

The Municipal Corporation Of Greater ... vs The Indian Oil Corporation Ltd. on 27 November, 1990

Equivalent citations: AIR1991SC686, (1991)93BOMLR11, JT1990(4)SC533, 1990(2)SCALE1140, 1991SUPP(2)SCC18, [1990]SUPP3SCR365, 1991(1)UJ287(SC), AIR 1991 SUPREME COURT 686, 1991 (2) SCC(SUPP) 18, 1991 (1) UJ (SC) 287, 1992 HRR 231, 1991 UJ(SC) 1 287, 1991 SCC (SUPP) 2 18, (1990) 4 JT 533 (SC), (1991) 2 RENCJ 665, (1991) 1 RENCJ 62, (1991) 1 RRR 51, (1991) 91 CURTAXREP 135, (1991) 44 DLT 57, (1992) 3 BOM CR 176, 1991 () BOM LR 11

Author: K. Ramaswamy

Bench: S. Ranganathan, K. Ramaswamy

ORDER

K. Ramaswamy, J.

1. This appeal by special leave is against the judgment by the Division Bench of the Bombay High Court dated March 27/28, 1974 in First Appeal No. 117 of 1969. The respondent had on lease a piece of land admeasuring 17, 279 square yards from the Bombay Port Trust for 30 years from February, 1961 at a rent of Rs. 9,482.34 per month for the first 15 years and Rs. 11,852.92 per month for the remaining period and put up apart from other structures and buildings six oil tanks for storage of petrol and petroleum products. Each tank rests on a foundation of sand having a height of 2 ft. 6 inches. There is a four inches thick asphalt layer to retain the sand. The steel plates were spread on the asphalt layer and the tank was put on the steel plates which acts as bottom of the tanks which rests freely on the asphalt layer. There are no bolts and nuts for holding the tanks on to the foundation. The tanks remain in the position by its own weight. Each tank is about 30 ft. in height and 50 ft. in diameter weighing about 40 tons. The total weight of the tank filled with petroleum products would be about 7,160 tons. Each tank has a staircase along the side. Each of the tanks is connected with the pump house with the pipes for pumping petroleum products into the tank and sending them back to the pump house having a diameter of 8' x 14'. The distance between the pump house and tanks varies between 50 fts. to 300 fts.

2. For the year 1964-65 the appellant fixed a sum of Rs. 1,27,380 as the rateable value of the installations on the demised property consisting of the buildings, structures and tanks. The Investigating Officer, on objections raised by the respondent, reduced the rateable value to Rs.

84,660 i.e. Rs. 13,980 being the rateable value of the buildings and structures, and the balance i.e. Rs. 70,680 being the rateable value of the tanks. The rateable value of the tanks was fixed on the basis of the capacity of each of the tanks. On appeal to the Court of Small Causes at Bombay, as against rateable value of the tanks, by judgment dated December 5, 1968, the Additional Chief Judge found that the tanks having been constructed of mild steel plates and structurals fell within the definition of 'land' or 'building' in Section 3(r) and 3(s) of the Bombay Municipal Corporation Act, 1888 (for short 'the Act') and are liable to property tax under the act. Accordingly the rateable value of the tanks fixed by the corporation was upheld. On further appeal, the High Court allowed the appeal holding that the tanks are neither structure, nor a building nor land under the act.

3. The crucial question, on the facts as found by both the courts narrated earlier is whether the storage tanks of petroleum products are "land" within the meaning of Section 3(r) or "buildings" as defined Under Section 3(s) of the Act and are exigible to property tax. Section 3(r) defines land thus:

land includes land which is being built upon or is built upon or covered with water, benefits to arise out of land, things attached to the earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over any street.

Section 3(s) defines 'building' thus:

building "is defined to include "a house, out-house stable, shed, hut and every other such structure whether of masonry, bricks, wood, mud metal or any other material whatever.

4. In Chapter VIII under the heading "Municipal Taxation", Section 139 is the charging section empowering the municipal corporation to impose:

1. Property Taxes;

(Other entries are not relevant, hence omitted).

5. Section 143(a) authorises to levy general tax on building and land or portions thereof. (Exempted properties are not relevant. Hence omitted).

6. Section 154 deals with the procedural part to quantify rateable value which reads thus:

(1) 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 the said annual rent and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever.

(2) The value of any machinery contained or situate in or upon any building or land shall not be included in the rateable value of such building or land.

7. The general tax shall be levied on all the buildings and the lands in Greater Bombay except those exempted under Clauses (a) to (c) and Sub-section (2) and (3) of Section 143. Section 154 provides the machinery to fix the rateable value and the value of the machinery contained or situated in or upon any building or land shall not be included in the rateable value of such building or land. The annual rent which the building or land might reasonably be expected to fetch is the basis to fix the rateable value of the building or land. It is, therefore, clear that any building or land situated in Greater Bombay is exigible to property tax.

8. The question is whether the petroleum storage tank is building or land?

9. In Blacks Law dictionary, Fifth Edition, the word 'building' has been defined thus:

Structure designed for habitation, shelter, storage, trade, manufacture, religion, business, education and the like. A structure or edifice enclosing a space within its walls and usually, but not necessarily, covered with a roof.

10. In Webster Comprehensive Dictionary, International Edition, 'building' has been defined thus:

An edifice for any use; that which is built, as a dwelling house, barn, etc. (2) The occupation, business or art of constructing. (3) The act or process of erecting or establishing.

11. Building has been defined in Stroud's Judicial Dictionary, fourth Edition at 334. What is a 'building' must always be a question of degree and circumstances; its "ordinary and usual meaning is, a block of brick or stone work, covered in by a roof". The ordinary and natural meaning of the word 'building' includes the fabric and the ground on which it stands.

12. In the Oxford English Dictionary the word 'building' has been defined to mean, "that which is built, structure, edifice, structure of the nature of a house built where it is to stand". In D.C. Gouse & Co. etc. v. State of Kerala and Anr. etc. . In the context of Entry 49, List I of VII schedule to the Constitution (Taxes on lands and buildings) under the Kerala Buildings Act, 1975, this Court held that the word 'building' means "that which is built; a structure edifice". The natural or ordinary meaning of a building is, "a fabric of which it is composed, the ground upon which its walls stand and the ground embraced within those walls". Under the inclusive definition of that Act it was held that a house, out-house, garage or any other structure cannot be erected without the ground on which it is to stand. The expression 'building' includes the fabric of which it is composed, the ground upon which its walls stand and the ground within those walls because the ground would not have a separate existence, apart from the building.

13. Thus it is clear that a tank to be a building must be a structure designed for either habitation or shelter for human habitation or storage of inanimate objects in storehouse or stable for horses shed

or a hut etc. within the four corners of the walls built with masonry or otherwise with ingress or egress. The word building must be given its ordinary natural meaning ascribable to it including the fabric and the ground on which it stands. On a mere look at the tank, by no stretch of imagination, it could be said to be a building.

14. The definition of the word 'building' is an inclusive definition bringing within its ambit house, out-house, stable, shed, hut and every other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatever. The word 'building' was defined as an inclusive definition. Shri Salve, learned Counsel for the respondent, contended that with the definition of the 'building' talks of a structure, it would be a structure analogous to a house, out-house, stable, shed or hut. The tank does not answer any of the descriptive particulars. The house or building, etc. must be constructed in accordance with the Master Plan and the Building Regulations conformable to the statutory requirements like drainage/sewage regulations. The construction of the tank is not required to be within the parameters of these regulations. Thereby tank cannot be construed to be a structure. Undoubtedly there is no independent definition of the word 'structure' in the Act. It is true that building, house or any out-house etc. required to be constructed in conformity with the building regulations and drainage and sewage requirements, etc. But every construction made need not necessarily be in conformity therewith. Take for instance a hut. A hutman cannot conform his construction to the statutory requirements. Equally many a time buildings are constructed by deliberate deviation of the statutory requirements. It is not uncommon that illegal constructions are compounded by collecting the compounding fee and regularised the illegal constructions. Therefore, the test of construction in conformity with the statutory requirement is not conclusive test though is a relevant one yet we have to consider whether the tank is a structure in its legal perspective. We have to consider the meaning of the word 'structure' in the light of the legislative purpose to fix the rateable value under the Act. The burden of tax is on the building or land and not on the tenant as under the British Statutes. Undoubtedly if the statutes have been understood by reference to the words, building and its analogous accompaniments including a hut, it would be referable to a house within the four corners of walls or a hut within the four corners of a shed for habitation of human being or animals or storage purpose. But the definition being an inclusive definition which intends to enlarge the scope of the definition, the meaning of the word 'structure' must be understood in that setting.

15. In *C.I.T. Andhra Pradesh v. Taj Mahal Hotel, Secundrabad* this Court considering the scope of the meaning of the word 'plant' held, "where a word is not defined in a statute, it must be construed in its popular sense, i.e., that sense which people conversant with the subject matter with which the statute is dealing, would attribute to it. The word 'includes' is generally used to enlarge the meaning of words or phrases used in the statute so that, words and phrases may be construed as comprehending not only such things as they signify according to their nature and import, but also these things which the interpretation clause declares that they shall include. The fact that even books have been included in 'plant' shows that the meaning given to 'plant' is wide. It should cover sanitary and pipe-line fittings".

16. In *S.P. Jain v. Krishna Mohan Gupta and Ors.* this Court held that law should take pragmatic view of the matter and respond to the purpose for which it was made and also take cognizance of the

current capabilities of technology and life style of the community. It is well settled that the purpose of law provides a good guide to the interpretation of the meaning of the Act. The legislative futility is to be ruled out so long as interpretative possibility permits.

17. In *S.P. Gupta, etc. etc. v. Union of India and Ors. etc. etc.* [1981] Suppl. SCC. 87 interpreting Section 123 of the Indian Evidence Act, this Court held that the Section was enacted in the second half of the last century, but its meaning and content cannot remain static. The interpretation of every statutory provision must keep pace with changing concepts and the values and it must, to the extent to which its language permits or rather does not prohibit, suffer adjustments through judicial interpretation so as to accord with the requirements of the fast changing society which is undergoing rapid social and economic transformation. The language of a statutory provision is not a static vehicle of ideas and concepts and as ideas and concepts change, as they are bound to do in any country like ours with the establishment of a democratic structure based on egalitarian values and aggressive developmental strategies, so must the meaning and content of the statutory provision undergo a change. It is elementary that law does not operate in a vacuum. It is not an antique to be taken down, dusted, admired and put back on the shelf, but rather it is a powerful instrument fashioned by society for the purpose of adjusting conflicts and tensions which arise by reason of clash between conflicting interests. It is, therefore, intended to serve a social purpose and it cannot be interpreted without taking into account the social, economic and political setting in which it is intended to operate. It is here that a Judge is called upon to perform a creative function. He has to inject flesh and blood in the dry skeleton provided by the legislature and by a process of dynamic interpretation, invest it with a meaning which will harmonise the law with the prevailing concepts and values and make it an effective instrument for delivering justice.

18. Since the enactment of the Act, enormous research and scientific development has taken place in the construction technology of storage tanks etc. The petroleum products are highly inflammable and highly dangerous liquid which cannot successfully be stored without taking careful precautions with modern technology for its storage. The erection and storage must be according to law or relevant rules. Therefore, the court would not fold its hands and say that the legislature had not had in its view the storage tanks at the time of making law as one of the subjects for fixation of rateable value and ask the legislature to make the amendment to the act. If it could be possible to give an interpretation consistent with the purpose and scheme of the act and the nature of the property sought to be assessed for rateable value, the court could always endeavour to give that interpretation which would subserve the purpose of the Act. If it, otherwise, becomes not possible, the court is left with no option but to leave it to the legislature to amend the law.

19. The question, therefore, is whether storage tank is a structure?

20. In *Stroud's Judicial Dictionary* 4th Edition, Vol. 5, at page 2638 the word 'structure' has been defined in diverse ways according to the intendment of a particular Act. In its ordinary sense, it is stated thus:

In its ordinary sense, means something which is constructed in the way of being built up as is a building.

Although the question what is a structure is a question of fact, the question what is a structure within the meaning of a particular statute or regulation is a mixed question of law and fact.

21. At page 2640 it is stated thus:

Structure (Valuation and Rating (Scotland) Act 1956(c.60), Section 8(t). Within the meaning of this provision a "structure" must be an entity in itself, although not necessarily a building in itself, adapted to the particular purpose it serves.

The mere use of part of a building for a qualifying purpose is not sufficient....The word, however, is wide enough in this context to include erections that would not normally be described as buildings.

22. In Cardiff Rating Authority and Cardiff Assessment Committee v. Guest Keen Baldwin's Iron and Steel Company Ltd. [1949] 1 Kings Bench Division 385. construing the word "in the nature of building or structure" within the meaning of the plant and machinery (Valuation for Rating) Order, 1927, Schedule I, Class 4, which describes various items, in the Courts of Appeal, Denning L.J. considering whether blast furnaces, melting furnaces and coke ovens are structures, held thus:

in the "nature of structure", and a structure is often not a building; a crane gantry or a turnable is a structure, but not a building.

Jenkins, J. held that it is not possible to give an exhaustive definition of what is meant by the words "is or is in the nature of a building" or "structure". They do, however, indicate certain main characteristics. The general range of things in view consist of things built or constructed. It must answer the description of buildings or structures, or, at all events, be in the nature of building or structures. The question whether a thing is or is not physically attached to the hereditament, certainly is a relevant consideration, but it cannot be regarded as conclusive against its being a building or structure or in the nature of a building or structure. He concluded on the test of "feat of engineering" that tilting furnaces, and mains were structures or in the nature of structures within the meaning of the above order.

23. In B.P. Refinery (Kent) Ltd. v. Walker (Valuation Officer) [1957] 2 Queens Bench Division 305. the Valuation Officer assessed the topping unit occupied in the refinery to rateable as a "still" within the meaning of Class 4 of the Schedule to the Plant and Machinery (Valuation for Rating) Order, 1927. It was contended that it is not assessable to rateable value. Lord Evershed M.R. laid emphasis that the items intended to be made, subject to rates, are not collections of individual items making a "plant", but are rather the specific component items themselves-so far, of course, as they satisfy the second qualification of being individually, structures or buildings, or of that nature. Denning L.J. held at page 328, thus:

But a thing may be in the nature of a structure, even though it is not built up on the site, but is brought there all in one piece. The nature of the thing depends on its characteristics when erected, not on whether it requires a feat of engineering to bring it there. Take, for instance, the soda flash tower. It is 25 feet high, 4 feet in diameter, weight 9 1/2 tons, as bolted to the ground and surrounded at its base by a fireproof wall 8 or 10 feet high, If it had been built up on the site, it would be regarded by everyone as a structure, just as much as a "water tower with tank" (which is expressly mentioned in the Third Schedule). Although this tower was not built up on the site, it is of the same nature as if it had been. It is of the nature of a structure and is rateable.

By contrast take the condensers. They are cylinders filled with a bundle of tubes. They are 16 feet long, nearly 3 feet in diameter, weigh 3 1/4 tons and are placed horizontally one above the other. No one looking at one of those by itself would say it was a structure or in the nature of a structure. It is just a piece of plant.

The accumulator, which is a metal tank 36 feet long, 8 feet in diameter, weighing 13 tons and resting in a steel cradle on reinforced concrete piers. Contrast this with the crude settler, which is metal tank 38 feet long, 9 feet in diameter, weighing 46 tons and rests on reinforced concrete piers. The only appreciable difference between these two tanks is that a crude settler weighs 46 tons and the accumulator 13 tons. Yet the Lands Tribunal has found that the crude settler is in the nature of a structure, but that the accumulator is not. The reason the Tribunal give for the distinction is that the transport of the crude settler to the site should be regarded as a "feat of engineering", but that the transport of the accumulator could not be so regarded. I do not think that is the right test. I should have thought it was a feat of engineering in each case. In any case, it is a mistake to substitute the test "feat of engineering" for the words of the statute. I should have thought that each of these enormous and permanent tanks was in the nature of a structure just as much as "water towers with tanks" mentioned in the Third Schedule. The test of feat of engineering was rejected.

In *Shell-Max & B.P. Ltd. v. Childs (Valuation Officer)* [1962] 9 Ryde Rating Cases 182(C.A.) heavily relied on by Sri Salve, the Court of Appeal had to consider the question whether three oil storage tanks comprised in a hereditament (the two larger ones each having a capacity of a million and a half gallons) were brought to a site in metal sections, which were there fitted and welded or revetted together with mechanical means being used to lift them into position on a base carefully prepared of hardcore and sand and in some cases also asphalt. Roof trusses were inserted and the roof or lid was placed on them. The two larger tanks were also surrounded by brick walls with sand or concrete or both filling the space between. Lord Evershed, M.R., Upjohn and Diplock L. JJ. (as their Lordships were) held that the word, 'building' should not be given an unduly or unnaturally narrow meaning because of its association with those two examples. On the other hand, the distinction between building and structure which shows at least this, that 'structure' must have the wider embrace, not every structure is not a building, though it may well be that every

building is a structure. In other words, looking at the context of the provision, it was held that the word 'building' is to be given its ordinary sense, not unduly restricted, not unduly expanded, the ordinary sense in which it is used. It was held that oil storage tank was not a building.

24. In *Shell-Max & B.P. Ltd. v. Holyoak* [1958] 1 Weekly Law Reporter, 331 the appellant Company constructed an underground petrol container beneath the pumps of a petrol station. The container consisted of a concrete base with brick walls 9" thick having a cement rendering. Concrete cradles rested on the base on which was placed a metal cylinder 13". 6" long by 7" in diameter capable of containing 3,000 gallons of petrol. The space round the outside of the cylinder was packed with dry sand and the whole was covered with slabs of reinforced concrete except for the manhole through which the cylinder was filled. The lands Tribunal held that the brick and concrete structure was liable to be rated, but that the metal cylinder was not in the nature of a building or structure, within Class 4 of the Schedule to the plant and Machinery (Valuation for Rating) Order, 1927, being a moveable piece of apparatus and, accordingly, was not liable to be rated as a 'tank'. On appeal Lord Evershed M.R. held that the installation on the hereditament was in its entirety, including the metal cylinder, a 'tank' for the purposes of the Order of 1927, and, since the whole of it was in the nature of a structure and was rateable to tax in its entirety. On further appeal the House of Lords in *Shell-max & B.P. Ltd. v. Holyoak* (Valuation Officer) [1959] 1 Weekly Law Reporter 188 held per majority that the metal cylinder alone did not fall to be rated as part of the hereditament. It was a tank housed in a structure and not part of a tank formed by the whole installation, and reversed the decision of the Courts of Appeal. In that regard while construing whether underground petrol storage tank was a building or structure, majority of the House of Lords rejected the theory of functional entity but accepted "physical entity" as a test. While so construing the order, it was held that the tank is used as per the licence as metal cylinder and not a complete installation and on that premise the majority concluded that it is not rateables. Lord Keith of Avonholm and Lord Denning dissented and held that cylinder became part of larger unit which can all be described as the tank forming part of the admitted plant of the filling station. The whole plant is in the nature of a building or structure.

25. It is seen that the structure must be an entity in itself, although not necessarily a building in itself, adopted to the particular purpose it serves. In its ordinary sense a structure is something which is constructed by way of being built as is a building. But method of construction by itself is not conclusive. Structure by itself may not be a building but it may be analogous to a building, outhouse, shed, hut or a stable. Ship is like a floating building but it is not a structure. A crane gantry or a turnable is a structure but is not a building. Weighing bridge is a structure. Tilting furnaces mains are in the nature of structure. The British Act levies property tax on the tenant and each item by itself is exigible to separate rateability. But under the Act the incidence of taxation is on the building or land. So the building or its accompaniments like house, out-house, garage, stable, shed, hut and such other structures must also be an entity by itself although not necessarily a building, erected on the land. The adverb 'such' must be construed in this perspective. Looking at the tank it would be apparent to be a structure, shorn of the feat of engineering mechanism put up to have the tank rested on the land. Mechanism or feat of engineering is not a conclusive test.

26. The question then is whether it is a land? Indisputably the definition of 'land' also is of an inclusive definition. Its accompaniments are land which is being built upon or is built upon or covered with water; benefits to arise out of land; things attached to the earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over any street. The question is whether the tank is attached to the earth? In Stroud's judicial dictionary, fifth Edition, Vol. 1 relied on by the learned Counsel for the appellant, the word 'attached' has been defined at p. 217 thus:

This word does not always mean physically fastened; it may also mean, superincumbent upon. Thus, in citing the judgment of Cockburn, C.J., Laing v. Bishopswearmouth 3 Q.B.D. 299 that whatever is 'attached' to premises has to be estimated for the purpose of ascertaining the rating value.

27. In Rating Valuation Practice by Bean and Lockwood, fifth Edition, at page 191, it is stated thus:

That physical attachment to the soil was a relevant consideration but not an essential condition of rateability in the case of the plant and machinery referred to in Class 4 of the Order as buildings or structures or in the nature thereof. The general range of things referred to in Class 4 considered of built or constructed things of substantial size; normally they would be built or constructed on the hereditament itself and would normally remain permanently in situ but might have a limited degree of motion in use, whether in relation to the hereditament or between different parts of themselves.

He relied on the question of movability considered in Cardiff's case already referred to at p. 192, it is stated thus:

A further factor which arose directly out of the Cardiff's case was that the Court of Appeal then decided that it was proper to consider an item of plant "in relation to the hereditament" and if there was some degree of permanence in relation thereto (i.e., the thing installed would normally remain in situs and only be removed by a process amounting to pulling down or taking to pieces) then that item could be regarded as rateable within Class 4.

As seen the physical entity test was approved by the House of Lords. In Shell-Max & B.P. Ltd case it was held that:

the position might well be different if the metal cylinder were so linked with the surrounding compartment as to become one physical entity with it-for instance if the space now filled with sand were filled with concrete adhering to the cylinder. As it is the Cylinder is simply a tank which has been placed in an underground structure, and surrounded with sand for safety reason. It is not a physical entity but a compartment.

28. At page 196 the author says that large storage tanks built up on the site would undoubtedly rank as structures. It is also stated at page 167 that the wide use of oil fuel in many industrial and other properties together with the general substantial increase in its use for transport by road and rail and for the generation of power and space heating, has naturally called for large storage and distribution centers. The largest storage tanks are generally found in coastal areas near to ports or where docking facilities are at hand, so that imported oil can be unshipped and pumped direct into tankage accommodation. Other large depots are to be found close to oil refineries but these later tend to be located where there are shipping facilities both for the import of crude oil and the export of refined products.

29. These depots or tanks are formed as they are sometimes called to have very large capacities, in some cases containing tanks upto 2, 300 water tons capacity (about 150 ft. in diameter by 50 ft. height), there are invariably numerous smaller tanks for the storage of refined products awaiting distributing. Such depots frequently cover many acres of land, the tanks being well dispersed as a fire precautionary measure. Necessarily there are miles of pipe lines with diameter of from 6 inches to 36 inches or greater and furthermore a net work of fire protection lines. These are called tanks with modern equipment and exigible to rateable value.

30. In the light of the above discussion it is undoubted that if the tanks are situated within a Plant they would be integral part of the plant and get exempted from assessment Under Section 154 of the Act but there exist no such plant on the demised site. It is also equally undoubted that harmonious construction must be adopted consistent not only with the principles of taxation to make rateable value but also those relating to income-tax, wealth-tax etc. In *New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Ors. v. Municipal Corporation of the City of Ahmedabad and Ors.* the Constitution Bench was concerned with levy of the property tax on textile factories at flat rate under Bombay Provincial Municipal Corporation Act, 1949 whose constitutional validity was impugned by Article 14 which this Court held to be ultra vires. It is not of much assistance to the respondent.

31. *K.N. Subramanian Chettiar v. M. Chidambaram Servai* [1940] Mad. 527, is also not of much assistance to the respondent. Therein the question was whether machinery is a movable property or immovable property within the meaning of Section 3, Expl. 1 of the Transfer of Property Act. It was held in determining whether or not a transfer relating to an engine is a transaction relating to immovable property regard must be had not merely to the nature of the attachment by which the engine is fixed on the ground but also to the circumstances in which it came to be fixed, the title of the person fixing it in immovable property and the object of the transaction by which the engine is transferred or bound. In that case the tenant himself fixed the machine. It was held that it was not an immovable property. Equally the ratio in *Perumal Naicker v. T. Ramaswamy Kone and Anr.* [1969] Mad. 346. also is not of much assistance to the respondent. The question there was whether the engine attached to the earth is immovable property. The engine fixed to the land was attached to recover the arrears of the loan taken for its purchase. In the context it was held that it is a mixed question of fact and law and has to be decided in the light of particular facts in each case and no particular test could be formulated but it must be considered in the context in which the question had arisen. The literal construction may not yield a proper and correct result. It must be decided in the light of the specific facts, the decision on the question should depend upon how the court,

looking at the facts as a whole, feels on the matter. The degree, the manner and the strength of attachment of the chattel to the earth or the building, are the main features to be regarded. Attachment must partake of the character of the attachment of the trees or shrubs rooted to the earth, or walls or buildings imbedded in that sense, the further test is whether, such an attachment is for the permanent beneficial enjoyment of the immovable property to which it is attached. In view of the fact that the engine was fixed for the beneficial enjoyment of the engine itself and in order to use the engine, it has to be attached to the earth and the attachment lasts only so long as the engine is used and it would be detached and shifted to some other place. In that view of the matter it was held, it is not an immovable property. In *Chaturbhuj Morarji v. Thomas J. Bannett and Ors.* [1905] 29 ILR, Bom. 323. the new shed, the fixture whether part of the lease was in question. It was held that the new shed as provided was not attached to the land and, therefore, it was not a part of the fixture. In *J.H. Sinha v. Govindrao Bhiwaji and Ors.* [1953] 4 AIR Nagpur 224 the machinery belonged to (A) was erected on the land belonged to (B). The question was whether the machinery formed part of the land of (B). The Division Bench laid down two tests to determine whether it was attached to the land and thereby became immovable property, namely, the degree or mode of annexation and the object of annexation. Of the two tests the latter is the more important, and it is a question of fact to be determined upon the particular facts and circumstances of each case. In that case it was held that the (A) did not intend to annex the machinery to the land as a permanent attachment. Therefore, it was held that it is not an immovable property. This ratio in these cases is also not of any assistance to the respondent.

32. The tanks, though, are resting on earth on their own weight without being fixed with nuts and bolts, they have permanently been erected without being shifted from place to place. Permanency is the test. The chattel whether is movable to another place of use in the same position or liable to be dismantled and re-erected at the later place? If the answer is yes to the former it must be a moveable property and thereby it must be held that it is not attached to the earth. If the answer is yes to the latter it is attached to the earth. For instance a shop for sale of merchandise or eatables is a structure. The same could be sold by keeping in a push cart which has its mobility from place to place. Merely it is stationed at a particular place and business was carried on, it cannot be said that push cart is a shop. The fact that no nuts and bolts were used to imbed the tank to the earth by itself is not conclusive. Though the witness stated that the tank is capable of being shifted, as a fact the tanks were never shifted from the places of erection. By scientific process, the tanks stand on their own weight on the earth at the place of erection as a permanent structure.

33. The petroleum products are being stored through pipes and are taken out by mechanical process. The operational mechanisation also though relevant, is not conclusive. The rateable is based on the rent, which the building or land is capable to fetch. Due to erection of the tanks whether the value of the demised property had appreciated or not, is also yet another consideration. Undoubtedly, when the tanks are erected and used for commercial purposes, the value of the demised property would get appreciated. The annual letting value is capable of increase. However, the rate of increase is a question of fact but the fact remains that the value of the land gets increased by virtue of erection of the storage tanks. Considering from this perspective we have no hesitation to hold that the petroleum storage tanks are structures or things attached to the land within the definition of Sections 3(s) and 3(r) of the Act. Thereby they are exigible to property tax. In this view

the appeal is allowed and the judgment of the High Court is reversed and that of the Court of Small Causes is affirmed. But in the circumstances each party is directed to pay and receive their respective costs throughout.