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Court : Mumbai Nagpur

Decided On : Dec-18-2014

Judge : A.B. Chaudhari & P.R. Bora

Appeal No. : Writ Petition No. 76 of 2004

Appellant : MIDC Industries Association

Respondent : The State of Maharashtra, through its Secretary, Ministry of Rural Development And Water Conservation and Others

Judgement :

P.R. Bora, J.

1. Heard learned counsel for the rival parties.
2. In the present petition, validity of rule 7 (1) of the Maharashtra Village Panchayats Taxes and Fees Rules, 1970 (hereinafter referred to as the 1970 Rules) is challenged by the petitioner-Association. Petitioner is an Association of Industries situated at MIDC, Hingna Industrial Estate, Nagpur. The said MIDC consists of 764 hectare of land which situate within the jurisdiction of respondents

no. 2 to 5 Gram Panchayats.

3. Rule 7 (1) of the 1970 Rules validity of which has been challenged, reads thus:

7. Rate of tax on buildings and lands (1) Every panchayat which decides to levy a tax on buildings and lands shall subject to the provisions of sub-rule (2) and after following the procedure prescribed in Rules 3 and 4 levy it at such rate based on the total area on the basis of per square foot of the lands and buildings, as may be decided by it, but not below the minimum and not exceeding the maximum rate, specified in the Schedule annexed to this part.

4. Learned counsel appearing for the petitioner-Association submitted that the amendment brought in the aforesaid rule vide Notification dated 3.12.1999 is arbitrary, unreasonable and discriminatory. Learned counsel further submitted that since the amendment so brought violates Article 14 of the Constitution of India, it is liable to be set aside.

5. Learned counsel brought to our notice that the aforesaid rule, as amended, provides for levying the tax on per square foot basis. Learned counsel submitted that the amended rule will have inherent difficulties in proper assessment of the tax since many aspects will remain unconsidered as to the age of the building, location of the building, user of the building etc. Learned counsel submitted that the time tested method for assessing the tax is to levy the tax on ratable value of the building. Learned counsel submitted that assessing and levying the tax on the basis of square foot would be most unpracticable, unjust and improper and violates the mandate of Article 14 of the Constitution of India.

6. In support of his contentions, learned counsel relied upon the following three judgments of the Honourable Supreme Court:

(1) Lokmanya Mills Barsi Ltd v. Barsi Borough Municipality (**AIR 1961 SC 1358**).

(2) The State of Kerala v. Haji K. Haji K. Kutty Naha and ors (**AIR 1969 SC 378**)

(3) Lachmi Narain v. Union of India and ors (**AIR 1976 SC 714**)

7. Learned counsel submitted that the Honourable Apex Court has elaborated in these judgments the rationale of tax assessment and has rejected the method of assessing the tax on per square foot basis. Learned counsel submitted that rule 7 (1) of the 1970 Rules is directly in conflict with the mandate laid down by the Honourable Apex Court in the aforesaid judgments and it, therefore, deserves to be quashed and set aside.

8. Learned Assistant Government Pleader opposed the submissions so made on behalf of the petitioners. Learned Assistant Government Pleader submitted that after having due deliberations, the amendment was brought to rule 7 (1) which is the most suitable way of assessing the tax. He further submitted that in fact the Gram Panchayats were finding it difficult to assess the tax on the basis of annual letting value and that was the reason why a simple method was brought into practice by amending rule 7. He also submitted that method provided as per rule 7 (1) is not at all arbitrary and it is perfectly valid and consistent with the Constitutional mandate.

9. We have carefully considered the submissions advanced on behalf of the parties. We have perused the judgments relied upon by learned counsel for petitioner.

10. In the case of **Lokmanya Mills Barsi Ltd** (supra), validity of rule 2C framed by the Municipality of Barsi under Section 58 (j) of the Bombay Municipal Boroughs Act, 1925 was under challenge. Vide the said rule 2C, the general body of the respondent Municipality therein had resolved that the rental value for levying rates on mills and factories within its limits be fixed at Rs. 40/- per every hundred square foot. The appellant Lokmanya Mills challenged the said recovery by filing suit. The trial Court held that rule 2C was valid and within the competence of Municipality. The District Court at Solapur, however, declared said rule 2C illegal. The matter was taken to the High Court and the High Court set aside the decree of the District Court disagreeing with the view that rule 2C was ultra vires. Against the judgment of the High Court, appeals were preferred before the Honourable Apex Court. While allowing the appeals and thereby declaring the said rule ultra vires, the Honourable Apex Court has observed thus:

(5) By S. 78, sub-sec. (1), cl. (d) and Explanation to S. 75, the rate to be levied on lands and buildings may be assessed on the valuation of the lands and buildings based on capital or the annual letting value. By the rules in operation prior to April 1, 1947, the house-tax and water-tax were levied as rates in respect of all lands, buildings and nonagricultural lands on the annual letting value (except Government buildings). Even under the new rules, house-tax and water tax continued to be levied in respect of all buildings and non-agricultural lands as rates; but the rate in respect of buildings falling within R. 2C was assessed on a valuation computed on the floor area of the structures, and not on the capital value nor on the annual for which the buildings may reasonably be expected to let. This was clearly not a tax based on the annual letting value, for Annual letting value postulates rent which a hypothetical tenant may reasonably be expected to pay for the building if let. A rate may be levied under the Act on valuation made on capital or on the annual letting value. If the rate is to be levied on the basis of capital value, the building to be taxed must be valued according to some recognised method of valuation; if the rate is to be levied on the basis of the annual letting value, the building must be valued at the annual rental which a hypothetical tenant may pay in respect of the building. The Municipality ignored both the methods of valuation and adopted a method not sanctioned by the Act. By prescribing valuation computed on the area of the factory building, the Municipality not only fixed arbitrarily the annual letting value which bore no relation to the rental which a tenant may reasonably pay, but rendered the statutory right of the tax-payer to challenge the valuation illusory. An assessment list prepared under Section 78 before it is authenticated and finalised, must be published and the tax payers must be given an opportunity to object to the valuation. By the assessment list in which the valuation is not based upon the capital value of the building or the rental which the building may fetch but on the floor area, the objection which the tax-payers may raise is in substance restricted to the area and not to the valuation.

11. The Honourable Apex Court has referred to its earlier judgment in the case of Borough Municipality, *Amalner v. Pratap Spinning, Weaving and Manufacturing Co.Ltd* reported in (AIR 1952 Bom 401). In the said matter, the High Court had negatived the challenge to the validity of rule similar to the rule questioned in the present petition. The matter was taken to the Supreme Court. While allowing the

appeal, the Honourable Apex Court distinguished the view taken by the High Court with following observations:

.... It was assumed in that case that all factory buildings within the area of the Amalner Municipality were alike in essential features and were intended to be used for purposes which were alike, and that probably the Municipality may have been satisfied that the principle enunciated in the rule impugned worked out on the whole as a fair basis for determining the valuation of the building in question. In our view, this approach to a rating problem arising under the Act is not permissible. In any event, there is no evidence on the record of this case that the factories and buildings relating thereto such as ware-houses, godowns and shops of the mills, may be separately let at the uniform rate prescribed by the Municipality. **The vice of the rule lies in an assumed uniformity of return per square foot** which structures of different classes which are in their nature not similar, may reasonably fetch if let out to tenants and in the virtual deprivation to the rate-payer of his statutory right to object to the valuation.

12. The validity of the flat rate method according to floor area for determining the rent for fixing ratable value was considered by the Constitutional Bench of the Honourable Apex Court in the case of **New Manek Chowk Spg. And Wvg. Mills Co. Ltd. v. Municipal Corporation of the City of Ahmedabad and ors** reported in **AIR 1967 SC 1801**.

13. In the said matter, the following points, amongst other, were for determination of the Honourable Apex Court:

(1) Whether the method of adopting a flat rate for a floor area for determining the annual value adopted by the Municipal Corporation of Ahmedabad was against the express provisions of the Act.

(2) Whether the method was also in violation of all recognised concepts and principles of valuation for the purpose of rating.

(3) Whether the imposition of tax on a flat rate method was violative of Art. 14 of the Constitution.

14. While answering the points so raised, the Honourable Apex Court held that the flat rate method according to the floor area could only be applied where the majority of properties are so nearly alike in character as to be regarded identical for rating purposes. The Honourable Apex Court also observed that the flat rate method was not also one which was generally recognized by the Authorities on rating. It was also observed that the flat rate method applied indiscriminately, it was sure to give rise to inequalities as there was no classification of the factories on any rational basis. The Honourable Apex Court accepted the arguments advanced by the petitioners in the said petition that the imposition of property tax on the flat rate method was ultra vires the Act and the Rules made thereunder and was violative of fundamental right of the petitioner guaranteed under Article 14 of the Constitution.

15. In the said judgment, the Honourable Apex Court has referred to the judgment of the Mysore High Court in the case of **Bhuvaneswariah v. State of Mysore** reported in **AIR 1965 Mys 170** wherein it is held as under:

The floorage basis is not only unscientific, it is something arbitrary and mechanical. It does not conform to any of the known principles of taxation. In the very nature of things, under that basis the incidence of tax must fall, unevenly on things similar.

16. In the case of **The State of Kerala v. Haji K. Haji K. Kutty Naha and ors** (supra), the validity of Section 4 of the Kerala Buildings Tax Act was under consideration. By Section 4 it was provided that there shall be a charge to tax in respect of every building the construction of which is completed on or after March 2, 1961 and which has a floor area of one thousand square feet or more and that the building tax shall be payable by the owner of the building and the tax rates were varying between Rs. 100 to Rs. 200 for every 1000 and 2000 square feet. The method so adopted was held to be unconstitutional by the Honourable Apex Court by observing thus:

But in enacting the Kerala Building Tax Act no attempt at any rational classification is made by the Legislature has not taken into consideration in imposing tax the class to which a building belongs, the nature of construction, the purpose for which

it is used, its situation, its capacity for profitable user and other relevant circumstances which have a bearing on matters of taxation. They have adopted merely the floor area of the building as the basis of tax irrespective of all other considerations. Where objects, persons or transactions essentially dissimilar are treated by the imposition of a uniform tax, discrimination may result, for, in our view, refusal to make a rational classification may itself in some cases operate as denial of equality.....

17. In view of the law laid down by the Honourable Apex Court, we have no doubt in our mind that rule 7 (1) so amended does not stand to the test of law as laid down by the Honourable Apex Court. It has to be, therefore, held invalid and hence to be quashed and set aside.

18. In the result, the following order is made:

ORDER

(i) Writ Petition No. 76 of 2004 is allowed.

(ii) Rule 7 (1) of the Maharashtra Village Panchayats Taxes and Fees Rules, 1970 is held ultra vires Article 14 of the Constitution of India. The same is, therefore, quashed and set aside. Consequently, the demand notices for the period in question only on square foot basis shall not be acted upon. Tax for the said period shall be reassessed on the basis of the method which was in vogue prior to the amendment. Tax recovered on the basis of amended rule shall be adjusted in future tax.

(iii) Rule made absolute in the above terms with no order as to costs.

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