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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2672 OF 2001

Food Corporation of India ...Petitioner
vs.
1 Brihanmumbai Mahanagar Palika
through the Commissioner

2 Assistant Assessor and
R/Central Ward, Mumbai ...Respondents

Mr.R.K.Sharma i/b M/s.Sharma Syndicate Lex Company for the Petitioner
Ms Shobha Ajitkumar for the respondent No.1

CORAM : A.S.OKA, & C.V.BHADANG,JJ.
DATE ON WHICH JUDGMENT IS RESERVED: JANUARY 29, 2016
DATE ON WHICH JUDGMENT IS PRONOUNCED:MAY 5, 2016

JUDGMENT: (PER A.S.OKA,J.)

(As Bhadang J. is sitting at Bench at Goa, signed Judgment is pronounced by A.S.Oka J. as per Rule 296 (iii) of the Bombay High Court Original Side Rules).

1 The petitioner in this petition-the Food Corporation of India has sought a declaration that the demand made by the first respondent-Municipal Corporation of Greater Mumbai (for short `the said Corporation') of property taxes in respect of the property held by the petitioner is illegal. There are consequential reliefs claimed in the petition.

2 The petitioner is a Corporation duly constituted under the provisions of the Food Corporation of India Act,1964. It is a Government of India Undertaking which is fully controlled by

the Government of India. In this petition, we are concerned with the godowns held by the petitioner at Poisar and Magathone within the limits of the said Corporation. The case made out by the petitioner is that the Union of India acquired the land admeasuring 3,47,903 sq yard at village Poisar and the land admeasuring 1,65,074 sq yard at Magathone by taking recourse to the acquisition proceedings. Thereafter, the Union of India constructed godowns for storage of foodgrains on the said lands. After establishment of the petitioner, the said godowns are being used by the petitioner.

3 In the writ petition, it is pointed out that the State Government claimed non agricultural assessment in respect of the said two lands under the provisions of the Maharashtra Land Revenue Code,1966. The demand of non agricultural assessment was challenged by the petitioner by filing a writ petition before the learned Single Judge of this Court which came to be dismissed. An appeal was preferred by the petitioner being Appeal No.259 of 1989 before a Division Bench of this Court. By Judgment and Order dated 3rd December 1992, the said Appeal was allowed by holding that the said lands still vest in the Government of India and consequently, the State Government was not entitled to levy any assessment. It was held that as the Food Corporation of India (the petitioner) was merely occupying the said lands, non agricultural assessment could not be levied. On 16th January 1997, the said Corporation issued bills demanding

payment of property taxes. By letter dated 4th July 1997, the Assistant Manager of the petitioner informed the Assistant Assessor and Collector, R/Central Ward of the said Corporation that as the property was vesting in the Government of India, no taxes were payable. By a letter dated 24th February 1998 issued by the Assistant Assessor and Collector, R/Central Ward, the petitioner was informed that similar properties in B and E wards of the said Corporation are assessed to the property taxes and the petitioner was paying the property taxes. Thereafter, the letters of demand were issued by the Municipal Corporation from time to time and ultimately, Warrant of Attachment was sought to be served to the petitioner. Thereafter, the present petition was filed. Initially, by order dated 2nd July 2002, the petition was dismissed. By order dated 26th July 2006, the Apex Court proceeded to set aside the order of this Court and remanded the present writ petition for deciding the same in accordance with law.

4 The first submission of the learned counsel for the petitioner is that the property/said lands are still vesting in the Government of India. He relied upon the extract of property register card in respect of the said lands of 30th September 2015 showing the name of Government of India as the holder. He invited our attention to the letter dated 17th February 1992 issued by the Ministry of Food, Government of India, New Delhi addressed to the petitioner in which it was stated that the Government of India has not executed a conveyance

deed in respect of the said lands and therefore, the ownership continues to be with the Government of India. Even in the letter dated 16^{th} January 1997 addressed by the Senior Regional Manager of the petitioner to the District Manager of the petitioner at Mumbai it was stated that the lands continue to vest in Government of India. The learned counsel for the petitioner also relied upon the provisions of section 144 of the Mumbai Municipal Corporation Act,1888 (for short "the said Act of 1888"). He also relied upon Article 285 of the Constitution of India and submitted that no taxes could be levied on the property vesting in the Government of India. He heavily relied upon the Judgment and Order dated 3^{rd} December 1992 passed by the Division Bench of this Court in Appeal No.259 of 1989 in the case of Food Corporation of India Vs. State of Maharashtra and others and urged that property taxes cannot be levied by the Mumbai Municipal Corporation. He submitted that in view of Article 285 of the Constitution of India, the Municipal Corporation is precluded from recovering of any property taxes in respect of the property of the Government of India.

5 The learned counsel for the said Corporation relied upon the decision of the Apex Court in the case of Food Corporation of India Vs. Municipal committee, Jalalabad and another[1]. The submission is that the issue is covered by the said decision. The petitioner which is the occupant of the godowns is liable to pay property taxes. The learned

1 1999 (6) SCC 74

counsel relied upon the Award given by the Arbitrator appointed by the Government for fixing the ratable value of the Government properties in accordance with sub-section 2 of section 144 of the said Act of 1888. The learned counsel submitted that exemption granted under Article 285 of the Constitution was not available to the property occupied by the Food Corporation of India. The learned counsel further submitted that the procedure under sub-section (2) of section 144 of the said Act of 1888 has been followed. The learned counsel for the Municipal Corporation also relied upon the Circular dated 11th June 1997 annexed to the affidavit of Shri Arun Yeshwant Mungekar, the Assistant Assessor and Collector, R/Central Ward of the Mumbai Municipal Corporation. Her submission is that the said Circular indicates that the even if the conveyance deed is not executed by the Government of India, the Food Corporation of India will be liable for payment of property taxes in respect of the godowns in its possession. Her submission is that under the said Act of 1888, there is no exemption available to the petitioner.

6 We have considered the submissions. Firstly, we must make a reference to the Judgment dated 3rd December 1992 in Appeal No.259 of 1989. A Writ Petition was filed by the petitioner in respect of the said lands for challenging levy of non agricultural assessment by the State Government. The Writ Petition was dismissed. The aforesaid Judgment is in an Appeal preferred by the petitioner

against the order of the learned Single Judge. In paragraph 3 of the said Judgment, the Division Bench recorded a finding which reads thus:

> "3...In view of the return filed on behalf of the Government of India, it is clear that the land still vests in Government of India and consequently, the Owner is not liable to pay any assessment. As the Central Government is not liable to pay assessment, it is not open for the State Government to recover the same from Food Corporation of India who is merely occupier of the lands and holder of the godowns on behalf of Government of India. In our Judgment, the claim of the State Government for recovery of N.A. assessment and service of notices cannot be sustained."

7 Thus, the Division Bench proceeded on the footing that the lands were vesting in the Government of India and therefore, the Government of India is not liable to pay agricultural assessment.

8 Now, it will be necessary to make a reference to the said Act of 1888. After having perused the provisions of Chapter VIII of the said Act of 1888, we find that there is no specific exemption granted in respect of the properties vesting in the Union of India from payment of property taxes. Even section 143 does not grant such exemption. What is material

is sub-section 1 of section 146 which reads thus:

"146 (1) Property taxes shall be leviable primarily from the actual occupier of the premises upon which the said taxes are assessed, if such occupier holds the said premises immediately from the Government or from the corporation or from a fazendar.

Provided that the property taxes due in respect of any premises owned by or vested in the Government and occupied by a government servant or any other person on behalf of the government for residential purposes shall be leviable from the Government and not the occupier thereof."

10 The Proviso to sub-section (1) of section 146 is added by Act No.28 of 1957 after the Constitution of India was brought into force. Thus, sub-section 1 of section 146 provides that if the premises are held by an occupier, the property taxes shall be leviable primarily from the occupier. In case of a premises vesting in the Government and occupied by a Government Servant for residential purposes, primary liability to pay the property taxes is of the Government.

11 Reliance was placed by the learned counsel for the petitioner on Article 285 of the Constitution of India which reads thus:

> " 285 (1)The property of the Union shall, save insofar as Parliament may by law

otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State."

12 The contention of the petitioner is that in view of clause 1 of Article 285, since the lands and godowns in respect of which property taxes are levied are the properties of the Government of India, the same are exempted from taxes imposed by a State or any other Authority within the State. Clause 2 of Article 285 carves out an exception to clause 1. If any Authority within the State was levying any taxes on the property of the Union of India to which such property was immediately before the commencement of the Constitution of India liable or treated as liable, the taxes can continue to be levied till the Parliament by a law otherwise provides. Under the said Act of 1888, the premises vesting in the Government of India were liable for property taxes on the date of commencement of the Constitution of India. The words "Government" appearing in sub-section 1 of section 146 was substituted for the words "the Crown" by the

Adaptation of Indian Laws Order in Council. Thus, as per the provisions of the said Act of 1888, the property of the Union of India within the jurisdiction of the said Corporation was liable for levy of property taxes immediately before the commencement of the Constitution of India. There is no law enacted by the Parliament after coming into force the Constitution of India which prevents the said Municipal Corporation from levying the taxes on the premises vesting in the Government. Therefore, Article 285 is of no help to the petitioner in view of applicability of clause 2 of Article 285 of the Constitution of India.

13 As far as the decision in Appeal No.259 of 1989 is concerned, the issue was of payment of non agricultural assessment in respect of the land vesting in the Government. The levy was under the provisions of the Maharashtra Land Revenue Code. In the present case, we are dealing with the levy of property taxes on the premises as defined in clause (gg) of section 3 of the said Act of 1888. Clause (gg) of section 3 reads thus:

> "(gg) "premises" includes messuages, buildings and lands of any tenure, whether open or enclosed, whether built on or not and whether public or private."

14 Thus, even the buildings on the public property are also "premises" within the meaning of of the said Act of 1888. Under section 139A of the said

Act of 1888, the property taxes are leviable on the buildings and lands. The property taxes include water tax, water benefit tax, sewerage tax, sewerage benefit tax, general tax, educational cess, street tax and betterment charges.

15 In view of the provisions of the said Act of 1888, the petitioner will not be entitled to the benefit of clause 1 of Article 285 and in view of sub-section (1) of section 146 of the said Act of 1888, the petitioner being the occupier of the godowns will be primarily liable to pay property taxes.

16 At this stage, we may refer to the decision of the Apex Court in the case of the Food Corporation of India Vs. Municipal committee, Jalalabad and another. As indicated by paragraph 7 of the Judgment, the issue before the Apex Court was whether the property of the Food Corporation of India is the property of the Union of India. The Apex Court held that the property vesting in the Food Corporation of India will not be a property to which Article 285 will apply. In the present case, that controversy does not arise as the petitioner is claiming that the lands and the godowns constructed thereon are vesting in the Union of India.

17 To sum up, we reject the contention that the petitioner will be entitled to the protection granted under clause (1) of Article 285 of the Constitution of India. Therefore, the contention

that the petitioner is not liable to pay property taxes to the said Corporation is not accepted. Accordingly, the petition must fail. We accordingly, reject the petition. Rule is discharged with no order as to costs.

18 If the petitioner has not paid property taxes to the said Corporation, we grant time of four months to the said Corporation to pay the taxes. For that purpose, for the said period of four months, the said Corporation shall not take any coercive action against the petitioner for recovery of taxes.

(C.V.BHADANG,J.) (A.S.OKA,J.)