# Municipal Corporation, Indore vs Rai Bahadur Seth Hiralal & Others on 31 October, 1967

## Equivalent citations: 1968 AIR 642, 1968 SCR (2) 125, AIR 1968 SUPREME COURT 642

## Author: J.M. Shelat

## Bench: J.M. Shelat, J.C. Shah, S.M. Sikri

PETITIONER:
MUNICIPAL CORPORATION, INDORE

Vs.

RESPONDENT:
RAI BAHADUR SETH HIRALAL & OTHERS

DATE OF JUDGMENT:
31/10/1967

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
SHAH, J.C.
SIKRI, S.M.

CITATION:
1968 AIR 642 1968 SCR (2) 125
CITATOR INFO :
D 1970 SC 417 (10)

ACT:
Madhya Bharat Municipalities Act (Act 1 of 1954) repealing Indore City Municipal Act 4 of 1909--S. 79 of new Act permitting an assessment list for taxes on houses and lands being prepared once in 4 years-Assessment list under old Act adopted for period covered by new Act-House tax levied on gross annual letting nature of houses as under old Act--New Act requiring tax to be levied on net value after giving statutory allowance of 10%--S. 2(c) how far saves old basis of taxation.

HEADNOTE:
The Madhya Bharat Municipalities Act 1954 came into force

January 26, 1954. The Indore City Municipal Act, 1909 which had till then governed the Indore Municipality was thereby repealed. Under the repealed Act the Indore Municipality used to levy and collect house tax at the rate of 7% of the gross annual letting value. Under s. 73(2) of the 1954 Act house tax was to be assessed on the basis of the gross annual letting value less 10% statutory allowance for repairs etc. However, even for the period after the passing of the new Act, the Municipal Corporation, purporting to act under s. 79'(1) of the 1954 Act. adopted ,the latest assessment list prepared under the old Act and levied house tax at the old rate of 7% of the gross. annual letting value. The respondents who were trustees of certain house property filed a suit challenging the levy on the basis of the gross annual letting value when s. 73(2) of the 1954 Act required the tax to be assessed on the net value after deduction of the statutory allowance. The suit was decreed by the 'Trial Court and the appeals filed by the Corporation before the District judge and the High Court were dismissed. The Corporation by special leave, came to this Court and urged: (i) that the levy at 7% of the gross annual letting value prescribed under the rules of the Indore Act was saved by s. 2(c) of the 1954 Act; (ii) that under s. 79(1) the Corporation was required to prepare a fresh assessment list only once in four years, that it was therefore entitled to adopt for the years in question the latest assessment list prepared under the old Act. and the said assessment list having been so adopted was conclusive evidence as to the annual rental value of houses and the house tax imposed thereon.

HELD: (i) While section 2(c) saves the rules and taxes. imposed under the old Act it saves them only to the extent that they are consistent with the new Act. The saving and deeming provisions of s. 2(c) can only apply if the tax is assessed in the manner consistent with the provisions of s. 73, that is, if it is assessed on the net and not the gross annual letting value after deducting 10% statutory allowance. The Corporation could not be allowed to go on imposing the tax on the basis of the gross annual letting value for ever despite the express provision in s. 73. The tax imposed by the Corporation at the rate of 7% of the gross annual letting value was not therefore saved by s. 2(c). [129E-H]

(ii) Ordinarily the Municipal Corporation has to prepare a fresh assessment list every year. The legislature has however by s. 79(1) empowered the Corporation to adopt the valuation and assessment contained in the assessment list prepared in an earlier year provided, however, that it prepares a fresh list once in every 4 years. But sub-s. (2)
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of s. 79 provides expressly that when such a previous list is adopted for a particular official year it can be done subject to the provisions ss. 75 and 76. The list so

adopted has therefore to be published, has to invite objections and has to be authenticated in the manner prescribed by s. 76(6) after disposing of the objections if any and it is then only that it becomes conclusive evidence of the valuation and the tax assessed thereon for that particular official year. If it were otherwise a house-owner would have no opportunity to object to the assessment for four years even though the value of his house may have decreased for some reason or the other. Section 79 has therefore to be construed to mean that though a Municipality need not prepare a fresh assessment list every year and need prepare such list once in every 4 ),ears and can adopt an earlier assessment list such an adopted list becomes the assessment list for that particular year as if it was a new list and to which ss. 75 and 76 apply. [130E-131C]

Accordingly, the Corporation was entitled to adopt for the official years in question the latest list prepared under the old Act, and under s. 79 that list would become the assessment list for the said years provided that the provisions of ss. 75 and 76 are followed. Even then the appellant Corporation would not be. entitled to impose house tax on the basis of the gross annual letting value as such imposition would be inconsistent with s. 73 under which the annual letting value would be the gross annual letting value less 10% statutory allowance. [131D]

Even on the footing that the resolution passed by the Indore Municipality to levy the tax at 7% of the gross annual letting value and on the basis of which the last list under the ,old Act was prepared was saved and was deemed to have been made under the 1954- Act it could be deemed to have been so made in so far as it was consistent with the provisions of the Act. Therefore to the extent that it was inconsistent with s. 73 it was neither saved nor deemed to have been made under the Act and had to be adjusted in the light of the provisions of s. 73(2). [131G-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 141 of 1965. Appeal by special leave from the judgment and order dated December 7, 1963 of 'the Madhya Pradesh High Court, Indore Bench in Second Appeal No. 378 of 1961. B.P. Jhandharia, P.C. Bhartari, J.B. Dadachanji and O.C. Mathur, for the appellant.

W.S. Barlingay, V.G. Tambvekar and A.G. Ratnaparkhi, for respondents Nos. 1, 2 and 4 to 7.

The Judgment of the Court was delivered by Shelat, J. This appeal by special leave is directed against the judgment and order of the High Court of Madhya Pradesh in Second Appeal No. 378 of 1961.

The respondents as trustees of a charitable trust are the owners of certain houses situate in Indore City. Prior to January 26, 1954 the Indore Municipality was governed by the Indore City Municipal Act, 4 of 1909. By virtue of the power conferred on it by that Act the Municipality used to levy and collect house tax at the rate of 7% of the gross annual letting value of these houses and the trustees duly paid such tax. After the formation of the State of Madhya Bharat, the legislature of that State passed the Madhya Bharat Municipalities Act, 1954 which came into force on January 26, 1954. The 1954 Act repealed amongst other Acts the Indore City Municipal Act, 1909. The Indore Municipality however purported to levy the house tax on the basis of the gross annual letting value at the rate of 7% of such value for the financial years 1953-54 and 1954-55. This was objected to by the respondents on the ground that under the 1954 Act the tax could be assessed on the basis of gross annual letting value less 10% statutory allowance in. lieu of costs of repairs or on any other account whatsoever. The difference came to Rs. 1,461, and of this the trustees claimed refund on the ground that the Municipality had collected the excess from them under pain of distress The Municipality having refused to refund the excess the respondents filed the suit to recover it on the ground that the excess amount was illegally recovered. The Trial Court decreed the suit and the appeals filed by the Corporation in the District Court and the High Court were dismissed.

To appreciate the stand taken by the appellant Corporation it is necessary to examine some of the provisions of the two Acts Sec. 21 of the Indore City Municipal Act authorised the Municipal Council to impose tax on houses, buildings or lands within the municipal limits at a rate not exceeding 12-1/2% of the gross annual letting value. As aforesaid, this Act amongst other Acts was repealed by the Madhya Bharat Municipalities Act, 1954. Sec. 2 of the 1954 Act which contains both a repealing and saving provisions repealed the several Acts set out therein. Clause (a) however provides that such repeal shall not affect the validity or invalidity of anything already done under any of the said enactments. Clause (c) of sec. 2 provides that all rules, orders, byelaws, notifications and notices, taxes and rates, made, passed, framed, issued or imposed or deemed to have been made, passed, framed, issued or imposed, shall so far as they are not inconsistent with this Act, be deemed to have been made, passed, framed, issued or imposed, as the case may be, under this Act. See. 69 authorises a Municipality to impose the several taxes set out therein including the tax on houses, buildings or lands or both. Sec. 70 lays down the procedure which the municipality would have to follow before it imposes any one of those taxes. Sec. 73 provides that when a tax on buildings or lands or both is imposed, the Chief Executive Officer shall cause an assessment list of all buildings or lands in the municipality to be prepared containing the particulars therein set out. Amongst such particulars are the valuation based on capital or annual letting value as the case may be on which the property is assessed. Sub-sec. 2 provides that in assessing the tax on buildings or lands, where the valuation determined under clause (d) of sub-section 1 is the annual letting value, a sum equal to 10% of such valuation shall be deducted therefrom in lieu of allowance for costs of repairs or on any account whatsoever. Sec. 75 provides for the publication of the assessment list and the. right of the owner or occupier of properties included in the list to take inspection thereof and to make extracts therefrom. Sec. 76 provides for a public notice of time fixed for lodging objections to such assessment list and the hearing of such objections. Sub-sec. 4 of sec. 76 provides for the authentication of the list. Sub-section 6 lays down that subject to such alterations as may be made therein under sec. 77 and to the result of any appeal or revision made under sec. 190 in the case of City Municipality and. under sec. 90 in the case of other municipalities, the entries in the

assessment list so authenticated shall be accepted as conclusive evidence for the purposes of all municipal taxes of the valuation or annual letting value of buildings. and lands to which such entries respectively refer and for the purposes of the tax for which such assessment list has been prepared of the amount of tax leviable on such buildings or lands "in any official year in which such list is in force." Sec. 79(1) provides that it would not be necessary for a Municipality to prepare a new assessment list for every year. It further provides that subject to the condition that such assessment list shall be completely revised not less than once in every 4 years the Municipality may adopt the valuation and assessment contained in the list for any year with such alterations as may be necessary for the year immediately following. But sub-section 2 lays down that the provisions of s. 75 and s. 76 shall be applicable every year as if a new assessment list has been completed at the commencement of the official year.

These provisions show that though by sec. 2 the new Act repealed the Indore City Municipal Act, 1909 along with other Acts, the legislature by sec. 2(c) saved certain things done under the repealed Acts, viz., rules bye-laws, orders, notifications and notices, taxes and rates made, framed, passed, or imposed or deemed to have been made, framed, passed or imposed under the repealed Acts and added a fiction that so far as they are not inconsistent with the new Act they shall be deemed as if they were made, framed, passed or imposed as the case may be under this Act. We are informed by Counsel that under the rules made under the repealed Indore City Municipal Act, 1909 the Municipality had imposed the tax on houses at the rate of 7% of their gross annual letting value, that an assessment list on that basis was prepared for the year 1952-53 and that the Municipality has been levying tax at the said rate on the basis of the said assessment list for the two subsequent years.

Counsel for the appellant Corporation argued that the Corporation was entitled to levy the house tax at the rate of 7% of the gross annual letting value and that it was not bound to deduct the 10% allowance provided by sec. 73(2) from such gross annual letting value. The argument was, firstly, that the appellant Corporation could do so because the rules made under the Indore Act are saved by sec. 2(c) and therefore the rate of 7% of the gross annual letting value at which the tax was levied also has been saved and secondly, that under sec. 79(1) of the 1954 Act the Corporation need not prepare a fresh assessment list every year, that it has to prepare a fresh assessment list only once in every 4 years, that the Corporation therefore can and in fact has adopted the said list for the two years in question and that being so, the list so adopted was. in force during the years in question and has to be accepted under s. 76(6) as conclusive evidence of the annual letting value as also for the amount of tax leviable on the buildings or lands or both. He contended that being' the position the respondents were debarred from objecting to the annual letting value and the quantum of tax based on it as entered against the respondents' properties in the said assessment list.

We are not impressed with these contentions as in our view they are not warranted on the true construction of the provisions of the Act. The Indore Municipal Act being no longer in force as from January 26, 1954, obviously no tax could be levied or imposed thereunder after that date. The rules made and the taxes imposed under the repealed Act are no doubt amongst other things saved and are deemed to have been made, framed, passed or imposed under the new Act but cl. (c) of sec. 2, it must not be forgotten, lays down an important qualification that they are to be deemed to have been made, or imposed etc., under the new Act to the extent that they are consistent with the provisions

of the Act. Sec. 73 read with sec. 69 provides that a tax on houses or buildings shall be levied on the annual letting value and that in assessing such tax a sum equal to 10% of such letting value shall be deducted therefrom. The tax levied under the old Act and the rules framed thereunder on the basis of the gross annual letting value is obviously inconsistent with the provisions of s. 73 of the Act. The saving and the deeming provisions in s. 2(c) can only apply if the tax is assessed in the manner consistent with the provisions of s. 73, that is, if it is assessed-on the net and not the gross annual letting value after deducting 10% statutory allowance in lieu of the costs of repairs or any other account whatsoever. If the construction of sec. 2(c) as suggested by Counsel were to.be accepted it would render sec. 73 (2) nugatory, for, the Municipal Corporation in that case can go on imposing the tax on the basis of the gross annual letting value for ever despite the express provision for levying tax on the basis of net annual letting value, i.e., the value arrived at after deducting 10% of the gross annual letting value.

The second part of the contention is equally unacceptable because, if accepted, it will be contrary to the provisions of sections 75,76 and 79 of the Act. After going through the procedure laid down in ss. 70, 71 and 72 sec. 73. enjoins upon the Chief Executive Officer to have an assessment list made containing inter alia valuation or annual letting value at which the property is assessed and the amount of tax assessed on the basis of such valuation or annual letting value. Under ss. 75 and 76 when the assessment list is prepared in accordance with the provisions of sec. 73 it has to be published and time has to be fixed for lodging objections against the entries therein. After such objections are heard and disposed of the assessment list has to be authenticated as provided by sec. 76(6). Sub-sec. 6 of sec. 76 lays down that such assessment list when authenticated becomes conclusive evidence for purposes of all taxes. of the valuation or annual letting value and of the amount of tax leviable on such buildings or lands or both in any official year in which such list is in force. The Municipal tax is an annual tax leviable for a particular official year and the assessment list on the basis of which the tax is assessed is for each such official year. This is supported by the words "such assessment list" and "of the amount of tax leviable in any official year in which such list is in force" in sec. 76(6).

Ordinarily therefore the Municipal Corporation has to prepare a fresh assessment list every year. The legislature however has empowered by sec. 79, as other State legislatures have similarly done in several Municipal Acts, to adopt the valuation and assessment contained in the assessment list prepared in an earlier year provided, however, that it prepares a fresh list once:in every 4 years. But sub-sec. 2 of sec. 79 provides expressly that when such a previous list is adopted for a particular official year it can be done subject to the provisions of sections 75 and 76. In other words, an assessment list being for a particular official year even when an assessment list prepared in an earlier year is adopted it becomes the list for such subsequent year subject to the procedure laid down in secs. 75 and 76. The list so adopted has therefore to be published, has to invite objections and has to be authenticated in the manner prescribed by sec. 76 (6) after disposing of the objections if any and it is then only that it becomes conclusive evidence of the valuation and the tax assessed thereon for that particular official year. If it were otherwise, the annual letting value or the value estimated on a particular building or house would be static for 4 years during which the Corporation can go on adopting the assessment list prepared in an earlier year and the owner or the occupier of the building would be deprived of the right to object to the valuation or the annual letting value or

the tax assessed thereon for at least 4 years even though the valuation or the annual letting value thereof may have decreased for one reason or the other. In order to prevent such a result the legislature has provided by sub-section 2 of sec. 79 that where a municipality adopts a previously prepared list for any subsequent year the provisions of ss. 75 and 76 shall be applicable as if a new assessment list has been completed at the commencement of that particular official year. The word, "if" appearing in sub-sec. 2 of sec. 79 is obviously a mistake and must be read as "as if" because the word "if" standing by itself makes no sense at all. Sec. 79 therefore has to be construed to mean that though a Municipality need not prepare a fresh assessment list every year and need prepare such list once in every 4 years and can adopt an earlier assessment list such an adopted list becomes the assessment list for that particular year as if it was a new list and 'to which ss. 75 and 76 apply.

The result of the foregoing discussion is that the appellant Corporation was entitled to adopt the assessment list prepared for the year 1952-53 for the two assessment years, 1953-54 and 1954-55, under sec. 79 and therefore that list became the assessment list for each of the 2 years in question. That fact however does not entitle the appellant Corporation to impose the house tax on the basis of the gross annual letting value as such imposition is inconsistent with sec. 73 under which the annual letting value would be the gross annual letting value less 10% statutory allowance.

But the contention was that the tax imposed on the basis of' the gross annual letting value was saved by sec. 2(c) and that saving coupled with the fact that the assessment list prepared for 1952-53 was adopted for the years in question made the entries in the assessment list so adopted conclusive evidence of the annual letting value and the amount of tax assessed thereon and entitled the Corporation to collect the tax assessed on the gross annual letting value. Therefore, it' was argued, both the annual letting value and the amount of tax shown in that list were conclusive evidence and could not be assailed. Counsel however forgets that even on the footing that the resolution passed by the Indore Municipality to levy the tax at 7% of the gross annual letting value and on the strength of which the list for 1952-53 was prepared was saved and was deemed to have been made under the 1954 Act it can be deemed to have been so made in so far as it is consistent with the provisions of the Act. Therefore, to the extent that it is inconsistent with sec. 73 it is neither saved nor deemed to have been made under the Act and has to be adjusted in the light of the provisions of sec. 73(2). It follows that the appellant-Corporation was not entitled to demand the tax assessed on the gross annual letting value. The High Court therefore was right in decreeing the suit and to order refund of the. said excess amount against the appellant Corporation. The appeal fails and is dismissed with costs. The costs of this appeal as also those in the next appeal No. 383 of 1965 are to be taxed on the footing of one hearing fee.

G.C. Appeal dismissed.