MUNICIPAL CORPORATION OF HYDERABAD

v.

HYDERABAD RACE CLUB

NOVEMBER 11, 1986

[M.P. THAKKAR AND B.C. RAY, JJ.]

Hyderabad Municipal Corporation Act 1955—Section 202(1)(b)—'Charitable purpose'—Meaning of—User of premises for Race Course Club—Whether exemption to general tax available.

The appellant—Corporation sought to assess the land and buildings of the respondent club to general tax under s. 202 of the Hyderabad Municipal Corporation Act, 1955. The respondent claimed exemption on the ground that occupation and user of the property for running horse races and training the horses etc. constituted occupation and user of the property for a *'charitable purpose'* within the meaning of s. 202(1)(b), which was refused. The respondent approached the High Court and succeeded.

Partly allowing the appeal by the Corporation,

HELD: 1. For determining whether exemption under s. 202(1)(b) of the Hyderabad Municipal Corporation Act, 1955, was available, the test to apply is to seek answer to the question: to what use is the property put or for what purpose is the property put and to ascertain whether such occupation or user is for 'charitable purpose'. [197F]

2. The expression 'charitable' in the context of s. 202(1)(b) means a benevolent activity calculated to benefit the poor or the deprived. Horse racing is surely not such a benevolent activity, however charitable a view is taken. It must be the very activity which is carried on on the property which must be charitable and *not* the application of the income of such activity. [197H-198A]

3. The High Court has completely failed to realize that the *'occupation'* of the land and buildings or the *'user'* must be for *'charitable purpose'* and that it is altogether irrelevant as to the manner in which the income of the club is utilised. Section 202(1)(b) makes no reference to the question as regards the employment of the income of the club or the purpose for which the income is so employed. Exemption is granted

A **only in respect of buildings which are *'solely'* and exclusively used for charitable purpose. [198B]**

4. In the instant case, the user of the premises for the Race Course Club will not constitute occupation or user for a 'charitable purpose' within the meaning of s. 202(1)(b) and of Race Course Club
B **will not be entitled to claim exemption from levy of the general tax. [198F]**

5. The High Court has rightly taken a view adverse to the appellant as regards the levy for the assessment year 1966-67, on an appreciation of evidence and there is no warrant to disturb the said finding. There is also no reason to interfere with the valuation of the property as made
C **by the Small Causes Court and confirmed by the High Court. [198G-H]**

6. The order passed by the High Court in so far as it is held that the property is exempt from levy of general tax under s. 202(1)(b) is set aside. The appellant would be entitled to levy general tax from 1967-68 onwards in accordance with law. [199B]
D

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 395 and 1346 (N) of 1973

From the Judgment and Order dated 13.12.1971 of the Andhra Pradesh High Court in A.A.O. No. 279 and 216 of 1970.
E

Vepa P. Sarthy, B. Parthasarthi and G.N. Rao for the Appellant.

V.S. Desai, Naunit Lal and Kailash Vasdev for the Respondent.

F The Judgment of the Court was delivered by

THAKKAR, J. Believe it or not, the most incongruous arguments can sometimes find a suiter. Were it not so, the High Court of Andhra Pradesh could not have taken the view that occupation or user of lands and buildings for the purpose of running horse races, and for
G training the horses etc. constitutes occupation or user of the property for a *'charitable'* purpose.

The High Court has taken the said view, an impossible view in our opinion, in the context of the exemption from levy of municipal taxes claimed by the Race Course Club (respondent herein) in respect
H of 127 acres, 14 goonthas and 95 sq. yards of land alongwith structures

standing thereon, which were sought to be assessed to general tax under Section 202 of the Hyderabad Municipal Corporation Act (Act in short). The respondent boldly contended, and strangely enough succeeded in convincing the High Court, that Section 202(1)(b) of the Act was attracted as occupation and user of the property for running horse races and training of horses etc. constituted occupation and user of the property for a *'charitable purpose'* within the meaning of the said provision.

Now, Section 202(1)(b) of the Act is in these terms:

> "202(1) The general tax shall be levied in respect of all buildings and lands in the city except—
>
> (a) xxxx
>
> (b) buildings and lands or portions thereof solely occupied and used for public worship or for a charitable or educational purpose;
>
> (c) xxxx
>
> (d) xxxx"

The High Court launched upon an exercise to ascertain whether the income of the Race Club was used for a charitable purpose. And on perceiving that some of the purposes for which the income was to be employed were charitable purposes concluded that the exemption under Section 202(1)(b) was available. The test to apply is to seek an answer to the question: to what use is the property put or for what purpose is the property put. And to ascertain whether such occupation or user is for a 'charitable' purpose. In the present case the occupation and user is to conduct horse races and to train horses for racing. Unless it can be posited that conducting of horse races is a charitable purpose, it cannot be concluded that the exemption envisioned by Section 202(1)(b) is attracted. And even if one were to take the most 'charitable' view as regards the meaning and content of the expression 'charitable' conducting of horse races or training of horses for the races cannot be said to be a charitable activity. The expression charitable in the context of Section 202(1)(b) means a benevolent activity calculated to benefit the poor or the deprived. Surely horse racing is not such a benevolent activity, however charitable a view one takes. It has also to be emphasized that it must be the very activity which is carried on on

A the property which must be charitable and *not* the application of the income of such activity.

What the High Court has completely failed to realize is that the *'occupation'* of the land and buildings or the *'user'* of the land and buildings must be for a *'charitable purpose'* and that it is altogether
B irrelevant as to the manner in which the income of the club is utilised. Section 202(1)(b) makes no reference to the question as regards the employment of the income of the club or the purpose for which the income is so employed. Exemption is granted only in respect of buildings which are *'solely'* used, meaning thereby exclusively used, for charitable purpose. For instance, if the premises are occupied for the
C purposes of benevolent activities such as the running of a free dispensary or clinic or for running of a free school for the children, such user of the building would constitute a user for a charitable purpose and entitle the owner of the building to claim exemption. It is impossible to subscribe to the view that occupation or user for 'any' purpose would constitute a user for a charitable purpose provided the income is
D used for a charitable purpose. Clutching at the tail of this reasoning, one would be induced to the conclusion that user of a building for running a common gaming house (or for any immoral or illegal purpose) would be user for a *'charitable'* purpose provided the income of the common gaming house is utilised for a charitable purpose. The argument deserves no further scrutiny and must be rejected outright.
E No further exercise need be undertaken in order to find out whether or not Section 202(1)(b) is attracted in the facts of the present matter. The judgment of the High Court in so far as the High Court holds that Section 202(1)(b) is attracted must therefore be reversed and set aside. We are of the opinion that the user of the premises for the Race Course Club will not constitute occupation or user for a charitable
F purpose within the meaning of Section 202(1)(b) and the Race Course Club will not be entitled to claim exemption from levy of general tax.

Two other questions have been agitated by the Appellant Municipal Corporation. First, whether the general tax could have been lawfully levied for the assessment year 1966-67. The High Court has
G rightly taken a view adverse to the appellant on an appreciation of evidence. We do not see any fallacy in the reasoning of the High Court. We therefore do not propose to disturb the finding recorded by the High Court in so far as this question is concerned. Secondly, as regards the valuation of the property. The learned Judge of the Small Causes Court has valued the property at Rs.4 lakhs. The valuation
H made by the Small Causes Court has been confirmed by the High

Court. We see no reason to interfere with the valuation as made by the Small Causes Court and confirmed by the High Court. Accordingly, in so far as these two points are concerned, the decision rendered by the High Court must be confirmed. A

The appeals are therefore partly allowed to the afore said extent. The order passed by the High Court in so far as it is held that the property is exempt from levy of general tax under Section 202(1)(b) is set aside. The appellant would be entitled to levy general tax from 1967-68 onwards in accordance with law. The appeals are partly allowed to this extent. There will be no order as to costs. B

A.P.J. Appeals allowed. C