UNION OF INDIA

v.

THE LONAVLA BOROUGH MUNICIPALITY OF LONAVLA, DISTRICT POONA, BY ITS CHIEF OFFICER, AND ANOTHER

March 9, 1970.

[S. M. SIKRI AND V. BHARGAVA, JJ.]

Bombay District Municipal Act 3 *of* 1901—*S.* 59 *Bombay Municipal Boroughs Act* 18 *of* 1905—*S.* 73—*Scope of—Collection of taxes from railway as consolidated tax under cl.* (c) *second proviso instead of separate taxes under the other provisions of the two sections —Validity*

The respondent Municipality, which at the time was governed by the Bombay District Municipal Act 3 of 1901 levied a tax on lands and buildings situated within its municipal limits at 4 per cent of the annual rental value. However, no such tax was levied on the buildings and lands of the G.I.P. Railway situated within its limits in view of s. 135 of the Indian Railways Act, 9 of 1890. In 1914, the Government of India issued a notification under s. 135 persuant to which the G.I.P. Railway administration was required to pay house tax to the respondent. Upto 1915 the respondent municipality used to draw water from the Railway's reservoir but constructed its own reservoir during that year. Both prior to and after this date, no water rate was charged by the respondent municipality from the railway.

On 4th May, 1916 the respondent promulgated new rules for taxation and instead of charging separate house tax under s. 59(1)(i) or a general water rate under s. 59(1)(viii) of the Act of 1901, it decided to charge a consolidated tax assessed as a rate on buildings and lands in accordance with clause (c) of the proviso to s. 59(i). Although the respondent demanded this consolidated tax from the railway in respect of its lands and buildings, the railway resisted payment contending that under the notification of 1914, house tax only was payable by it. On 26th July, 1917, the Government of India issued a fresh notification under s. 135 of the Railways Act whereby the railway administration was rendered liable to pay what was described as "tax on lands and buildings". Thereafter the respondent charged the railway the consolidated tax until some time in 1927 when the G.I.P. railway was taken over by the Government. In the rules promulgated on 4th May, 1916, the consolidated tax was not chargeable on Government property. Relying on this provision, an objection was raised that the charge of tax was illegal when the railway had become Government property. The respondent Municipality amended its rules and promulgated fresh rules on 6th October, 1931 under the provisions of the Bombay Municipal Boroughs Act 18 of 1925 under which enactment the respondent Municipality had by that time been consitituted into a Borough. Under these rules the exemption in respect of Government property was deleted. In pursuance of these amended rules the respondent started collecting from the railway the consolidated tax assessed as a rate on its buildings and lands which was by then being levied under the provisions of s.73 of the Act of 1925 that were similar to those of s.59 of the Act of 1901.

In 1940 the railway administration preferred an appeal under s. 110 of the Act of 1925 against one of the demand notices. Although the

A First Court set aside the demand notice, an appeal was eventually dismissed by the High Court with the remark that the proper remedy to be sought was by means of a suit. The Union of India which had become the owner of the railway, filed a suit in November 1954 for refund of the entire amount which was collected by the respondent from the railway in pursuance of the rules of 1931. The Trial Court granted a decree holding that the levy of this tax was void inasmuch as, under the notification issued on the 26th July, 1917, only the rate on lands and buildings was payable by the Railway Administration. On appeal, the High Court disagreed with the trial court and set aside the decree. On appeal to this Court by a certificate under Art. 133 of the Constitution.

HELD : Dismissing the appeal,

On the proper interpretation of the language used in two Acts, the Rules, the notification, and taking into account the circumstances under which the notification of 1917 was issued, the only conclusion that could be arrived at was that the Railway was made liable to the consolidated tax.

It is true that all taxes are not rates; but all rates are taxes. A rate on buildings and lands is a tax on buildings; so also any other tax assessed as a rate on buildings and lands becomes a tax on buildings and lands. It was not possible to accept the submission of the appellant that the expression "tax on buildings and lands" used in the notification of 26th July, 1917 could only refer to a rate on buildings and lands under clause (i) of s. 59(1) and would not cover the consolidated tax referred to in clause (c) of the second proviso. Although the tax under clause (c) of the second proviso is not identical with, and is different in nature from, the rate on buildings and lands imposed under clause (i), that circumstance does not imply that it is not a tax on buildings and lands. The mere use of the word "consolidated" cannot make any difference to this interpretation. The intention appears to be that, though the Municipality was empowered to impose four different kinds of taxes, it was permitted under clause (c) of the second proviso to simplify matters by having a single tax on buildings and lands *in lieu* of those multiple taxes. Such single tax had to be assessed as a rate on buildings and lands. This being the nature, it obviously becomes a tax on buildings and lands, so that the notification of 26th July, 1917 clearly makes the Railway liable to payment of this tax. The position under the Act of 1925 is exactly the same where also the language of clause (c) to the second proviso is identical with that contained in the Act of 1901, so that the liability imposed on the Railway by the notification of the Government dated 26th July, 1917 under s. 135(1) of the Railways Act continued even under the Act of 1925. [927 B-H]

Borough Municipality, Ahmedabad v. *Ahmedabad Manufacturing and Calico Printing Co. Ltd.*, A.I.R. 1939 Bom. 478; *Raza Buland Sugar Co. Ltd. Rampur* v. *Municipal Board, Rampur*, A.I.R. 1962 All. 83; *Municipal Council, Cuddappah* v. *M. & S.M. Ry. Co. Ltd.*, A.IR 1929 Mad. 746; and *Patel Gordhandas Hargovindas* v. *Municipal Commissioner, Ahmedabad*, [1964] 2 S.C.R. 608; referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1641 of 1966.

Appeal from the judgment and decree dated March 10, 11, 1965 of the Bombay High Court in Appeal No. 26 of 1958 from Original Decree.

L. M. Singhvi and *B. D. Sharma,* for the appellant. A

H. R. Gokhale, Y. S. Chitale, Janendra Lal and *B. R. Agarwala,* for respondent No. 1.

The Judgment of the Court was delivered by

Bhargava, J. The Union of India, as the owner of the Central Railway, instituted a suit for refund of Rs. 2,76,967/- collected as tax from the Railway Administration by the respondent Municipality during the period from 1931 till the institution of the suit in November, 1954. The facts leading up to the suit are that the G.I.P. Railway, which was a Private Company, had land situated within the limits of the respondent Municipality. On this land, stood the railway station, their Water Reservoir at Bhusi, bungalows of Officers, and certain other buildings. There were also vacant lands and some lands on which railway lines were laid out. In this area, which belonged to the G.I.P. Railway, the Railway Company itself built roads, supplied water from its Bhusi Reservoir, arranged for the lighting, and provided other services. In fact, up to the year 1916, the Railway used to supply water even to the Municipality from its Bhusi Reservoir on payment. The Municipality was governed, at that time, by the Bombay District Municipal Act No. 3 of 1901 (hereinafter referred to as "the Act of 1901") under which a tax on lands and buildings situated within the municipal limits used to be charged @ 4 per cent of the annual rental value, but no tax was levied on the buildings and lands of the G.I.P. Railway in view of section 135 of the Indian Railways Act No. 9 of 1890. In the year 1914, the Government of India issued a notification under s. 135 of the Railways Act declaring that the Administration of the G.I.P. Railway shall be liable to pay, in aid of the funds of the local authorities set out in the Schedule, the taxes specified against each of those authorities. Against the name of Lonavla Municipality, which is the respondent in this case, the tax mentioned was house-tax. Thus, the exemption granted to the Railway Administration was taken away by this notification in respect of house-tax and house-tax became payable by the G.I.P. Railway to the respondent. In 1916, the respondent constructed its own water reservoir and became independent of the Railway for water supply, but no water rate was charged from the Railway even thereafter, though water charges for actual quantities of water supplied in three of the bungalows was charged from the occupants of the bungalows. The rest of the Railway Colony continued to be supplied with water from the Railway Reservoir at Bhusi.

B C D E F G H

On 4th May, 1916, the respondent promulgated new rules for taxation and, instead of charging separate house-tax and water rate it decided to charge a consolidated tax assessed as a rate on

A buildings and lands in accordance with clause (c) of the proviso to section 59(1) of the Act of 1901. Thereafter, it appears that the respondent demanded this consolidated tax from the Railway in respect of the Railway lands and buildings. The Railway felt that, since, under the notification of 1914, house-tax only was payable by the Railway Administration, there was no justification for
B the respondent to charge consolidated tax from it and, consequently, protested against this payment. Thereafter, on 26th July, 1917, the Government of India issued a fresh notification under s. 135 of the Railways Act, whereby the Railway Administration was rendered liable to pay what was described as "tax on lands and buildings". On the issue of this notification, the respondent started
C charging the G.I.P. Railway this consolidated tax and this continued until some time in the year 1927 by which time the G.I.P. Railway was taken over by the Government and became a Government undertaking. In the Rules promulgated on 4th May, 1916, the consolidated tax described as a general rate on buildings and lands was not chargeable on government property. Relying on this provision in the Rules, an objection was raised that the charge
D of the tax was illegal when the Railway had become government property.

Subsequently, the respondent Municipality amended its Rules and promulgated fresh Rules on the 6th October, 1931. By this time, the respondent Municipality had been constituted into a Borough under the Bombay Municipal Boroughs Act No. 18 of
E 1925 (hereinafter referred to as "the Act of 1925"). These new Rules were thus promulgated under this Act of 1925. Under these Rules, the exemption in respect of government property to the charge of the general rate on buildings and lands, which was contained in the Rules of 1916, was deleted and all lands and buildings within the Municipal Borough became chargeable irrespec-
F tive of their being owned by the Government. A separate clause was incorporated giving certain exemptions, but, since they do not affect the case before us, they need not be mentioned. In pursuance of these Rules of 1931, the respondent started collecting the consolidated tax assessed as a rate on buildings and lands of the Railway from it.

G In the year 1940, the Railway Administration preferred an appeal under section 110 of the Act of 1925 against one of the demand notices issued in respect of this tax on the 6th October, 1940. This appeal came up before the Sub-Divisional Magistrate, Western Division, Poona, who held that the levy of this consolidated tax was *ultra vires* and set aside the demand notice. On a revi-
H sion by the respondent under section 111 of the Act of 1925, the District and Sessions Judge set aside the order of the Sub-Divisional Magistrate, holding that the imposition of the tax was valid. Against this decision, the Railway Administration filed a revision

before the High Court of Bombay under section 115 of the Code of Civil Procedure. The High Court, on 12th February, 1945, refused to exercise its special powers under section 115, C.P.C., with the further remark that the proper remedy to be sought was by means of a suit.

Under these circumstances, the Union of India, which had come to be the owner of this Railway under the name of the Central Railway, filed the suit on 27th November, 1954 for refund of the entire amount which was collected by the respondent from the Railway in pursuance of the Rules of 1931. The trial court held that the levy of this tax was void inasmuch as, under the notification issued on the 26th July, 1917, only the rate on lands and buildings was payable by the Railway Administration. The suit for the refund filed by the Union of India was, on this ground, decreed. On appeal, the High Court disagreed with the trial court and held that even the consolidated tax was payable in view of the notification of 26th July, 1917, so that the tax had been rightly collected. The High Court, thereupon, set aside the decree of the trial court and dismissed the suit. It is against this decree that the Union of India has come up in this appeal by certificate under Article 133 of the Constitution.

In order to appreciate the submissions made by counsel for parties in this appeal, it is necessary to set out the relevant provisions of section 59 of the Act of 1901 and of section 73 of the Act of 1925 which are as follows :—

"Section 59 of the Act of 1901.

59. (1) Subject to any general or special orders which the State Government may make in this behalf, any Municipality—

. . . . . .

many impose, for the purposes of this Act, any of the following taxes, that is to say,

(i) a rate on buildings or lands or both, situate within the municipal district;

. . . . . .
. . . . . .

(vii) a general sanitary cess for the construction or maintenance, or both construction and maintenance, of public latrines, and for the removal and disposal of refuse;

(viii) a general water-rate or a special water rate or both for water supplied by the Municipality, which may be imposed in the form of a rate assessed on buildings

A and lands, or in any other form, including that of charges for such supply, fixed in such mode or modes, as shall be best adapted to the varying circumstances of any class of cases or of any individual case;

(ix) a lighting tax;

B . . . . .
. . . . .

Provided further that—

. . . .
. . . . .

C (c) the Municipality in lieu of imposing separately any two or more of the taxes described in clauses (i), (vii), (viii) and (ix) may impose a consolidated tax assessed as a rate on buildings or lands, or both situate within the municipal District."

D "Section 73 of the Act of 1925

73. (1) Subject to any general or special orders which the State Government may make in this behalf and to the provisions of sections 75 and 76, a municipality may impose for the purposes of this Act any of the following taxes, namely :—

E (i) a rate on buildings or lands or both situate within the municipal borough;

. . . . .
. . . . .

(viii) a general sanitary cess for the construction
F and maintenance of public latrines, and for the removal and disposal of refuse;

. . . . .
. . . . .

(x) a general water-rate or a special water-rate or
G both for water supplied by the municipality, which may be imposed in the form of a rate assessed on buildings and lands or in any other form, including that of charges for such supply, fixed in such mode or modes as shall be best adapted to the varying circumstances of any class of cases or of any individual case;

H (xi) a lighting tax;

. . .

Provided further that—

. . .

. . . . .

(c) the municipality in lieu of imposing separately any two or more of the taxes described in clauses (i), (viii), (x) and (xi) may impose a consolidated tax assessed as a rate on buildings or lands or both situated within the municipal borough."

In the year 1914, the respondent Municipality had only levied a rate on buildings and lands under clause (i) of s. 59(1) of the Act of 1901. There was no question of imposing a general or special water rate as the respondent had no water works of its own and was taking water supply from the G.I.P. Railway. It was in these circumstances that the notification was issued by the Central Government dated the 13th May, 1914 making the Railway Administration liable to pay house-tax to the Municipality of Lonavla. The notification was obviously intended to make the Railway liable to pay the tax which had been imposed as a rate on buildings and lands under s. 59(1)(i) of the Act of 1901 by the respondent. Subsequently, in the year 1916, the respondent Municipality not only arranged for water supply and imposed a general water rate, it proceeded to make rules for imposition of a consolidated tax assessed as a rate on buildings and lands under clause (c) of the second proviso to s. 59(1) in lieu of the existing tax imposed as a rate on buildings and lands under clause (i) as well as the water rate imposed under clause (viii) of s. 59(1). Thereafter, the Central Government issued the notification dated 26th July, 1917 under s. 135(1) of the Railways Act making the G.I.P. Railway liable to tax on buildings and lands imposed by the Lonavla Municipality. It is to be noted that, in this notification, the Government used the word "tax" and not the word "rate". The tax imposed under s. 59(1) was described as "a rate on buildings and lands". If the intention of the Government had been that the G.I.P. Railway should be liable to that tax only, it could have used the word "rate" instead of the word "tax" in the notification. In fact, if the notification had been left untouched, the liability of the G.I.P. Railway would have continued to be in respect of the rate on buildings or lands because of the earlier notification of 1914, under which the Railway had been made liable to House-tax. The notification of 26th July, 1917 made the Railway liable to tax on buildings and lands obviously because the Government intended that the Railway should be liable to the consolidated tax under clause (c) of the second proviso to s. 59(1). Clause (c) permits the imposition of a consolidated tax assessed as a rate on buildings or lands, or both. The moment a tax is assessed as a rate on buildings or lands, it naturally becomes a tax

A on building and lands. The fact that it was a consolidated tax was immaterial. It was this consolidated tax which was intended to be made payable by the G.I.P. Railway when the Central Government used the expression "tax on buildings and lands" in place of the earlier words "House Tax" and chose not to refer to the liability being in respect of a rate on buildings and lands. It is true
B that all taxes are not rates; but all rates are taxes. A rate on buildings and lands is a tax on buildings, so also any other tax assessed as a rate on build ings and lands becomes a tax on buildings and lands. We are unable to accept the submission made by counsel for the appellant that the expression "tax on buildings and lands" used in the noti-
C fication of 26th July, 1917 could only refer to a rate on buildings and lands under clause (i) of s. 59(1) and would not cover the consolidated tax referred to in clause (c) of the second proviso. It is true, as urged by him, that the tax under clause (c) of the second proviso is not identical with, and is different in nature from, the rate on buildings and lands imposed under clause (i), but that circumstance does not imply that it is not a tax on buildings and
D lands. The mere use of the word "consolidated" cannot make any difference to this interpretation. It is also significant that clause (c) of the second proviso does not purport to lay down that the consolidated tax will be the sum-total of the taxes described in clauses (i), (vii), (viii) and (ix). The consolidated tax envisaged by that clause is in lieu of separate imposition of any two or more
E of the taxes described in clauses (i), (vii), (viii) and (ix) which means that the power to impose this consolidated tax has been given for the purpose of substituting it for the multiple taxes which could be imposed under those clauses. This consolidated tax cannot, therefore, be held to be of the same nature as the taxes in all those clauses. The intention appears to be that, though the Municipality was empowered to impose four different kinds of
F taxes, it was permitted under clause (c) of the second proviso to simplify matters by having a single tax on buildings and lands in lieu of those multiple taxes. Such a single tax had to be assessed as a rate on buildings and lands. This being the nature, it obviously becomes a tax on buildings and lands, so that the notification of 26th July, 1917 clearly makes the Railway liable to pay-
G ment of this tax. The position under the Act of 1925 is exactly the same where also the language of clause (c) to the second proviso is indentical with that contained in the Act of 1901, so that the liability imposed on the Railway by the notification of the Government dated 26th July, 1917 under s. 135(1) of the Railways Act continued even under the Act of 1925.

H It is also significant to note that the Rules, which were framed by the Municipality under the Act of 1901 and by the Municipal Borough later under the Act of 1925 which were promulgated on

the 4th May, 1916 and the 6th October, 1931 respectively, described the tax as a general rate on buildings and lands in rule 1. It is true that, in the heading of the Rules, the expression used was that "the Rules were for the levy of a consolidated rate on buildings and lands", but, in the main provision, the tax was described only as "a general rate on buildings and lands". A general rate on buildings and lands is obviously a tax on buildings and lands and would, therefore, be covered by the notification of the Central Government dated 26th July, 1917.

Apart from this interpration which we have arrived at on the basis of the language used in the two Acts, the Rules, and the notification of the Central Government, there are two circumstances which indicate that this must be the correct construction of the notification issued by the Central Government. The first circumstance is that, when this notification was issued, the only tax which was being imposed by the Lonavla Municipality which the Central Government could have intended should become payable by the G.I.P. Railway was the consolidated tax under clause (c) of the second proviso. There was no other tax which could have been coverd by this notification. In fact, the notification would be meaningless if we were to hold that this consolidated tax is not covered by the expression "tax on buildings and lands". This notification was issued while the earlier notification of 1914 was already in existence and, if the intention was to cover only the rate mentioned in clause (i) of s. 59(1), there was no need to issue this fresh notification as the liability of the Railway to pay that tax already existed under that notification of 1914.

The second circumstance that we can take notice of is the historical background in which this notification of 26th July, 1917 was issued. It appears that, after the Rules for imposition of this consolidated tax came into force in 1916, the Municipality demanded payment of this consolidated tax from the G.I.P. Railway. Thereupon, the Agent of the G.I.P. Railway Company wrote a letter to the Secretary, Railway Board, Simla, on the 1st December, 1916, stating that the Company did not agree that it should pay the new consolidated tax as it comprised a house tax and a water rate. The Company had its own arrangements for the supply of water and it was obviously unfair that it should be called upon to pay any tax which includes a water rate, when no municipal water was being consumed by the Railway at Lonavla. The Secretary, Railway Board, forwarded this letter to the Secretary to the Government of Bombay, General Department, with a letter dated 12th December, 1916, enquiring whether the Agent's information was correct and, if so, whether the Bombay Government had any remarks to offer on the Agent's

A contentions. On 11th May, 1917, the Secretary to the Government of Bombay replied to the Secretary, Railway Board, pointing out that, originally, the Municipality proposed to levy a general water rate on all houses, in addition to the existing house tax, but, on representations from property owners of Lonavla and Khandalla, it had decided to impose a consolidated rate on B buildings and lands in lieu of the house-tax and the proposed general water rate. Consequently, they were levying, in lieu of house-tax, a consolidated rate, which included a general water rate, on a sliding scale, on all properties situated within the municipal limits. The water rate imposed was not intended to cover expenses on any service rendered in the nature of a general tax as opposed to a service tax. In equity, the Railway Company's property in C Lonavla had no better right to exemption than the properties of private individuals who, although they did not take private pipe connections, were paying the general water rate. In these circumstances, a request was made to the Secretary, Railway Board, to move the Government of India to declare the Administration of the G.I.P. Railway liable to pay to the Lonavla Municipality D the consolidated tax on buildings and lands in lieu of the house-tax in respect of the railway properties situated within the municipal limits. It was suggested that the Schedule annexed to the notification dated 13th May, 1914 may be amended accordingly. It was in pursuance of this move by the Bombay Government that the notification of 26th July, 1917 was issued by the Central Gov- E ernment. That the notification of 26th July, 1917 was issued in pursuance of this correspondence is clarified by the Memorandum dated 17th August, 1917, with which a copy of the new notification was forwarded by the Government of India, Railway Department (Railway Board) to the Secretary to the Government of Bombay. These circumstances, in which the notification of 16th July, 1917 was issued, make it plain that the Government of India, when they F used the expression "tax on buildings and lands" in the notification, intended to make the G.I.P. Railway liable to the consolidated tax which had been imposed by the Municipality under the Rules of 1916.

G The decision of the Bombay High Court in *Borough Municipality, Ahmedabad* v. *Ahmedabad Manufacturing and Calico Printing Co. Ltd.*(1) on interpretation of section 73 and 110 of the Act of 1925 also supports the view that we have taken above. The question that arose in that case was whether the right of an appeal envisaged by using the expression "in the case of a rate on buildings or lands or both" in section 110 could be availed of in respect of H a general water rate imposed under clause (x) of section 73(1) which described that tax as a general water rate imposed in the form of a

(1) A.I.R. 1939 Bom. 478.

rate assessed on buildings and lands. It was held that there was no distinction between a rate on buildings or lands and a tax in the form of a rate assessed on buildings or lands. In the case before us, on that analogy, a consolidated tax assessed as a rate on buildings and lands cannot be distinguished from a tax on buildings and lands.

Reference may also be made to a decision of the Allahabad High Court in *Raza Buland Sugar Co., Ltd. Rampur* v. *Municipal Board, Rampur*(1) where it was held that a water rate is a tax on buildings and lands and is not, in fact, a service tax chargeable in respect of water supplied. Counsel for the appellant referred to a decision of the Madras High Court in *Municipal Council, Cuddappah* v. *M & S. M. Ry. Co. Ltd.*(2); but that case is of no assistance as it turned on the special language which had been used in the Act and the notification which came up for consideration in that case. In fact, the expression that had to be interpreted was "property tax" and not "tax on buildings and lands". We agree with learned counsel for the appellant that much assistance cannot be derived from the decision of this Court in *Patel Gordhandas Hargovindas* v. *Municipal Commissioner, Ahmedabad*(3) which was relied upon by the High Court. However, as we have held above, on the proper interpretation of the language used in the two Acts, the Rules, and the notification, and taking into account the circumstances under which the notification of 1917 was issued, the only conclusion that can be arrived at is that the Railway was made liable to this consolidated tax, so that the decision of the High Court is perfectly correct.

The appeal fails and is dismissed with costs.

R.K.P.S. *Appeal dismissed.*

(1) A.I.R. 1962 Alld. 83.
(2) A.I.R. 1929 Mad. 746.
(3) [1964] 2 S.C.R. 608