(1988) 04 BOM CK 0003

In the Bombay High Court

Case No : Writ Petition No. 214 of 1984

Abdeali Shaikh Tayebali Zaidy and Another — APPELLANT

Vs

Bombay Housing and Area Development Board and Others — RESPONDENT

Date of Decision : 07-04-1988

Acts Referred:

Bombay Municipal Corporation Act, 1888 — Section 167(2)
Maharashtra Housing and Area Development Act, 1976 — Section 82

Citation : (1988) 3 BomCR 457 : (1988) MhLj 707

Hon'ble Judges : Sujata Manohar, J

Bench : Single Bench

Advocate : A.V. Bookwala and S.K. Srivastav, instructed by Z.H. Zaidy, for the Appellant; V.N. Lokur and R.V. Desai, for respondents 1 and 3 and S.N. Tidke, for respondents 2, 4 and 5, for the Respondent

Judgement

Sujata Manohar, J.—The petitioners own a building known as Aamer House at 4 Henry Road, Bombay 400 009. This is an old building consisting of ground, three upper storeys, plus a half floor and a terrace on the 4th floor. The rear portion consists of five storeys.

2. In the year 1972-73 the petitioners obtained a "no objection" certificate from the Bombay Building Repairs and Reconstruction Board to carry out extensive repairs to the building including its near portion. By its letter of 30th October, 1973 the Bombay Building Repairs and Reconstruction Board gave to the petitioners an extension of time upto 31st March, 1974 for completion of the repair work. The repair work was accordingly completed by the petitioners. There is some dispute about the date of completion of the repair work which is not material. I will assume for the sake of this petition that the repair work was completed by 31st March, 1973. In respect of the repair work the petitioners have been reimbursed to the extent of 75% of the cost of repairs by the Building Repairs and Reconstruction Board.

3. In or about February 1983 the petitioners received a copy of a statement

dated 7th February, 1933 prepared by the Maharashtra Housing and Area Development Board (which had replaced the earlier Bombay Building Repairs and Reconstruction Board) relating to completion of repairs and sent to the Municipal Corporation of Greater Bombay for the purpose of enhancement of repair cess as per section 82 of the Maharashtra Housing and Area Development Act, 1976. In column 60 of this statement it was stated "work completed before 1-10-80. Cess should be increased at the calling limit of Rs. 120/- sq. meter''. Column 8 which relates the date of enhancement is kept blank. Thereafter the petitioner received 21 bills all dated 8th November, 1983 covering the period from 1-10-72 to 31-3-1983 for payment of enhanced repair cess in respect of this building. The particulars of these bills are set out at Exhibit `K'' to the petition. Before issuing these Bills enhancing the Repair cess even requisite provisions of notice and hearing before enhancement of repair cess under the Bombay Municipal Corporation Act were not adhered to. The petitioners have challenged this imposition of enhanced repair cess with retrospective effect from 1-10-72. They are challenging 21 bills which cover the previous financial years. They do not challenge the 22nd bill in Exhibit ''K'' which is for the period 1-4-83 to 30-3-83.

4. Under the Maharashtra Housing and Area Development Act, 1978 section 82 deals with levy and collection of Bombay Building Repairs and Reconstruction cess. u/s 82 sub-section (2) the repair cess shall be collected by the Bombay Municipal Corporation in the same manner in which the property tax is collected under the Bombay Municipal Corporation Act. Section 84(1) provides as follows :

"84(1) For the purpose of assessing the amount if cess leviable under this Chapter, the Municipal Commissioner shall, in a Schedule appended to the assessment book maintained by him u/s 156 of the Corporation Act (which shall be deemed to be a part of such assessment book) cause additional entries to be made showing the category to which every property on which the cess is leviable belongs and such other particulars as he deems necessary . ...

(2) Where additional entries regarding any land or building in existence in any area on the date of which this Chapter comes into force are made for the first time, the Municipal Commissioner shall give individual notice thereof to the person primarily liable for the payment of the property taxes in the manner laid down in sections 483 to 486-A (both inclusive) of the Corporation Act and also public notice thereof in the manner laid down in section 160 of that Act and on the place where the ward assessment book so amended, or a copy of it, may be inspected. When the first public notice is given, and whenever any such action is given subsequently under the said section 160, the provisions of sections 164 and 165 as modified for the purpose of this Chapter by sub-section (3) of this section and of sections 166 and 167 of the Corporation Act shall, so far as may be apply to such additional entries as they apply to the entry showing the amount of rateable value and other entries relating to any property entered in the assessment book, of which notice is given by the Municipal Commissioner.

(3) In applying the provisions of sub-section (1) of section 156 of the

Corporation Act, for the purposes of sub-section (2) of this section, for the words "the Commissioner" the words and figures "the Commissioner in consultation with an Engineer of the Corporation and an Engineer of the Authority established under the Maharashtra Housing and Area development Act, 1967", shall be deemed to be substituted."

Thus for the purpose of assessing the amount of repair cess additional entries have to he made in the assessment book maintained under the provisions of the Bombay Municipal Corporation Act. Where additional entries are made or any amendments are carried out in the Ward assessment book, the relevant provisions of the Bombay Municipal Corporation Act are to be complied with. It, is therefore necessary to see the relevant provisions of the Bombay Municipal Corporation Act, 1888.

5. u/s 156 of the Bombay Municipal Corporation Act the Commissioner shall keep a book to be called "the Assessment Book" in which shall be entered every official year various particulars as set out in that section. These include the rateable value of each building and land. u/s 160 when these entries have been made in any Ward Assessment Book, the Commissioner shall give public notice of it and of the place where the Ward Assessment Book, or a copy of it, may be inspected.

6. Sections 162 to 165 deal with lodging and hearing of complaints regarding entries. u/s 166 when all complaints have been disposed off and entries have been completed in the Ward Assessment Book, the Book shall be authenticated by the Commissioner. u/s 166(2), ''thereupon the said Ward Assessment Book, subject to such alterations as may thereafter be made therein under the provisions of the next following section, shall be accepted as conclusive evidence of the amount of each property-tax leviable on each building and land in the ward in the official year to which the box relates." (italics nine). Though entries are made for each official year, u/s 168 a new assessment book need not be prepared every year, but it shall be prepared at least once in every four years.

7. Section 167 inter alia, provides as follows :

"Section 167(1) : The Commissioner may upon the representation of any person concerned, or upon any other information, at any time during the official year to which an assessment book relates amend the same.........by increasing or reducing the amount of any rateable value and of the assessment based thereon.............

(2) Every such amendment shall be deemed to have been made, for the purpose of determining the liability or exemption of the person concerned in accordance with the altered entry, from the earliest day in the current official year when the circumstances justifying the amendment existed."

8. Section 167 is directly relevant in the present case because the amendment of an entry made in the assessment book can operate only from the earliest day in

the current official year when the circumstances justifying the amendment existed. The phrase ''the earliest day in the current official year ''has come up for interpretation in a number of cases. In the case of The Sholapur Municipal Corporation v. Ramchandra Ranapna Madaundi, reported in 74 Bom.L.R. 469 a Full Bench of this High Court was required to consider section 82 of Bombay Municipal Borough Act, 1986, which is in material particulars similar to section 167 of the Bombay Municipal Corporation Act. Section 82(2) of the Bombay Municipal Corporation Act, 1985 which deals with an Assessment-List (equivalent to an Assessment Book) is as follows :

"82(3) An entry or alteration made under this section shall........ have the same effect if it had been made...... on the earliest day in the current year on which the circumstances justifying the entry or alteration existed; and the tax or the enhanced tax as the case may be shall be levied in such year in the proportion which the remainder of the year after such day bears to the whole year."

9. The Full Bench was required to consider whether on a true construction of section 82(3) of the Bombay Municipal Boroughs Act, 1985 a retrospective alteration could be made in the Assessment List so as to entitle the municipality to levy tax for an official year or any part of it which had already expired. This question was answered in the negative by the Full Bench. It interpreted the key words in section 82(3) "the earliest day in the current official year" to mean the earliest day in the official year which is current when the amendment of the Assessment List takes place. It said, " If it were intended to include in the context in which it was used any of the Past year prior to the date on which the amendment of the assessment list is made, the expression would not be on the earliest day in the current official year, but that would amount to the unwarranted introduction of a word in the statute which is not there and which we cannot do".

10. The decision has been approved by the Supreme Court in the case of Municipal Corporation of City of Hubli v. Subha Rao Hanumantharao, reported in AIR 1978 S.C. 1988. The Supreme Court was also required to construe the provisions of the Bombay Municipal Boroughs Act, 1926. The Supreme Court has described the scheme of the Bombay Municipal Borough Act. First there is a proposal to levy tax to which objections are invited. After the objections are investigated and disposed of the Assessment List in the one case and the altered entry in the other, are authenticated giving rise to the liability in the rate-payer. It must follow, a fortiori, that if an alteration in the Assessment List is required to be made during the currency of the official year, the assessment List, in order to give rise to liability, must also be authenticated before the expiry of the official year. The Supreme Court observed:

"Once we take the view that the process of levying the tax is complete only when the assessment list is authenticated and it is only then that the tax is levied on the rate-payers, it is difficult to resist the conclusion that the authentication must be made within the official year. The tax, being a tax for the official year, must obviously be levied during the official year and since the levy of the tax is complete only when the assessment list is authenticated, it must follow a fortiori that the authentication on the making of which alone the levy of the tax is effected, must take place in the official year. Any other view would result in an anomalous and rather absurd situation, namely that the tax for official year would be leviable at any time, even years after the expiration of the official year."

Instead of an assessment list an assessment book is prepared under the Bombay Municipal Corporation Act in substantially the same manner under the Bombay Municipal Boroughs Act, 1925.

11. u/s 167 sub-section (2) of the Bombay Municipal Corporation Act also it is expressly provided that every amendment, altering the cess or tax shall be deemed to have been made form the earliest day in the current official year. Since the levy of tax is for every official year and the amendment is also in respect of current official year, it cannot operate retrospectively to cove past official years. The respondents therefore, are clearly not entitled to increase the repair cess retrospectively to cove the period from 1-10-1979 to 31-3-1983.

The petition therefore, succeeds. The levy of enhanced repair cess for the official years covering the period 1-10-1972 to 31-3-1983 is set aside. Bills for the said period are quashed. The rule is accordingly made absolute in terms of prayer (b) for the above period.

Respondents to pay to the petitioners costs of the petition.

