THE SURAT TEXTILE MARKET COOPERATIVE SHOPS AND WAREHOUSES SOCIETY LTD., SURAT

v.

MUNICIPAL CORPORATION OF THE CITY OF SURAT

NOVEMBER 25, 1997

[DR. A.S. ANAND AND S. RAJENDRA BABU, JJ.]

Bombay Provincial Municipal Corporations Act, 1949 : Sections 2(1A) and 411.

Municipality—Levy of Property tax—Determination of annual value—Land taken on lease by appellant—Society—Building constructed thereon—Revolving restaurant located on the 14th floor of building—Appellant let out the revolving restaurant—Lift provided for use of restaurant—Lift meant exclusively for use of the customers visiting the revolving restaurant—Charges collected from the customers @ Rs.1/- per person visiting the revolving restaurant—Inclusion of 50% of the income received by appellant in the annual letting value of revolving restaurant—Challenge to assessment order—Order upheld by authority as well as appellate authority—Writ challenging assessment dismissed by High Court—Appeal—Held, lift provided for the restaurant was integral part of the building—Municipal Corporation was justified in including 50% the income received by the appellant in the annual letting value.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1597 of 1991.

From the Judgment and Order dated 8.11.90 of the Gujarat High Court in C.A.No. 1627 of 1979.

K.G. Shah and M.N. Shroff for the Appellant.

S.K. Dholakia, S.B. Naik and S.C. Patel for the Respondent.

The following Order of the Court was delivered :

This appeal calls in question the judgment and order of the High Court of Gujarat dated 8th November, 1990 and arises in the following circumstances:-

A The appellant is a cooperative society registered under the Gujarat Cooperative Societies Act, 1961. The respondent a Corporation Constituted under the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as 'the Act') served the appellant with a show cause notice of assessment in respect of the building constructed by the appellant on Survey Nos.95 and 96, Paiki of Ward No.14, Umarwada on the land taken on lease B by it from Surat Municipal Corporation. The appellant has constructed a textile market at the said site. The appellant filed objections to the said notice of assessment. After hearing objections, the assessment proceedings were finalised and the appellant was informed. The respondent while finalising the assessment proceedings added an amount of Rs.5,508/-, being 50% of the C income derived by the appellant, in the rental value of revolving restaurant, holding that the appellant derives income from the lift which is provided for taking visitors from the ground floor to the 14th floor, where the revolving restaurant is situated. The assessment order was challenged through a Municipal Assessment Appeal in the Court of the learned Civil Judge (Senior Division), Surat. By an order dated 26th August, 1977, the appellate authority D dismissed the appeal holding that the appellant had let out the revolving restaurant with the convenience of the lift and the charges collected by it from the customers at the rate of Re. 1/- per person visiting the revolving restaurant by using that lift were to be included in the rental value. A Regular Civil Appeal was thereafter filed under Section 411 of the Act by the appellant E against the judgment and order dated 26th August, 1977. The second appeal was dismissed and the judgment and order of the first appellate court was confirmed on 18th October, 1979. The appellant thereafter filed a writ petition under Articles 226/227 of the Constitution of India in the High Court of Gujarat challenging the judgment and order dated 18th October, 1979 passed by the learned Extra Assistant Judge, Surat in the Regular Civil Appeal. The F writ petition also came to be dismissed on 8th November, 1990. Hence this appeal by special leave.

The basic question which requires our consideration in this appeal is whether the charges which the appellant collects at the rate of Re. 1/- per G person for use of the lift could be added to the rental value of the revolving restaurant located on the 14th floor of the building for purpose of computation of property taxes by the respondent-Municipal Corporation?

To answer the question it would be appropriate to first refer to the definition of the 'annual letting value'. The 'annual letting value' has been H defined in Section 2(1A) of the Act, the relevant portion of which reads as

follows :-

'annual letting value' means—

(i) in relation to any period prior to 1st April, 1970, the annual rent for which any building or land or premises, exclusive (of) furniture or machinery contained or situate therein or thereon, might, if the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom. LVII of 1947) were not in force, reasonably be expected to let from year to year with reference to its use;

(ii) in relation to any other period, the annual rent for which any building or land or premises, exclusive of furnitures or machinery contained or situate therein or thereon, might reasonably be expected to let from year to year with reference to its use;

and shall include all payments made or agreed to be made to the owner by a person (other than the owner) occupying the building or land or premises on account of occupation, taxes, insurance or other charges incidental thereto;

The High Court noticed that the lift which was provided and was to be used for going to the 14th floor, was meant only for the use of the revolving restaurant and, therefore, that lift was in the nature of an exclusive *passage or an access to the revolving restaurant.* According to the High Court :-

"It is clear that this particular lift was intended to be an exclusive passage for going to the revolving restaurant on the 14th floor and it should be views (viewed) as such in the context of imposing Municipal Taxes under the Act. The provision for such exclusive passage to the revolving restaurant cannot be compared with rendering services or giving the amenities of providing hot water to the tenants in a building."

The High Court after referring to various jugments cited before it rightly concluded that the lift provided for the restaurant was an integral part of the building and on the basis of that finding held that the respondent-Corporation was entitled to impose tax in respect of that passage through the use of the lift since it constituted an integral part of the building of the access to the 14th floor.

The lift which has been provided for use of the customers intending to

A go to the revolving restaurant on the 14th floor is meant *exclusively* for use of the customers visiting the revolving restaurant. This position has been admitted by Mr. D.P. Dalal, the Manager of the appellant—Society who was examined as a withness. He categorically admitted that the revolving restaurant was given on lease with the understanding that it would be given a separate facility of the lift and that "the lift is provided only for the restaurant''. This
B evidence makes it abundantly clear that the facility of the lift was required to be treated as an intergral part of the building and that being so, the respondent was justified in including 50% of the income received by the appellant in the annual letting value. It is not possible to agree with learned counsel for the appellant that the provision of lift was in the nature of an amenity or service.
C Whereas an amenity or service may also be considered to be for the beneficial use of the residents of the building, provision of an exclusive passage to a portion of the building, is an essential and an intergral part in so far as that building is concerned. Learned counsel for the appellant, however, submitted that the lift is not meant only for the customers visiting the revolving restaurtant but is also meant for those visitors who intend to go to the observation
D gallery. The argument does not, have any substance because of the evidence of Mr. Dalal to which we have already made a reference. That evidence categorically shows that the lift was meant *exclusively* for the use of the restaursant and, therefore, it does not lie in the mouth of the appellant now to urge that the lift was also for the use of the persons visiting the observation
E gallery. Property tax in respect of such an intergral part of the building was, therefore, required to be levied by the Corporation. Learned counsel does not question the quantum of tax.

In this view of the matter, we find that the High Court committed no error in dismissing the writ petition, upholding the order of assessment as
F also the orders of the appellate authorities. We do not find any merit in this appeal which consequently fails and is dismisssed but without any order as to costs.

T.N.A. Appeal dismissed.