

PETITIONER:
MUNICIPAL CORPORATION OF GREATERBOMBAY AND ANR.

Vs.

RESPONDENT:
INDIAN OIL CORPORATION LTD.

DATE OF JUDGMENT 27/11/1990

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
RANGNATHAN, S.

CITATION:
1991 AIR 686 1990 SCR Supl. (3) 365
1991 SCC Supl. (2) 18 JT 1990 (4) 533
1990 SCALE (2) 1140
CITATOR INFO :
RF 1992 SC1782 (10)

ACT:
Bombay Municipal Corporation Act, 1888--Sections 3(r),
3(s), 143 and 154 Petroleum storage tank--Whether building,
structure, or land--Exigible to property tax.
Words and Phrases--'Land', 'building'--Meaning of.

HEADNOTE:

The respondent-Oil Corporation took a piece of land on lease from the Bombay Port Trust for 30 years from February 1961 and put up six oil tanks for storage of petrol and petroleum products, apart from other structures and buildings.

For the year 1964-65 the appellant-Municipal Corporation fixed a sum as the rateable value of the installations on the demised property consisting of the buildings, structures and tanks. The Investigating officer, on objections raised by the respondent, reduced the rateable value. the rateable value of the tanks being fixed on the basis of the capacity of each of the tanks.

On appeal to the Court of Small Causes as against rateable value of the tanks, the Additional Chief Judge found that the tanks fell within the definition of 'land' or 'building' in Section 3(r) and 3(s) of the Bombay Municipal Corporation Act, 1888 and are liable to property tax under the Act. Accordingly, the rateable value of the tanks fixed by the Corporation was upheld.

On further appeal, the High Court allowed the appeal holding that the tanks are neither structure nor a building nor land under the Act.

In the appeal to this Court by the Municipal Corporation the question was whether the storage tanks of petroleum products are "lands" within the meaning of section 3(r) or "buildings" as defined under section 3(s) of the Bombay Municipal Corporation Act, 1888 and are exigible to property tax.

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Allowing the appeal, this Court,

HELD: 1. The expression 'building' includes the fabric of which it is composed, the ground upon which its walls

stand and the ground within those walls because the ground would not have a separate existence, apart from the building. [371G-H]

A tank to be a building must be a structure designed for ³ 7

of inanimate objects in storehouse or stable for horses shed or a hut etc. within the four corners of the walls built with masonry or otherwise with ingress or egress. [372A-B]

The word, 'building' must be given its ordinary natural meaning ascribable to it including the fabric and the ground on which it stands. On a mere look at the tank, by no stretch of imagination, it could be said to be a building. [372A-B]

The definition of the word, 'building' is an inclusive definition bringing within its ambit house, out-house, stable, shed, hut and every other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatever. [372B-C]

The tank does not answer any of the descriptive particulars. [372C]

2. The house or building, etc. must be constructed in accordance with the Master Plan and the Building Regulations conformable to the statutory requirements like drainage/sewage regulations. The construction of the tank is not required to be within the parameters of these regulations. Thereby tanks cannot be construed to be a structure. [372D-E]

The structure must be an entity in itself, although not necessarily a building in itself, adopted to the particular purpose it serves. In its ordinary sense a structure is something which is constructed by way of being built as is a building. But method of construction by itself is not conclusive. Structure by itself may not be a building but it may be analogous to a building, outhouse, shed, hut or a stable. Ship is like a floating building but it is not a structure. A crane, gantry or a turntable is a structure but is not a building. Weighing bridge is a structure. Tilting furnaces mainly are in the nature of structure. [378E-F]

3. The definition of 'land' also is of an inclusive definition. Its accompaniments are land, which is being built upon or is built upon or ³ 67

covered with water; benefits to arise out of land; things attached to the earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over any street. [378H-379B]

4. If the tanks are situated within a plant they would be integral parts of the plant and get exempted from assessment under section 154 of the Act, but there exist no such ³ 7

adopted consistent not only with the principles of taxation to make rateable value but also those relating to income tax, wealth-tax etc. [380G-H]

5. The tanks, though, are resting on earth on their own weight without being fixed with nuts and bolts, they have permanently been erected without being shifted from place to place. Permanency is the test. The chattel whether is movable to another place of use in the same position or liable to be dismantled and re-erected at the later place? If the answer is yes to the former it must be a moveable property and thereby it must be held that it is not attached to the earth. If the answer is yes to the latter it is attached to the earth. [382D-E]

6. The petroleum products are being stored through pipes and are taken out by mechanical process. The operational

mechanisation also though relevant, is not conclusive. The rateable is based on the rent, which the building or land is capable to fetch. Due to erection of the tanks whether the value of the demised property had appreciated or not, is also yet another consideration. When the tanks are erected and used for commercial purposes, the value of the demised property would get appreciated. The annual letting value is capable of increase. However, the rate of increase is a question of fact but the fact remains that the value of the land gets increased by virtue of erection of the storage tanks. Considering from this perspective it is held that the petroleum storage tanks are structures or things attached to the land within the definition of Sections 3(s) and 3(r) of the Act. Thereby they are exigible to property tax. [382G-383H]

D.C. Gouse & Co. etc. v. State of Kerala & Anr. etc., [1980] 1 S.C.R. 804; C.I.T. Andhra Pradesh v. Taj Mahal Hotel, Secundrabad, [1972] 1 S.C.R. 168; S.P. Jain v. Krishna Mohan Gupta & Ors., [1987] 1 SCC 191; S.P. Gupta, etc. etc. v. Union of India & Ors. etc. etc., [1981] Suppl. S.C.C. 87; Cardiff Rating Authority and Cardiff Assessment Committee v. Guest Keen Baldwin's Iron and Steel Company Ltd., [1949] 1 Kings Bench Division 385; B.P. Refinery (Kent) Ltd. v. Walker (Valuation Officer), [1957] 2 Queen's Bench Division 305; Shell-368

Max (B.P. Ltd.) v. Childs (Valuation Officer), [1962] 9 Ryde Rating Cases 182 (C.A.); Shell Max & B.P. Ltd. v. Holvoak, [1958] 1 Weekly Law Reporter 331; Shell-Max & B.P.Ltd. v. Holyoak (valuation officer), [1959] 1 Weekly Law Reporter 188, referred to.

New Manek Chowk Spinning and Weaving Mills Co. Ltd. and A-73

Ors., [1967] 2 S.C.R. 679; K.N. Subramaniam Chettiar v.M. Chidambaram Servai, [1940] Mad. 527; Perumal Naicker v. Ramaswamy Kone and Anr., [1969] Mad. 346; Chaturbhuj Morarji v. Thomas J. Bannet & Ors., [1905] 29 ILR BOM. 323; J H. Sinha v. Govindrao. Bhiwaji & Ors., A.I.R. 1953 Nagpur 224, distinguished.

Blacks Law Dictionary, Fifth Edition; Webster Comprehensive Dictionary, International Edition; Stroud's Judicial Dictionary, Fourth Edition; Oxford English Dictionary; Rating Valuation Practice by Bean and Lockwood, Fifth Edition-Referred to.

JUDGMENT: