HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

DIVISION BENCH

BEFORE: SHEEL NAGU

AND

RAJEEV KUMAR SHRIVASTAVA, JJ.

Writ Appeal No. 1062/2019

Gwalior Hotels Pvt. Ltd.
Versus
Union of India and Another

Shri Arun Katare, learned counsel for the Appellant.
Shri Vinod Bharadwaj, learned Senior Advocate with Shri Rohit Batham, Advocate for the Respondent No.1.
Shri Ankur Maheshwari, learned counsel for Respondent No.2.

Reserved on - 27/02/2020

Whether approved for Reporting - Yes

Law Point Involved	Relevant paras
Article 285 of the Constitution exempts the property of Union of India from being subject to tax imposed by the State or any local authority. Similar manifestation of exemption is contained in Section 136 of the Municipal Corporation Act, 1956 ("1956 Act" for brevity) which exempts building and land owned by or vested *inter alia*	**19, 20, 21 and 22**

in Union of India from levy of property tax. However, a building which is constructed and owned not by Union of India, though erected and standing on an exempted land owned by Union of India, would not be entitled to exemption u/Sec.136 of the 1956 Act and would be amenable to property tax.	

J U D G M E N T
(18.03.2020)

Per Rajeev Kumar Shrivastava,J.:

This writ appeal under Section 2(1) of Madhya Pradesh Uchcha Nyayalaya Ko Appeal Adhiniyam, 2005, has been filed against the order dated 27.3.2019 passed in Writ Petition No. 1319/2016, whereby the writ petition had been disposed of with certain directions.

2. The facts in short are that the appellant had filed Writ Petition No. 1319/2016 being aggrieved by the action of the respondents by giving notice for recovery of property tax dated 22.1.2016 (Annexure P/1 of writ petition) and final notice dated 10.2.2016 (Annexure P/2 of writ petition) for recovery of the property tax from the appellant.

3. It is submitted that the appellant firm (Gwalior Hotels Pvt. Ltd.) is running hotel business and title relating to the property is of Ministry of Railway, so as per the circular issued by the Union of India, the respondent No.2 has no authority to charge property tax from the property which belongs to the Union of

India. The appellant firm is a registered firm doing business of hotel named Hotel Ambience, Gwalior situated at Railway Station Campus, Gwalior. The title over the property on which hotel is situated is of Union of India, Ministry of Railway as the Ministry of Railway has given the property on lease for 30 years to M/s Ircon Infrastructure & Service Limited, who in turn sublet the same to the appellant-firm. An agreement in this regard was entered vide Annexures P/7 and P/3 respectively of the writ petition.

4. Respondent no.2 served a bill assessing property tax upon the appellant-firm vide Annexure P/1 of the writ petition. The appellant submitted his objection in the office of respondent No.2, who did not consider the objection submitted by the appellant and issued a final demand notice of property tax mentioning therein that the appellant had not submitted any objection with regard to the property tax. Annexure P/2 of writ petition is misconceived and contrary to the documentary evidence submitted by the appellant. Against the aforesaid Annexure P/2 the appellant again submitted objection in the office of Mayor, Municipal Corporation, Gwalior but to no avail.

5. Learned counsel for the appellant has further contended that there is a circular issued by the Government of India, Ministry of Urban Development directing the Union Territories and State Government for payment of service charges to local bodies in respect of Central Government properties. The appellant filed circular along with representation (Annexure P/5 of writ petition) but again respondent No.2 has not paid any heed nor decided the objection submitted by the appellant. The respondent No.2 cannot recover property tax from Union of India, as the property in question belongs to Union of India. The title of the property is of Ministry of Railway, therefore, the respondent No.2 can recover

only service charges from the appellant and not the property tax of the property. The appellant-firm has not used basic amenities provided by the respondent No.2, such as water supply, drainage system. On these premises, learned counsel for the appellant prayed to quash Annexures P/1 and P/2 of writ petition.

6. It has been further pleaded that the Writ Court while deciding writ petition has not considered the aspect that the property of the appellant is Central Government property and as per Article 285 of the Constitution of India as well as Section 136 of the Municipal Corporation Act, 1956 (for brevity, the 'Act of 1956'), local authority cannot charge tax. This aspect it is urged has not been considered by the Writ Court. Instead the Writ Court passed final order as under :-

> "13. Conclusion is inevitable that the property in question being that of the Union Government is not amenable to property tax. Consequently, the demand notice for property tax qua the property in question was quashed. However, other taxes which finds mention in the demand notice shall be borne by the petitioner."

7. On the basis of above, learned counsel for the appellant has prayed to allow the writ appeal seeking directions not to charge other taxes from the appellant qua the property in question, as the property belongs to Union of India, Ministry of Railway.

8. The respondent No.2-Municipal Corporation, Gwalior has filed its return, wherein as preliminary submissions, it is stated that against issuance of notice of demand under Section 174, remedy of appeal lies under Section 184 of the Act of 1956 but the appellant has not availed such statutory remedy and has directly filed the writ petition. It is further stated that the appellant has wrongly stated in the petition that the title of the property in question belongs to Union of India, Ministry of Railways. From the agreement Annexures P/3 and P/7, it is clear that the land is

owned by the Rail Land Development Authority (RLDA), which is a statutory authority constituted for commercial use for the purpose of generation of revenue. Therefore, it cannot be said that the land is owned or vested in the Union of India. It may be that it comes within the control of Ministry of Railways but the land on which the hotel is running belongs to Gwalior Hotels Private Limited and is not exempted from payment of property tax.

9. It is further contended by learned counsel for the respondent No.2 that from Annexure P/7 it is apparent that clause 9.5 of agreement (Annexure P/7) specifically stipulates that the lessee Ircon ISL (M/s. Ircon Infrastructure and Services Limited) is liable to pay all outgoings, cess taxes including municipal taxes, levies, fee, in respect of the sites and utilities and the RLDA shall not be liable for the same. Moreso, as per clause 7.8 of agreement (Annexure P/3) there is further stipulation that the sub-lessee (appellant herein) undertakes to pay all charges, fees, taxes and duties levied by any government authority or local body or municipality or municipal corporation in respect of leased premises. Meaning thereby that the appellant is required to pay the property tax and other cess levied by the Municipal Corporation even though he is a sub-lessee. Incorporation of such terms and conditions under the agreement (Annexures P/3 and P/7) clearly indicates that the occupier of the land is required to pay the property tax. Hence, the Railways prayed for dismissal of the writ appeal.

10. Heard learned counsel for the parties.

11. Before adverting to the issue involved in the instant appeal, relevant provisions are reproduced below for the sake of convenience :-

Article 285 of Constitution of India:

"**285. Exemption of property of the Union**

from State taxation. - (1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.
(2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State."

Section 4A of Railways Act, 1989:

"**4A. Establishment of Railway Land Development Authority**.-- The Central Government may, by notification, establish an authority to be called the Rail Land Development Authority to exercise the powers and discharge the functions conferred on it by or under this Act."

Sections 135 and 136 of Municipal Corporation Act, 1956 :

"**135. Imposition of Property Tax.-** Notwithstanding anything contained in this Act, the tax under clause (a) of sub-section (1) of section 132 shall be charged, levied and paid, at the rate not less than six percent and not more than ten percent of the annual letting value, as may be determined by the Corporation for each financial year.

Provided that if the Corporation fails to determine the rate of the property tax by 31st March the rate as prevailing during the previous financial year shall be deemed to be the rate for current financial year.

136. Exemptions.-- The property tax levied under section 135 shall not be leviable in respect of the following

properties, namely:-

(a) buildings and lands owned by or vesting in-

(i) the Union Government;

(ii) the State Government;

(iii) the Corporation;

(b) buildings and lands the annual value of which does not exceed six thousand rupees in case of Municipal area having population of one lac or above and four thousand eight hundred rupees in case of Municipal area having population below on lac.

Provided that if any such building or land is in the ownership of a person who owns any other building or land in then same city, the annual value of such building or land shall for the purposes of this clause, be deemed to be the aggregate annual value of all buildings or lands, owned by him in the city;

(c) buildings and lands or portions there of used exclusively for educational purposes including schools, boarding houses, hostels and libraries if such buildings and lands or portions thereof are either owned by the educational institutions concerned or have been placed at the disposal of such educational institutions without payment of any rent;

(d) public parks and play grounds which are open to the public and building and land attached thereto if the rent derived there from is exclusively spent for the administration of parks and playgrounds to which they are attached;

(e) buildings and land or portions thereof used exclusively for public worship or public charity such as mosques, temples, churches, dharmashalas, gurudwaras, hospitals, dispensaries, orphanages, alms

houses, drinking water fountains, infirmaries for the treatment and care of animals and public burial grounds, or other places for the disposal of the dead:

Provided that the following buildings and lands or portions thereof shall not be deemed to be used exclusively for public worship or for public charity within the meaning of this Section, namely:-

(i) building in or lands on which any trade or business is carried on unless the rent derived from such buildings or lands is applied exclusively to religious purposes or to public charitable institutions aforesaid;

(ii) buildings or lands in respect of which rent is derived and such rent is not applied exclusively to religious purposes or public charitable institutions aforesaid.

(f) buildings or lands owned by widows or minors or persons subject to physical disability or mental infirmity owing to which they are incapable of earning their livelihood, where the main source of maintenance of such widows or minors or persons is the rent derived form such buildings and lands:

Provided that such exemption shall, relate only to the first twelve thousand rupees or the annual value of such buildings and lands.

(g) buildings and lands owned by freedom fighters, retired members of Defense Services and their widows during their life time if they are exempted from income tax.

(h) building and lands owned by

blind persons, abandoned women and mentally incapacitated persons if sufficient proof is produced in this behalf and if the main source of their maintenance is he rent derived from such buildings and lands.

(i) buildings and lands in occupation of owner or his residence shall be exempted from property tax to the extent of fifty per cent.

(j) the electric pole erected by the Madhya Pradesh Electric Board.

(k) property owned by such political party in the State which has been recognized by the Election Commission of India."

Section 6 of Madhya Pradesh Upkar Adhiniyam, 1981:

"**6. Levy of cess on lands and buildings.** -- (1) there shall be charged, levied and paid for each year an urban development cess on all lands or buildings or both situated in municipal area or urban area at the rate of 2 per centum of the annual letting value or annual value :

Provided that where the lands or buildings or both are in occupation of the owner himself, the rate of cess shall be one half of the rate aforesaid :

Provided further that no cess shall be charged, levied and paid in respect of lands or buildings or both, for which property tax is not leviable under the provisions of the law relating to local authority or the Sampatti Kar Adhiniyam, as the case may be.

(2) The cess charged and levied under subsection (1) shall be in addition to tax charged and levied on lands or buildings or both in respect of annual letting value or annual value thereof under the law relating to local authority or the Sampatti Kar Adhiniyam, as the case may be, and shall be payable by the owner in the same manner as that tax.

> (3) Subject to the provisions of this part, the provisions of the law relating to local authority or the Sampatti Kar Adhiniyam, as the case may be, and the rules made thereunder shall apply to the cess as if the cess were a tax levied under the said law or the Sampatti Kar Adhiniyam, as the case may be.

(The second proviso to Section 6 has been substituted by M.P. Act No.11 of 2007 w.e.f. 21.5.2007).

12. It is admitted position that as per Annexure P/7, the land in question is of railway department, therefore, title of the land belongs to Central Government.

13. Tax Recovery Notice is Annexure P/2. Lease agreement between RLDA and M/s Ircon Infrastructure & Service Limited. It is also undisputed that the construction over the said railway land has been made by the lessee M/s Ircon Infrastructure & Service Limited.

14. A perusal of Article 285 of the Constitution of India makes it clear that this provision exempts all the properties of the Union Government from State taxation. In the present case, it is undisputed that owner of the land is railway department, i.e., Central Government. Therefore, under Article 285 of the Constitution and under Section 136 of the Act of 1956, the Central Government's land is only exempted against levy of State taxation.

15. However the building erected and standing over said land is constructed by M/s Ircon Infrastructure & Service Limited, which is a private limited company, and as per Annexure P/3, M/s Ircon Infrastructure & Service Limited has sublet the aforesaid building to Gwalior Hotels Pvt. Ltd., which again is a private limited

company running a hotel therein named 'Hotel Ambience' purely for commercial purposes. Therefore, it cannot be said that the constructed building housing a private hotel is Central Government property. Hence, the Municipal Corporation is entitled to claim property tax and other taxes from the appellant with regard to hotel/building constructed over exempted land.

16. The word 'property' is nowhere defined in the Municipal Corporation Act or M.P. Upkar Adhiniyam. In the present case it is undisputed that the owner of the land is Union Government but the construction made over it is by a private party, i.e., appellant.

17. The words 'building and land' have been used in clause (b) of Section 136 of Municipal Corporation Act. In this section the word 'property' has not been used, which denotes that the Act recognises “land” and “building” as distinct properties which can independently be chargeable to property tax and can also independently enjoy the exemption under Section 136. Thus, in the case at hand, the land in question is owned by the Union of India and as such is exempted from levy of property tax under Section 136 but that by itself cannot per se exempt the building standing on the exempted land unless he building is also owned by the Union of India, which is not the case herein.

18. Similarly, under Section 6 of M.P. Upkar Adhiniyam, lands and buildings are specifically mentioned in the section, i.e., “for each year an urban development **cess on all lands or buildings** or both situated in municipal area or urban area at the rate of 2 per centum of the annual letting value or annual value”.

In proviso, it is further specified that if the lands or buildings or both are in occupation of the owner himself, the rate of cess shall be one half of the rate aforesaid. It is further provided that no cess shall be charged, levied and paid in respect of lands or buildings or both, for which property tax is not leviable under the provisions of the law relating to local authority or the Sampatti Kar Adhiniyam, as the case may be. That means, intention behind enactment is to levy the Upkar, independently upon lands on one hand, and buildings on the other.

19. The decision of this Court in respect of interpretation of the expression "Property" and "Ownership" contained in Sec. 285 of the Constitution, is bolstered by the decision of Federal Court in **Corporation of Calcutta vs. Governors of St. Thomas' School, Calcutta [(1949) F.C.R. 368]**, wherein Four Judges' bench (three out of them adorned the Office of Chief Justice of Apex Court) held thus:-

> "The main argument of the appellant is that the buildings put up by the Government cannot be separately assessed because the land on which the buildings stand .is not vested in the Government. It was therefore argued that as the valuation is of the whole one unit, the exemption given to the Crown lands under s. 154 of the Government of India Act cannot exclude the new structures from assessment. It was argued that the order of requisition legalised what would otherwise have been a trespass and there was no lease in favour of the Government so as to give to the Government any interest in the land on which the new structures were put up. It was therefore contended that s. 154 of the Government of India Act was not applicable. In the alternative it was contended that the proviso would be applicable because the unit of revaluation and assessment was the whole area and as that unit was already taxed before April,

1937, the additional structures should be included in the revaluation.

In our opinion, the contentions of the appellants cannot be accepted. The facts in the present case show that when the Government requisitioned the property under r. 75-A(2) of the Defence of India Rules, the Government was entitled to use or deal with the same in such manner as may appear to it expedient. Although the agreement of the 26th of February, 1943, does not provide for the erection of fresh structures or state what is to be done (if they are put up) when the property is released from requisition, it seems clear that the authority to deal with the property in such manner as may appear to the Government expedient, given in r. 75-A (2), is wide enough to allow them to put up new structures. It was argued on behalf of the appellant that by the order of requisition the land was not vested in the Government and therefore the structures erected on the land would be the property of the owner of the land. This contention is based on the assumption that when someone puts up a structure on land not belonging to him, the owner of the land is the owner of the structure. We are unable to accept the correctness of this assumption in India in all cases.

Section 154 raises two questions for determination when an exemption from liability to tax is claimed—

(i) whether the tax is claimed in respect of "property"; and

(ii) whether such property is vested in Government.

The word "property" is used in the context without any limitation and therefore should bear its normal meaning. Interpreted in that way it will embrace every kind of property. As observed by Langdale M.R. in *Jones* v. *Skinne[(1835) 5 L.J. Ch. 87]*, "'property' is the generic term for all that a person has dominion over. It

> is the most comprehensive of all terms which could be used, inasmuch as it is indicative and descriptive of .every possible interest which the property can have". Without attempting to define affirmatively what the generic term will cover, it is sufficient for us to hold that the buildings in question are property and as in India the ownership of a building is not necessarily related to the ownership of the land on which the building stands, the buildings in the present case were vested in the Government. It is therefore clear that the main part of s. 154 covers the case. In *The Cantonment Committee* v. *Satischandra Sen [(1930) 57 I.A. 339]* Sir George Lowndes, in delivering the judgment of the Board, recognised the principle that houses could be erected upon land by the licence of Government, the buildings being recognised as the property of the persons by whom they were erected while the land remained in the ownership of the Government. In our opinion, the meaning of "property" adopted in *Governor-General of India in Council* v. *Corporation of Calcutta [(1948) 52 C.W.N. 173]* is correct."

20. Similar view has also been taken by Division Bench of Andhra Pradesh High Court in **Electronics Corporation of India Limited vs. The Secretary, Revenue Department, Govt. of A.P., Hyderabad and others [AIR 1983 AP 239]**, where it has been held as under :-

> "(2) The rate of levy is provided in the schedule to the Act and Sec. 8 empowers the state Government to amend the same from time to time. Indeed, the Schedule was also amended by the aforesaid Amendment Act.
>
> (3) The writ petitioner herein is the Electronics Corporation of India Ltd. , Moulali, Hyderabad. A notice of demand was served upon by the

petitioner calling upon it to pay a sum of Rupees 11,98,826-32 ps. towards the years 1974-75 to 1978-79, and a further sum of Rupees 1,91,189-68 ps. for the years 1970- 71 to 1973-74, on account of the non-agricultural tax due under the Act. The present writ petition is filed questioning the said demand.

(4) The contention of the writ petitioner is that it is a lessee of the land which belongs to the Union of India, and since the property of the Union of India cannot be taxed by a State Legislature, the Andhra Pradesh Non-agricultural Lands Assessment Act, 1963, cannot apply to the property owned by the Union of India and, accordingly, no demand can be made upon the petitioner, which is a lessee of the Union of India. It is stated that an area of approximately 1000 Acres was granted by the State Government to the Department of Atomic Energy, Government of India, and the Department of Atomic Energy in turn leased out an extent of 280-25 acres to the petitioner-Corporation for establishing its plant and machinery. It is further contended, that, out of the extent granted to the petitioner, an extent of 29 acres is covered by buildings; an extent of 12 acres is covered by buildings; an extent of 12 acres by roads and the rest of the area is meant for future expansion It is also submitted that an extent of 14. 25 acres is being used for agricultural purposes.

(6) Article 285 of the Constitution reads as follows:-

> "285. (1) The property of the Union shall, save in so far as Parliament may by law otherwise provide be exempt from all taxes imposed by a State or by any authority within a State.
>
> (2) Nothing in cl. (1), shall, until Parliament by law otherwise provides prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that state".

This Article corresponds to Sec. 154 of the

> Government of India Act, 1935. Cl. (1) of Art. 285 declares that the property of the Union shall be exempt from all taxes imposed by a State except in so far as the Parliament may by law provide otherwise. The contention of Sri P. R. Ramachandra Rao, the learned counsel for the writ petitioner, is that inasmuch as the property upon which the non-agricultural tax is being levied is the property of the Union, the State Legislature is not competent to levy and tax thereon. This is disputed by Sri N. Subba Reddy, the learned Government Pleader with reference to the language of Sec. 3 read with the definition of 'Owner' in the Ac. His contention is that the levy is not upon the property of the Union, but is upon the interest of the lessee/occupier and that therefore the bar in Art. 285 has no application. We are inclined to agree with Mr. Subba Reddy.
> (7) The definition of the expression "Owner" in Cl. (J) of Sec. 2 is an inclusive definition. It includes (j) any person for the time being receiving or entitled to receive, whether on his own account or as agent, trustee guardian manager or receiver, for another person, or for any religious educational, or charitable purpose, rent or profits for the non-agricultural land or for the structure constructed on such land, in respect of which the word is used: (ii) a lessee of the land owned by the state Government or the Central Government, provided the lease has been granted for any commercial, industrial or other non-agricultural purpose; and (iii) a local authority, if the land is vested in the local authority and is used for any commercial industrial or other non-agricultural purpose deriving income therefrom."

21. The case at hand is not a case where the property tax is not leviable, hence it cannot be said that the building which is constructed by a private party over the land of Central Government will be exempted from levy of taxes.

22. In the light of above discussion, in our considered view, this writ appeal stands disposed of in

the following terms :-

1. The respondent Corporation is prohibited from assessing, levying and recovering property tax on the land in question owned by the Union of India.
2. The appellant/petitioner not being the Union of India is not entitled to exemption under Section 136 of Municipal Corporation Act on the commercial building constructed over the exempted land in question.
3. Consequently, the respondent Corporation is entitled to assess, levy and recover property tax on the building constructed by petitioner/appellant over the land in question.
4. The impugned bills and the impugned order of the learned Single Bench stand modified to the extent indicated above.

(Sheel Nagu) **(Rajeev Kumar Shrivastava)**
Judge **Judge**

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