Privy Council Appeal Nos. 7 & 8 of 1943

The Madras and Southern Mahratta Railway Co. Ltd. – *Appellants*

v.

The Bezwada Municipality – – – – – – *Respondents*

Same – – – – – – – – – – *Appellants*

v.

Same – – – – – – – – – – *Respondents*

Consolidated Appeals

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 30TH MARCH, 1944

Present at the Hearing:
LORD MACMILLAN
LORD CLAUSON
SIR GEORGE RANKIN

[*Delivered by* LORD MACMILLAN]

The appellants, the Madras and Southern Mahratta Railway Company Limited, own certain vacant lands within the municipality of Bezwada. These lands are admittedly subject to the property tax which the respondents, the Bezwada Municipality, are empowered to levy. The question for decision in these consolidated appeals is whether the respondents acted within their statutory powers in ascertaining the annual value of the lands for the purpose of imposing the tax.

The method which the respondents adopted in order to arrive at the annual value of the lands was first to ascertain their capital value, which they did by reckoning them at so much per square yard, and they then took 6 per cent. of the capital value as representing the annual value. On the annual value so calculated they imposed property tax at the rate of 16½ per cent. per annum. The appellants under protest paid the assessments made upon them in each of the four financial years ending on 31st March in 1932, 1933, 1934 and 1935. They now seek to have these payments refunded as having been illegally exacted. In this they have been unsuccessful in both the Courts in India.

Many points were raised and many topics were discussed in the course of the proceedings in India, but before their Lordships the appellants both in their printed case and in their arguments at the bar concentrated upon one main ground of attack, namely, that on a sound construction of the respondents' statutory powers the method adopted by the respondents of fixing the annual value of the lands in question was not permissible. If they failed to make good this point the appellants did not contend that they could otherwise succeed.

The taxing powers of the respondents are conferred upon them by the Madras District Municipalities Act, 1920, as amended by subsequent legislation. Their Lordships take the Act as it stood at the relevant period. By section 78 every municipal council is empowered to levy ***inter alia***

a property tax and any resolution of a municipal council determining to levy a tax is required to specify the rate at which and the date from which it shall be levied.

Sections 81 and 82 deal with the levying and assessment of property tax and the argument turned upon the interpretation of these sections. So far as material to the present question they read as follows:—

> " *Section* 81.—(1) If the council by a resolution determines that a property tax shall be levied, such tax shall be levied on all buildings and lands within municipal limits save those exempted by or under this Act or any other law. The property tax may comprise—
>
> (*a*) a tax for general purposes;
>
> (*b*) a water and drainage tax.
>
> * * * * * *
>
> (2) Save as otherwise provided in this Act, these taxes shall be levied at such percentages of the annual value of lands or buildings or both as may be fixed by the Municipal Council, subject to the provisions of section 78.
>
> (3) The Municipal Council may, in the case of lands which are not used exclusively for agricultural purposes and are not occupied by, or adjacent and appurtenant to, buildings, levy these taxes at such percentages of the capital value of such lands or at such rates with reference to the extent of such lands, as it may fix:
>
> Provided that such percentages or rates shall not exceed the maxima, if any, fixed by the Local Government and that the capital value of such lands shall be determined in such manner as may be prescribed.
>
> (4) (*a*) The Municipal Council may, in the case of lands used exclusively for agricultural purposes, levy these taxes at such proportions as it may fix of the annual value of such lands as calculated in accordance with the provisions of section 79 of the Madras Local Boards Act, 1920.
>
> * * * * * *
>
> *Section* 82.—(1) Every building shall be assessed together with its site and other adjacent premises occupied as an appurtenance thereto unless the owner of the building is a different person from the owner of such site or premises.
>
> (2) The annual value of lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to let from month to month or from year to year less a deduction, *in the case of buildings only*, of ten per centum of such annual rent and the said deduction shall be in lieu of all allowance for repairs or on any other account whatever:
>
> Provided that—
>
> (*a*) in the case of—
>
> (i) *any Government or railway building or*
>
> (ii) any building of a class not ordinarily let the gross annual rent of which cannot, in the opinion of the executive authority, be estimated,
>
> the annual value of the premises shall be deemed to be six per cent. of the total of the estimated value of the land and the estimated present cost of erecting the building after deducting for depreciation a reasonable amount which shall in no case be less than ten per centum of such cost: "
>
> * * * * * *

By a resolution dated 29th January, 1932, the respondents resolved to levy property tax within their municipality at certain specified rates. The terms of this resolution give rise to some questions but the assessment on the appellants was not challenged by them before their Lordships on the ground that there had been no effective resolution to levy property tax.

It will be observed that under section 81 (2) the property tax, save as otherwise provided in the Act, is to be levied at a percentage of " the annual value of lands or buildings or both." Subsection (3) otherwise provides inasmuch as it permits, but does not enjoin, the levying of the tax " in the case of lands which are not used exclusively for agricultural purposes and are not occupied by or adjacent and appurtenant to buildings " either at a percentage of the capital value of such lands or at such rates with reference to the extent of such lands as the Municipal Council may fix, subject to compliance with the proviso to the subsection. If either of the alternative methods permitted by subsection (3) is adopted the

assessment is not on annual value. Appropriate as this subsection was to the case of the appellants' lands the respondents did not in fact avail themselves of it in making the assessment complained of. In particular, they did not levy the tax at a percentage of the capital value of the appellants' lands; they levied it at a percentage on their annual value.

Section 82 (2) prescribes how the annual value of lands and buildings is to be ascertained. It is to be deemed to be the gross annual rent at which they may reasonably be expected to let from month to month or from year to year, less 10 per cent. in the case of buildings. The spectre of the hypothetical tenant, so familiar an apparition in English rating law, is here invoked. The appellants did not dispute that, if this subsection had not had a proviso appended to it, it would have been open to the respondents to resort to any of the recognized methods of arriving at the rent which a hypothetical tenant might reasonably be expected to pay for the lands in question, including the method of taking a percentage of their capital value. But the proviso, they say, makes all the difference. It expressly enjoins resort to this last-mentioned method of arriving at annual value in the case of two specified classes of buildings. Therefore, they say, resort to this method is by necessary implication prohibited in every other case, and in particular in the case of their lands. The respondents contest this reading and maintain that the proviso does not impliedly prohibit resort to capital value as a means of getting at annual value in every case not covered by the proviso, and that the chief purpose of the proviso is to be found in the limitation to 6 per cent. which it contains.

Their Lordships cannot accept the appellants' argument which in their opinion involves a misinterpretation of the effect of the proviso. The proviso does not say that the method of arriving at annual value by taking a percentage of capital value is to be utilised *only* in the case of the classes of buildings to which the proviso applies. It leaves the generality of the substantive enactment in the subsection unqualified except in so far as concerns the particular subjects to which the proviso relates. The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where, as in the present case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it by implication what clearly falls within its express terms.

It follows that in their Lordships' opinion the respondents were not precluded from adopting a percentage of the capital value of the appellants' lands as a method of ascertaining their annual value for the purpose of the imposition of property tax merely by reason of the fact that this method is specifically enjoined in the particular instances mentioned in the proviso and that their lands are not included in these instances.

This is sufficient for the disposal of the case as presented before their Lordships. Before taking leave of it, however, they think it right to advert to certain matters which were incidentally brought to their notice. The resolution already referred to by which the respondents resolved to levy property tax consists of two paragraphs. The first imposes property tax in general under section 81 at a percentage of annual value for each component of the tax; the second imposes what it calls "land tax," presumably a species of property tax (1) on agricultural lands at 6 per cent. per half year and (2) "on other lands which fall under the category specified in section 81 (3) at ½ per cent. of the capital value per half year". From this it would appear that the respondents were originally minded to exercise the option conferred upon them by section 81 (3) and to assess lands such as those of the appellants not on annual value but on capital value. The Local Self-Government Department, however, took exception to this part of the resolution on the ground that the proviso to section 81 (3) required capital value to be "determined in such manner as may be prescribed"; that "prescribed" by section 3 (19) meant "prescribed by the Local Government by rules made under this Act"; that no such rules had been made; and that consequently the portion of the resolution in question was unwarranted and could not receive effect. Before their

Lordships the appellants supported this view. The respondents on the other hand maintained that if no rules were made they were nevertheless entitled to avail themselves of the capital method of valuation under section 81 (3) unfettered as to the manner in which they might determine capital value. In this they have the support of the judgment of the High Court. It seems that rules have now been made but railway lands are expressly excluded from their operation.

The respondents do not appear to have rescinded the part of their resolution alleged by the Department to be incompetent or to have passed any amending resolution. So far as the appellants' lands are concerned they seem simply to have ignored it, and to have invoked instead section 82 (2). They submitted an argument to the effect that the resolution did no more than fix the rates of the tax to be levied but did not commit the respondents to assessing any particular class of subjects in any particular way. The appellants not unnaturally do not seem to have objected to a departure from the capital value method under section 81 (3) for 1 per cent. per annum on capital value is more than 16½ per cent. on annual value calculated at 6 per cent. on capital value.

It is manifest that these topics are eminently debateable. As, however, the respondents did not in point of fact proceed under section 81 (3); as the appellants, so far from saying that they should have done so, maintained that the respondents could not lawfully have done so; and as the controversy before their Lordships was confined to the mode of ascertaining annual value under section 82 (2), their Lordships while mentioning those other topics do not feel called upon to make any pronouncement upon them and confine themselves to the matter which alone was directly raised before them and on which they have already expressed an opinion adverse to the appellants. There having in their Lordships' view been compliance in substance and effect with the provisions of the Act, within the meaning of section 354 (2), the appellants cannot recover the assessments which they have paid.

Their Lordships will accordingly humbly advise His Majesty that the consolidated appeals be dismissed. The appellants will pay the respondents' costs of the appeals.

(33004) Wt. 8060—28 150 4/44 D.L. G. 338

In the Privy Council

THE MADRAS AND SOUTHERN MAHRATTA RAILWAY CO. LTD.

v.

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SAME

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DELIVERED BY LORD MACMILLAN

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