A

SPENCER & CO.

v.

STATE OF MYSORE & OTHERS

April 27, 1971

B [S. M. SIKRI, C. J., G. K. MITTER, C. A. VAIDIALINGAM, P. JAGANMOHAN REDDY AND I. D. DUA, JJ.]

City of Bangalore Municipal Corporation Act, 1949 as amended by City of Bangalore Municipal Corporation Act, 1964, ss. 98, 99 and 100—Levy of property tax—Vacant land taxed at uniform rate on market value of land—Provisions whether discriminatory—Whether procedure in s. 98 relating to levy of new tax ought to have been followed.

C The appellant company owned a hotel at Bangalore. The vacant land appurtenant to the building was used for the beneficial enjoyment of the building as gardens and lawns. Under s. 99(2) (b) of the City of Bangalore Municipal Corporation Act, 1949 as amended in 1964 land appurtenant to a building not exceeding thrice the area occupied by the building was to be taxed as a part of the building, land in excess of that limit was to be taxed at a uniform rate of 0.4 per cent of its market value. D A notice was issued to the appellant on March 20, 1966 demanding tax on the vacant land in excess of thrice the area occupied by the hotel building. The appellant challenged the levy in the High Court but its petition under Art. 226 was dismissed. In this Court the questions that fell for considerations were: (i) whether for the reasons canvassed by the appellant the tax was discriminatory; (ii) whether the levy was invalid on the ground that the procedure in s. 98 for the levy of a new tax had not been followed.

E HELD: (i) The Act is not discriminatory. The scheme of the Act is that the market value of the land is first ascertained and then the tax at 0.4 per cent is levied. Under sub-s. (3) of s. 99 the Commissioner has to determine the market value of the land and sub-s. (3) of s. 100 gives guidance as to how to determine the market value of the land. The expressions 'estimated value' and the word 'area' in s. 100(3) are not vague. In the context of determining the market value of the land, which F has a well-known connotation the Commissioner is directed to look at the lands in the area of the land which is being assessed. In the context he can only look at lands which are similarly situate and are similar in nature to the lands being assessed, and the area must mean the locality in which the land is situate and the extent of the locality would be determined by the well-known characteristics such as commercial area, residential area or factory area etc. In other words the sub-section is drawing the attention of the Commissioner to the well-known principle, which is G followed in assessing the market value, that lands similarly situate and of similar potentiality should be taken as exemplars.

(ii) This Court has held that the State legislatures have power to levy property tax by assessing the market value of it and levying a percentage on it. If all lands are assessed to the same rate of taxation it cannot be held that there is *per se* any discrimination. Market value of land always bears a definite relationship to the actual or potential income being derived or derivable from the land and there cannot be any objection to a levy at uniform rate on market value. *Moopil Nair's* case where no attention was paid at all to income of the land was therefore distinguishable.

Kunnathat Thathunni Moopil Nair v. *State of Kerala*, [1961] 3 S.C.R. 77, 91 and *State of Kerala* v. *Haji K. Kutty*, [1969] 1 S.C.R. 645, distinguished. A

(iii) No discrimination can be said to result from the fact that land appurtenant to a building not exceeding thrice the area occupied by such building has been treated as a part of the building and taxed as such whereas land in excess of thrice the area of a building and other lands not appurtenant to buildings have been classified separately. In cities like Bangalore where land is scarce, excessive use of land as gardens and grounds is not in the public interest and the legislature can validly tax the excess land on a different and higher basis. It may in a particular case cause hardship but the legislature cannot be denied the right to classify the lands in such a manner. Three times the area occupied by a building is not a small area and it cannot be held that this figure is not reasonable. B C

It was not necessary to specify as to which land would be treated as surplus because the idea is to tax the excess land being used for a particular building and such land would be located in a block.

(iv) It was not necessary to have followed the procedure in s. 98 of the Act to levy the impugned tax. The lands were being assessed to property tax even before the 1964 Act either separately or as part of the building. It could not be said that the tax was being imposed for the first time within the meaning of s. 98. D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1852 of 1967.

Appeal by special leave from the judgment and order dated March 28, 1967 of the Mysore High Court in Writ Petition No. 704 of 1966. E

R. B. Datar, for the appellant.

A. R. Somnath Iyer and *S. P. Nayar*, for respondent No. 1.

Rameshwar Nath, for respondent No. 2. F

The Judgment of the Court was delivered by

Sikri, C. J. This appeal by special leave is directed against the judgment of the High Court of Mysore dismissing the prayer for a declaration of the invalidity of s. 99(2)(b) of the City of Bangalore Municipal Corporation Act, 1949—hereinafter referred to as the Corporation Act—as amended by the City of Bangalore Municipal Corporation (Amendment) Act, 1964—hereinafter referred to as the 1964 Act. G

By its judgment dated March 28, 1967 the High Court gave a limited relief to the appellant in respect of the notice No. 4606 dated March 31, 1966 issued by the Assistant Revenue Officer, Corporation of Benglore, to the appellant and quashed it to the extent it related to the period anterior to the date of notice. H

A The following points were urged before the High Court:

"(1) The new provision, section 99(2)(b) of the Corporation Act, introduced by the amending Act is beyond the legislative competence of the State Legislature.

B (2) The said provision is violative of the fundamental rights of the petitioners guaranteed under Articles 14 and 19(1)(f) of the Constitution.

(Note : The case of alleged violation of Article 19 (1)(f), it is conceded, is not available to the petitioner in writ Petition 704 of 1966 which is an incorporated C Company.)

(3) The Corporation has omitted to observe the procedure prescribed by section 98 of the Corporation Act, and cannot therefore levy the tax."

D Two other points were raised with which we are not concerned.

The learned counsel for the appellant, in view of our decision in *Assistant Commissioner of Urban Land Tax* v. *The Buckingham & Carnatic Co.*,(1) has not pressed point No. 1 before us. In order to appreciate the other points it is necessary to set out a few facts.

F The appellant company are the proprietors of the West End Hotel, Race Course Road, Bangalore. The premises of the hotel comprises a total extent of 19.43 acres or 11,19,168 sq. ft. out of which the building area is 1,05,683 sq. ft. The entire vacant land, excluding the built area and appurtenant thereof is being made use of for the beneficial enjoyment of the building in the F area as garden and lawns. Pursuant to the powers conferred upon the Municipal Corporation of Bangalore under the Corporation Act, as amended by the 1964 Act, to levy tax on the basis of estimated market value of lands, a notice was issued to the appellant on March 30, 1966 demanding a sum of Rs. 35,717.20 as tax on vacant land. It G was stated in the notice that the vacant land, over and above the limit, measuring 89,293 sq. yds. is assessed at 0.4% of the market value, plus Education Cess, plus Health Cess with effect from April 1, 1965. Property tax was also demanded on the building of the hotel but no question arises in this case as to its validity. The High Court expressly stated that they were excluding from consideration in this case all contentions of the appel- H lant relating to property tax on buildings, and the appellant was

(1) [1970] 1 S. C. R. 268.

left to pursue his normal remedies under the Corporation Act regarding the property tax on buildings.

Objections were filed on behalf of the appellant before the Commissioner. The appellant also filed a writ petition under art. 226 of the Constitution challenging s. 99(2)(b) of the Corporation Act, as amended by the 1964 Act, as unconstitutional and void and prayed for other consequential reliefs.

We may now set out the relevant provisions of the Corporation Act, as amended by the 1964 Act. Part III Chapter V of the Corporation Act deals with taxes. Section 97 enumerates taxes and duties which the Corporation may levy and one of the taxes enumerated therein is "a property tax". Section 98(1) requires that before the corporation passes any resolution imposing a tax or duty for the first time it shall direct the commissioner to publish a notice in the Official Gazette and fix a reasonable period not being less than one month from the date of publication for submission of objections. The sub-section further provides that the Corporation may after considering the objections, if any, received within the period specified, determine by resolution to levy the tax or duty and such resolution shall specify the rate at which, the date from which and the period of levy, if any, for which such tax or duty shall be levied. Sub-s. (2) of s. 98 provides that "when the corporation shall have determined to levy any tax or duty for the first time or at a new rate, the commissioner shall forthwith publish a notice in the manner laid down in sub-section (1) specifying the date from which, the rate at which and the period of levy, if any, for which such tax or duty shall be levied." Sub-sections (3) and (4) are not relevant for our purpose.

Section 99(1) reads as under:

> "If the corporation by a resolution determines that a property tax shall be levied, such tax shall be levied on all buildings and lands within the city save those exempted by or under this Act or any other law."

sub-section (2) of s. 99, provides :

> "(2) Save as otherwise provided in this Act, the property tax shall be levied,—
>
> (a) in the case of buildings at such percentages, not being less than ten per cent and not more than twenty per cent of the annual value of such buildings as may be fixed by the Corporation:
>
> Provided that the percentage to be fixed may be different for different classes of buildings.

A (b) in the case of any land at 0.4 per cent of the market value of the land:

Provided that the tax levied on any such land shall not be less than rupees ten per annum.

B *Explanation.*—For purposes of this section, 'building' includes any land appurtenant to such building used as garden and grounds for the more beneficial enjoyment of such building, not exceeding thrice the area occupied by such building."

C Sub-section (3) of s. 90 reads:

"(3) For the purposes of assessing the property tax the annual value of any building or the market value of the land shall be determined by the Commissioner:

Provided that the annual value of any building or the market value of the land the tax for which is payD able by the commissioner shall be determined by the mayor."

Section 100(1) provides that every building shall be assessed together with its site and other adjacent premises occupied as appurtenances thereto unless the owner of the building is a E different person from the owner of such site or premises. Sub-section (2) of s. 100 provides:

"The annual value of a building shall be deemed to be the gross annual rent at which such building may at the time of assessment reasonably be expected to let from month to month or from year to year, less a deducF tion of 16⅔ per cent of such annual rent and the said deduction shall be in lieu of all allowance for repairs or on any other account whatever.....(proviso omitted)."

Sub-section (3) provides that "the market value of lands shall be determined in accordance with the estimated value at the time of G assessment of such lands in the area in which such lands are situate."

It is contended that the tax on vacant land is violative of Art. 14 of the Constitution because (i) it is levied at an average rate without any relation to the actual or potential income of the H land; (ii) the manner of determining the market value was discriminatory, and (iii) the classification of vacant land and land appurtenant to a building is discriminatory. The learned counsel relied on the decision of this Court in *Kunnathat Thathunni*

Moopil Nair v. *The State of Kerala*(1). It will be remembered that the charging section in that case was s. 4 of the Travancore-Cochin Land Tax Act, 1955, which read as follows: A

> "4. Subject to the provisions of this Act, there shall be charged and levied in respect of all lands in the State, of whatever description and held under whatever tenure, a uniform rate of tax to be called the basic tax." B

Our attention was drawn to the following passage in Chief Justice Sinha's judgment:

> "It is common ground that the tax, assuming that the Act is really a taxing statute and not a confiscatory measure, as contended on behalf of the petitioners, has no reference to income, either actual or potential, from the property sought to be taxed.....Ordinarily, a tax on land or land revenue is assessed on the actual or the potential productivity of the land sought to be taxed. In other words, the tax has reference to the income actually made, or which could have been made, with due diligence, and, therefore, is levied with due regard to the incidence of the taxation. Under the Act in question we shall take a hypothetical case of a number of persons owning and possessing the same area of land. One makes nothing out of the land, because it is arid desert. The second one does not make any income, but could raise some crop after a disproportionately large investment of labour and capital. A third one, in due course of husbandry, is making the land yield just enough to pay for the incidental expenses and labour charges besides land tax or revenue. The fourth is making large profits, because the land is very fertile and capable of yielding good crops. Under the Act, it is manifest that the fourth category, in our illustration, would easily be able to bear the burden of the tax. The third one may be able to bear the tax. The first and the second one will have to pay from their own pockets, if they could afford the tax. If they cannot afford the tax, the property is liable to be sold, in due process of law, for realisation of the public demand. It is clear, therefore, that inequality is writ large on the Act and is inherent in the very provisions of the taxing section. It is also clear that there is no attempt at classification in the provisions of the Act." C D E F G H

(1) [1961] 3 S. C. R. 77, 91.

A We are unable to hold that the impugned Act is discriminatory. The scheme of the Act is that the market value of the land is first ascertained and then tax at 0.4 per cent is levied. Under sub-s. (3) of s. 99 the Commissioner has to determine the urged by the learned counsel that the expression "estimated as to how to determine the market value of the land. It was B urged by the learned counsel that the expression "estimated value" and the word "area" are very vague. We are unable to agree with him in this respect. In the context of determining the market value of the land, which has a well-known connotation, the Commissioner is directed to look at the lands in the area of the land which is being assessed. In the context he can C only look at the lands which are similarly situate, and are similar in nature to the lands being assessed, and the area must mean the locality in which the land being assessed is situate and the extent of the locality would be determined by the well-known characteristics such as commercial area, residential area or factory area, etc. In other words the sub-section is drawing the attention of the Commissioner to the well-known principle, which is D followed in assessing the market value, that lands similarly situate and of similar potentiality should be taken as exemplars.

The next question that arises is whether fixing property tax at 0.4 per cent is itself discriminatory. We are unable to see how this is discriminatory. This Court has held that E the State legislatures have power to levy property tax by assessing the market value of it and levying a percentage on it. If all lands are assessed to the same rate of taxation we are unable to see how there is *per se* any discrimination. The facts in *Kunnathat Thathunni Moopil Nair* v. *The State of Kerala*(1) were quite different. There no attention was paid at all to the income of the land. Here it is true that income of the land is not taken F into consideration and instead market value is the basis of taxation. But market value of land always bears a definite relationship to the actual or potential income being derived or derivable from the land and there cannot be any objection to a levy at uniform rate on the market value.

G Reference was made to the decision of this Court in *State of Kerala* v. *Haji K. Kutty*(2). There the facts were again quite different. The legislature adopted the floor-area of the building as the basis of tax irrespective of all other consideration. The market value of the property stands on a different footing because, like income, the market value of property is one of the indices of the benefit which the owner derives or can derive from it and H the very concept of market value takes into account the present or the potential income and other relevant considerations.

(1) [1961] 3 S. C. R. 77. (2) (1969) 1 S. C. R. 645

It was next contended that the classification of vacant land is discriminatory. While land appurtenant to a building used as garden and as grounds for the more beneficial enjoyment of such building, not exceeding thrice the area occupied by such building, has been treated as a part of the building and taxed as such, land in excess of thrice the area of a building and other lands not appurtenant to buildings have been classified separately. The learned counsel said that the distinction is artificial as the land in excess of thrice the area of a building is also being used for the same beneficial enjoyment of the building. It seems to us that in cities like Bangalore, where land is scarce, excessive use of land as gardens and grounds is not in the public interest and the legislature can validly tax the excess land on a different and higher basis. It may in a particular case cause hardship but the legislature cannot be denied the right to classify the lands in such a manner. Three times the area occupied by a building is not a small area and we are unable to hold that this figure is not reasonable.

It was said that the Act did not give any indication as to which land would be treated as surplus but in our view it is not necessary to specify the lands because the idea is to tax the excess land being used for a particular building and as this land would be located in a block it was not necessary to specify the land.

The last point urged before us was that this was a new tax and the procedure prescribed in s. 98 should have been followed. We are unable to hold that it is a new tax. Tax was being levied before the 1964 Act. The lands were being assessed to property tax even before the 1964 Act, either separately or as part of the building. We cannot say that this tax is being imposed for the first time within the meaning of s. 98.

In the result the appeal fails and is dismissed but in the circumstances there will be no order as to costs.

G.C. *Appeal dismissed.*