

## Munnalal and Others Vs B.S. Baswan and Others

**Court:** Madhya Pradesh High Court (Gwalior Bench)

**Date of Decision:** July 22, 1977

**Acts Referred:** Madhya Pradesh Nagariya Sthawar Sampatti Kar Adhiniyam, 1964 "Section 35(1), 35(2)  
Madhya Pradesh Nagariya Sthawar Sampatti Kar Niyam, 1964 "Rule 4(9)

**Citation:** AIR 1978 MP 36 : (1980) ILR (MP) 197 : (1977) J LJ 667 : (1978) 23 MPLJ 152 : (1978) MPLJ 152

**Hon'ble Judges:** Shiv Dayal Shrivastava, C.J.; R.L. Murab, J; P.D. Mulye, J; G.P. Singh, J; C.M. Lodha, J

**Bench:** Full Bench

**Advocate:** K.L. Mangal, for the Appellant; S.K. Dube, for the Respondent

### Judgement

Shiv Dayal, C.J.

This Bench has been constituted under Article 228A of the Constitution to determine the validity of Clause (9) of Rule 4 of the Madhya Pradesh

Nagariya Sthawar Sampatti Kar Niyam. 1964. That rule reads thus:

(9) If a building contains more than one portion not belonging to the same owner, every such portion may be treated as a separate building for the

purposes of these rules but not until satisfactory evidence, which shall be either a decree of a Court of Law or a registered document, has been

given in proof of the separate ownership thereof.

The petitioners are the owners and are in occupation of a house situate at Sadar Bazar, Morar, District Gwalior. The Property Tax Officer,

constituted under the Act, issued a notice to the petitioners of the provisional assessment list and assessed the annual letting value of the house at

Rs. 3,492/- to be enforced from April 1, 1970. The petitioners, on April 4, 1970, filed objections before the Property Tax Officer, in which they

alleged, inter alia, that there was an oral partition among the owners, so that the portion allotted to each one of them had to be assessed separately.

They produced a deed of sale in their favour. The Property Tax Officer did not recognise the oral partition. The Additional Property Tax

Commissioner, who heard two revision petitioners against the orders dated May 16, 1970 and October 16, 1971 passed by the Property Tax

Officer, held that oral partition could not be recognised in view of the impugned Rule 4 (9). Aggrieved by the order of the revisional authority, the

petitioners invoked the jurisdiction of this Court by a writ petition under Article 226 of the Constitution. It is not necessary to state the other facts

or the contentions which have been raised in the writ petition.

The petitioner's contention is that since they are Hindus, governed by the Hindu Law, an oral partition can be validly effected without reducing it

into writing, while the impugned Rule forbids its recognition for the purposes of the Property Tax Act. The Rule is, therefore, ultra vires the law.

The Act provides for the levy of tax on lands and buildings in urban areas in Madhya Pradesh. Section 4 is charging section. It enacts that there

shall be charged, levied and paid for each year, a tax on the lands or buildings or both situate in the areas specified in that Section at the specified

rates per-centum of the annual letting value of the land or building.

The expression "annual letting value" is defined in Section 2, meaning the annual letting value as determined u/s 5.

Section 5 enacts the manner in which annual letting value is to be determined and revised. Section 6 enumerates certain Exemptions. Clause (b)

exempts "buildings and lands or part thereof in actual occupation of the owners thereof when the annual letting value of such buildings and lands or

part thereof does not exceed three thousand" (Substituted by the words "Eighteen Hundred rupees" by virtue of the Amendment Act No. 3 of

1971).

Section 7 requires the preparation of "provisional assessment list", a notice of which is to be given in the manner prescribed. Section 8 enables a

person aggrieved by any entry in the provisional assessment list, to file objections. Section 9 provides for the decision of the objections and

finalisation of the assessment of the list finalised u/s 9. Section 11 deals with escaped assessment. Section- 12 confers conclusiveness on the entries

in the assessment list. Section 14 enacts the machinery for realisation of the tax. Section 15 confers right of appeal from orders passed under

Sections 9, 10 or 11. Section 18 vests the Commissioner with revisional jurisdiction. Section 35 confers power on the State Government to make

rules to carry out the purposes of the Act. For the purposes of the question we are dealing with, it is not necessary to recapitulate the other

provisions of the Act.

In exercise of the said rule making power, the State Government framed rules from time to time. They are contained in the Madhya Pradesh

Nagariya Sthawar Sampatti Kar Niyam, 1964; published in the Madhya Pradesh Gazette dated November 20, 1964. Rule 4 deals with the

preparation of provisional assessment list. Duty is cast on the Asses-sine Authority to prepare it. He has to ascertain the annual letting value.

Clause (9) of Rule 4 enacts that if a building contains more than one portion not belonging to the same owner, then every such portion may be

treated as a separate building for the purposes of the rules. But, this can be done only when the fact that the portions do not belong to the same

owner is proved either by a registered document or by a decree of a Court of law. In this Rule, the word "partition" does not occur. It applies to

building which has more portions than one and it is claimed that the different portions belong to different owners. If that fact is proved then,

obviously enough, the annual letting value is divided amongst those portions and when tax is assessed, it may be found to be below taxable limit

and be, thus, exempted from levy of property Tax. It is obvious enough the Rule 4 (9) is intended to safeguard against defeating the provisions of

the Act. By pleading orally that the different portions belong to different persons, tax could easily be evaded. Special rule of evidence has,

therefore, been provided for safeguarding against the evasion of tax. This special rule of evidence which is contained in Rule 4 (9), is confined to

the purposes of the Act. It is apparent that what is intended by the Rule is not to confer jurisdiction in the Assessing Authority to adjudicate upon

the question of ownership when it is alleged that different portions of a particular building -- a single building -- belong to different owners. Such

allegation can be proved before the Assessing Authority either by a registered document or a decree of a Court of law, but by no other means.

Thus, Rule 4 (9) is a special rule of evidence made for the purposes of a special law. It is not correct to think that a partition among the members

of a joint Hindu family whereby portions are allotted to joint owners by metes and bounds, would be rendered invalid because of the impugned

Rule, There can be no doubt that there is nothing in the impugned Rule which in any way affects the substantive rights or liabilities of parties which

may accrue from an oral partition, nor does it invalidate any such transaction. The decision of the Supreme Court in Rohtak Hissar District

Electricity Supply Co. Ltd. Vs. State of Uttar Pradesh and Others, ) relied on by the petitioners is not apposite. The Rule is purely a rule of

evidence prescribing the particular mode of proof. Having regard to the scheme of the Act and the Rules and in view of the obvious intention of the

impugned Rule and its scope, it cannot be held to be unreasonable. The Rule does not say that an oral partition or an oral transfer of any portion

would be inoperative or ineffective. On the other hand, when the Rule permits that a fact can be proved by a decree of a Court of law, it

contemplates the validity of such partition or transfer. It will be for the Civil Court to see whether such partition or transfer is valid and it creates

ownership in different persons in respect of different portions of the building.

During the hearing before us, a question arose whether the impugned Rule would be invalid in respect of an oral partition alleged to have been

effected before the Rules came into force. It is unnecessary to consider that question in this petition inasmuch as in the present case the petitioners

have not pleaded that the alleged partition was effected before the Rules came into force. The petitioners did not specify any date of partition in

their objections dated April 4, 1970, which were filed before the Property Tax Officer, nor in the revision before the Commissioner, nor even in

this petition. Even today, after a lapse of four years, the learned counsel could not tell us the date of the alleged oral partition.

A copy of the sale-deed which was filed before the Property Tax Officer (as averred in para 5 of the writ petition) has been shown to us by the

learned counsel for the non-petitioners. That deed of sale is dated October 14, 1964. As averred in the same paragraph 5 of the writ petition, the

entire house was purchased by the petitioners. There is absolutely nothing to show that they became the separate owners of separate portions on a

partition by metes and bounds.

Shri Mangal, learned counsel for the petitioners, then urged that Rule 4 (9) was made in excessive exercise of the delegated power. He strenuously

relies on Clause (ii) of Sub-section (2) of Section 35 which reads thus:

In particular and without prejudice to the generality of the foregoing powers such rules may provide for all or any of the following matters,

namely:--

(ii) the procedure to be followed in the preparation and publication of the provisional assessment list and the final assessment list and the particulars

to be contained therein.

We do not find any substance in this contention. In the first place, the language of Clause (ii) is comprehensive enough to make special rule of

evidence as contained in Rule 4 (9). Furthermore, it is now settled law that if power is conferred to make subordinate legislation in general terms,

the particularisation of topics is construed as merely illustrative and does not limit the scope of the general power. In Rohtak Hissar District

Electricity Supply Co. Ltd. Vs. State of Uttar Pradesh and Others, their Lordships laid down thus (at pp. 1477, 1478)

It is well-settled that the enumeration of the particular matters by sub-sec. (2) will not control or limit the width of the power conferred on the

appropriate Government by Sub-section (1).....

See also: AIR 1945 156 (Privy Council) and Afzal Ullah Vs. The State of Uttar Pradesh, . It is only when the rule making power given to the State

Government is not expressed in the usual form, that is, is not to the effect that the State Government may make rules for the purposes of the Act,

that the rule making power is limited to what is stated in the clauses as was the case in Sant Saranlal and Another Vs. Parsuram Sahu and Others, .

Relevant . observations of their Lordships run as under (at page 1855)

It is significant to note that the rule-making power given to the State Government is not expressed in the usual form, i.e. is not to the effect that the

State Government may make rules for the purposes of the Act.

The rule-making power as contained in Sub-section (1) of Section 35 is very wide and general. It runs thus :

The State Government may, after previous publication in the Gazette, make rules to carry out the purposes of this Act.

In the result, we return the following opinion ;

(1) Rule 4 (9) of the Madhya Pradesh Nagariya Sthawar Sampatti Kar Niyam, 1964, being a special rule of evidence, made exclusively for the

purposes of this Act, is valid.

(2) However, it is unnecessary to express any opinion on the further question which may arise whether the said special rule of evidence will also

govern transactions effected before the commencement of the said Rules,