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NATIONAL & GRINDLAYS BANK LTD.

v.

THE MUNICIPAL CORPORATION OF GREATER BOMBAY

February 5, 1969

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

Bombay Municipal Corporation Act 3 *of* 1888, *S.* 146—*Landlord leasing land to tenant who constructs thereon—Whether section contemplates composite assessment of property tax on land and building—If primary liability to tax that of landlord.*

C The appellant had leased a plot of land situated in the Malad Area in Greater Bombay at a rental on a monthly basis. The lessee had constructed a house on the plot of land at his own cost. Prior to the merger of the Malad Area into Greater Bombay in February, 1947, the Malad District Municipality assessed and levied taxes on the land and the structures separately and recovered the same from the landlord and the tenant. After the merger, the respondent Bombay Municipal Corporation issued a notice to the appellant under section 167 of the Bombay Municipal Corporation Act No. 3 of 1883, informing him that there would be a D composite assessment on him. An appeal against the order to the Chief Judge, Small Causes Court, Bombay, under section 217 of the Act was dismissed. A single bench of the High Court dismissed a further appeal on the view that it was bound by the decision in *Ramji Keshavji* v. *Municipal Corporation* of Bombay 56 B.L.R. 1132. A Letters Patent appeal was also dismissed.

In the appeal to this Court it was contended on behalf of the appellant E that on a proper construction of section 146 (2) of the Act there should have been a separate assessment in respect of the building and the land; alternatively even if section 146(2) contemplates a composite assessment of the building and the land, a preliminary liability should be imposed upon the owner of the building in whom the right to let the building vests and not on the owner of the land; the appellant could not be treated as a lessor under section 146(2) because it did not let the land with the building thereon as one unit to the lessee.

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HELD : (1) The scheme under section 146 is that when the land is let and the tenant has built upon the land, there should be a composite assessment of tax upon the land and the building taken together. In the case of such a composite unit the primary liability of assessment of tax is intended to be on the lessor of the land under section 146 (2)(a) of the Act. [571 F]

G In section 146(1) and (2) the word "premises" is used in contrast to section 146(3) where the words "land and building" are separately mentioned. Section 146(3) which is admittedly not applicable in the present cases, furnishes a key to the interpretation of section 146(2)(a). In the context of section 146(3) the lessor of the premises, as mentioned in section 146(2)(a) must be construed to mean the lessor of the land on which the building has been constructed by the tenant. [571 D]

H Section 147 provides for an apportionment of responsibility to property tax when the premises are let or sub-let; it is clear the intention of the legislature was to impose the primary liability for payment of property tax upon the lessor of the land to facilitate its collection and to give him the right to recoupment under section 147. [571 F]

Ramji Keshavji v. *Muncicipal Corporation for Greater Bombay*, 56 Bom. L.R. 1132, approved. A

(2) Even assuming that the meaning of section 146(2) is obscure and that it is possible to interpret it as throwing the primary liability for payment of property tax upon the lessee who has constructed a building on the land, this was not a case where the law expressed by the High Court in *Ramji Keshavji's case*, should be interfered with. That is the construction which the authorities have put upon it by their usage and conduct for a long period of time, and the Court may therefore resort to contemporary construction by applying the principle *"optima legum interpres est consuetudo"*. [572 E] B

Ohlson's case, [1891] 1 Q.B. 485, 489; *Clyde Navigation Trustees* v. *Laird*, 8 A.C. 658, 670, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 462 of 1966. C

Appeal by special leave from the order dated March 25, 1964 of the Bombay High Court in Letters Patent Appeal No. 28 of 1964.

S. V. Gupte, P. P. Khambatta, D. P. Mehta, Bhuvnesh Kumari and *O. C. Mathur*, for the appellant. D

M. C. Chagla and *I. N. Shroff*, for the respondent.

The Judgment of the Court was delivered by

Ramaswami, J.—The question of law involved in this appeal is whether the primary liability is imposed on the appellant under the Bombay Municipal Corporation Act, 1888 (Act No. 3 of 1888) to pay property taxes to the respondent *i.e.*, the Municipal Corporation of Greater Bombay in respect of land owned by the appellant and let on a monthly basis to a third party who has constructed a building thereon. E

The appellant is a banking company incorporated in the United Kingdom and has established places of business in India. The appellant is the sole trustee of the estate of the late Mr. F. E. Dinshaw and in that capacity is the owner of a plot of land at Manchubhai Road, Malad, Greater Bombay in the State of Maharashtra, bearing No. P-Ward No. 6418, Street No. 299B. The said plot of land had been leased by the former trustee of the estate to one Mr. R. R. Pande (hereinafter referred to as the lessee) since a number of years at a monthly rent of Rs. 12.50. The lessee had constructed at his own cost a tiled house on the said plot of land. The Malad area merged into Greater Bombay on 1st February, 1957. Upto the date of the merger the Malad District Municipality was assessing and levying taxes on the land and the structure separately and recovering the same from the landlord and the tenant. After the merger, the Bombay Municipal Corporation issued a notice to the appellant under section F G H

A 167 of the Act informing him that the assessment book had been amended by inserting the name of the appellant and that the rateable value of the house had been fixed at Rs. 430/-. Being aggrieved by this order the appellant preferred an appeal to the Chief Judge, Small Causes Court, Bombay under section 217 of the Act. The appeal was dismissed by the Chief Judge, Small B Causes Court by his order dated 3rd August, 1960. The appellant took the matter in further appeal to the Bombay High Court. The appeal was heard by Mr. Justice Patel and was dismissed on the 14th January, 1964. The learned Judge felt that he was bound by the decision of Chagla, C.J. and Shah, J. in *Ramji Keshavji* v. *Municipal Corporation for Greater Bombay*(1). The appellant thereafter preferred a Letters Patent Appeal No. 28 of C 1964 which was summarily dismissed by Chief Justice H. K. Chainani and Mr. Justice Gokhale on 25th March, 1964. The present appeal is brought by special leave from the judgment of the Bombay High Court dated 25th March, 1964.

Section 3(r) of the Bombay Municipal Corporation Act, 1888 D (Act No. 3 of 1888) (hereinafter called the Act) defines 'land' as including "land which is being built upon or is built upon or covered with water.....". Section 3(s) defines 'buildings' as including a house, out-house, stable, shed, hut and every other such structure, whether of masonry bricks, wood, mud, metal or any other material whatever. Section 3(gg) defines 'premises' as including messuages, buildings and lands of any tenure, whether E open or enclosed, whether built on or not and whether public or private. Section 140 states :

> "140. The following taxes shall be levied on buildings and lands in Greater Bombay and shall be called "property taxes", namely :—
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> F (a) a water tax of so many per centum of their rateable value as the corporation shall deem reasonable for providing a water-supply for Greater Bombay.
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> (b) a halalkhor-tax of so many per centum, not exceeding five of their rateable value as will, in the opinion of the corporation, suffice to provide for the col- G lection, removal and disposal, by municipal agency, of all excrementitious and polluted matter from privies, urinals and cesspools and for efficiently maintaining and repairing the municipal drains constructed or used for the receiptions or conveyance of such matter, subject however, to the provisions that the minimum amount of H such tax to be levied in respect of any one separate holding of land, or of any one building or of any one portion of a building which is let as a separate holding, shall

(1) 56 Bom. L.R. 1132.

be six annas per month, and that the amount of such tax to be levied in respect of any hotel, club or other large premises may be specially fixed under section 172;

(c) a general tax of not less than eight and not more than twenty-six per centum of their rateable value, together with not less than one-eighth and not more than three-quarters per centum of their rateable value added thereto in order to provide for the expense necessary for fulfilling the duties of the corporation arising under clause (k) of section 61 and Chapter XIV;

(ca) the education cess leviable under s. 195E;

(d) betterment charges leviable under Chapter XII-A."

Section 146 provides :—

"146. (1) Property taxes shall be leviable primarily from the actual occupier of the premises upon which the said taxes are assessed, if such occupier holds the said premises immediately from the Government or from the corporation or from a fazendar.

Provided that the property taxes due in respect of any premises owned by or vested in the Government and occupied by a Government servant or any other person on behalf of the Government for residential purposes shall be leviable primarily from the Government and not the occupier thereof.

(2) Otherwise the said taxes shall be primarily leviable as follows, namely :—

(a) if the premises are let, from the lessor;

(b) if the premises are sub-let, from the superior lessor; and

(c) if the premises are unlet, from the person in whom the right to let the same vests.

(3) But if any land has been let for any term exceeding one year to a tenant, and such tenant on any person deriving title howsoever from such tenant has built upon the land, the property taxes assessed upon the said land and upon the building erected thereon shall be leviable primarily from the said tenant or such person, whether or not the premises be in the occupation of the said tenant or such person".

A Section 147 states :

"147. (1) If any premises assessed to any property tax are let, and their rateable value exceeds the amount of rent payable in respect thereof to the person from whom, under the provisions of the last preceding section, the said tax is leviable, the said person shall be
B entitled to receive from his tenant the difference between the amount of the property tax levied from him, and the amount of which would be leviable from him if the said tax were calculated on the amount of rent payable to him.

(2) If the premises are sub-let and their rateable
C value exceeds the amount of rent payable in respect thereof to the tenant by his sub-tenant, or the amount of rent payable in respect thereof to a sub-tenant by the person holding under him, the said tenant shall be entitled to receive from his sub-tenant or the said sub-tenant shall be entitled to receive from the person hold-
D ing under him, as the case may be, the difference between any sum recovered under this section from such tenant or sub-tenant and the amount of property-tax which would be leviable in respect of the said premises if the rateable value thereof were equal to the difference between the amount of rent which such tenant or sub-
E tenant receives and the amount of rent which he pays.

(3) Any person entitled to receive any sum under this section shall have, for the recovery thereof, the same rights and remedies as if such sum were rent payable to him by the person from whom he is entitled to receive the same".

F Section 154(1) enacts as follows :—

"In order to fix the rateable value of any building or land assessable to a property-tax, there shall be deducted from the amount of the annual rent for which such land or building might reasonably be expected to let from year to year a sum equal to ten per centum of
G the said annual rent and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever".

Section 155 enacts :—

"155. (1) To enable him to determine the rateable value of any building or land and the person primarily liable for the payment of any property tax leviable in
H respect thereof the Commissioner may require the owner or occupier of such building or land, or of any portion thereof, to furnish him, within such reasonable period

as the Commissioner prescribes in this behalf, with information or with a written return signed by such owner or occupier— A

(a) as to the name and place of abode of the owner or occupier, or of both the owner and occupier of such building or land; and B

(b) as to the dimensions of such building or land, or of any portion thereof, and the rent, if any, obtained for such building, or land, or any portion thereof.

(2) Every owner or occupier on whom any such requisition is made shall be bound to comply with the same and to give true information or to make a true return to the best of his knowledge or belief. C

(3) The Commissioner may also for the purpose aforesaid make an inspection of any such building or land".

Section 156 states: D

"The Commissioner shall keep a book, to be called "the assessment book" in which shall be entered every official year—

(a) a list of all buildings and lands in Greater Bombay distinguishing each either by name or number, as he shall think fit; E

(b) the rateable value of each such building and land determined in accordance with the foregoing provisions of this Act;

(c) the name of the person primarily liable for the payment of the property taxes, if any, leviable on each such building or land..... F

. . . . . ."

It was contended by Mr. Khambatta that on a proper construction of section 146(2) of the Act there should have been separate assessments in respect of the building and the land in the present case. It was argued in the alternative that even if section 146(2) of the Act contemplates a composite assessment of the building and the land, the primary liability should be imposed upon the owner of the building and not on the owner of the land. It was said that the right to let the building vests in the lessee of the land and not in the appellant, and so, the primary liability was upon the lessee under section 146(2) of the Act. The argument was pressed that the appellant cannot be treated as a lessor under section 146(2) of the Act, because the appellant has not let the G H

A land with the building thereon as one unit to the lessee. The opposite viewpoint was presented on behalf of the respondent. It was argued, in the first place, that section 146(2) of the Act contemplates that there should be a composite assessment of the land and the building taken as one unit. In the case of such a composite assessment, the primary liability of the payment of tax
B was on the landlord under sub-section (2)(a) of section 146 except in the case referred to in sub-section (3) where the primary liability was upon the tenant and not upon the landlord. Admittedly, the present case did not fall under section 146(3), and, therefore, the primary liability was placed upon the appellant. In our opinion, the argument put forward on behalf of the respondent is
C well-founded and must be accepted as correct. In the first place, the language of section 146(2) indicates that the Legislature contemplated that in a case where the land and the building are owned by different persons there should be a composite assessment of property tax. The reason is that in section 146(1) and (2) the word 'premises' is used in contrast to section 146(3) where the
D words 'land and building' are separately mentioned. In section 154(1) of the Act again, the Legislature uses the expression 'building or land'. Then section 155 provides for the right of the Commissioner to call information from the owner or the occupier in order to enable him to determine the rateable value of any building or land and the person primarily liable for the payment of any property tax levied in respect thereof. Section 156 pro-
E vides that the Commissioner shall maintain a book to be called 'the assessment book' which book is to contain among other things a list of all lands and buildings. Therefore, the scheme of section 146 is that when the land is let and the tenant has built upon the land, there should be a composite assessment of tax upon the land and building taken together. We are further of opinion
F that in the case of such a composite unit the primary liability of assessment of tax is intended to be on the lessor of the land under section 146(2)(a) of the Act. It was objected by Mr. Khambatta that the appellant was only the lessor of the land and not of the building, and so, the appellant cannot be held to be the lessor within the meaning of section 146(2)(a). We do not think that
G there is any merit in this objection. Section 146(3) of the Act furnishes the key to the interpretation of section 146(2)(a). In the context of section 146(3) the lessor of the premises as mentioned in section 146(2)(a) must be construed as to mean the lessor of the land on which the building has been constructed by the tenant. In this connection, reference should be made to sec-
H tion 147 which provides for an apportionment of responsibility for property tax when the premises assessed are let or sub-let. The language of this sub-section suggests that the lessor of the land has the right of recovering from his tenant the amount of tax

which he has paid in excess of the tax which the property is liable to pay on the basis of the rent recovered by the lessor. It is also clear that the intention of the Legislature in fixing the primary liability of property tax upon the owner of the land in a case not falling under s. 146(3) of the Act is to facilitate the collection of property tax. In the case of a monthly tenant who puts up a temporary shack or asbestos shed on the land and who may at any time terminate the lease at a short notice, it is not always possible for the Corporation to keep track of the lessee and to collect the property tax from him. It is not unreasonable therefore that in a case of this description the Legislature should impose the primary liability for the payment of the property tax upon the lessor of the land and to give him the right of recoupment under section 147. A similar view with regard to the interpretation of section 146 of the Act was expressed by a Division Bench of the Bombay High Court consisting of Chagla, C.J. and Shah, J. in *Ramji Keshavji's*(1) case. It was held by the learned judges in that case that where the owner of a land had leased it to a tenant for a period of one year and the tenant had put up a structure upon the land, the owner of the land was primarily liable to pay property tax together with the structure constructed thereon. Counsel on behalf of the appellant challenged the correctness of this decision, but for the reasons already expressed we hold that the *ratio* of this decision is correct.

We shall, however, assume in favour of the appellant that the meaning of section 146(2) of the Act is obscure and that it is possible to interpret it as throwing the primary liability for payment of property tax upon the lessee who has constructed a building on the land. Even upon that assumption we think that the view of the law expressed by the Bombay High Court in this case ought not to be interfered with. The reason is that in a case where the meaning of an enactment is obscure, the Court may resort to contemporary construction, that is the construction which the authorities have put upon it by their usage and conduct for a long period of time. The principle applicable is *"optima legum interpres est consuetudo"*(2). In *Ohlson's case*(3), in dealing with the interpretation of section 39 of the Pawnbrokers Act, 1872, Stephen, J. said :

> "What weighs with me very greatly in coming to the present conclusion is the practice of the Inland Revenue Commissioners for the past sixteen years. So long ago as 1874 this very point was decided by Sir Thomas Henry, for whose decisions we all have very great respect; and the least that can be said with regard to the

(1) 56 Bom. L. R. 1132. (2) 2 Co. Rep. 81.

(3) [1891] 1 Q.B. 485, 489.

A case before him is that he pointedly called the attention of the commissioners to the case—the learned magistrate having offered to state a case—an offer refused by the commissioner, who by their refusal must be taken to have acquiesced in the decision. That is a very strong contemporaneous exposition of the meaning of the Act".

B The same principle was referred to by Lord Blackburn in *Clyde Navigation Trustees* v. *Laird*(1). The question in dispute in that case was whether the Clyde Navigation Consolidation Act, 1858 (repealing eight prior Acts) imposed navigation dues on timber floated up the Clyde in logs chained together. From 1858 to 1882 dues had been levied on this class of timber without resistance from C the owners; and some judges in the Court of Session suggested that this non-resistance might be considered in construing the statute. On this point Lord Blackburn said :

"I think that submission raises a strong *prima facie* ground for thinking that there must exist some legal D ground on which they (the owners) could not resist, And I think a court should be cautious, and not decide unnecessarily that there is no such ground. If the Lord President (Inglis) means no more than this when he calls it '*contemporanea exposito* of the statutes which is almost irresistible', I agree with him. I do not think that he means that enjoyment at least for any period E short of that which gives rise to prescription, if founded on a mistaken construction of a statute, binds the court so as to prevent it from giving the true construction. If he did, I should not agree with him, for whom I know of no authority, and am not aware of any principle, for so saying".

F In our opinion, the principle of *contemporanea exposito* applies to the present case. The Act was passed in the year 1888 and there appears to be a practice followed by the Bombay Municipal Corporation for a very long time of treating the land and the building constructed upon it as single unit and charging the property tax upon the owner of the land in a case where the land is let for G a period of less than one year to a tenant who has constructed a building thereon [See *Ramji Keshavji's case*(2)].

For the reasons expressed, we hold that there is no merit in this appeal which is accordingly dismissed with costs.

R.K.P.S. *Appeal dismissed.*

(1) 8 A.C. 658, 670.
(2) 56 Bom. L.R. 1132.