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discriminatory and because sub-r. (6) is void inasmuch as the State Government had no power to enact it and it is not servable from the rest of the rule.

I would therefore allow the appeal with costs and order the issue of a writ quashing the proceedings pending before the Cane Commissioner and prohibiting him to continue those proceedings.

BY COURT : In accordance with the opinion of the majority, this Appeal is dismissed with costs.

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December, 7.

CORPORATION OF THE CITY OF NAGPUR

v.

THE NAGPUR HANDLOOM CLOTH MARKET CO. LTD.

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, K. C. DAS GUPTA and J. C. SHAH, JJ.)

Municipal Corporation—Levy of taxes—Water rates—Conservancy and property taxes—Individual shop-keepers—Liability—Building, if includes part of a building—Residential and non-residential—Liability—Connotation of 'family'—If postulates relationship—City of Nagpur Corporation Act, 1948 (C.P. and Berar 2 of 1950), s. 5 (7)—City of Nagpur Corporation Rules, r. 10 (a) (b) (c).

The Nagpur Handloom Cloth Market Company Ltd. constructed in the City of Nagpur on plots owned by it a number of buildings with two floors, the ground floor intended to be used as shops and the first floor to be used for residential purposes. For the use of the shops lavatories connected with the sewers of the corporation drainage system were constructed and water supply for the shops was obtained from a corporation water standard. The corporation levied among other taxes, under s. 114 of the City of Nagpur Corporation Act, 1948, conservancy tax and water rates on the basis of the letting value of

the buildings. Most of the shops were occupied by shop-keepers and in the year 1953 the corporation served notices of assessment on individual shop-keepers of the respective shops. Some of the shop-keepers filed objections against the notices served on them and on rejection of these objections filed appeals under ss. 387 and 130 of the Act but without success. Nearly two years after these proceedings the company and one of the shopkeepers filed a writ petition in the High Court of Bombay to quash the order of demand dated February 2, 1958, and to prohibit the Corporation from applying r. 10 (a) of the Assessment Rules. The High Court allowed the writ petition holding that r. 10 (a) applied only to residential houses and not to houses occupied for non-residential purposes and therefore separate assessment of the shops in the occupation of the shop-keepers was invalid. The contention of the Corporation that in view of the great delay in filing the petition, the petition should fail was rejected by the High Court. The present appeal came before this Court by way of special leave.

Held, that the expression "building" in s. 5 (7) of the Act would include a part of a building. By reason of s. 5 (7) and the implication of r. 10 (a) and r. 10 (c) the Corporation is competent to treat each tenement occupied by a different person as a separate building for levy of tax. The expression 'family' in r. 10 (a) does not in the setting of the rules postulates the existence of relationship either by blood or by marriage between the persons residing in the tenement. Even a single person may be regarded for the purpose of the rule as a family and a master and servant would also be so regarded. The expression "occupying" in r. 10 (a) applies equally to uses residential and non-residential.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 288 of 1960.

Appeal by special leave from the judgment and order dated August 8, 1958, of the Bombay High Court in Special Civil Application No. 174 of 1958.

G. S. Pathak, S. M. Hajarnavis, O. C. Mathur, J. B. Dadachanji and *Ravinder Narain*, for the appellant.

M. C. Setalvad, Attorney-General of India, M. N. Phadke and *Naunit Lal*, for the respondents.

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1962. December 7. The Judgment of the Court was delivered by

SHAH, J.—The Nagpur Handloom Cloth Market Company Ltd.—hereinafter called 'the Company'—constructed on certain plots owned by it, two houses—each house consisting of a ground floor, intended to be used as shops and an upper floor intended to be used for residential purposes. For the use of the occupants of the shops, 20 flush lavatories with underground sewers connected with the drainage system of the Nagpur Corporation were constructed by the Company. The Corporation of Nagpur had also erected a municipal public water Standard within 200 yards of the houses. Among the taxes levied by the Municipal Corporation under s. 114 of the City of Nagpur Corporation Act, 1948—hereinafter called 'the Act'—were the conservancy tax and the water-rate which under the rules applicable thereto were leviable as rates on the annual letting value of buildings and lands within the Corporation area. It is common ground that the shops which in the aggregate number 201, are occupied by shop-keepers under a scheme under which on payment of stipulated amounts, the occupants will be full owners of the shops, and on the liability of all the occupants being discharged the Company will be dissolved. However the scheme under which this arrangement was made has not been placed before us and it is not possible on the material before us to ascertain what the true relation between the shop-keepers and the Company is.

For the year 1953-54 the Corporation of Nagpur proposed to assess the shop-keepers numbering one hundred and fifty five who occupied the shop built by the Company to private conservancy tax, water rate and property tax on each shop as a separate unit of assessment, and assessment notices in that behalf were issued to the Managing Director of

the Company on September 26, 1953. The Company requested the Corporation by letter dated September 30, 1953 that the assessment notices be served on the 'individual shop-keepers of the respective shops regarding the assessment made by the Corporation'. The Corporation thereupon served the individual shop-keepers with notices of assessment. 120 out of 155 shop-keepers served with the notice of assessment preferred objections submitting *inter alia* that the taxes could be assessed only on the Company. These objections were heard before the Objection Officer appointed by the Corporation. The Managing Director of the Company and a representative of the shop-keepers submitted their respective cases on behalf of the Company and the shop-keepers. By his order dated April 19, 1954 the Objection Officer held that the Company be treated as owner of the houses and the shop-keepers as occupants and that the demand for tax be 'primarily made from the occupants'. No proceeding challenging this order were initiated by the shop-keepers or the Company and the assessment list was authenticated as required by the relevant rules. The Corporation thereafter served demand notices upon the shop-keepers calling upon them to pay the taxes due by them pursuant to the assessment list.

On December 16, 1954 some of the occupants appealed to the Chief Executive Officer under s. 387 of the Act challenging the validity of the assessment. The Deputy Chief Executive Officer rejected the appeals against the order passed by the Objection Officer to the Chief Executive Officer as incompetent and observed that in any event the appeals which were not presented within the period of limitation prescribed by s. 379 of the Act, were barred. The shop-keepers and the Company preferred separate appeals to the District Judge, Nagpur, against the order of the Objection Officer. The District Judge by his order dated October 28, 1955 held that the

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appeals were barred by the law of limitation and the appellants before him had made out no ground for condonation of delay. The shop-keepers again moved the Chief Executive Officer to reconsider the order of assessment of tax. That Officer by his order dated April 18, 1956 held that even though the order passed by the Deputy Chief Executive Officer dismissing 'the previously filed appeals' as not maintainable, and observing that the proper remedy of the shop-keepers and the Company aggrieved was an appeal under s. 130 of the Act was erroneous, the appeals before him being barred by the law of limitation, he was unable to grant any redress to the appellants. The Chief Executive Officer also opined that the houses having been divided into separate shops and allotted to the Company's shareholders who carried on their business independently and each such allottee having a separate source of income within the meaning of rule 10 (a) of the assessment rules, the Objection Officer was right in holding that each shop be treated as an independent unit, and be separately assessed for the conservancy cess and water rate.

Nearly two years thereafter the Company and one Sitaram—one of the shop-keepers—preferred a writ petition in the High Court of Bombay at Nagpur for writs of *certiorari* quashing the order of demand dated February 19, 1958 and also bills for the assessment years 1956-57 and 1957-58 and for a writ of *mandamus* prohibiting the Corporation from applying the provisions of rule 10 (a) for the purposes of conservancy tax and water rate, and directing the Corporation not to treat the individual shops on the ground floor of the two houses as separate units of assessment for purposes of conservancy tax and water rate. The High Court held that rule 10 (a) of the assessment rules applied only to residential houses and not to houses occupied for non-residential purposes and therefore separate assessment of the shops

in the occupation of the shop-keepers was, under the provisions of the Act, read with the relevant rules, invalid. The High Court accordingly allowed the petition and quashed the notice of demand dated February 19, 1958 made by the Corporation for levy of tax. The Corporation has, with special leave, appealed to this Court.

Three principal contentions are raised by counsel for the Corporation in support of the appeal :—

(1) That under the Act there are three distinct stages dealing with the liability of tax-payers to pay tax—imposition of tax authorised by a statute according to the procedure prescribed in that behalf; assessment or levy of tax according to the provisions of the statute and the rules framed thereunder; and collection of tax. Each stage being self-contained, if no objection is made to assessment as prescribed by the statute and the rules made thereunder and in the manner provided in that behalf, in a proceeding for recovery of tax, the validity of the assessment cannot be challenged.

(2) The objection raised by the Company was only against the demand and not against the assessment, and that in any event there was gross delay in the commencement of proceedings in the High Court for obtaining relief by an application for a writ, and on that account the company had disentitled itself to relief.

(3) That even on the merits the interpretation placed by the High Court upon rule 10(a) of the assessment rules was erroneous and therefore each occupant of the shops whose

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name was entered in the assessment list as framed was liable to pay the conservancy tax and the water rate in respect of the shop in his occupation.

Part IV of the Act deals with taxation i.e, imposition, assessment and recovery of taxes. Sections 114 and 115 set out the taxes which the Corporation is obliged to impose or may impose and the procedure in that behalf. Sections 116 to 140 deal with the assessment of property tax and ss. 154 to 169 deal with recovery of taxes. Section 130 provides for a right of appeal to the District Court against a dispute as to the liability of any land or building to assessment of property tax or as to the basis or principle of assessment of property tax. Section 164 provides for an appeal against a notice of demand for tax due under sub-section (1) of s. 155. This appeal lies to a Magistrate by whom under the direction of the District Magistrate such class of cases is to be tried. A general right of appeal is granted by s. 387. Any person aggrieved by an order passed under the Act or under any rule or bye-law made thereunder failing to obtain redress may appeal to any Corporation Officer appointed by the Chief Executive Officer to hear such appeals, or failing such appointment, to the Chief Executive Officer.

The procedure for assessment of conservancy tax and water rate is prescribed not by the provisions of the Act, but by the rules framed under the C. P. & Berar Municipalities Act of 1922 which by virtue of s. 3(2) of the Act are to be deemed to have been made under the provisions of the Corporation Act of 1948. The procedure for recovery is however governed by the provisions of ss. 154 to 167 of the Act. The subject of taxation in the matter of conservancy tax and water rate is therefore found distributed in the Act and the Rules under three heads of

imposition, assessment and recovery of taxes.

For the purpose of the present case it is unnecessary to express any opinion on the plea raised by Mr. Pathak for the Corporation that the tax-payer cannot challenge the correctness of an order of assessment, in a proceeding for recovery of tax, though it may appear that under the analogous provisions contained in the Bombay District Municipal Act III of 1901 and the Bombay Municipal Boroughs Act, XVIII of 1925, in an appeal against a notice of demand to a Magistrate the correctness or propriety of the assessment may be challenged. See *The Municipal Borough of Ahmedabad* v. *The Aryodaya Ginning and Manufacturing Company Ltd.* (1) and *The Municipality of Ankleshwar* v. *Chhotalal Ghelabhai Gandhi* (2).

There has undoubtedly been great delay in moving the High Court by a petition under Art. 226 of the Constitution. The order of the Objection Officer was made on April 19, 1954 and the appeal against that order was dismissed on April 22, 1955. Even the second order by the Chief Executive Officer was made on April 18, 1956 and for nearly two years thereafter no proceeding was commenced in the High Court challenging the validity of that order. The High Court was, however, of the view that because the Chief Executive Officer in the first instance held that the appeal filed before him was not competent and the remedy of the tax payer was to move the District Court under s. 130 of the Act and that in the appeal preferred in the year 1956 he held that the appeal was maintainable and dismissed it on the merits while observing that it was barred by limitation, there was some ground for not regarding the shop-keepers and the Company as guilty of laches. The High Court also observed that after the order passed by the Chief Executive Officer in 1956 the Corporation was moved by an application

(1) I. L. R. (1941) Bom. 658. (2) (1954) 57 Bom. L. R. S 547;

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under s. 143 of the Act, and since the decision of the Corporation on the application, the petition was filed without delay. This ground may appear to us inadequate but the High Court has exercised its discretion in holding that the petition notwithstanding the delay should be entertained and we are unable in a matter essentially of discretion to set aside the judgment of the High Court on this ground alone, especially when the petitioners have claimed relief not only in respect of the assessment for the year 1953-54 but also in respect of assessment of tax for the years 1956-57 and 1957-58.

The question that falls then to be determined is about the true interpretation of rule 10 (a) of the assessment rules relating to the conservancy tax and water rate. Section 114 of the Act requires the Corporation to levy, amongst others, a property tax, a latrine or conservancy tax payable by the occupier or owner upon private latrines, privies or cesspools or upon premises or compounds cleansed by Corporation agency and a water rate where water is supplied by the Corporation. For assessment of the property tax, machinery is prescribed in the Act itself, but no such machinery is prescribed in the Act in respect of the conservancy tax and water rate. Under the C.P. & Berar Municipalities Act, II of 1922, by s. 66 various taxes could be imposed by the Municipalities governed thereby (and the Municipality of Nagpur was governed by that Act) and latrine or conservancy tax and water rate were two out of the many taxes leviable. By s. 71 of the Act of 1922 power was conferred upon the State Government to make rules under the Act, *inter alia*, regulating the assessment of tax. In exercise of the powers the Government of Madhya Pradesh framed diverse sets of rules dealing with assessment, levy and collection of taxes. Rules were made on August 19, 1941 declaring liability of buildings and lands for conservancy tax in respect of private latrines, and Rule 2 thereof, in so far as it is

material, provided that—

"2. There shall be imposed—

(i) x x x x

(ii) On every building or land to which a private latrine, privy or cesspool is attached, or any resident whereof uses a private latrine, privy or cesspool, which is either cleansed by municipal agency or is connected with the municipal underground sewer, or the premises or compounds of which are cleansed by municipal agency, a tax payable by the owner under section 66 (1) (h) according to the following scale on its gross annual letting value."

A similar set of rules in respect of water rate came to be promulgated on September 28, 1949. It was provided by Rule 1, in so far as it is material, that—

"1. There shall be imposed—

(1) (a) x x x x

(b) On every building or land which has no private supply from municipal service pipes or the resident thereof does not use water from such supply and which is situated within 200 yards from public water standard or a service pipe, a tax leviable from the owners or occupiers under section 66(1) (k) according to the following scales on its gross annual letting value : "

In 1941 rules were made for assessment of conservancy tax. The tax was to be levied on the

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gross annual letting value of the building. By rule 5 it was provided that on the completion of the assessment, notices shall be given to the persons affected by the preparation of the assessment list. Any person affected by the entries in the list was by *rule 6* entitled to file objections against assessment or valuation or both as shown in the register at any time within thirty days of the publication or service. This rule also provided for affording a hearing to the objectors. Rule 8 provided that after the objections under rule 6 had been disposed of and all consequential amendments were made in the assessment list it shall be authenticated and the register shall be valid from the date of the authentication and shall continue to be valid until the beginning of the half-year next following the authentication of a new register. Rule 10(a) provided :

> "Where more than one family having separate sources of income, occupy separate portions of the same building or range of buildings, each of such portion shall be deemed a building under these rules and assessed according to its gross annual letting value as determined in accordance with rule 1."

Clause (b) provided :

> "The Committee may, at a special meeting if it thinks fit, assess the tax on such building on the aggregate gross annual letting value of all the portions instead of assessing each portion separately."

Clause (c) provided :

> "Detached building, even when occupied by the same person or family, shall, where any road or pathway over which the public have a right of way, or any land belonging to any

other person separate them from one another,

be separately assessed as independent units.

Similar rules were made in respect of the assessment list for water rate. The water rate was also to be imposed as a rate on the gross annual letting value and provisions of rule 10 (a), (b) and (c) were in terms identical with the assessment rules framed in respect of the conservancy tax assessment and for the sake of brevity we will only refer to assessment rules relating to conservancy tax. These rules remained in force even after the C. P. & Berar Municipalities Act, 1922 was repealed by virtue of s. 3 (2) of the Act of 1948, and applied to assessment of liability to conservancy tax and water rates as if the rules were framed under the latter Act.

'Building' is defined in the Act by s. 5 (7) as including "a house, outhouse, stable, hut, shed or other enclosure, whether used as a human dwelling or otherwise and shall include verandahs, fixed platforms, plinths, door-steps, walls and the like." The definition is an inclusive definition, and contains inherent indication that a part of a building would be a building for the purposes of imposition of liability to pay rates, and assessment of such liability. It is manifest that under the scheme of the Act read with the rules, conservancy tax and water rate are to be levied as rates on the gross annual letting value and a rate can only be levied from a person in respect of the tenement or premises occupied as an independent unit. The assessment rules provide for levy of rate on the gross annual letting value of the building, and in as much as the expression 'building' according to the definition given in s. 5 (7) of the Act would include a part of a building, the Corporation is competent to frame a list in respect of several tenements occupied by different persons treating each tenement as a separate building for levy of tax. That is implicit in rule 10 (b) and also in rule 10 (c) of the assessment rules.

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By the rules, liability to pay conservancy tax and water rate is imposed in respect of a building provided certain conditions specified in the rule are fulfilled, and this liability arises whether the building is used for residential purposes or non-residential purposes. Rule 10 (a) also clearly authorises the Corporation to levy water rate and the conservancy tax in respect of separate tenements occupied by different persons as if each such tenement is a building. In the view of the High Court use of the expression 'family' in rule 10 (a) indicated that the rule did not apply to buildings occupied for non-residential purposes. But by the rules imposing the conservancy tax and the water rate, all buildings to which are attached latrines cleansed by municipal agency and all buildings which are connected with the water distribution system, or which are situate within the prescribed distance of water standard, are liable to pay the conservancy tax and the water rate irrespective of the nature of the use to which the building is put. It is implicit in the view of the High Court that a building occupied for non-residential use can be taxed as one unit, even if the building is occupied by tenants or licencees, carrying on their separate or individual trades or businesses. But this view does not appear to be supported by the scheme of the Act and rules. If a building is partly occupied for residential and partly for non-residential purposes the portions occupied for residential purposes would, in the view of the High Court, be regarded as separate buildings and each occupant having a seperate source of income would be liable to pay conservancy tax and water rate but the portions occupied for non-residential purposes would not be regarded as separate buildings. The High Court reached its conclusion that rule 10 (a) did not apply to portions of buildings when they were occupied for non-residential purposes merely because of the use of the expression 'family' in the rule. But the expression 'family' has according

to the context in which it occurs a variable connotation. It does not in the setting of the rules postulate the existence of relationship either of blood or by marriage between the persons residing in the tenement. Even a single person may be regarded as a family, and a master and servant would also be so regarded. The word 'occupy' used in rule 10 (a) is not restricted either expressly or by anything contained in the context of the rule suggesting that the occupation is to be only for residential purposes, and in the absence of any such implication the rule must be deemed to be of general application i.e., it applies to uses non-residential as well as residential. The expression 'family' must therefore take colour from the expression 'occupy' used in the same rule. In our view the expression 'family' in the context in which it occurs, means no more than a person or a group of persons.

Mr. Pathak appearing on behalf of the Corporation submitted that there was a drafting error in rule 10 (a), and as a matter of interpretation the Court would be justified in reading the expression 'family' in that rule as meaning 'family or person' —which is the expression used in rule 10 (c). He submits that rule 10(a) and rule 10 (c) deal with the same subject-matter and, therefore, the Court would be justified in holding that the expression 'one family' used in rule 10 (a) and the expression 'person or family' in rule 10 (c) must have the same meaning. *Prima facie*, there is substance in this contention, but we do not think it necessary to base our decision on that ground. In our view the expression 'family' has not a restricted meaning as suggested by the High Court, and under the rules imposing liability to pay conservancy tax and water rate liability is imposed upon every building, which expression includes a part of a building occupied as an independent unit irrespective of the nature of the user. The learned Attorney General appearing on

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behalf of the Company submitted that under the Corporation Act the owner and not the occupier is liable for the conservancy tax and water rate and therefore separate assessments of different units occupied by the shop-keepers could not be made. This plea was not raised in the High Court. Even apart from this infirmity, there is no substance in the plea. Under s. 114 of the Act a latrine or conservancy tax payable by the *occupier or the owner* may be imposed. Similarly water rate may be imposed, when water is supplied by the Corporation. By the rules framed under s. 71 of the C. P. Berar Municipality Act of 1922, and continued under the Act of 1948 liability imposed for payment of the conservancy tax and the assessment rules is not restricted to owners only. By rule 4 of the assessment rules the Corporation is required to prepare an assessment list containing the names of *the persons liable to pay the tax*. The assessment rules therefore clearly indicate that the occupier of the premises may be rendered liable to pay the conservancy tax and the water rate. Section 165 of the Act makes all sums due from any person in respect of taxes on any land or building, a first charge upon the said land or building and upon any movable property found within or upon such land or building and belonging to the said person, provided that no arrears of any such tax shall be recoverable from any occupier who is not the owner, if such arrears are for a period during which the *occupier* was not in occupation. It is implict in s. 165 that an occupier of the premises may be liable to pay the tax even though he is not the owner. It is also necessary to point out that the scheme under which the shop-keepers are occupying the premises has not been produced before this Court. It is admitted, however, that the shop-keepers will be owners of the premises occupied by them as soon as the amounts which they have agreed to pay are fully paid and their liability discharged. The

Company treated the shop-keepers as owners (vide their letter dated September 30, 1953). Manifestly they have a substantial interest in the tenements in their occupation and it would be difficult not to call them owners for purposes of municipal taxation. According to the definition in s. 5 (37) of the Act an 'owner' "when used with reference to any land or building includes the person for the time being receiving the rent of the land or building or of any part of the land or building whether on his own account or an agent or trustee for any person or society or for any religious or charitable purpose, or as a receiver who would receive such rent if the land, building or part thereof were let to a tenant". There is nothing on the record to show that the shop-keepers would not be entitled to let out the premises in their occupation and if they can they would be regarded as owners within the meaning of cl. (37) of s. 5.

In our view, therefore, the High Court was in error in holding that rule 10 (a) applied only to building occupied for residential purposes. The rule in our judgment applies to buildings occupied for non-residential as well as residential purposes, and to every part of a building occupied by a person or a group of persons having a separate source of income, whether the occupation is for residential or non-residential purposes and such person or group of persons would be liable to pay the conservancy tax and the water rate.

The appeal therefore is allowed and the petition filed by the Company and the tax payer Sitaram Upasrao dismissed with costs in this Court and the High Court.

Appeal allowed.