BASAPPA RUDRAPPA BETGERI & ORS.

v.

HUBLI DHARWAR MUNICIPAL CORPORATION

April 27, 1971

[J. M. SHELAT, I. D. DUA AND V. BHARGAVA, JJ.]

Bombay Municipal Boroughs Act, 1925, ss. 73, 85—Levy of house tax by municipality on lessees of buildings owned by municipality—Validity of levy.

The respondent Corporation was originally constituted as a Borough under the Bombay Municipal Boroughs Act, 1925 having been converted into a Corporation in 1962. The Borough owned several buildings in the area of its jurisdiction and some of these were given on lease to the appellants in 1953. The leases were renewed in 1955. Neither in the original leases nor in the fresh leases was there any mention of the liability of the tenants to pay the house tax. Subsequent to the execution of the fresh leases bills were received from the respondent by the appellants calling upon them to pay the house tax imposed in respect of the buildings belonging to the respondent which were on lease with the appellants. The appellants filed a suit challenging the legality of the imposition of this house tax. The main ground taken was that the Municipality could not impose a house tax on buildings owned by itself. The trial court held that the respondent was not competent to levy from the tenants any sum in excess of the agreed rents and that in the circumstances of this case notice under s. 206-A of the Act was not necessary. The Additional District Judge in appeal agreed that the levy was not valid but held the suit not to be maintainable for want of a notice under s. 206-A. The High Court in second appeal held that the levy was valid and that a notice under s. 206-A was necessary. In appeal by special leave to this Court,

HELD: There is nothing in the scheme of the Act to indicate that buildings belonging to the municipality itself cannot be subjected to the house-tax which can be imposed under s. 73 of the Act. The language of s. 85 specifically envisages imposition of such a tax on buildings belonging to the municipality. It clearly lays down that such a tax shall be leviable primarily from the actual occupier of the property on which the tax is assessed, even if he holds it on a lease from the municipality. The fixation of such responsibility primarily on the occupier holding a building on lease from the municipality could only be laid down on the basis that the buildings owned by the municipality can be subjected to the tax. Once the tax is imposed on such a building it would be payable by the occupier if he holds it as a lessee of the municipality. There is nothing anomalous in such taxation because the tax is not levied by the municipality on itself but on the lessee.

[On the above view the court did not find it necessary to decide whether before the filing of the suit by the appellants a notice under s. 206-A of the Act was necessary.]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2206 of 1966.

Appeal by special leave from the judgment and order dated February 23, 1966 of the Mysore High Court in Second Appeal No. 888 of 1961.

A *S. V. Gupte, Naunit Lal S. S. Khanduja* and *Swaranjit Sodhi* for the appellants.

K. R. Chaudhuri, for the respondent.

The Judgment of the Court was delivered by

B **Bhargava, J.**—This appeal by special leave arises out of a suit challenging the validity of imposition of house-tax and notices issued for realisation of that tax from the appellants. The respondent, the Hubli Dharwar Municipal Corporation, was originally constituted as a Borough under the Bombay Municipal Boroughs Act, 1925 (hereinafter referred to as "the Act"). At the relevant C time, when the disputes leading to the suit arose, it was still a Borough, but it became a Corporation subsequently in the year 1962. The Borough owned several buildings in Dharwar. Some of these buildings were given on leases, to the appellants. These leases were executed in favour of the appellants by the Borough some time in March and April, 1953. Thereafter, by a General D Committee Resolution No. 36 dated 29th June, 1953, the Borough decided to recover house-tax and other municipal taxes from the private individuals who were tenants of the municipal buildings leased out to them. In pursuance of this Resolution, a notice was issued by the President of the Borough that all the citizens in occupation of the buildings owned by the Municipality must pay E the taxes assessed on them in respect of the premises under their occupation. On 9th September, 1953, the appellants preferred joint objections against the levy of the house-tax and its realisation from them. On 9th September, 1954, the Government of Bombay sanctioned the amendment to the then existing House-tax Rules framed under the Act in respect of this Borough, and the General Committee passed a Resolution on the 19th February, F 1955 sanctioning the levy of taxes on Municipal owned buildings, adopting the sanctioned taxes, and bringing them into force with effect from 1st April, 1955 by giving necessary public notice as required by law. Notice under section 77 was published on 25th February, 1955 and then the taxes came into forct on 1st April, 1955. Thereafter, fresh lease-deeds were executed by the respon- G dent in favour of the appellants on 11th May, 1955. It may be mentioned that, neither in the original leases of 1953, nor in the fresh leases of 1955, was there any mention about liability of the tenants to pay the house-tax. Subsequent to the execution of these fresh leases, bills were received from the respondent by the appellants calling upon them to pay the house-tax imposed in respect H of the buildings belonging to the respondent which were on lease with the appellants. The appellants, thereafter, filed the suit, out of which the present appeal has arisen, challenging the legality of the imposition of the tax. The main ground taken was that the

Municipality could not impose a house-tax on buildings owned by itself, so that the imposition of this house-tax was invalid in law. The suit was resisted on the plea that it was a valid taxation. A further defence was taken that the suit was bad for failure on the part of the appellants to give notice to the respondent under section 206-A of the Act. The trial Court decreed the suit, holding that the respondent was not legally competent to levy from the tenants, any sum in excess of the agreed rents, and the bills issued for recovery of excess were not valid and that, in the circumstances of this case, notice under s. 206-A of the Act was not necessary. On appeal, the IInd Additional District Judge agreed with the trial Court that the levy of the tax was not justified, but held that the suit without a proper notice under section 206-A of the Act was not maintainable. He, therefore, allowed the appeal and dismissed the suit with costs. On second appeal, the High Court of Mysore upheld the dismissal of the suit, but on both the grounds, viz., that the tax was validly levied, and that the suit was not maintainable for want of proper notice under section 206-A of the Act. It is against this decision that the appellants have come up to this Court. It may be mentioned that the appellants sued the Borough in a representative capacity as representing all the tenants of buildings belonging to the Borough.

Learned counsel for the appellants took us through the various provisions of the Act and relied on the scheme of the Act to urge that a Municipality could not tax its own buildings. The power to impose a tax on buildings is contained in section 73 of the Act, the relevant portion of which is as follows:—

> "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:—
>
> (1) a rate on building or lands or both situate within the municipal borough;"

A proviso to this provision, which is relevant, may also be quoted:

> "Provided further that:
>
> (a) no tax imposed as aforesaid, other than a special sanitary cess, a drainage tax or a water-rate, shall, without the express consent of the Government, be leviable in respect of any building or part of any building or of any vehicle, animal or other property, belonging to Government and used solely for public purposes and not used or intended to be used for porposes of profit; and no toll shall be leviable in respect of any animal or vehicle

A used for the passage of troops or the conveyance of Government stores or of any other Government property, or for the passage of military or police officers on duty or the passage or conveyance of any person or property in their custody;

* * * *"

B Section 74 then provides for payment of an *ad hoc* sum ascertained in the manner provided in that section by the Government or district local board in lieu of a rate on buildings vesting in the Government or in the district local boards which are exempted under clause (a) of the proviso quoted above. Section 75 then lays down the procedure for imposition of the tax and s. 75(c) C gives the right of filing objections to the inhabitants of the borough. It may be noted that the right of filing objections is not confined only to owners of buildings, but is granted to inhabitants of the borough which will not exclude the Government or the district local board in respect of their buildings which may not satisfy the requirements of the proviso to section 73 inasmuch as D they may not be actually used for public purposes and, hence, may be liable to be taxed. Section 78 makes provision for preparation of an assessment list and requires that that list should contain the names of the owner as well as occupier, if known. Section 79 deals with cases where the person primarily liable for payment of this tax cannot be ascertained, and makes it sufficient E to designate him in the assessment book as "the holder" of such premises without further description. Section 80 lays down the manner in which the completed assessment list is to be published and gives a right to every person claiming to be either the owner or occupier of property included in the list, and any agent of such person, to inspect the list and to make extracts therefrom without charge. Finally, attention was drawn to the provisions of F section 85, which lays down who is to be primarily responsible for payment of the tax, in the following language:—

"85. A tax imposed in the form of a rate on buildings or land or both shall be leviable primarily from the actual occupier of the property upon which the tax is assessed if he is the owner of the property, or holds it on G a building, or other lease from the Government or from the municipality, or on a building lease from any person. Otherwise the tax shall be primarily leviable as follows, namely:—

(a) if the property is let from the lessor;

H (b) if the property is sublet, from the superior lessor,

(c) if the property is unlet, from the person in whom the right to let the same vests."

We are unable to agree with learned counsel for the appellants that this scheme of the Act contains any indication that buildings belonging to the municipality itself cannot be subjected to the house-tax which can be imposed under section 73 of the Act. In fact, the language of section 85 specifically envisages imposition of such a tax on buildings belonging to the municipality. It clearly lays down that such a tax shall be leviable primarily from the actual occupier of the property on which the tax is assessed, even if he holds it on a lease from the municipality. The fixation of such responsibility primarily on the occupier holding a building on lease from the municipality could only be laid down on the basis that the buildings owned by the municipality can be subjected to the tax. Once the tax is imposed on such a building, it would be payable by the occupier if he holds it as a lessee of the municipality. The same principle applies in the case of buildings held on a lease from the Government. It may be noted that all Government buildings are not exempted from the tax. Only those buildings are exempted which are used solely for public purposes and are not used or intended to be used for purposes of profit. Learned counsel urged that it is anomalous that a municipality should be permitted to impose tax on buildings owned by itself. But this argument loses sight of the fact that the tax is primarily payable by the occupier and not by the owner. The purpose of imposition of tax by a municipality on its own buildings is to ensure that it is paid by the lessees of those buildings. Of course, if the building is not on lease, the imposition of the tax would serve no purpose at all. That, however, will not make the imposition of tax by the municipality on its own buildings invalid which imposition will be really effective whenever that building is given out on lease to any other person. In these circumstances, we fully agree with the High Court that the tax was validly imposed and the suit challenging its realisation from the appellants had to fail.

In view of our decision on the validity of the tax, the question whether a notice under section 206-A of the Act was necessary or not becomes immaterial. The appeal fails and is dismissed with costs.

G.C. *Appeal dismissed.*