PETITIONER:
MUNICIPAL BOARD, SAHARANPUR

Vs.

RESPONDENT:
SHAHDARA (DELHI) SAHARANPUR LIGHT RAIL CO. LTD.

DATE OF JUDGMENT: 24/11/1998

BENCH:
S.B. MAJMUDAR, & M. JAGANNADHA RAO.

ACT:

HEADNOTE:

JUDGMENT:
JUDGMENT

S.B. MAJMUDAR, J.

Municipal Board, Saharanpur having obtained the certificate of fitness to appel to this Court under Article 133 of the Constitution of India on 12th August, 1976, has filed this appeal. While grating the certificate, the High Court has observed that the concept and meaning of the words "common compound" used in the Uttar Pradesh Municipalities Act, 1916 (hereinafter referred to as 'the Act') is required to be decided in this appeal. This appeal raises the same contentions which are raised in the Companion Appeal being Civil Appeal No. 1218 of 1976 moved by the very same appellant - Municipal Board, Saharanpur against Imperial Tobacco of India Ltd. wherein the High Court has granted a similar certificate of fitness. Even though the certificates are granted by the High Court on the common question in both these appeals and even though our decision of even date in Civil Appeal No. 1218 of 1976 will govern the present controversy, we deem it fit to highlight the facts particular to the present respondent and the other questions which were canvassed by the learned counsel for the respective parties before us in this appeal.
BACKGROUND FACTS:

The respondent railway company which has now become defunct, had various immovable properties situated in one complex within the Saharanpur town. The appellant Municipal Board, duly constituted under the Act, sought to levy house tax and water tax in connection with the buildings and lands of respondent railway company during the relevant years. The said taxes were sought to be levied under Section 128(1)(i). The respondent railway co., functioning since 1905, had several properties in a vast contiguous area within the limits of the Municipal Board. They included the railway station, a childerns park, a canteen, a dispensary, administrative offices, rest-houses, out-houses, officers bungalows etc. The appellant Board issued a notice to the railway company in 1960, assessing the properties to tax on

buildings and also to water-tax. The appellant Board determined the annual value with reference to clause (a) of Section 140 of the Act and in doing so it treated all the buildings as one unit and all the land in the area as appurtenant to the buildings. A number of objections were raised by the respondent railway company but they were rejected by the Executive Officer of the Municipal Board. The railway company appealed against the order of the Executive Officer to the District Magistrate under Section 160 of the Act, The District Magistrate remanded the case back for proper calculation of the house tax and directed that the general rate should not be applied to all the buildings but the buildings should be divided in such a way as to arrive at a fair rate. The respondent company, or remand, had again submitted to the Executive Officer that certain buildings and approach roads should be excluded in calculating the area. It appears that there was some agreement between the parties regarding the total area to be [considered for the purpose of taxation. But leaving aside that agreement, which no longer remains operative, several objections on merits were raised by the respondent railway company but they were all negatived. In further appeal, the District Magistrate, confirmed the order of the Executive Officer, subject to the modification that the cost of the buildings for the purpose of calculating annual value be reduced by 10 per cent by way of depreciation allowance. The tax on buildings was accordingly fixed at Rs. 3,957.75 paise. As regards the water-tax, the Magistrate considered that the Municipal Board was not entitled to levy water-tax on the Railway Company. This was on the basis that there was one hydrant within 600 feet from the railway area. But it appeared that between the hydrant and the railway area there lay some area of the Northern Railway surrounded by a wall. According to this interference therefore, the distance between the hydrant and the premises of the respondent was more than 600 feet in a zigzag manner and hence the water-tax could not be levied on this complex.

Against the said order of the District Magistrate, the respondent railway company filed a Writ Petition being 3508 of 1965 in so far as it referred to house tax while Writ Petition No. 3415 of 1965 was filed by the appellant Municipal Board urging that the Railway Company was liable to water-tax. Both these writ petitions were heard together by a learned Single Judge of the Allahabad High Court, who took the view that the lands of the railway company were within the radius of 600 feet from the nearest water-stand point and hence they had to be considered for imposing water-tax on the buildings of the respondent railway company situated in these lands. To that extent, the learned Single Judge set aside the reasoning and finding of the District Magistrate. However, the learned Single Judge took the view that so far as the levy of water-tax was concerned, only those buildings in the complex of the respondent which were within the radius of 600 feet were liable to pay water-tax. It was also held that the assessment of water-tax had to be done building-wise and all the buildings should not be treated as one unit for that purpose. The assessment also had to be made as per Section 140 (a) of the Act. So far as levy of house tax was concerned, it was felt that all the buildings situated in the "common compound" could not be treated as one unit in a "common compound" and had to be taxed separately by computing the annual letting value of such buildings and their appurtenants. Resultantly both the writ petitions were partly allowed by the common order dated 27.2.1970. That gave rise to two special appeals moved by

the respondent railway company being aggrieved by the common order of the learned Single Judge, in so far as the same was party against the respondent on both the writ petitions. While thee appellant Board also filed a cross special appeal being aggrieved by the decision of the learned Single Judge regarding water-tax. All the three appeals were heard together and were disposed of by a common judgment by a Division Bench of the High Court of Judicature at Allahabad dated 22nd July, 1974. Against the said dicision, as noted earlier, on the grant of certificate of fitness under Article 133 of the Constitution of India, the present appeal is filed by the Board.

RIVAL CONTENTIONS:

Shri D.K. Garg, learned counsel for the appellant Board submitted that so far as levy of water-tax was concerned, the Division Bench of the High Court had committed a patent error in taking the view that even if the water stand pipe of the Board was at a distance of 600 feet from one of the building of the respondent company situated in the same "common compound" all other buildings situated in the very same "common compound" and belonging to the same respondent could not be subjected to water-tax if such buildings were more than 600 feet of radius from the nearest water stand pipe. He, however, fairly stated that if it is held that all these buildings in the "common compound" were liable to water-tax by assessing water-tax, sections 140(a) and 140(b) of the Act as applicable at relevant time had to be applied and assessment had to be made on that basis. So far as the house tax was concerned, it was submitted by Shri Garg in support of this appeal that all the buildings situated within the "common compound" which belong to the same owner respondent should be treated as one unit for the purpose of assessing water-tax and house tax. It was next contended that in any case the 10 per cent depreciation granted by the District Magistrate and as confirmed by the learned Single Judge and the Division Bench on the total assessable value of such buildings for the purpose of house tax was ultra vires and beyond the scope of the Act and could not have been sustained by the Division Bench. On the other hand, learned counsel for the Liquidator, who is now in-charge of the property of the respondent defunct private railway company, which is in voluntary winding up, submitted that water-tax could not be levied on all those buildings belonging to the respondent company which were situated in the "common compound", if such buildings were beyond the distance of 600 feet radius from the nearest water stand pipe and, accordingly, the Division Bench of the High Court was right in taking this view. It was submitted that even assuming that for the levy of water-tax, radius of 600 feet from the water stand pipe for one of the buildings may attract the levy of water-tax for the entire complex. So far as the house tax is concerned each individual house with appurtenant land was a unit by itself and all such buildings cannot be treated as one unit as tried to be submitted by learned counsel for the appellant. He also submitted that the grant of 10 per cent depreciation of the assessment of annual letting value for the purpose of levy of water tax and house tax on all these buildings was legal and valid. We may mention that learned counsel for the appellant also submitted that the special appeals were not maintainable against the decision of the learned Single Judge. However, this contention cannot be countenanced for the simple reason that even the appellant, aggrieved by the order of the Single Judge, has also filed a special appeal and had sought

the decision of the Division Bench of the High Court on merits. The Board's appeal was also heard with the companion appeals of the respondent. Hence, this contention which is self-destructive cannot be entrained. Even otherwise if such contention is entertained, it will not advance the case of the appellant, as the respondent would be well entitled to bring in challenge the main order of the learned Single Judge directly before us and the entire period till date will get excluded under Section 14 of the Limitation Act, Thus, this technical contention cannot be countenanced.

In view of the aforesaid rival contentions on merits of the appeal, the following points arise for our consideration:

1) Whether the Division Bench of the High Court was right when it held that only those buildings of the respondent, which were situated within the radius of 600 feet from the nearest water stand pipe of the appellant, could be subjected to water-tax.

2) Whether for imposition of house tax, all the buildings of respondent situated in the "common compound" and forming part of one complex could be treated as one unit for imposing house tax;

3) Whether 10 per cent depreciation allowed by the learned District Magistrate and as confirmed in the High Court both by learned Single Judge and the Division Bench on the assessable annual letting value of such buildings was justified in law; and

4) What final order?

We will deal with these contentions seriatim.

Point No.1:

So far as the contention concerning this point is concerned, by a detailed Judgement in the companion Civil Appeal No.1218 of 1976 decided today we have negatived this contention. For the reasons recorded therein, therefore, this contention fails. Point No.1 is, therefore, answered in the negative in favour of the appellant and against the respondent.

Point No.2:

So far as this contention of the appellant that all the buildings situated within the "common compound" belonging to the respondent railway company should be treated as one unit for the purpose of house tax is concerned, it becomes necessary for us to have a look at the relevant statutory scheme. Section 128 (1)(i) of the Act provides as under:

"128. Taxes which may be imposed (1) Subject to any general rules or special orders of the State Government in this behalf, the taxes which a municipality may impose in the whole or any part of a municipality are".

(i) a tax on the annual value of buildings or lands or of both."

In view of the aforesaid provision, therefore, it has to be held that the appellant Board, subject to special orders of the State Government, is entitled to impose tax on the annual value of buildings or lands or of both. It, therefore, becomes clear that in the complex belonging to the respondent as number of buildings are situated in the "common compound", house tax can be levied by the appellant both on the buildings and also on the other open land in which such buildings are situated. These open lands surrounding the buildings if not appurtenant to such buildings would be a separate subject of house tax while

buildings with their appurtenant land would form another subject of house tax. Charge of house tax will settle on all these buildings and lands not comprised in these building. This becomes clear if we view Section 2 sub-section (2) of the Act which defines "buildings". It reads as under:

> "(2) "Building" means a house, outhouse, stable, shed, hut or other enclosure or structure whether of masonry bricks, wood, mud, metal or any other material whatsoever, whether used as a human dwelling or otherwise, and includes any verandah, platform, plinth, staircase, doorstep, wall including compound wall other than a boundary wall of the garden or agricultural land not appurtenant to a house but does not include a tent or other such portable temporary shelter."

The said definition has to be read with the definition of the term "compound" under Section 2, sub-section (5). The said term reads as under:

> "5. "Compound" means land, whether enclosed or not, which is the appurtenance of a building or the common appurtenance of several buildings".

On a conjoint reading of these provisions therefore, it becomes clear that before the appellant Board can impose house tax under Section 140(a) on any property situated within its municipal limits if it is a "building" the unit of tax would be the building concerned including its compound wall and the compound wall would also cover within it the land situated in the said compound provided it is appurtenant to the building or a "compound" appurtenant to the several buildings. It is, therefore, obvious that if the "common compound" in which the housing complex belonging to the common owner is situated is not an appurtenance to several buildings within that complex, then the said land cannot be said to be a part and parcel of the building for the purpose of house tax. For imposing house tax on buildings under Section 140(1)(a) it has to be shown that the buildings with their common appurtenant land or the land in common appurtenance to several buildings situated nearby are available for imposing such a tax thereon. It is only such appurtenant land which can form part of the buildings for attracting house tax assessment proceedings. But if the "common compound" in which such buildings with appurtenant lands are situated also includes land which cannot be said to be a common appurtenance to several buildings situated therein or separately appurtenant to any given building, such land would be outside the sweep of the term "building". Such land, however, on its own could be legitimately made the subject matter of separate levy of house tax as an independent unit being open land. As seen from Section 140(1)(b) itself as the Board can impose the tax on annual value of lands which may not be covered by the sweep of the definition of the term "building". Once that conclusion is reached, it becomes obvious that all the buildings situated along with their appurtenant lands in one "common compound" belonging to the same owner cannot be treated as one unit for the purpose of imposing house tax under Section 128 (1)(i). The reasoning of the High Court in this connection cannot be found fault with on the scheme of the Act. It is pertinent to note that "common compound" which is relevant for the water-tax as per Section 129 of the Act to which we have made a detailed reference while deciding the companion appeal No. 1218 of 1976 is conspicuously absent in connection with imposition of house tax on the annual value

of buildings or lands or both as found in Section 128 (1)(i). We, therefore, endorse the reasoning of the Division Bench of the High Court which rejected this contention of the appellant Board. Point No.2 is therefore answered in the negative against the appellant and in favour of the respondent.

Point No.3:

That takes us to the last main point for consideration. It has to be kept in view that house tax is to be imposed under Section 128 (1) (i) on the annual value of buildings or lands or of both. Assessment of annual value has to be done according to the requirement of Section 140 sub-section (1) which defines "annual value" as under:

> "(1) "Annual value" means
> (a) in the case of railway stations, hotels, colleges, schools, hospitals, factories and other such buildings, a proportion not exceeding five per centrum to be fixed by rule made in this behalf of the sum obtained by adding the estimated present cost of exacting the building to the estimated value of the land appurtenant thereto, and
> (b) in the case of a building or land not falling within the provisions of clause (a), the gross annual rent for which such building, exclusive of furniture or machinery therein, or such land is actually let, or where the building or land is not let, or in the opinion of the municipality is let for a sum less than its fair letting value, might reasonably be expected to let from year to year."

It becomes obvious in the light of the aforesaid provision that up to the limit of 5 per cent of the annual value, the Board can impose house tax on immovable properties, like railway stations, hotels, colleges, school, hospital etc. mentioned in the said provision but for doing so the estimated present cost of erected buildings concerned has to be kept in view and also the estimated value of the land appurtenant thereto is also to be taken into consideration. Now, the phrase "estimated present cost of erecting the building" is entirely differently worded as compared to the phrase "estimated value of the land appurtenant thereto". The value of the building as well as the land appurtenant once arrived at will have to be added for computing 5 per cent ceiling up to which by rules the Municipal Board can impose house tax on the buildings concerned. It becomes at once clear that when appurtenant land is to be valued it's valuation has to be made as per its market value obtaining at the time of assessment. But so far as the value of the building to which such land is appurtenant goes, the computation has to be made on the estimated present cost of erecting the building to be subject to the tax. Meaning thereby, at the time of assessment the cost of construction of such building in its existing state is to be kept in view. Hence such cost must be arrived at by keeping in view the then existing state of the building and the cost which would be incurred for erecting such a building. Consequently it becomes obvious that while estimating the present cost of erecting the building concerned, the assessing authority has to keep in view the life of the building and also the fact as to when it was earlier constructed and in what present state the building is and what will be the cost of erecting a new building so as to result into erection of such an old building keeping in view its life and wear and tear from which it has suffered since it was put up. It is obvious that if the building is an old

one the present cost of erecting such a building would necessary require further consideration to what would be the depreciated value of such a buildings; if a new building is erected at the time of assessment. Such cost, obviously, has to be sliced down by giving due weight to the depreciation so as to make estimation of present cost of the new building to ultimately become equal to the erection cost of the building concerned in its depreciated state. Consequently, it cannot be said that 10 per cent depreciation allowed by the District Magistrate and as confirmed by the High Court on the total estimated cost of the building for bringing it within the assessable tax net of house tax was an exercise which was ultra vires provisions of the Act or beyond the jurisdiction of the assessing authority. On the facts governing the case, it is seen that the railway station belonging to the respondent, was as old as 1905, there may be other buildings within the complex which might have seen the light of the day years before the time of assessment. Naturally, they would not be new buildings which could have said to have been put up only at the time of assessment proceedings. They were obviously old buildings. It is not the case of the appellant or any of them that these buildings were new buildings recently constructed when assessment proceedings were initiated. Consequently, a flat rate of 10 per cent depreciation as granted by the District Magistrate while computing the annual value for house tax purposes, in the present case, cannot said to be an unauthorised exercise. The third point for determination, therefore, has to be answered in the affirmative against the appellant and in favour of the respondent.

Point No.4:

As a result of the aforesaid discussion, this appeal succeeds so far as the first point is concerned. However, it stands rejected so far as the last two contentions are concerned. The appeal is partly allowed accordingly and the Judgment and Order of the Division Bench will stand modified in terms of this judgment in favour of the appellant Board. Before parting with this appeal, we may mention that during the pendency of this appeal, by an interim order dated 20th January, 1977, a three Judge Bench of this Court, directed as under:

> "There will be stay of restitution pending the disposal of the appeal.
>
> The appellant undertakes not to press the demand for the recovery of the amount of Rs. 98,950/- and any future dues from the respondent during the pendency of the appeal in this Court.
>
> The hearing of the appeal is expedited and the same shall be listed for hearing along with C.A.1218/76."

It is obvious that the aforesaid order in so far as the interim stay deals with the right of the appellant Board to impose water-tax on all the respondent is concerned, now there will remain no occasion for the appellant Board to grant any restitution to the respondent so far as recovery of water-tax for the relevant time in dispute is concerned. It will also be open to the appellant Board to press for payment of recovery of water-tax which has remained unpaid by the respondent for the relevant year subject to assessment of all buildings as separate units of taxation. However, as the appellant fails on the question of levy of house tax as decided against it while answering point no.2, so far as house tax levy is concerned, it will abide by the

result of this appeal which is partly decided against the appellant and will be assessed accordingly for the relevant years. The appeal is partly allowed as aforesaid. No costs.