assessed at the rate of 7 percent, per annum on the footing that the properties owned by the three brothers constituted one building for the purpose of taxation and so the three brothers filed three different

suits challenging the taxation made by the State of Bombay, which is defendant No. 1 in the suit, under the Bombay Finance Act, 1932.

3. According to the plaintiff, the defendants recovered the Urban Immovable Property Tax from the plaintiff at the rate of 7 per cent, and each of the three plaintiffs paid the tax under protest. On September 3, 1952, Amratlal filed suit No. 1298 of 1952 in order to obtain a declaration that his properties were assessed for the purposes of the Urban Immovable Property Tax in an illegal manner and claimed an injunction against the defendants and also a refund of the amount of the tax recovered from him. Chimanlal filed suit No. 1299 of 1952, claiming the same reliefs including the relief of a refund of a sum of Rs. 82. Narandas filed suit No. 1300 of 1952 claiming identical reliefs including a refund of Rs. 102.

4. The Ahmedabad Municipal Corporation, which was defendant No. 2 in the suit, did not file a written statement, but the suit was contested by the State of Bombay and it was contended that although the properties were separately purchased by the three brothers, the whole building as such was liable to be assessed under the Bombay Finance Act, 1932, and the properties being one building, the taxation at the rate of 7 percent, on the aggregate annual rental value was proper and the plaintiff was not entitled to claim the refund.

5. The learned trial Judge decreed the plaintiff's suit and the decree was confirmed in appeal by the Second Extra Assistant Judge, Ahmedabad. From the appellate decree made in each suit, the State of Bombay has filed these three second appeals.

6. The question to be decided, turns upon, the proper construction of the second proviso to Section 22. Before referring to the relevant provisions, it would be material to make mention of the important facts in the case. It is not in dispute that the properties purchased by the three brothers were at one time owned by a single individual. It is not in dispute that after the purchases made by the three brothers, the properties were entered in the municipal record of the names of the three respective brothers. It is again not in dispute that the properties are separately assessed to general tax and it will appear from the evidence in the case that these three separate properties have a common plinth, a common staircase, a common roof and a common privy. The contention on behalf of the State of Bombay is that the three separate properties comprise one building for the purpose of the second proviso to Section 22. Mr. Patwa appearing on behalf of the plaintiffs, however, contends that the three properties do not constitute one building-, but they are three separate buildings, and, if they are three separate buildings, they cannot be brought within the second proviso to Section 22. The relevant provisions are contained in Part VI of the Bombay Finance Act, 1932. Part VI applies, inter alia, to Ahmedabad where the properties are situate. Section 21 is a section which gives definitions and u/s 21(2) it is provided that "buildings" and "lands" have the same meanings as they have in the Bombay Municipal Corporation Act, the Bombay Provincial Municipal Corporations Act,

1949, the Bombay Municipal Boroughs Act, 1925, the Bombay District Municipal Act, 1901, or the Cantonments Act, 1924, as the case may be. The expression "Urban Immovable Property Tax" is defined in Section 21(3) as meaning a tax leviable under the provisions of Section 22. The expression "Property Tax" is defined in Section 21(7) as meaning, so far as material, in the State of Bombay the general tax levied u/s 132 of the Bombay Provincial Municipal Corporations Act, 1949. It is, therefore, necessary to refer to Section 132 of the Bombay Provincial Municipal Corporations Act, 1949, and s. 132, by Sub-section (1), provides, so far as material, that, the general tax shall be levied in respect of all buildings and lands in the City, except as provided in the section. So that the general tax is levied in respect of all buildings in the City. The general tax referred to in Section 132(1) becomes the property tax within s. 21(7). So that if the general tax is levied in respect of all buildings, there is no question that the property tax is also leviable in respect of all buildings. The section which is material for the determination of the question, is Section 22 which, so far as material, provides:

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 percent, 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:

And by the second proviso it is laid down 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. It is significant that whereas in Section 132 the expression used is "buildings", the expression used in the second proviso to Section 22 is "tenement", and it is necessary, therefore, to understand the meaning of the expression "tenement". The expression "tenement", as defined in the Shorter Oxford English Dictionary, means a building or house to dwell in; a dwelling-place, a habitation, residence, abode. So that according to this definition, the expression "tenement" and the word "building" are interchangeable terms. Section 26 of the Act makes the actual occupier of a building primarily liable for the payment of the Urban Immovable Property Tax. It is then necessary to refer briefly to the provisions contained in the four provisos to Section 22. The first proviso says that the tax shall be levied and paid to the State Government at such rate not exceeding three and half percent, of the annual letting value of the buildings or lands. I have already referred to the second proviso to Section 22. The third proviso to Section 22 says that 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. The fourth proviso to Section 22 refers to a case of a building owned by a Co-operative Housing Society, and under that proviso the different tenements are considered as constituting one building for the purpose of the imposition of the urban immovable property tax. Leaving aside the first

and the fourth provisos to Section 22, it is clear that whereas in the third proviso to Section 22 the element to be taken into consideration is the element of ownership, so far as the second proviso is concerned, there is no question of any element of ownership arising in the case. The learned appellate Judge was, to a great extent, influenced by the circumstance that in the second proviso to Section 22 an element of ownership was necessarily involved. Now, if the language of the second proviso to Section 22 is contrasted with the language of the third proviso to Section 22, it is quite clear that the second proviso makes no reference whatever to the concept of ownership, whereas in the third proviso to Section 22 the dominant consideration is the consideration of ownership of a single individual. All that the second proviso to Section 22 requires is that the building should consist of more than one tenement and such tenements must be separately assessed to the property tax. If the meaning of the expression "tenement" is a building, there is no question that the building of each of the three brothers is separately assessed to general tax and that becomes the property tax for the purpose of the Finance Act, 1932. Therefore, where the building of each of the three brothers has been separately assessed to general tax, there is no question that each of the buildings or tenements is liable to be assessed separately to the property tax. But Mr. Patwa argues that the three brothers own three separate buildings and inasmuch as there are three separate buildings, the present case does not fall within the second proviso to Section 22. Now, it is important to bear in mind that the second proviso to Section 22 refers to a building as consisting of more than one tenement and the use of the expression "tenement" is, in my opinion, deliberate. It is not accurate to say of a building as consisting of several buildings. It is quite correct to say that a building consists of more than one tenement. So that if a building consists of more than one tenement, there is no question that for the purpose of the second proviso to Section 22 the tenements taken together would constitute one building. Therefore, so far as the second proviso to Section 22 is concerned, there is no element of any ownership involved, much less is any element of ownership present as a determining factor in regard to the imposition of the urban immovable property tax. The third proviso to Section 22 makes it perfectly clear that to make the third proviso applicable, the buildings must be owned by one person and they must be situate in the same locality. Therefore, the element of ownership is necessarily involved" in the application of the third proviso to Section 22. In my view, therefore, the learned Extra Assistant Judge was wrong in taking the view that in considering the applicability of the second proviso to Section 22, one has to take into consideration the concept of ownership as being relevant for the determination of the question of the imposition of the urban immovable property tax. If the question of ownership is not a determining factor, it is quite clear that the building consists of more than one tenement and those tenements have been separately assessed to the property tax. In my view, therefore, the requirements of the second proviso to Section 22 have been satisfied in this case.

7. Apart from this, the facts in the present cases are striking. Here, there was originally one building and different portions of the building were separately sold to three different persons who are brothers. Further, according to the evidence adduced in the case, the building consisting of different portions has a common plinth, has a common roof, has a common stair-case and has a common privy. If these are the facts, there is no question but that there is one building within the meaning of the second proviso to Section 22. It is necessary for the existence of the three different tenements to have a common plinth, a common roof, a common privy and a common stair-case. Remove the common plinth and the tenement cannot stand. remove the common roof and the tenement cannot stand, Remove the common stair-case and the tenement cannot be enjoyed. Remove the privy and the tenement cannot again be enjoyed. In view of these considerations, there is no difficulty in holding that the building consisting of different tenements constitutes one building and the different portions purchased by the three brothers do not constitute three separate buildings.

8. In view of the above conclusion, the orders made by the Courts below cannot be supported and the decree made by the lower appellate Court will have to be set aside.

9. The result is that appeal No. 253 of 1955 will be allowed, the decree passed by the lower appellate Court set aside and the plaintiff's suit dismissed with costs throughout.

10. For the reasons given in S.A. No. 253 of 1955, S.A. No. 254 of 1955 will also be allowed, the decree passed by the lower appellate Court reversed and the plaintiff's suit dismissed with costs throughout.

11. For the same reasons, S.A. No. 255 of 1955 will be allowed, the decree passed by the lower appellate Court reversed and the plaintiff's suit dismissed with costs throughout.