

(1920) 08 BOM CK 0010
In the Bombay High Court
Case No : Second Appeal No. 882 of 1919

Ambalal Sarabhai

APPELLANT

Vs

The Ahmedabad Municipality

RESPONDENT

Date of Decision : 16-08-1920

Acts Referred:

Bombay District Municipal Act, 1901 — Section 2, 65(4)

Citation : (1921) 23 BOMLR 48 : 60 Ind. Cas. 578

Hon'ble Judges : Shah, J;Crump, J

Bench : Division Bench

Judgement

Shah, J.—This appeal arises out of a suit to recover certain taxes said to have been illegally levied by the Ahmedabad Municipality. In the lower Courts the case has been disposed of on somewhat different grounds, but in the result a refund of the excess of the drainage tax claimed by the plaintiff is allowed but a refund of the house and property tax is not allowed. In the appeal before us, a refund of the excess amount levied in respect of the house and property tax for the year 1911-12 is claimed on the ground that rule No. 74 of the Rules and bye-laws of the Ahmedabad Municipality, which were in force at the time, has not been complied with. It is stated that the assessment list with the Proposed alteration for the year 1911-12 was published in April 1911, and the notice of the proposed increase in the tax was given to the plaintiff by the Municipality on the 20th of June. The plaintiff objected to the enhancement on the 12th July" but a demand was made for the enhanced amount on the 18th July. A further protest was made by the plaintiff on the 30th July and his objections were heard and disposed of in December 1911 by the officer authorised to deal with such objections Ultimately a notice of demand was served on the 27th January, 1912, and the amount claimed by the Municipality for the year 1911-12 was paid under protest. I mention these dates as stated on behalf of the plaintiff and not challenged on behalf of the defendant with respect to the proposed enhancement relating to one property though the whole amount levied was in respect of several properties These dates in substance are applicable to the full demand made by

the Municipality with reference to all the properties, as to which a refund is claimed.

2. The two grounds urged in support of this claim for refund before us are that u/s 65, Sub-section (4), there was no proper authentication of the list in so far as the officer required by the clause to sign the list did not do so, and, secondly, that the provisions of Rule 74 were not complied with at all. As regards the first objection I do not think that there is any substance in it. It may be that if the list is not signed it could not be accepted as conclusive evidence as provided by Sub-section (6). But I do not see how the mere fact that the officer did not sign the list could affect the question as to whether the levy was legal or not particularly when the amount fixed under the list is not challenged before us.

3. The second objection which is based on Rule 74 seems to me to be good. The rules in question were originally framed u/s 32, Clause (h), of Bombay Act II of 1884, and u/s 2 of the present District Municipal Act these rules were in force in 1911. This position is not challenged on behalf of the Municipality. If the rule is not ultra vires it is clear to my mind, from the provisions of this rule that the intended increase in the house and property, tax was to be notified to the house-owners concerned before the 1st of March. All objections to the proposed increase were to be lodged in writing in the Municipal office before the 15th March, and the investigation was to be completed before the 1st of April and the payment of the tax for the official year was to be considered due on that date. That is, in the present case, if the provisions of this rule had been duly followed, by the 1st of April 1911, all objections should have been considered and the amount payable for the year 1911-12 determined. The effect of the rule seems to me to be that for the year 1911-12 the Municipality would be entitled to such amount as is determined by the beginning of the year and not to any increase that may be determined at any time during the year. I am unable to agree with the lower appellate Court on this point. The question is not whether the levy of the tax is illegal apart from Rule 74, but the question to my mind is as to what was due to the Municipality by the present plaintiff by way of house and property tax according to law. The rule distinctly indicates that the amount payable for the year is the amount fixed at the commencement of the year. Unless the increased amount was determined in the manner contemplated by Rule 74 the only amount that could be said to be due by the owner for 1911-12 was the amount which was fixed for the next preceding year, I do not see anything unreasonable in this rule, and if it is consistent with the provisions of the present Act, I am of opinion that it should be given effect to. If effect is given to it, it follows that the levy of the increased tax for the year 1911-12 was not justified. As a last resort Mr. Mehta has urged on behalf of the Municipality that this rule is ultra vires and inconsistent with the provisions of Act III of 1901. In support of this argument, he relies upon Section 67, Sub-section (2). On a careful consideration of the scheme of the Sections 63, 64, 65, 66 and 67, it is clear that under Sub-section (2) of Section 67 it is permissible to the Municipality to deal with the matters arising under Sections 64, 65, 66 after the commencement of the official year in

question. But there is nothing in the Act to show that the matters intended to be dealt with u/s 65 must necessarily be dealt with after the commencement of the official year. For instance Section 66, Sub-section (3), provides that any alteration made under that section shall have the same effect as if it had been made on the earliest day in the current official year in which the circumstance justifying the alteration existed. Though Section 66 does not apply to the present case, Sub-section (3) illustrates, to my mind, that when the Legislature intends that even though the alteration is made after the commencement of the year it should take effect on the earliest day in the particular official year in which the circumstance justifying the alteration exists an express provision to that effect is made. There is no such provision with reference to matters arising u/s 65: and that indicates, in my opinion, that it was open to the Municipality to have such a rule as No. 74 with reference to matters arising u/s 65. In prescribing the time when the objections were to be made by the house-owners and dealt with by the Municipality, there was nothing inconsistent with the provisions of the District Municipal Act of 1901. It is also clear to my mind that these provisions as to time, when a house-owner is to receive notice of the intended increase, and his objections relating to the increase are to be decided, are within the scope of the powers of the Municipality to make rules concerning the levy of the taxes. The words of Clause (1) of Section 46 are wide enough to justify such a rule; and though we are not strictly concerned with the question as to whether this rule was intra vires under the Act of 1884 it seems to me that under Clause (A) of Section 32 of the Act of 1884 it was competent to the Municipality to have such a rule regulating the levy of the house and property tax. It is clear that this rule was binding upon the Municipality as well as upon the house-owners; and the non-compliance with that rule entitles the plaintiff to recover what has been levied by way of house and property tax in excess of what was payable at the beginning of the year, which would be the amount fixed for the next preceding year. The correctness of the amount claimed by the plaintiff is not challenged on behalf of the Municipality.

4. The cross-objection with reference to the refund of the drainage tax has not been pressed.

5. I would, therefore, vary the decree of the lower appellate Court by allowing to the plaintiff the sum of Rs. 413-5-6 claimed in this second appeal. The plaintiff to have his costs throughout.

6. The cross-objection is dismissed with costs.

Crump, J.

7. I agree.