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STATE OF KERALA

v.

HAJI K. HAJI K. KUTTY NAHA & ORS. ETC.

August 13, 1968

B [J. C. SHAH, V. RAMASWAMI AND A. N. GROVER, JJ.]

Kerala Buildings Tax Act, 1961, s. 4 and Constitution of India, Art. 14—Tax on buildings levied solely on basis of floor area—Taxing statute must not be inconsistent with Constitution or violative of fundamental rights—Lack of rational classification when results in discrimination.

C Under s. 4 of the Kerala Buildings Tax Act, 1961, buildings constructed after the coming into force of the Act and having a floor area of one thousand square feet or more were subjected to tax on a graduated scale. The tax was levied on the basis of floor area only and no classification was attempted. The High Court in writ petitions filed by the present respondents held the charge to be invalid because of violation of the equality clause of the Constitution. The State appealed.

D HELD : (i) The law by which a tax is levied must not only be within the competence of the legislature concerned but it must also not be inconsistent with any provision of the Constitution. The validity of a taxing statute is open to question on the ground that it infringes the fundamental rights. [648 B-C]

K. T. Moopil Nair v. State of Kerala, [1961] 3 S.C.R. 77 and *Khandige Sham Bhat v. Agricultural Income-tax Officer*, [1963] 3 S.C.R. 809, relied on.

E

(ii) In the application of the principles expounded by this Court for determining whether there has been denial of equal protection of the laws, the Courts, in view of the inherent complexity of fiscal legislation admit a larger discretion to the Legislature in the matter of classification, so long as it adheres to the fundamental principles underlying the doctrine of equality. The power of the legislature to classify is of 'wide range and flexibility' so that it can adjust its system of taxation in all proper and reasonable ways. [648 H]

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But when objects persons or transactions essentially dissimilar are treated by the imposition of a uniform tax, discrimination may result, for, refusal to make a rational classification may itself in some cases result in denial of equality. [649 C]

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In enacting the Kerala Building Tax Act no attempt at any rational classification has been made by the Legislature. The Legislature has not taken into consideration in imposing tax the class to which a building belongs, the nature of construction, the purpose for which it is used, its situation, its capacity for profitable user and other relevant circumstances which have a bearing on matters of taxation. They have adopted merely the floor area of the building as the basis of tax irrespective of all other considerations. The High Court was therefore right in holding that the charging section of the Act was violative of the equality clause of the Constitution. [649 B]

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Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar & Ors. [1959] S.C.R. 279, referred to.

New Manek Chowk Spinning & Weaving Mills Co. Ltd. v. Municipal Corporation of the City of Ahmedabad, [1967] 2 S.C.R. 679, applied. A

[Question whether imposition of a tax only on buildings constructed after the coming into force of the Act and exempting buildings completed before that date would violate Art. 14 of the Constitution left open.] [650 A]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1052, 1054 to 1058, 1060 to 1087, 1089 to 1095, 1097, 1100 to 1112, 1114 to 1118, 1120 to 1129, 1131 and 1133 to 1145 of 1968. B

Appeals by special leave from the judgment and order, dated July 7, 1966 of the Kerala High Court in Writ Appeals Nos. 35, 38 to 40, 43, 44, 46, 47, 57, 59 60 to 69, 71 to 77, 79 to 82, 84 to 86, 88, 89, 92 to 95, 97, 99, 102, 184 to 186, 190 to 195, 202, 217, 218, 222 to 224, 226, 227, 231 to 240, 242, 245, 247, 249 to 252, 257, 273, 274, 305 to 307, and 312 of 1965 respectively and Civil Appeals Nos. 1146 and 1147 of 1968. C

Appeals by special leave from the judgment and order, dated September 19, 1966 of the Kerala High Court in Writ Appeals Nos. 42 and 246 of 1965. D

B. R. L. Iyengar and *A. G. Pudissery*, for the appellant (in all the appeals).

Sardar Bahadur, Vishnu Bahadur and *Youngindra Khushalani*, for the respondent (in C.As. Nos. 1080 and 1137 of 1968). E

H. R. Gokhale and *J. B. Dadachanji*, for the respondent (in C.As. Nos. 1094 and 1144 of 1968).

A. V. V. Nair, for the respondents Nos. 2 and 3 (in C.As. Nos. 1053, 1112 and 1139 of 1968).

Lily Thomas, for the respondent (in C.As. Nos. 1056, 1087 and 1128 of 1968). F

A. Sreedharan Nambiar, for the respondent (in C.As. Nos. 1067, 1075, 1091 and 1136 of 1968).

M. C. Chagla, J. B. Dadachanji and *Thomas Vallapally* for intervener. (in C. A. No. 1144 of 1968). G

The Judgment of the Court was delivered by

Shah, J. This group of appeals arises out of an order passed by the High Court of Kerala holding that the Kerala Buildings Tax Act 19 of 1961 is *ultra vires* the Legislature in that it infringes the equality clause of the Constitution. The State of Kerala has appealed against the decision with special leave granted by this Court. H

A The material provisions of the Kerala Buildings Act, 1961, may be briefly set out. The Act extends to the whole of the State of Kerala; s. 1(2), and shall be deemed to have come into force with effect from March 2, 1961; s. 1(3). An "assessee" is defined by s. 2(b) as meaning a person by whom building tax or any other sum of money is payable under the Act and includes every person in respect of whom any proceeding under the Act has been taken for the assessment of building tax payable by him. Section 2(d) defines "building" as meaning a house, out-house, garage or any other structure or part thereof whether of masonry, bricks, wood, metal, or other material, but does not include any portable shelter or any shed constructed principally of mud, bamboos, leaves, grass or thatch or a latrine which is not attached to the main structure. "Floorage" is defined by s. 2(e) as meaning the area included in the floor of a building, and where a building has more than one floor of a building, the aggregate area included in all the floors together. By s. 3 buildings owned by the State Government, the Central Government or any local authority and buildings used principally for religious, charitable or educational purposes or as factories or workshops are exempt from payment of tax under the Act. By s. 4 it is provided that there shall be a charge to tax in respect of every building the construction of which is completed on or after March 2, 1961, and which has a floor area of one thousand square feet or more, and that the building tax shall be payable by the owner of the building. The Schedule to the Act sets out the rates of building tax. Buildings having a total floor area of less than 1,000 sq. ft. are not liable to pay tax.

The Act, on a bare perusal, discloses some singular provisions. The liability to tax in respect of buildings having total floor area between 1,000 to 2,000 sq. ft. varies between Rs. 100 to Rs. 200; for buildings with a floor area between 2,000 to 4,000 sq. ft. varies between Rs. 400 to Rs. 800; for buildings having total floor area between 4,000 to 8,000 sq. ft. it varies between Rs. 1,200 to Rs. 2,400; for buildings with total floor area of 8,000 to 12,000 sq. ft. it varies between Rs. 3,200 to Rs. 4,800; and in respect of buildings having total floor area exceeding 12,000 sq. ft. a rate of 50 np. per sq. foot *i.e.*, Rs. 6,000 or more per annum. For determining the quantum of tax the sole test is the area of the floor of the building. The Act applies to the entire State of Kerala, and whether the building is situate in a large industrial town or in an insignificant village, the rate of tax is determined by the floor area : it does not depend upon the purpose for which the building is used, the nature of the structure, the town and locality in which the building is situate, the economic rent which may be obtained from the building, the cost of the building and other related circumstances which may appropriately be taken into

consideration in any rational system of taxation of building. Under the Seventh Schedule List II Entry 49, the State Legislature has the power to legislate for levying taxes on lands and buildings. But that power cannot be used arbitrarily and in a manner inconsistent with the fundamental rights guaranteed to the people under the Constitution. No tax may be levied or collected under our constitutional set-up except by authority of law : and the law must not only be within the legislative competence of the State, but it must also not be inconsistent with any provision of the Constitution. It has been frequently said by this Court that the validity of a taxing statute is open to question on the ground that it infringes fundamental rights. In *K. T. Moopil Nair v. State of Kerala*,⁽¹⁾ Sinha, C.J., delivering the judgment of the majority observed at p. 89 :

“Article 265 imposes a limitation on the taxing power of the State in so far as it provides that the State shall not levy or collect a tax, except by authority of law, that is to say, a tax cannot be levied or collected by a mere executive fiat. It has to be done by authority of law, which must mean valid law. In order that the law may be valid, the tax proposed to be levied must be within the legislative competence of the Legislature imposing a tax and authorising the collection thereof and, secondly, the tax must be subject to the conditions laid down in Art. 13 of the Constitution. One of such conditions envisaged by Art. 13(2) is that the Legislature shall not make any law which takes away or abridges the equality clause in Art. 14, which enjoins the State not to deny to any person equality before the law or the equal protection of the laws of the country. It cannot be disputed that if the Act infringes the provisions of Art. 14 of the Constitution, it must be struck down as unconstitutional.”

Similar observations were made in *Khandige Sham Bhat v. Agricultural Income-tax Officer*.⁽²⁾

The principles which have been expounded by this Court in determining whether there has been denial of equal protection of the laws are also well settled : see *Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar and Ors.*⁽³⁾ It is true that in the application of the principles, the Courts, in view of the inherent complexity of fiscal legislation admit a larger discretion to the Legislature in the matter of classification, so long as it adheres to the fundamental principles underlying the doctrine of equality. The power of the Legislature to classify is, it is said, of “wide

(1) [1961] 3 S.C.R. 77.

(2) [1963] 3 S.C.R. 809.

(3) [1959] S.C.R. 279

A range and flexibility" so that it can adjust its system of taxation in all proper and reasonable ways *Khandige Sham Bhat v. Agricultural Income-tax Officer*(¹).

But in enacting the Kerala Building Tax Act, no attempt at any rational classification is made by the Legislature. As already observed, the Legislature has not taken into consideration in imposing tax the class to which a building belongs, the nature of construction, the purpose for which it is used, its situation, its capacity for profitable user and other relevant circumstances which have a bearing on matters of taxation. They have adopted merely the floor area of the building as the basis of tax irrespective of all other considerations. Where objects, persons or transactions essentially dissimilar are treated by the imposition of a uniform tax, discrimination may result, for, in our view, refusal to make a rational classification may itself in some cases operate as denial of equality. This Court in a recent judgment has decided that the levy of tax in exercise of the power under Entry 49 List II of the Seventh Schedule in respect of factory buildings in a municipal area based on floor area was illegal : *New Manek Chowk Spinning and Weaving Mills Co. Ltd. v. Municipal Corporation of the City of Ahmedabad*(²). The Court held in that case that the method of adopting a flat rate for a floor area for determining the annual value adopted by the Corporation of Ahmedabad in exercise of the powers conferred upon it by the Bombay Provincial Municipal Corporation Act 49 of 1949 was against the provisions of the Act and the Rules made thereunder as well as all recognized principles of valuation for the purpose of taxation. If levy of tax in a municipal district based on floor area in respect of a factory building violates Art. 14 of the Constitution when the tax is sought to be levied by the Municipal Corporation, we see no reason to uphold the tax imposed under the impugned Act when the State, in exercise of legislative authority conferred by Entry 49 List II Sch. VII, imposes liability to tax buildings solely on floor area. The vice of the Act in the present case is more pronounced than it was in *New Manek Chowk Spinning & Weaving Mills case*(²). In that case the Rules under which the tax was sought to be levied on the basis of floor area were restricted in their operation to factory buildings within the Corporation limits of Ahmedabad, whereas Act 19 of 1961 which is challenged in the present case applies to the whole State of Kerala in respect of buildings completed on or after March 2, 1961, whatever may be the nature or class of the building, the use to which it is put, materials used in its construction and the extent of profitable user to which the building may be put, its cost and its economic rental. It is unnecessary in the circumstances to consider whether imposition of a tax only on buildings constructed

(1) [1963] 3 S.C.R. 809.

(2) [1967] 2 S.C.R. 679.

after March 2, 1961, and exempting buildings completed before that date may not violate Art. 14 of the Constitution.

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The High Court was, in our judgment, right in holding that the charging section of the Act is violative of the equality clause of the Constitution.

The appeals therefore fail and are dismissed with costs. Parties appearing in different groups of appeals through the same Advocate in this Court will be entitled to one hearing fee.

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G.C.

Appeals dismissed.