

**National and Grindlays Bank vs. Municipal Corporation for  
Greater Bombay**

IN THE SUPREME COURT OF INDIA

[1969 AIR 1048](#)

**Court** – The Supreme Court of India.

**Bench** – Justice V. Ramaswami.

**Decided on**– 05 February 1969

**Relevant Sections** - Sections 3(r), 3(s), 140, 146(2), 147, 154(1), 155,156, 167, 217

**BACKGROUND:**

The Appellant, National and Grindlays Bank, brought an appeal to the Apex Court against the Respondent, Mumbai Municipal Corporation after the same has been dismissed by the Court of Small Causes and later by the High Court of Bombay.

**FACTS:**

The National and Grindlays Bank is a UK based overseas banking company operating in India. Thereby the appellant was happened to be a sole trustee of the late Mr. F. E. Dinshaw's Estate, in that capacity is the owner of the property in Malad. The erstwhile trustee leased the said plot to a person (lessee) for the monthly rent of 12.50 INR, wherein the lessee constructed a house at his own expense. Regarding the property tax, the Malad District Municipality has been levied a separate tax on land and the building structure till the date it was merged to the Greater Bombay. Thereafter, a notice was sent to the appellant, for the lack of informing the fixed Rateable Value (RV) of the house (430 INR) by the Bombay Municipal Corporation. Withal, notified that the assessment book has been amended under Section 167 of the Mumbai municipal Act of 1888 and by which the appellant name was added. The appellant felt aggrieved and opt

for an appeal under Section 217 of the Act to the chief judge of Small Cause Court. The appellant brought it to the High court after the same was dismissed by the Small Cause Court dated 3rd August 1960. Later the same was dismissed by the Bombay High Court as well.

### **RELEVANT PROVISIONS:**

Section 3(r) of the Mumbai Municipal Corporation Act, 1888 defines *land*, which includes land being built on.

Section 3(s) define the *Building* as a structure constructed on the land excludes water tank..

Section 217 suggests the Chief Judge of Small Cause Court hear and determine the appeal, if only if the same was brought before within twenty-one days by the aggrieved party against any fixed tax or RV.

Section 167 of the Act empowers the Municipal Commissioner to amend the assessment book to insert or exempt any person's name, from whom the property tax is leviable.

Section 140 provides the list of property taxes leviable on Rateable value or capital value.

Section 146 dealt with the liability of the property tax. Under which, clause (1) describes that the occupier of such premises is primarily accountable for paying the levied tax. It mentions that if such premises are occupied by any person on behalf of the government. Then, the property tax is primarily leviable from the government.

The subsequent clause (2) lists the primary person liable to pay the imposed property tax.

- a. If the premises are leased, then the lessor is liable to pay
- b. If the premises are let to a subtenant, then the property tax is primarily leviable from the superior lessor
- c. If the premises are not let, then the person, who is enlightened to let the same, is accountable
- d. In case if the premises owner's facts are cannot be ascertained. Then the tax is primarily leviable from the occupier

Clause (3) prescribes the government to levy property tax primarily on the tenant, who has constructed a building on the concerned property rented for any term more than a year.

Section 147 entitles the taxpayer (landlord) to recoupment from his tenant. This Section elucidates the situation wherein the landlord leased his land to the tenant and paid the property

tax for the same. Then by invoking this Section, the lessor may recover the difference in the amount of tax collected from him and the amount which would be leviable from the lessor, if the tax was assessed on the amount of rent payable to the lessor by the lessee.

Further, clause (3) of the Section states that the entitled right and remedies are vice versa.

### **ISSUES:**

- Whether or not the appellant is responsible to pay the tax imposed by the respondent on the property constructed by the third party (lessee).
- Whether or not the Mumbai Municipal Corporation Act of 1888 validates the respondent act of imposing the property tax on the appellant.
- The property tax shall be primarily leviable from whom, whether from the appellant or the lessee.

### **Appellant's contentions:**

The appellant relied on Section 146 of the Mumbai municipal corporation Act of 1888 throughout the appeal. It has pleaded that the proper conception of Section 146(2) of the Act would indicate that there should be a separate assessment in fixing the property tax of the land and the structure. Per contra, even if the aforesaid Section prescribes the combined assessment of the premises; the primary liability is on the lessee to pay the tax since he is the owner of the building. Withal, the right to rent was vested on the lessee as qua owner of the structure. Furthermore, the appellant should not be treated as a lessor under this Section since he leased the land but not the building.

### **JUDGMENT:**

The appeal was dismissed with cost, on the grounds it was expressed that, the case at hand will fall under the principle of *contemporanea exposito*. The court propounded the substantial necessity for the usage of such principle in the present case is since the practice of composite assessment of property tax was followed by the Mumbai Municipal Corporation for a greater deal of time in addressing this case, which is not the subject of Section 146(3) of the Act. Withal, the natural meaning of Section 146 (2) (a) along with Section 147 of the Act denotes

such composite property tax is primarily leviable from the owner of the land. For the stated reasons, the Apex court held the appeal has no merits.

### **ANALYSIS:**

Firstly, the lucidity of Section 146 was focused. The Apex Court accepted the viewpoint of the respondent, stating that Section 146(2) prescribes the composite assessment of the tax and the subsequent sub-clause 146(2) (a) of Act imposes the primary liability of tax payment on the lessor if only if the case could not fall under Section 146(3). Admittedly, the present case is not related to Section 146(3), which separately mentions the *building and the land*. It is not in the subject matter of Section 146 (1) and (2), where the comprised unit of land and the building is named as *premises*. The Apex court appends the respondent argument as qua the *bona fide* Scheme of the said Section recommends the composite tax leviable from the landlord. And nullified the appellant's contention of expressing the construed of Section 146 (2) (a) as it denotes the owner of the structure build is primarily liable for tax payment.

Further, the court has interlinked the essence of Section 147, which enables the lessor to recoup the difference in paid tax and which the property is liable to pay based on rent. And also stated the difficulties combined in fixing the primary liability on the lessee since it is impossible to keep track of any monthly tenant.

In the present case, a stand taken by the Divisional Branch of the Bombay High Court in the case of *Ramji Keshavji Contractor v. The Municipal Commissioner of Greater Bombay* [1] was cited. Wherein, a similar situation arises with the appellant, who has leased his land to the tenant for a period of one year, on which the said lessee had constructed a structure. In its Judgment, the Apex court validated the interpretation of Section 146 of the Act expressed in the aforementioned case.

Further stated that this case is within the ambit of the principle *Optimus legum interpret est consuetude*, in layman's definition, it means *the custom is the best interpreter of law*. Since the nature of Section 146(2) was assumed to be unclear, the court relies on the status quo practice of the respondent in assessing property tax of land and the building as a single unit. And invoked two cases, where the principle was applied earlier, the *Clyde Navigation Trustees v. Laird* [2] and the *Ohlson's case* [3].

### **CONCLUSION:**

Following up the examination of the appellant and the respondent arguments, the Apex Court held that the quo animo of the contented Section of Mumbai Municipal Corporation Act, 1888 is to impose a property tax on the landlord and to bestow him with the right to recoupment under Section 147 of the Act. Further, the principle of *contemporanea exposito* was applied, which connotes the general rule: the interpreter of the statute must place himself at the time of its enactment. Consequently, the Apex court dismissed this case with cost i.e. the appeal was failed, and the appellant was held to pay all the expenses incurred by the respondent for the sake of defending the suit.

**REFERENCES:**

- [1] [\(1954\) 56 BOMLR 1132](#)
- [2] 8 A.C.658 670
- [3] [1891] 1 Q.B. 485, 489
- [4] <https://www.casemine.com/judgement/in/5609ab65e4b014971140c5ba>
- [5] <https://www.latestlaws.com/latest-caselaw/1969/february/1969-latest-caselaw-27-sc/>
- [6] <http://www.bareactslive.com/MAH/MH167.HTM#3>
- [7] <http://www.duhaime.org/LegalDictionary/C/ContemporaneaExpositio.aspx>

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