

PETITIONER:
BARSII MUNICIPAL COUNCIL BARSII, DISTRICT DHOLAPUR

Vs.

RESPONDENT:
LOKAMANYA MILLS, BARSII, LTD., BARSII AND ANOTHER(With Connect

DATE OF JUDGMENT 19/09/1972

BENCH:
MATHEW, KUTTYIL KURIEN
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MATHEW, KUTTYIL KURIEN
GROVER, A.N.
MUKHERJEA, B.K.

CITATION:
1973 AIR 1021 1973 SCR (2) 399
1972 SCC (2) 857

ACT:
Bombay Municipal Borough Act, 1925, Section 75 Explanation.
Bombay Municipal Boroughs Rules-Rule 2(c) Boroughs
Municipalities (Validation of certain taxes on buildings,
and lands) Act, 1965, Sections 8 and 4. A levy of tax cannot
be validated by a validating act unless the charging
section, earlier struck down, is revived or resurrected.

HEADNOTE:
The Supreme Court, in Lokmanya Mills, Barsi Led. v. Barsi
Borough Municipality (1962) 1 SCR 306 struck down Rule 2(c)
as being violative of Art. 14 of the Constitution of India,
for the vice of assumed uniformity of return per sq. ft.
from structures of different classes which are in their
nature not similar. The Maharashtra Legislature passed
Borough Municipalities (validation of certain taxes on
buildings and lands) Act 1965, to validate the levy and
collection of the tax with retrospective effect and to
enable the municipalities to levy house tax on mills
factories and buildings on the basis of Rule 2(c).
Explanation to Sec. 75 of the Act was substituted by the new
explanation, by the Validating Act. Ss. 4 and 5 are
designed to validate the levy and collection of tax with
retrospective effect. On challenge through a Writ Petition,
the Division Bench of the Bombay High Court struck down
Sections 3(b), 4(1), 4(2) and 5 of the Validating Act for
their contravention of Art. 14. The appeal filed by the
State and the Barsi Municipal Council before this Court
among other things, raised a question as to whether the
Validating Act has resurrected the provisions of Rule 2(c)
and levy and collection were validated as required by law.
Dismissing the appeal,

HELD : When the rule was struck down by this Court, the
effect was that the Rule could never be deemed to have been
passed. Apart from Rule 2(c), there was no charging
provision 'similar to Rule 2(c) either in the Boroughs Act
or in the Validating Act for levying house tax on mills,
factories and buildings connected therewith. After Rule
2(c) was struck down, the Municipality did not frame any
rule under the provisions of Section 75 of the Boroughs Act
for imposing tax on mills, factories or buildings connected

therewith. Section 4 of the Validating Act does not revive or resurrect Rule 2(c). Since the charging section is not revived, there was no authority under law to collect tax on the said categories of properties. Since in the eye of law there was no charging provision, there could be no validation of any levy or collection. [403G]

Held further, that the above holding was enough to grant all reliefs claimed by the respondent in the Writ Petition and there was no need to express an opinion on the validity of the impugned sections of the Validating Act. [404F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1194, 1196, 1197 & 1250 of 1967.

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Appeals by certificate from the judgment and order dated November 22, 23 and 24, 1966 of the Bombay High Court in Special Civil Applications Nos. 1476 and 1424 of 1966.

G. L. Sanghi, C. K. Ratnaparkhi and A. G. Ratnaparkhi, for the appellant (in C.A. No. 1194/67).

B. N. Lokur, C. K. Ratnaparkhi, A. G. Ratnaparkhi and B. M. Srivastava, for the appellant (in C.A. No. 1196/67).

M. C. Bhandare, B. D. Sharma, for the appellants (in C.As. Nos. 1197 and 1250/67 and Respondent No. 2 (in C.As. Nos. 1194 and 1196/67)).

Sharad Manohar and B. P. Maheshwari, for respondent No. 1 (in C. As. Nos. 1194 and 1197 of 1967).

M. N. Phadke, Sharad Manohar and B. P. Maheshwari, for respondent No. 1 (in C.As. Nos. 1196 & 1250/67).

B. N. Lokur, G. L. Sanghi, C. K. Ratnaparkhi, A. G. Ratnaparkhi and B. M. Srivastava, for respondent No. 2 (in C.As. Nos. 1197 & 1250/67).

The Judgment of the Court was delivered by MATHEW, J. The respondents in these appeals filed writ petitions in the Bombay High Court challenging the validity of the Borough Municipalities (Validation of Certain Taxes on Buildings and Lands) Act, 1965 (Maharashtra Act No. 111 of 1966), hereinafter called the "Validating Act", on the ground that the provisions of the Act violated their fundamental rights under Art. 14 of the Constitution and for restraining the appellants from levying house tax on the mills, factories and buildings connected therewith of the respondents or collecting the same from them. A Division Bench of the High Court held that sections 3(b), 4(1), 4(2) and 5 of the Validating Act were invalid as they contravened Art. 14 and granted the prayer for restraining the appellant-Municipality from levying and collecting the tax. These appeals, by certificate, are directed against the judgment of the Division Bench.

Till the year 1947, the appellant-Municipality used to levy house tax on the mills, factories and buildings connected therewith of the respondents in these appeals on the basis of their annual letting value and the annual letting value for this purpose was ascertained in the normal way, that is, by ascertaining the amount at which the buildings might reasonably be expected to let from year to year. In 1947, the appellant-Municipality made fresh rules for levy of house tax and rule 2 (c) of the new rules ran as follows

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"2(c) In the case of mills and factories and buildings connected therewith, house tax on buildings shall be levied at the usual rate on the annual rental value fixed at Rs. 40/- for

every 100 square feet or portions thereof for each storey, floor or cellar.

"Explanation : The expression "building connected therewith" means and includes warehouses, godowns, millshops, etc. which are within the compound of mill premises but does not include residential buildings, such as bungalows, out-houses.

"Note : Buildings which are not taxed under Rule 2(c) shall be taxed under the ordinary rules."

Under this rule, the annual rental value of all the buildings of mills and factories other than residential buildings was fixed at a uniform rate of Rs. 40/- for every square foot of floor area irrespective of the actual rental value of the premises.

One of the respondents, namely, Lokamanya Mills. Barsi, Limited, claimed refund of amounts paid by them on the basis that Rule 2(c) was ultra vires the Boroughs Act and they filed 4 suits for the same. Against the decrees dismissing the suits, appeals were preferred to this Court and they were finally disposed of by this Court in Lokamanya Mills, Barsi Ltd. v. Barsi Borough Municipality(1). This Court, after referring to the provisions of S. 78 and the explanation to S. 75 of the Boroughs Act, held that the Municipality could levy a rate on lands and buildings on the basis of their capital or annual letting value and that in framing rule 2(c), the Municipality had adopted a mode of valuation different from the one sanctioned by the Boroughs Act. The Court also observed :

"The vice of the rule lies in an assumed uniformity of return per square foot which structures of different classes which are in their nature not similar, may reasonably fetch if let out to tenants and in the virtual deprivation to the rate-payer of his statutory right to object to the valuation."

Accordingly, the Court allowed the appeals and decreed the suits.

The main objects of the Validating Act were to enable the municipalities governed by the Boroughs Act to levy house tax on mill's factories and buildings connected therewith on the basis of rule 2(c) and to validate the levy and collection of the tax with retrospective effect. Section 3 of the Validating Act

(1) [1962] 1 S.C.R. 306.

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brings about certain amendments in the Boroughs Act. In s. 3 of the Boroughs Act, a clause is inserted which lays down that "rate on buildings or lands" includes any tax imposed on buildings or lands. Another amendment introduced in the Boroughs Act is with reference to Explanation to s. 75. Prior to the amendment, the explanation to s. 75 was as follows :

"In the case of lands the basis of valuation may be either capital or annual letting value."

This explanation was substituted by the Validating Act by an explanation which reads

"Explanation : For the purposes of a rate on buildings or lands, the basis of valuation may be

(i) the annual letting value.

(ii) the annual value;

(iii) the floor area, in the case of mills,

factories buildings and lands connected therewith;

(iv) the capital value in the case of vacant lands".

Both these amendments were given retrospective effect from the commencement of the Boroughs Act. Sections 4 and 5 of the Validating Act are designed to validate with retrospective effect, the levy and collection of tax notwithstanding the decision of this Court.

Sub-section (1) and (2) of s. 4 provide

"4(1) Any house tax and any water tax levied or purported to be levied and collected in respect of any mills, factories and buildings and lands connected therewith or in respect of any vacant lands, under the Boroughs Act and rules made thereunder, at any time before the commencement of this Act shall be deemed to have been levied and collected by or under the Boroughs Act as amended by this Act; and accordingly notwithstanding anything in any judgment, decree or order of any Court any such house tax or water tax levied and collected shall, for all purposes be deemed to be, and always to have been, validly levied and collected, and shall not be called in question merely on the ground that the tax was not levied on the basis of the annual letting value, or was levied on the basis of a uniform rate on the floor area, or that it was levied on the basis

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of capital value or a percentage on such value, or on the ground that any proceeding laid down in the Boroughs Act or in the rules was not followed."

"4(2) anything done or any action taken, by or on behalf of any Borough Municipality or any officer of such Municipality, acting or purporting to act under the provisions of the Boroughs Act or any rules made thereunder for or in connection with the levy or collection of the said taxes, shall be deemed for all purposes to have been validly done or taken; and no suit or other legal proceedings whatsoever shall be entertained or continued in any Court on any or all of the grounds mentioned in sub-section (1)."

Section 5 provides, among other things, for recovery of tax by the municipal authority concerned and the period within which it should be recovered, etc.

The two points which arise for consideration in these appeals are, whether rule, 2(c) was available to the appellant-Municipality for imposing house tax on mills, factories and buildings connected therewith of the respondents and whether the rule can be deemed to have been in operation in order that the levy and collection of house tax might be validated with retrospective effect

It may be recalled that rule, 2 (c) was struck down by this Court in Lokamanya Mills, Barsi Ltd. v. Barsi Borough Municipality (1) on the, basis that the Boroughs Act authorized levy of house tax only on the basis of annual letting value or capital value of the land or building as the case may be, and that rule 2(c) as it purported to levy house tax on the basis of the floor area was ultra vires the Act.

When the rule was struck down by this Court, the effect was, that the rule could never be deemed to have been passed. Apart from rule 2(c), there was no charging provision similar to rule 2(c) either in the Boroughs Act, or in the Validating Act for levying house tax on mills, factories and buildings connected therewith. After rule 2(c) was struck down, the Municipality did not frame any rule under the provision of S. 75 of the Boroughs Act for imposing house tax on mills factories or buildings connected therewith. The Validating Act has not also revived or resurrected rule 2(c). Therefore, the position was, that there was no charging provision for imposition of house tax on the mills, factories or buildings connected therewith. It is only if there was a charging provision for imposing house tax on the mills, factories or buildings connected therewith that any house tax could be imposed upon the mills, factories or buildings connected therewith of the respondents. All that the explanation to s. 75 substituted by the Validating Act did was

(1) [1962] 1 S.C.R. 306.

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to enact that, for imposing house tax, floor area will be the basis of valuation in the case of mills, factories or buildings connected therewith. The consequence is that (there could be no levy of house tax on the mills, factories or buildings connected therewith of the respondents nor could any demand be made on the respondents on the basis of any levy. The High Court was, therefore, right in restraining the appellant-Municipality from levying house tax on the mills, factories or buildings connected therewith of the respondents and in quashing the demand notice issued. Section 4 did not resurrect rule 2(c) with retrospective effect in order that it might be said that there was, in the eye of law, a provision for charging house tax on mills, factories or buildings connected therewith so that the tax levied and collected might be validated. Even if s. 4 had resurrected rule 2(c) and said that it shall be deemed to have been passed under the Validating Act with retrospective effect, that might not have cured invalidity on account of its being violative of Art. 14 of the Constitution as it imposed a flat rate on the floor area without making any classification of the area on the basis of income, productivity, or age of building, etc. But we do not think it necessary to pass upon this hypothetical question as s. 4 did not revive or resurrect rule 2(c), much less, give it retrospective operation.

In this view, we have no occasion to reach the constitutional question as regards the validity of the impugned sections of the Validating Act and we express no opinion upon it. We think that it was not necessary for the High Court to have struck down the provisions of sections 3(2), 4(1), 4(2) and 5 of the Validating Act. When rule 2(c) was held to be inoperative by virtue of the decision of this Court, all the reliefs claimed by the respondents in the writ petitions could have been given to them without striking down these provisions. It is a wise tradition with Courts not to decide a constitutional question if the case can be disposed of on other grounds.

We dismiss the appeals but, in the circumstances, make no order as to costs.

S.B.W.

Appeals dismissed.

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JUDIS