A

LINKS ADVERTISERS & BUSINESS PROMOTERS

v.

COMMISSIONER, CORPORATION OF THE CITY OF BANGALORE

April 21, 1977

B

[P. K. GOSWAMI AND S. MURTAZA FAZAL ALI, JJ.]

City of Bangalore Municipal Corporation Act, 1949—S. 136, third proviso, cl (e)—Scope of—Advertisement fronting a street put up within railway premises "Fronting" meaning of.

Words and Phrases—"fronting" meaning of.

C

Section 136 of the City of Bangalore Municipal Corporation Act, 1949 provides that every person who erects, exhibits etc., over any land or structure any advertisement or who displays any advertisement to public view in any place, whether public or private, shall pay on every advertisement a tax levied by the Corporation. Clause (e) of the third proviso to the section enacts that no such tax shall be levied on any advertisement which *is exhibited* within any railway station or upon any wall or other property of a railway, except any portion of the surface of such wall or property *fronting any street.*

D

An advertisement facing a public street was put up by the appellant adjacent to the compound fencing of a railway station but within the railway premises. The Municipal authorities levied tax on the advertisement. The appellant's writ petition challenging the levy was dismissed by a single judge of the High Court and this decision was upheld by a division bench.

On appeal to this Court it was contended that the expression "fronting any
E street" occurring in the proviso qualified the railway property and not the advertisement.

Dismissing the appeal,

HELD : 1. (a) Since the advertisements were fronting public street and were exposed to public view, were not covered by the exemption contemplated by the proviso and were, therefore exigible to tax. [677 D]

F (b) The word "fronting" qualifies not the wall or property mentioned in the latter part of the proviso but "advertisement". The test laid down by the proviso is that the Court has to see if the advertisement affixed whether inside the compound of the railway or not fronts the street. If it fronts the street or faces the street, even if it is within the railway premises it will be exigible to tax. [674 D & F]

(c) The word "fronting" has been used in the proviso not in any legal or
G technical sense but it ordinary parlance. It is not a term of art but one that signifies its meaning according to common notions. [675 D]

The Corporation of Madras v. *Messrs The Oriental Mercantile Company Ltd., Madras,* [1966] 2 M.L.J. 440 and *Ware Urban District Council* v. *Gaunt & Others.* [1960] 3 All E.R. 778, 787 distinguished.

2. The view of the single Judge that since the public street to which the advertisements were facing, ran along the railings with no other obstacle between
H the advertisement and the public view, it could reasonably be said that they were fronting public street is correct. On the other hand, the view of the Division Bench that the proviso would only apply to advertisements of such hoardings whose ownership lay with the railway or which belonged to the railway is not borne out by cl. (e). The question of exigibility to tax is relatable not to the ownership of the hoardings but their situs. [676 G-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 325/1976. A

(From the Judgment and Order dated the 3.12.1975 of the Karnataka High Court in Writ Appeal No. 284/74).

V. S. Desai, Sanjev Aggarwal and *R. B. Datar,* for the appellant.

S. S. Javali, Jagannath Shetty and *B. P. Singh* for resp. No. 1.

S. N. Prasad and *Girish Chandra,* for the Intervener Union of India. B

Nemo for respondent No. 2.

The Judgment of the Court was delivered by

FAZAL ALI, J.—Whether hoardings containing advertisements fixed in the premises of a railway station fronting a public street are exigible to tax under the provisions of s. 136 of the City of Bangalore Municipal Corporation Act, 1949 (Act No. LXIX of 1949)— hereinafter referred to as 'the Act'—is the substantial question of law involved in this appeal by certificate. C

The facts of the case lie within a narrow compass and the point raised by counsel for the appellant is one of first impression and undoubtedly requires serious consideration. The appellant is a firm of advertising commercial goods and other items by putting up hoardings containing advertisements on properties taken on lease or licence from various owners. The appellant also has been putting up hoardings on railway lands in the compound of the Bangalore Railway Station. In the instant case, we are only concerned with the hoardings containing advertisements put up adjacent to the railway compound fencing but within the railway premises by being placed on girders affixed to the earth. The fencing of the railway compound is adjacent to and faces a public street. It is also not disputed by the parties that the advertisements are put up at sufficient height so as to be clearly visible to and attract the attention of the members of the general public passing through the public street. The appellant has produced photographs of some of the hoardings which demonstrate these facts. D E F

The Municipal Corporation of the City of Bangalore being of the opinion that the hoardings containing advertisements put up by the appellant were exigible to tax issued a demand notice dated March 7, 1973 calling upon the appellant to pay a sum of Rs. 5871-83 as the advertisement tax including arrears. The appellant represented to the Municipal authorities that as the hoardings containing advertisements were situate within the railway premises they squarely fell within clause (e) of the third proviso to s. 136 of the Act. The Municipal Corporation did not accept the contention of the appellants and pressed for paying up the tax. G

The appellant then filed a writ petition before the High Court of Karnataka praying that the order of the Corporation demanding payment of tax be quashed, because the advertisements were clearly H

A exempt from tax by virtue of the aforesaid proviso. The writ petition was in the first instance heard by a single Judge who by his order dated April 4, 1974 overruled the contention of the appellant and dismissed the petition. Thereupon the appellant filed an appeal under the Letters Patent before a Division Bench which also affirmed the order of the single Judge, though on different grounds. The Division B Bench later on being approached under Art. 133 of the Constitution granted a certificate of fitness and hence this appeal before us.

The only point that has been raised before us is that the hoardings containing advertisements squarely fall within the exemption contained in the third proviso to s. 136 of the Act and, therefore, they are not exigible to tax. The High Court found that as the advertisements C did not belong to the Railway nor for the purpose of the Railway, the proviso in question did not apply and the Single Judge was right in holding that the advertisements were exigible to tax. The single Judge had, however, found that as the advertisements were much above the railings which faced the public street, the proviso had no application.

Before examining the view of the High Court, it may be necessary to extract the relevant portions of the statute which we are called D upon to interpret. The relevant part of s. 136 of the Act runs thus :

> "Every person who erects, exhibits, fixes or retains upon or over any land, building, wall, hoarding or structure any advertisement or who displays any advertisement to public view in any manner whatsoever, in any place whether public or private, shall pay on every advertisement which is so E erected, exhibited, fixed, retained or displayed to public view, a tax calculated at such rates and in such manner and subject to such exemptions, as the corporation may, with the approval of the Government, by resolution determine :
>
> x x x x
>
> "Provided further that no such tax shall be levied on F any advertisement which is not a sky-sign and which—
>
> x x x x
>
> (e) *is exhibited* within any railway station or upon any wall or other property of a railway except any portion of the surface of such wall or property *fronting any street.*
>
> G *Explanation* 1.—The word 'structure' in this section shall include any movable board on wheels used as an advertisement or an advertisement medium."
>
> (Emphasis supplied)

Section 136 of the Act which is the charging section clearly shows that the intention of the statute was to tax certain types of advertise- H ments. The pith and substance of the entire section, therefore, is the taxation of advertisements fixed, erected or exhibited on any land, building. wall, hoarding, structure etc. Thus it is manifest, that s. 136 contemplates tax on advertisements and not tax on premises or

buildings. This clear distinction has to be kept in mind in construing the third proviso to s. 136 of the Act which falls for determination in this case, particularly in view of some of the authorities relied upon by the appellant which deal with tax on premises rather than tax on advertisements.

The essential conditions necessary for the application of s. 136 of the Act are—

(i) that a person should erect, exhibit, fix or retain any advertisement upon any land, building, wall, hoarding or structure or display any advertisement in any manner;

(ii) that erection, exhibition, fixation or retention or display of that advertisement must be exposed to public view; and

(iii) that the advertisement must be exhibited in any place public or private.

The *sine qua non* for the application of this section is, therefore, that the advertisements displayed by any person must be to public view in any manner whatsoever. Once these conditions are satisfied, the person who exhibits the advertisements is liable to pay tax on such advertisements As, however, the Act was merely to regulate the premises falling within the Bangalore Municipal Corporation, it is obvious that the premises which did not fall within the Corporation or which belonged to other autonomous authorities could not be exigible to tax unless expressly so provided. Furthermore, it appears that the object of the Municipal Corporation in charging tax was to keep the public premises clean and water-tight and protect advertisements which may amount to nuisance, because the Act lays down a procedure which has to be followed before the advertisements could be exhibited. Consistent with this object, therefore, the third proviso to s. 136 of the Act grants an exemption from tax on any advertisement which is exhibited in any railway station or upon any wall or other property of a railway. Here also an exception is carved out which is that if such an advertisement, even though on any portion of the railway property, faces any street it will not earn the exemption.

The central argument put forward before us by Mr. V. S. Desai counsel for the appellant is that the expression "fronting any street" appearing in cl. (e) of the third proviso to s. 136 qualifies the railway property and not the advertisement so that the fact that the advertisement fronting the street or which is exposed to public view or is visible to the public from the public street will not make the advertisement exigible to tax, if the advertisement is within the railway premises or is adjacent to the compound wall or any other property which itself is fronting the street. In other words, the contention was that having regard to the terminology of the word "fronting" it is not possible to conceive that two portions of the property can front a street at one and the same time, unless they are in the same

A line. From the photographs produced before us, as also before the High Court, it appears that the hoardings containing the advertisements are no doubt fixed just 2 or 3 feet behind the compound fencing of the railway station premises. Mr. Desai, therefore, contended that once the compound wall which is in front of the girders on which the advertisements are fixed faces the street, there is no question of the advertisement facing the street. Secondly, it was contended that the B test of fronting the street as contained in the third proviso is that what is fronting the street is not the advertisement but the property of the railway. In other words, it was argued that as in the instant case the compound wall already fronted the street, the hoardings containing the advertisements being behind the compound wall, though adjacent to it, cannot be said to front the street, because two properties cannot front the street at the same time. We have given anxious consideration to the arguments advanced by the learned counsel for the appellant, but on a proper interpretation of the proviso we are unable to accept the same. To begin with, if the proviso is read with reference to the context, then it is absolutely clear that the verb "fronting" qualifies not the wall or the property but the advertisement. The central subject-matter of s. 136 as also of the proviso is not a place or building but advertisement which alone attracted tax. If we read the third proviso in the following manner, then the intention of the statute becomes absolutely clear :

> "Provided further that no such tax shall be levied on any *advertisement*
>
> (e) which is *exhibited* within any railway station or upon any wall or other property of a railway except any portion of the surface of such wall or property *fronting any street.*"
>
> (Emphasis supplied)

The verb "fronting", therefore, does not qualify wall or property mentioned in the latter part of the proviso but the noun advertisement. The test, therefore, laid down by this proviso is that the Court has to see whether the advertisement affixed whether inside the compound of the railway or not fronts the street. If the advertisement fronts the street or faces the street even if it is within the railway premises, it will be exigible to tax. For instance if the hoardings containing the advertisements were affixed just behind the compound wall and the advertisements did not face the street at all but faced the other side of the railway station their back being to the street, then the advertisements will certainly be exempt from tax and the proviso would clearly apply. This seems to us to be the natural interpretation of the proviso having regard to the context in which it is placed.

Mr. Desai learned counsel for the appellant relied on the definition of the word "fronting" as used in Stroud's Judicial Dictionary, 4th End., at p. 1121, where the learned author while defining "fronting" observed thus :

> "Fronting. (1) Premises "fronting, adjoining, or abutting" on a STREET, and as such chargeable with expense

of road-making under Public Health Act 1875 (c. 55), s. 150, did not need to be absolutely contiguous." A

In the first place the author defines the word "fronting" within the meaning of the Public Health Act, 1875, which levied tax on premises. The author was not at all concerned with tax on advertisement as in the instant case. In the case referred to in the book, the Court was called upon to judge the expenses on road-making under the Public Health Act. It is, therefore, manifest that these considerations would not apply to the facts of the present case. B

On the other hand in Webster's Third New International Dictionary Vol. I, the word "front" used as a verb is defined thus :

"something that confronts or faces forward: as (1) : a face of a building; esp. the face that contains the principal entrance. .....put a facing upon (e.g. the building with brick) 5 : to face or look forward have the front toward, opposite, or over against the houses the street)." C

According to the aforesaid dictionary meaning "fronting" merely means that the article should face or have its front toward, opposite or over against the house or the street. In our opinion the word "fronting" has been used in the proviso not in any legal or technical sense but as used in ordinary parlance. It is not a term of art but one that signifies its meaning according to common notions. For these reasons, therefore, we are clearly of the opinion that as the advertisements upon the hoardings in the instant case were undoubtedly facing or fronting the street they were exigible to tax and the fact that they were affixed on the earth which formed the compound of the railway premises would make no difference in view of the plain and unambiguous language of the proviso. D E

Learned counsel for the appellants relied on a decision of the Madras High Court in *The Corporation of Madras* v. *Messrs The Oriental Mercantile Company Ltd., Madras.*(1) This authority, however, can have no application to the facts of the present case, because to begin with, there is nothing to show that the hoardings containing the advertisements were in any way fronting or facing the street. On the other hand, the advertisements were merely on the outside wall within the railway compound. In these circumstances, therefore, this case does not appear to be of any assistance to the appellant. F

Reliance was then placed on a decision of the Queen's Bench Division in *Ware Urban District Council* v. *Gaunt and Others*(2) and particularly on the observations of Ashworth, J., where the Judge observed as follows : G

"The remaining issue is, in a sense, the most troublesome of all, namely, whether it is open to the appellants to apportion part of the expense on premises situate on the westerly H

(1) [1966] 2 M.L.J. 440,

(2) [1960] 3 All E. R. 778, 787.

A side of Walton Road but separated from it by the public footpath. This issue involves as an ancillary problem the question whether part of the expense should in any event be apportioned on the public footpath. Section 6 of the Act of 1892 provides, inter alia, that

> "....the expenses incurred by the urban authority in
> B executing private street works shall be apportioned (subject as in this Act mentioned) on the premises fronting, adjoining, or abutting on such street or part of a street." "

The observations extracted above will show that there also the Court was dealing not with a tax on advertisements but a tax on premises, and the question of the frontage was interpreted having regard to the
C place where the premises were situate. In the same judgment, the learned Judge observed as follows :

> "In each case, as it seems to me, *regard must be paid to the context in which the words appear and, quite apart from any decided cases,* I am inclined to think that the context in
> D the present case points to an enlarged rather than a restricted meaning of the word "adjoin". "
>
> (Emphasis ours)

It is, therefore, clear that the meaning of the words used in a particular statute has to be construed with reference to the context and not in isolation, nor is it possible to lay down any rule of universal application in a matter like this. For these reasons, therefore, this authority
E also does not appear to be apposite so far as the present case is concerned.

The Single Judge of the High Court, while interpreting the proviso, observed as follows :

> "These advertisements in question are displayed on the
> F hoardings standing close to the cement fencing at the outer mark of the railway property. The cement railings are hardly about 3 feet in height and the advertisement boards are very much above the railings. The Public street to which the advertisements are facing runs along the cement railings, with no other obstacle between the advertisement
> G boards and the public view. Therefore, it can reasonably, be said that they are fronting the Public Street."

We find ourselves in complete agreement with the view taken by the Single Judge.

The Division Bench of the High Court, however, while upholding the judgment of the Single Judge, observed as follows :

> H "In the instant case, we are not faced with any situation as the one envisaged in the second part of the exemption clause relative to advertisement on a wall or other property

of the railway 'frontage by street'. We are concerned herein with the case of a hoarding put up by and belonging to the appellant and not the railway. Hence, it is plain that no exemption on that score could be claimed on behalf of the appellant."

The High Court does not appear to have interpreted the proviso correctly. The view of the High Court that the proviso would only apply to advertisements of such hoardings whose ownership lies with the Railway or which belong to the Railway is not borne out by cl. (e) of the third proviso to s. 136. In other words the question of exigibility to tax is relatable not to the ownership of the hoarding but its situs. Even if the hoarding does not belong to the Railway but to some private party, if it does not front the street and is situated within the Railway premises or within the compound of the railway premises it is clearly exempt. We, therefore, do not approve of the line of reasoning adopted by the Division Bench.

On a close and careful interpretation, therefore, of cl. (e) of the third proviso to s. 136 of the Act we are clearly of the opinion that on the facts proved in the present case as the hoardings containing the advertisements were fronting the public street and were clearly exposed to public view and the members of the public passing through the street, they are not covered by the exemption contemplated by the proviso and are, therefore, exigible to tax. The demand notice, therefore, served on the appellant by the Municipal Corporation for payment of tax is not legally erroneous.

The result is that the appeal is dismissed with costs.

P.B.R. *Appeal dismissed.*