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THE CENTURY SPG. & MFG. CO. LTD.

v.

DISTRICT MUNICIPALITY OF ULHASNAGAR

November 9, 1967

B [J. C. SHAH, S. M. SIKRI AND J. M. SHELAT, JJ.]

Bombay District Municipal Act (Bom. 3 of 1901), ss. 4, 7, 59 60, 61, 62, 63 and House Tax Rules framed under s. 46 of the Act—Rules 1, 3 and Schedule 1—Notification setting up municipality whether invalid for contravention of ss. 4 and 7—House Tax Rules whether in conformity with ss. 59-63 of Act—Flat Rate on carpet area whether a permissible method of assessment—Open land not liable to be included for purpose C *of rating factory buildings.*

By notifications issued under the Bombay District Municipal Act 1901, the State of Bombay set up the respondent Municipality comprising portions of certain villages. The Municipality framed House Tax Rules under s. 46 of the Act and served notice to the appellant-company that it proposed to assess its buildings at a certain amount. On, the appelants' objections, it was asked to furnish the cost of constructions, which it failed D to furnish. The appellant was served a house tax bill. Thereupon the appellant unsuccessfully filed petitions in the High Court under Arts. 226 and 227 of the Constitution for quashing the notifications, assessment, and bills. In appeal to this Court, the appellant, *inter alia*, contended : (i) that the notifications were invalid as ss. 4 and 7 of the Act do not permit the Government to constitute a local area by including in it not villages but only portions thereof; (ii) that the House Tax Rules were not in E conformity with ss. 59 to 63 of the Act, as they failed to prescribe the basis of valuation of each class of property on which it imposed the house tax; what these Rules provided was merely to impose the house tax at the rate of 15% or Rs. 12/- whichever was more on the valuation arrived at after deducting 10% from the annual letting value without specifying the method by which such annual letting value was to be arrived at . and (iii) that the bill served on the appellant was not in conformity with the Rules, as (a) the buildings could be assessed on their F annual letting value and not at a flat rate on the carpet area, and (b) in assessing the rate it could not include the rate on open lands.

Held : (i) The notifications were not in any way contrary to or *ultra vires* ss. 4 or 7 of the Act. There is nothing either in ss. 4 or 7 to limit the power of the Government in constituting a municipal district to include therein the whole of the village or suburb. The Act, on the other hand, permits the Government to include "land adjoining thereto" which shows that a part of land adjoining an existing village or a suburb can G also be added if it is thought expedient so to do. Likewise, while altering the limits of an existing municipal district it can exclude from or include in it part of the land where it becomes necessary or expedient so to do. [216G, H]

(ii) The word "rate" in s. 59(i) means a tax for local purposes imposed by local authorities, the basis of which is the annual value of the lands or buildings arrived at in one of the three ways, *viz.*, (1) the actual H rent fetched by such land or building where it is actually let; (2) where it is not let rent based on hypothetical tenancy particularly in the case of buildings and (3) where either of these two modes is not available. by valuation based on capital value from which annual value has to be found

by applying a suitable percentage which may not be the same for lands and buildings. It is legitimate to infer that the legislature intended this meaning of the word "rate" in s. 59(1) by using the word "rate" as distinct from other imposts specified in that very sub-section and designated as toll, cess, tax etc. [218 C-E] A

In case of buildings or lands or both the municipality colud impose a "rate" and not a "tax". The rate is as understood in such statutes, *viz.*, on the basis not of capital but on the annual letting value ascertained by any of the said recognised methods. Section 60 leaves it to the option of the municipality for arriving at the annual value for assessment of the rate to choose any one of the aforesaid recognised methods, the only restriction being that it must specify in the rules which basis of valuation, capital or annual letting value or any other basis, it proposes to adopt. [218H; 219B] B

The Municipality had complied with the procedure required by the Act before a tax was imposed by selecting the tax, by laying down the class of property which it desired to make liable, the amount of the rate at which such property would be liable and lastly the basis of valuation for purposes of the rate on buildings and houses. [220F-G] C

(iii) (a) Schedule 1 to the Rules expressly provides that the house tax is to be assessed on the basis of the annual letting value. The annual letting value can be arrived at by any one of the recognised methods. Neither the Rules nor Sch. 1 constrict the Municipality to adopt any one particular method of arriving at the annual letting value. It may well be that a flat rate on the carpet area may correspond to the annual letting value of a building in which case it would be the annual letting value as provided by Sch. I which would be the basis of assessment. If it is not, the owner or occupier of the building can legitimately challenge the assessment on the ground that such assessment on the basis of a flat rate on the carpet area does not reflect the annual value so calculated. [221E-G] D E

Patel Goverdhandas Hargovindas v. *Municipal Commissioner, Ahmedabad*, [1964] 2 S.C.R. 603 and *Lokmanya Mills* v. *Barsi Borough Municipality*, [1962] 1 S.C.R. 306, referred to.

(b) The open lands could not be included while rating the factory buildings of the appellant companies as such inclusion was *ultra vires* the Rules and therefore invalid. Rule 3(7) expressly excludes the definition of a building or a house in sec. 3(7). The word "building" or "house" must therefore bear the meaning given to it by the Rule and not the meaning given to it by the Act. By virtue of r. 1 (ii) these rules extend to buildings or houses or shops or huts (jhupras) only and a building or a house under r. 3(7) means a building, house, shop, hut (jhupras) etc. with a roof thereon constructed for human habitation or otherwise. Open lands obviously are not only not included in the term "building" or "house" but the Rules do not extend to such open lands. [222H-223B] F G

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2014, 2565 and 2567 of 1966.

Appeals from the judgment and order dated July 6, 7, 1965 of the Bombay High Court in Special Civil Applications Nos. 635, 517, 518 and 1816 of 1964 respectively. H

S. V. Gupte, Solicitor-General, S. A. Shroff, P. C. Bhartari, Ravinder Narain and *O. C. Mathur*, for the appellant (in C.A. No. 2014 of 1966).

A *S. T. Desai, A. B. Diwan, Ravinder Narain* and *O. C. Mathur,* for the appellant (in C.A. No. 2565 of 1966).

A. B. Diwan, Ravinder Narain and *O. C. Mathur,* for the appellants (in C.As. Nos. 2566 and 2567 of 1966).

A. K. Sen, N. H. Gurshoni, Prahlad H. Advani and *N. N. Keswani* for the respondents Nos. 1-5 (in C.A. No. 2014 of
B 1966) and the respondents (in C.As. Nos. 2565-2567 of 1966).

S. P. Nayar for *R. H. Dhebar* for respondent No. 6 (in C.A. No. 2014 of 1966.

The Judgment of the Court was delivered by

Shelat, J. These four appeals by certificate from the High
C Court at Bombay raise common questions of law and are therefore disposed of by a common judgment. As the facts in all these appeals are similar it is not necessary to narrate the facts of each appeal. However, for appreciating the contentions raised in these appeals we propose to set out only the relevant facts in Civil Appeal No. 2014 of 1966 as typical.

D By a notification dated October 30, 1959 the Government of Bombay proposed to set up a local area comprising of parts of Shahad, Ambernath and other villages into a municipal district under the name of the Municipal District of Ulhasnagar, the limits of which were set out in a Schedule thereto. After considering the objections to the said proposal the Government by another
E notification dated September 20, 1960 issued under secs. 4 and 7 of the Bombay District Municipal Act, III of 1901 declared the said local area as the Municipal District with effect from April 1, 1960. By the said notification the Government also set up an interim Municipality for Ulhasnagar, consisting of 18 Councillors with effect from November 1, 1960 for one year in the first instance or till an elected body took over, whichever
F was earlier. Under sec. 46 of the Act the first respondent Municipality became entitled to frame rules and bye-laws in relation to taxes it proposed to impose. Accordingly, it framed Rules and in particular the House Tax Rules, with which these appeals are concerned. On November 8, 1963 the Municipality served a notice under s. 65(1) of the Act informing the appel-
G lant Company that it proposed to assess its buildings at Rs. 1,97,609/52. On November 28, 1963 the appellant Company submitted its objections to the said assessment and the said bill. On February 22, 1964 the assessing officer requested the appellant Company to furnish to him the cost of construction of its factories and buildings and on the appellant Company failing to do so he passed his order dated March 6, 1964 assessing the
H appellant Company to house tax at Rs. 1,13,647/- for the period from April 1, 1963 to March 31, 1964. On March 20, 1964 the Municipality served a house tax bill for the said amount.

Similar house tax bills were served on the other appellant companies. Thereupon the appellant Company in Civil Appeal No. 2014 of 1966 and the appellant companies in other appeals filed writ petitions in the High Court under Arts. 226 and 227 of the Constitution alleging that the said notifications, the said assessment and the said bills were invalid and should be quashed. On April 20, 1964 the High Court issued a rule *nisi* against the respondent municipality in all the said petitions, but summarily dismissed the said petitions so far as respondents 2, 4 and 6 were concerned and also restricted the rule only to certain grounds in the petitions. The petitions were resisted by the municipality on several grounds, *viz.*, that they were not maintainable, that the proper remedy for the appellants was by way of appeal in the court of the first class judicial magistrate, as provided by the Act, that the municipality was competent to levy the said tax under s. 59, that the said notifications were valid, that the tax was properly levied, that the assessing officer under sec. 67A was authorised to prepare, finalise and authenticate the assessment list and that the same was properly done. The appellant Company, on the other hand, urged before the High Court (1) that the said rules were *ultra vires* as they did not provide for the basis for the fixation of valuation; (2) that the valuation was arrived at at a flat rate on the carpet area, a method which was not permissible in law; (3) that, in any event, the Municipality was not entitled to tax the open lands; (4) that the assessment was bad on account of discrimination between the appellant companies *inter se* inasmuch as whereas assessment was made in the case of the Century Mills on the basis of cost of construction the assessment in respect of other appellant companies was made at a flat rate on the carpet area occupied by them; (5) that the register prepared under sec. 65 became operative after the date of the authentication of the said list and that therefore the tax for the period prior to the said date was illegal; (6) that the tax was imposed by the Municipality which had no legal existence as the tenure of one year of its councillors was over by September 30, 1961 and that therefore the said rules were ineffective and lastly that the appointment of the President and the Vice-President of the respondent Municipality was illegal. The High Court dismissed the petitions holding (1) that the said Rules were valid; (2) that the principles of valuation were not modes of valuation and therefore it was not necessary to lay down in the said Rules methods by which the valuation should be arrived at; (3) that the assessment list was proper; (4) that though under the said Rules only houses and buildings and not open lands could be taxed it was impossible to say in a writ petition without a detailed inquiry as to whether the tax in fact was levied on open lands or as adjuncts to their factories merely because their valuation was separately made and that therefore such a question should

A be more properly raised in the appeals filed by the Companies; (5) (a) that the Municipality was entitled to levy tax for the official year 1963-64, (b) that the appointment of the said President and Vice President was valid and lastly that the respondent Municipality though an interim municipality was competent to levy the said tax.

B Mr. Gupte for the Century Mills raised the following contentions which were adopted by Counsel for the other companies:

(1) that the said notifications were invalid having regard to secs. 4 and 7 of the Act;

(2) that the House Tax Rules were not in conformity with C secs. 59 to 63;

(3) that the bill served on the Mills was not in accordance with the Rules; (a) to the extent that the said bill sought to assess open lands, (b) that the flat rate method on carpet area was not permissible as it was not a recognised method of determining the annual letting value and (c) that the assessing officer D had arrived at the annual letting value on the basis of construction cost without giving an opportunity to the Company to be heard on such cost;

(4) that as the authentication was made to the assessment list on March 6, 1964 it could not operate under the said Rules for assessment for the period prior thereto, *viz.*, April 1, 1963 E to March 31, 1964 and lastly;

(5) that the assessment suffered from discrimination inasmuch as the assessing officer assessed the Century Mills on the basis of construction cost while he did so in the case of the other companies at a flat rate on the carpet area occupied by them.

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As regards the first contention, the argument was that secs. 4, 7 and 8 do not permit the Government to constitute a local area by including in it not villages but only portions thereof and that when it is proposed to amalgamate different units such as villages or suburbs situate adjacent to each other to form one municipal district it can do so by bringing them into such a district as G whole units and not breaking them up and having a part or parts of such unit and not the rest. The contention was founded on the fact that the notification dated October 30, 1959 stated that the Government proposed to constitute the local area comprising of parts of Shahad, Ambernath, and other villages into a permanent municipal district, the limits of which were H specified in the Schedule thereto. The said Schedule set out the boundaries of the proposed municipal district by showing Ulhas river as its boundary in the north and certain survey numbers of

the said villages as boundaries in the east, south and west. After considering the objections as required by the Act the Government by a further notification dated September 20, 1960 declared the said local area of which the same boundaries were set out in the Schedule thereto to be a permanent municipal district. It is true that in constituting the municipal district of Ulhasnagar the Government included parts of villages enumerated in the said Schedule. But the question is, was the Government competent to do so or not. Section 4 provides that subject to secs. 6, 7 and 8 the Government may declare by a notification any local area to be a municipal district and may, by a like notification; extend, contract or otherwise alter the limits of any municipal district, that every such notification constituting a new municipal district or altering the limits of an existing municipal district shall clearly setforth the local limits of the area to be included in or excluded from such municipal district as the case may be and when so done it is the duty of the municipality already existing or of every municipality newly constituted or whose limits are altered to set up as required by the Collector boundary marks defining its limits or the altered limits of the municipal district subject to its authority. Section 7 provides that any local area which comprises of (a) a city, town, or station or two or more neighbouring cities, towns or stations with or without any village, suburb or land adjoining thereto or (b) a village or suburb or two or more neighbouring villages or suburbs, may be declared a permanent municipal district. It will be seen that while the Government can declare a municipal district comprising of two or more neighbouring cities, towns or stations or a village or suburb or two or more neighbouring villages or suburbs, sec. 7 expressly provides that such a local area may comprise not only of two neighbouring villages or suburbs but also land adjoining to a village or suburb. Therefore while constituting a municipal district the Government, when it is expedient so to do, can join to an existing village or suburb the land adjoining thereto. Similarly sec. 4 empowers the Government to extend, contract or otherwise alter from time to time the existing limits of a municipal district or declare any local area to be a municipal district. There is nothing either in sec. 4 or sec. 7 to limit the power of the Government in constituting a municipal district to include therein the whole of the village or suburb as contended. The Act, on the other hand, permits the Government to include "land adjoining thereto" which shows that a part of the land adjoining to an existing village or a suburb can also be added if it is thought expedient so to do. Likewise, while altering the limits of an existing municipal district it can exclude from or include in it part of the land where it becomes necessary or expedient to do. That being so, it is impossible to say that b ytaking parts of the villages set out in the Schedules to the two notifications the Government

A B C D E F G H

A formed a municipal district contrary to the provisions of secs. 4 or 7 or that the constitution by it of the municipal district of Ulhasnagar was in any way contrary to or *ultra vires* the two sections.

The next contention was that the House Tax Rules framed by the municipality were not in conformity with sec. 60 inasmuch as they failed to prescribe the basis of valuation of each class of property on which it imposed the house tax, that what these Rules provided was merely to impose the house tax at the rate of 15% or Rs. 12/- whichever was more on the valuation arrived at after deducting 10% from the annual letting value without specifying the method by which such annual letting value was to be arrived at. The argument was that it was incumbent on the Municipality to lay down specifically in the Rules, the method or methods by which such annual letting value had to be calculated and not having done so the Rules were not in accord with the express provisions of sec. 60. Mr. Gupte argued that the High Court was in error in holding that this was not necessary on the mere ground that sub-clause (iv-a) of sec. 60(a) was inappropriate or that the legislature had inserted that sub-clause without properly understanding its implications.

Dealing with this contention the High Court observed as follows :—

> "Inasmuch as in 1901 Act in sec. 60 there was no provision corresponding to the Explanation to sec. 75 of the 1925 Act, the addition of sub-clause (iv-a) of sec. 60 was most inappropriate and has no meaning. In the Act of 1925 it had to be provided because both the land and the building could be taxed on the basis of the annual letting value, or, if the Municipality so chose, the land could be taxed on the basis of capital value and it is for this reason that it became necessary to provide that a rule shall be framed by the municipality laying down the basis on which valuation has to be made."

> "In fact, there is nothing, either in the provisions of the Municipal Boroughs Act or in the provisions of the present Act, to suggest that what was intended by clause 3 in sec. 75 of the 1925 Act and by sub-clause (iv-a) of cl. (a) of sec. 60 of the 1901 Act, was that the Municipality was required to frame rules prescribing the modes by which the annual letting value was to be determined."

Sec. 3(11) defines "annual letting value" as the annual rent for which any building or land might reasonably be expected to let

from year to year. Sec. 59(1) provides that a municipality, after observing the procedure required by sec. 60 and with the sanction of the State Government in the case of city municipalities and in other cases of the Commissioner, may impose any of the following taxes, that is to say, (i) a rate on buildings, or lands or both, situate within the municipal district; (ii) a tax on all or "any vehicles, boats" etc. Sub-clauses (iii) to (ix) describe various other imposts which the municipality can impose such as toll, octroi, cess and a general or special water rate or tax. It will be seen that though sub-sec. 1 authorises the municipality to impose "the following taxes", when it comes to imposing a tax on buildings or lands or both it describes the tax as "rate", in distinction of the other imposts described variously as toll, cess, octroi and tax. The distinction as pointed out in *Patel Goverdhandas Hargovindas* v. *Municipal Commissioner, Ahmedabad*(1) is a deliberate one. As laid down there the word "rate" in sec. 59(1) must be understood to mean a tax for local purposes imposed by local authorities the basis of which is the annual value of the lands or buildings arrived at in one of the three ways, *viz.*, (1) actual rent fetched by such land or building where it is actually let; (2) where it is not let rent based on hypothetical tenancy particularly in the case of buildings and (3) where either of these two modes is not available by valuation based on capital value from which annual value has to be found by applying a suitable percentage which may not be the same for lands and buildings. It is therefore legitimate to infer that the legislature intended this meaning of the word "rate" in s. 59(1) by using the word "rate" as distinct from other imposts specified in that very sub-section and designated as toll, cess, tax etc. Section 60 provides that before imposing any one of these taxes the Municipality shall by a resolution select one or other of those taxes, prepare rules therefor, specify by such resolution and in such rules the class or classes of persons or of property or of both which the municipality desires to make liable, the amount for which or the rate at which it is desired to make such classes liable and by sub-clause (iv-a) in the case of a rate on buildings or lands or both the basis, for each class, of the valuation on which the rate is to be imposed. Section 60 therefore requires the municipality both in the said resolution and the said rules to specify (a) the class or classes of persons or property which it desires to make liable; (b) the amount or rate at which it wants such classes to be liable and (c) in the case of buildings or lands or both the basis of valuation for each class of property, that is, buildings or lands or both. As aforesaid, in the case of buildings or lands or both the Municipality can impose a "rate" and not a "tax". The rate is as understood in such statutes, *viz.*, on the basis not of capital but on the annual

(1) [1964] 2 S.C.R. 608.

letting value as observed in *Patel Govardhandas Hargovindas* v. *Municipal Commissioner, Ahmedabad*(1) ascertained by any of the said recognised methods. The words "the basis, for each class, of the valuation" on which such rate is to be imposed indicate that the municipality can adopt any one of those basis for different classes of property, *viz.*, buildings or lands for arriving at the annual value for each such class. Section 60 thus leaves it to the option of the municipality for arriving at the annual value for assessment of the rate to choose any one of the aforesaid recognised methods, the only restriction being that it must specify in the rules which basis of valuation; capital or annual letting value or any other basis, it proposes to adopt.

Section 75 of the Bombay Municipal Boroughs Act, XVIII of 1925 contains provisions similar to those in sec. 60 of the present Act except that in addition it contains an Explanation which provides that "in the case of lands the basis of valuation may be either capital or annual letting value". But under sec. 75 the Borough Municipality also as the District Municipality under sec. 60 of the present Act is authorised to impose a "rate" and not a "tax" on buildings or lands or both. The effect of adding the Explanation to sec. 75 therefore is simply that whereas sec. 60 of the District Municipal Act leaves it to the discretion of the municipality to assess the annual value upon any basis of valuation of its choice, the Explanation to sec. 75 in Act XVIII of 1925 restricts the choice to either the capital or the annual letting value. In both the cases, however, the Municipality can impose a rate and not a tax as understood in local Acts, *i.e.*, a rate on the annual letting value of the building or the land. That was why in *Lokmanya Mills* v. *Barsi Borough Municipality*(2) it was held that a rate may be levied by a municipality under the Bombay Municipal Boroughs Act 1925 on the valuation made on the basis of capital or on the annual letting value of a building and not on a valuation computed merely on the floor area of the structures, that such a rate was clearly not a tax based either on the capital value or on the annual letting value, for, annual letting value postulates rent which a hypothetical tenant may reasonably be expected to pay for the building if let. Therefore, the municipality had no power under that Act to ignore the basis of valuation prescribed by the Act and to adopt a basis not sanctioned by the Act. There is therefore nothing inappropriate in adding sub-cl. (iv-a) in sec. 60 (a) by sec. 10 of Bombay Act XXXV of 1954 as observed by the High Court. The effect of both sec. 60 in the present Act and sec. 75 in the 1925 Act is the same. Both the classes of municipalities are authorised to impose rate on buildings or lands or both. The rate as consistently understood is a certain percentage on the annual value, such value being arrived

(1) [1964] 2 S.C.R. 608. (2) [1962] 1 S.C.R. 306.

at on a basis specified by it. The only difference is that whereas under the Bombay Act of 1925 where a rate is imposed on buildings or lands, the Borough Municipality can arrive at the annual value on either of the basis mentioned in the Explanation to sec. 75, that is either the capital value or the annual letting value only, no such restriction in the absence of such an explanation as in s. 75 as to the basis of valuation is placed by sec. 60 of the 1901 Act.

As required by sec. 60, the Municipality has framed Rules under sec. 46 and selected the tax, *viz.*, the house-tax. Sub-clause (iv-a) of sec. 60(a) no doubt requires the Municipality in the case of the rate on buildings or lands or both to specify the basis, for each class, of the valuation on which such rate is to be imposed. That is done in the present case by the Rules. Rule 3 of the House Tax Rules provides that in respect of every building or house the house tax shall be payable to the Secretary or any other person appointed by the Municipality for that purpose in each year by the owner or occupier thereof at the rates calculated in accordance with Schedule I. The Rule thus requires the assessing authority to assess the house tax calculated in accordance with Schedule I. Schedule I provides that the tax is to be assessed on the net annual letting value, that is, after deducting from the gross annual letting value 10% allowance in lieu of the cost of repairs or on any other account whatsoever. It also provides that the house tax is to be 15% of such annual letting value or Rs. 12/- per year whichever is more. Rule 3 and Sch. I thus specify as required by sec. 60(a) the rate, the class of property to be made liable and in the case of houses or buildings the basis of valuation, *viz.*, the annual letting value. The effect of Rule 3 and Sch. I is that the assessing authority can assess the rate on buildings only on the annual letting value and no other value such as the capital value. The Municipality therefore has complied with the procedure required by the Act before a tax is imposed by selecting the tax, by laying down the class of property which it desires to make liable, the amount of the rate at which such property would be liable and lastly the basis of valuation for purposes of the rate on buildings and houses. We are unable therefore to accept the contention that the basis of valuation is the method of valuation of annual value or with the contention of Mr. Desai for the companies in other appeals that the Rules not only have to specify the classification of properties which are sought to be taxed but also the method of valuation for each class, *viz.*, the rental basis, cost or capital value or the profits basis. The fallacy in the contention lies in mixing up the method with the basis of valuation. The basis as provided in the Rules is the annual value which can be ascertained or arrived at by any one or more of the recognised methods.

A Though we are not able to accede to these contentions we think the appellants are on a surer ground in their third contention, *viz.*, that the said house tax bills were not in accordance with the Rules to the extent that they sought to assess the open lands. In the case of the Century Mills the assessment first made as aforesaid was for Rs. 1,97,609/52 nP assessed at flat rate on
B the carpet area occupied by the Mills. The same was also the basis in respect of other appellant companies in the rest of the appeals. When the assessment was objected to by the Century Mills the assessing officer changed the method of assessment from the flat rate on the carpet area to the construction cost taken from the Company's balance-sheet for 1962. Taking the figure of Rs. 1,46,05,920 as the cost of construction of the buildings he
C assessed at 5% on the said cost after deducting 10% allowance in lieu of cost of repairs. He fixed the rate on buildings at Rs. 98,590 and Rs. 15,057 on the open land at the rate of Rs. 2 per 1000 sq. ft. The total assessment arrived at by him thus came to Rs. 1,13,647. In the case of the other companies he retained the method of valuation adopted by him, *i.e.*, a flat rate
D on the carpet area but reduced the rate to a certain extent.

The objection raised by the appellant companies is two-fold; (1) that the assessing officer can assess the buildings on their annual letting value and not at a flat rate on the carpet area and (ii) that in assessing the rate he cannot include the rate on open
E lands. As regards the first part of the objection, Sch. 1 to the said Rules expressly provides that the house tax is to be assessed on the basis of the annual letting value. The annual letting value can be arrived at by any one of the recognised methods. Neither the Rules nor Sch. 1 constrict the Municipality to adopt any one particular method of arriving at the annual letting value. It may well be that a flat rate on the carpet area may correspond to the
F annual letting value of a building in which case it would be the annual letting value as provided by Sch. 1 which would be the basis of assessment. If it is not, the owner or occupier of the building can legitimately challenge the assessment on the ground that such assessment on the basis of a flat rate on the carpet area does not reflect the annual value so calculated. The question is
G at best one of calculation, *viz.*, whether considering other similar buildings in the locality, their hypothetical rents and other data calculation of the house tax on the basis of carpet area at a flat rate, corresponds to their annual letting value. Since such a question would be one of fact and can properly be decided in the appeals before the Judicial Magistrate we do not propose to
H go into this question. It will be for the appellant companies to establish in those appeals that such a valuation at a flat rate on the carpet area is not equivalent to the annual letting value of their factories and other buildings.

The second part of the objection unlike the first part however touches upon the validity of the assessment. The question is whether the bill includes assessment on open lands as such and if so whether the Rules permit their assessment. The bill served on the Century Mills clearly shows that Rs. 15,057 out of the total assessment of Rs. 1,13,647 are assessed on the open lands calculated at the flat rate of Rs. 2 per 1000 sq. ft. The bills similarly served on the other appellants are all calculated at varying flat rates on different areas of their properties. But the basis of the assessment though varying rates have been applied is the carpet area and the carpet area does include open lands in the case of each of the appellant companies.

Is the assessing officer authorised by the Rules to include the open lands while assessing the rates? Under sec. 59(1)(b)(i) the municipality, subject to observing the procedure laid down in sec. 60, can impose a rate on buildings or lands or both. As already observed the municipality, however, has by its resolution to select the tax, and in the Rules prescribing the tax so selected specify the class or classes of property which it desires to make liable as also the rate at which it wishes to subject such class or classes of property. Sub-clause (iv-a) of sec. 60(a) requires that in the case of buildings or lands or both the basis of valuation for each such class has also to be specified by the said resolution and in the said Rules. We must therefore turn to the Rules to see if they specify therein the open lands, the rate at which they are to be subjected to the tax and the basis of valuation of such open lands.

Rule 1 (ii) of the House Tax Rules provides that these Rules shall extend to "all buildings or houses or shops or huts (jhupras) whatsoever form any property" within the Ulhasnagar District Municipal limits except the tenements lying vacant etc. Rule 3(7) defines a building or a house to which these Rules apply by virtue of Rule 1 (iii). A building or a house according to the definition given by Rule 3(7) means "any building, house, shop, hut (jhupras) and with a roof thereof constructed for human habitation or otherwise". Section 3(7) of the Act contains no doubt a wider definition of the word "building" and includes within that word any hut, shed or other enclosure whether used as human dwelling or otherwise and shall include also the walls (including compound wall and fencing) verandahs, fixed platforms, plinths, door-steps and the like. But that definition cannot be available to the respondent municipality as Rule 3(9) provides in express terms that only the words and expressions other than those defined in Rule 3 shall be deemed to be used in the Rules in the same sense in which they are used in the Act. Rule 3(7) therefore expressly excludes the definition of the building given in the Act by providing a special definition of a building or a house in Rule

A 3(7). It is clear therefore that the word "building" or "house" must bear the meaning given to it by this Rule and not the meaning given to it by the Act. It follows that as by virtue of Rule 1 (ii) these rules extend to buildings or houses or shops or huts (jhupras) only and a building or a house under Rule 3(7) means a building, house, shop, hut (jhupras) etc., with a roof thereon B constructed for human habitation or otherwise, open lands obviously are not only not included in the term "building" or "house" but the Rules do not extend to such open lands.

In his assessment order dated March 6, 1964 passed against the Century Mills the assessing officer justified the inclusion of C the open lands in the assessment by observing as follows :

> "The Superintendent (of the appellant Company) states that the Municipality has decided to levy tax on the buildings or shops only and that there is no resolution, rule or bye-law for the levy of house tax on land. Apparently the Superintendent's contention seems to D be correct. But on deeper consideration it will be seen that the words "whatsoever form the property" have a significance and the same can include lands also. According to the District Municipal Act of 1901, building includes, "any hut, shed or other enclosure whether used as human dwelling or otherwise" and also "walls, E verandahs, fixed platforms, plinths, door-steps and the like". Now the Century Rayon Factory is bounded by a compound wall in which all the open space lies. Whole enclosure can therefore be held as enclosure and is therefore liable for rating. On the whole, the Act and the Rules have empowered the Municipality for the assessment on the open space."

F

In our view, the assessing officer was clearly wrong, for, what he did was to apply the definition of a building as given in sec. 3 of the Act instead of the definition in R. 3(7). That he was not right in doing as Rule 3(9) excludes the application of that definition. He was bound by the definition of building in Rule 3(7) G and in view of Rule 1(ii) he could base his assessment only on the annual letting value of a building as provided by Sch. 1 and not the open lands. He was also not entitled to rely upon the words "whatsoever form any property" in Rule 1 (ii) as those words go with the previous words "buildings or houses or shops or huts" and do not include open lands to means buildings or houses. The H reasoning of the High Court regarding the objection to the conclusion of the open lands in the assessment also does not appear to be correct. Though the High Court on a consideration of the Rules held that the Municipality was not authorised to levy the

rate on open lands it observed that if an open land formed an adjunct of the factory building it would constitute an amenity, that in that event a hypothetical tenant would pay a higher rent taking such an amenity into consideration, that the assessing authority would be entitled in such a case to take into account such an additional amenity, that there could be no objection, if he did so and that to decide whether the assessing officer had valued the open land as an adjunct to the factory building or separately as open land evidence would have to be led and scrutinised and therefore it would not be possible to decide such a question in a writ petition. With respect, it is not possible to agree with the High Court on this part of its judgment, firstly, because the open lands have been separately valued and secondly because the assessing officer in his said order has in clear terms repelled the appellants' objection to his taxing the open lands by relying on the definition of building in sec. 3 of the Act as including open lands when bounded by compound walls and not on the ground that they formed an adjunct of the factory buildings and were an amenity or additional advantage which a hypothetical tenant would take into account when offering rent. In our view the assessing officer was not entitled to include the open lands while rating the factory buildings of the appellant companies as such inclusion was *ultra vires* the Rules and therefore invalid.

So far as the rest of the contentions are concerned they can be dealt with, in our view, more properly by the appellate tribunal before whom the appeals by the appellant companies are at present pending rather than in these appeals. We therefore do not propose to go into those questions, especially as it is agreed by Counsel for the Municipality (1) that the Municipality will not take any objection to these questions being canvassed in those appeals on the ground that any one or more of them were not taken by the appellants in their objections to the assessment list and (2) that it will not also take any objection to the appeal by the Century Mills having been filed beyond the time prescribed therefor. Before the High Court the Municipality had in fact undertaken that it will not insist that the appellants should confine their objections in their appeals only to the grounds urged in their objections to the assessment list under sec. 65 of the Act. The appellant Companies would therefore be entitled to urge that the valuation made by the assessing officer is erroneous or bad on any ground available to them under the Act.

The appeals are partly allowed and the judgment and order passed by the High Court are set aside to the extent that the assessment on open lands in each of these appeals is declared *ultra vires* the Rules and therefore invalid. We also set aside the order of costs passed by the High Court against the Century Mills. So

A far as these appeals are concerned the parties will bear their own costs.

Before parting with these appeals, we may mention that the appellant companies have filed a statement regarding the various amounts deposited by them either in the High Court or in this B Court. For 1963-64, the Century Mills deposited in the High Court Rs. 1,13,647, and the Municipality has withdrawn that amount. Out of this amount Rs. 15,057 was, as held by us, wrongly included in the house tax bill and therefore that sum should be refunded to the Mills within one month from today. The balance should be treated as deposit under sec. 86 of the Act in the appeal filed by the Company. For 1964-65 also the C Century Mills deposited Rs. 1,13,647 in this Court. Out of this amount the Company will be at liberty to withdraw Rs. 15,057 and the balance may be withdrawn by the Municipality but it will be treated as deposit in the Company's appeal for the year 1964-65. For 1965-66 the Company has deposited Rs. 1,13,647 against the total assessment of Rs. 1,27,147, the difference being D the tax on open lands. The Municipality will be at liberty to withdraw the amount but it will be treated as deposit in the Company's appeal pending before the said Magistrate. For 1967-68 the Company has deposited Rs. 2,78,829/78 in this Court. The Municipality will be at liberty to withdraw the amount but the said amount shall be treated as deposit in the E appeal pending before the said Magistrate.

The Indian Dye Stuff Industries Ltd., has deposited Rs. 49,282.92/- for the year 1963-64. Of this amount Rs. 14,722/92 nP is referable to assessment on open lands. The Municipality will refund the sum of Rs. 14,722/92 nP to the Company within one month from today and treat the balance as F deposit in the appeal filed by the Company. For 1967-68 the Company has deposited Rs. 2,96,724.33 in this Court. The Municipality is at liberty to withdraw this amount but shall treat the amount as deposit in the appeal filed by the Company as required by the Maharashtra Municipalities Act, 1965.

G Amar Dye Chemical Co., has deposited with the Municipality Rs. 42,819.12 nP for 1963-64. The Municipality will refund to the Company such amount out of this sum as is referable to tax on open lands within one month from today and retain the rest but shall treat such balance as deposit in the appeal filed by the Company before the Magistrate. For the year 1967-68 the H Company has deposited Rs. 1,07,553.92 nP. in this Court. The Municipality will be at liberty to withdraw this amount but will treat the amount as deposit in the Company's appeal pending before the Magistrate.

Power Cable (P) Ltd., has deposited Rs. 18,084.40 nP with the Municipality. The Municipality will refund to the Company such amount, if any, out of this amount as is referable to the tax on open lands and treat the balance as deposit in the appeal filed by the Company before the Magistrate. A

Y.P. *Appeals allowed in part.* B