

(1974) 01 GUJ CK 0004

In the Gujarat High Court

Case No : Special Civil Application No"s. 285 and 287 of 1973

D.N. Dholakia and Others

APPELLANT

Vs

The State of Gujarat and Others

RESPONDENT

Date of Decision : 22-01-1974

Acts Referred:

Gujarat Municipalities Act, 1963 — Section 105, 111, 112, 144

Citation : AIR 1974 Guj 209 : (1975) GLR 103

Hon'ble Judges : S.H. Sehth, J;J.B. Mehta, J

Bench : Division Bench

Advocate : P.V. Hathi, for the Appellant; S.J. Joshi, A.H. Mehta, A.H. Mehta, S.J. Joshi, M.M. Dave, of Purnanand and Co. and J.R. Nanavati, Asst. Govt. Pleader, for the Respondent

Judgement

S.H. Sheth, J.—These two petitions are directed against the assessment made by the Rajkot Municipality for the year 1972-73. Special Civil Application No. 285 of 1973 has been filed by eleven petitioners who are tax-prayers of Rajkot Municipality, Special Civil Application No. 287 of 1973 has been filed by four petitioners. The petitioner No. 1 is Rajkot Tax-prayers" Association. The facts of both cases are the same and therefore, same questions arise in both of them for our determination. We, therefore, proceed to decide them by a common judgment.

2. Rajkot Municipality is constituted and functioning under the Gujarat Municipalities Act, 1963. Section 99 of the Act empowers the Municipality to impose a tax on buildings or lands situate within the municipal borough. Rajkot Municipality has framed Rules for the purpose. They came into force on 1st January 1965. The aforesaid tax is to be based on annual letting value or capital value or percentage of capital value of the buildings or lands or both. Assessment of annual letting value is required to be made and assessment lists are required to be prepared. The rules made by Rajkot Municipality provide for making assessment and preparation of assessment list.

3. In 1969 the State Government addressed a communication to all municipalities in the State of Gujarat requiring them to have the assessment made by Government Officers, more particularly the revised assessment to be made at the end of every four years as required by Section 111 of the said Act. During 1972 - 1973 Rajkot Municipality was required to revise the assessment and prepare a fresh assessment list as required by Section 111. The Government desired that the revision of assessment should take place at the hands of the Government Officers and not at the hands of the Officers appointed by the municipality. The Government desired the municipality to have the assessment done by Government Officers in the pursuance of the policy laid down by it in the communication addressed by it to all municipalities in 1969. The communication issued to Rajkot Municipality in 1972 led to correspondence between the municipality and the Government. The correspondence discloses that the municipality contended that there was no provision under which assessment could be done by Government Officers. In its opinion, therefore, if the assessment was done by Government Officers it would be unauthorised and illegal. The Government, however, persisted in its attempt to have the assessment done by Government Officers. It, therefore, informed the municipality that if it wanted grant from the Govt. towards dearness allowance payable to its employees it must have assessment done by Government Officers. On 29th January 1972 the municipality resolved to get the assessment work done by Government officers but pointed out that such as assessment would be illegal in light of the provisions of Section 105. Correspondence between the municipality and the Government continued thereafter. The municipality did not carry out the assessment work. Therefore, on 1st August, 1972 the Government appointed 14 officers in exercise of its power u/s 112(1) for completing the assessment and the assessment list. On 19th December, 1972 the Government appointed ten Appellate Officers to decide appeals against the assessment made by the Assessment Officers. It is clear from the facts of the case that the assessment for the year 1972-73 which was a revised assessment at the end of four years as contemplated by Section 111 was made by Assessment Officers appointed by the Government. After the assessment was done notices were issued, amongst others, to the petitioners except the petitioner No. 1 in Special Civil Application No. 287 of 1973.

4. The petitioners have filed these two petitions under the aforesaid circumstances and they pray for the following reliefs against or in connection with the assessment made and the assessment list prepared.

1. Resolution No. 340 of Rajkot Municipality passed on 29th January, 1972 by which it resolved to have the assessment made by Government Officers is unlawful and is, therefore, liable to be struck down.

2. Notification issued by the State Government (Annexure "O" to Special Civil Application No. 287 of 1973) issued u/s 112 appointing Government Officers as Assessment Officers for carrying out and completing the assessment work is

illegal, ultra vires its powers and should be struck down.

3. Notification issued by the Government (Annexure "P" to Special Civil Application No. 287 of 1973) by which the Government appointed Appellate Officers for hearing objections against the assessment made by the Assessment Officers is illegal, ultra vires and is liable to be struck down.

4. The public notice issued by the Assessment Officers (Annexure "Q" to Special Civil Application No. 287 of 1973) declaring that the assessment for the year 1972-73 had been completed by them is illegal and ultra vires and should be struck down.

5. A writ of mandamus be issued requiring the respondents to desist and forbear from enforcing the impugned orders, Annexures "O" and "P".

6. Sub-clause (v) of Clause 10 of Government Resolution No. GIR-4064-2710-P, dated 26th April 1965 be declared ultra vires Sections 99 to 108, 144 and 145.

7. A writ of mandamus be issued directing the Government to pay to Rajkot municipality grant payable to it towards the dearness allowance.

8. A writ of mandamus be issued directing the Government to pay to Rajkot Municipality all expenses incurred on account of the assessment work done by the Assessment Officers and appeals heard by the Appellate Officers.

9. The assessment list prepared for the year 1972-73 by Rajkot Municipality and all orders made and decisions taken in pursuance of the notification dated 10th December, 1972(Annexure "P") are illegal and should be struck down.

5. In Special Civil Application No. 285 of 1973 there is a further prayer by which a declaration is sought that Rule 6 of the "Rules of Rajkot Borough Municipality for the levy of rate (tax) on buildings and lands" is ultra vires S. 2 (1) of the Gujarat Municipalities Act, 1963.

6. The principal question which has been raised for our decision in these petitions is whether the notifications issued by the State Government on 1st August, 1972 and 19th December, 1972 and the public notice issued by the Assessment Officers (Annexure "Q") are ultra vires and void.

7. In order to decide this principal question which has been raised before us it is necessary to refer to the general communication addressed by the State Government to all municipalities on 9th September, 1969. It is a letter which the Director of Municipalities, Gujarat State, addressed to all municipalities in the State and dealt with the subject of four-yearly revision of assessment by the municipalities. It inter alia states as follows:

Under the Grant-in-aid Code a condition has been laid down for the grant of dearness allowance that all municipalities should provide by their Rules for appointment of Government Officers as Assessment Officers and as Appellate Officers for hearing objections against the assessment made. Some of the

municipalities have made such a provision by their Rules. Those municipalities which have made such a provision by their Rules shall have to get the periodical revised assessment made by Government Officers. Those municipalities which are required to get the revised assessments done during, 1970-71 must immediately pass a resolution and forward it in four copies to the respective Collectors in order to enable the latter to appoint Government Officers for the purpose of revised assessment. Those municipalities which have made no such provision should make such a provision immediately by their Rules and get such Rules sanctioned by the Government through the Collector.

8. It is not necessary to reproduce the remaining part of the said letter which is at Annexure "D" to Special Civil Application No. 287 of 1973. This letter was not addressed to Rajkot Municipality in particular. However, Rajkot Municipality was required to consider the implications flowing from that communication. The Tax Superintendent of Rajkot Municipality submitted his note to the municipality on 25th September, 1969. It is at Annexure "E" to Special Application No.287 of 1973. It is not necessary to make any detailed reference to that note.

9. On 13th January 1970 the President of Rajkot Municipality wrote to the Director of Municipalities pointing out to him that the making of assessment and the preparation of assessment list was a statutory duty of the Chief Officer of the municipality u/s 105 of the Act and the hearing of objections against the assessment made by or at the instance of the Chief Officer was a statutory duty of the Executive Committee u/s 108. The municipality had acted accordingly and, therefore, the aforesaid letter stated, nothing remained to be done in the matter. On 20th September, 1971 the Collector of Rajkot wrote to the President of Rajkot Municipality that if the municipality wanted to receive grant from the Government towards dearness allowance payable to its employees, it would be necessary for the municipality under the provisions of the Grant-in-aid Code to have its four-yearly assessment done by Government Officers. He also stated that the four-yearly revision of the assessment of the properties situate within its jurisdiction would become due during 1972-73.

10. Thereafter, the Chairman of the Executive Committee of the municipality wrote a letter to the President of the Municipality in that behalf in which she stated how much work had been done in connection with the revision of assessment and preparation of assessment list. On 29th January, 1972 Rajkot Municipality passed a resolution by which it resolved that in terms of the recommendations made by the Collector of Rajkot the revision of assessment during 1972-73 should be carried out by Government Officers appointed in that behalf. The Vice-President of Rajkot Municipality thereafter on 10th March, 1972 wrote a letter to the Collector of Rajkot and pointed out that it was the Chief Officer whose statutory right it was to prepare the assessment list and that the Act provide for no other alternative method. He also pointed out that any assessment which the Assessment Officers appointed by the Government would do would be contrary to law and would be liable to contrary to law and would be

liable to be challenged in a Court of law. On 30th April, 1972 the Chief Officer of the municipality wrote to the President of the Municipality and pointed out that it was the statutory function of the Chief Officer to have the assessment done and the assessment list prepared. However, by that time the Government had appointed four officers for the purpose of making assessment. He, therefore, sought guidance from the President in the matter and desired that the making of assessment should be postponed until the Assessment Officers appointed by the Government could assume charge of their duties. On 24th April, 1972, the President of Rajkot Municipality wrote a letter to the Minister in charge of Panchayats and Health pointing out the illegality of the direction issued by the Government and the difficulties involved in implementing it. On 29th June, 1972 the Vice-President of Rajkot Municipality wrote a letter to the Minister in charge of Panchayats and Health on the same subject. On 17th July, 1972 the President-in-charge, Rajkot Municipality wrote in similar terms a letter to the Chief Minister of Gujarat and forwarded a copy thereof to the Minister for Panchayats and Health and to the Secretary in charge of the department of municipalities. On 1st August, 1972 the Director of Municipalities made an order by which he appointed 14 officers as Assessment Officers for four yearly revision of assessment and preparation of assessment list for Rajkot Municipality. It stated that the municipality had failed to authenticate the assessment list by 31st July, 1972 as required by the Act and that, therefore, the Government had in exercise of the power conferred upon it by Section 112 made the aforesaid order. On 19th December, 1972 the Government made an order by which it appointed 10 Officers as Appellate Officers for hearing objections against the assessment made by the Assessment Officers appointed by it earlier. The aforesaid two orders are at Annexures "O" and "P" to Special Civil Aviation No. 287 of 1973. The Assessment Officers appointed by the Government carried out the work entrusted to them and published a public notice on 10th November, 1972 announcing to the members of the public that the revised assessment list for Rajkot Municipality had been prepared for 1972-73 and that it was open to the members of the public for inspection. It also invited objections to it. These are the circumstances under which the assessment has been revised by the Assessment Officers appointed by the Government u/s 112 and objections have been heard by the Appellate Officers appointed by the Government.

11. It is the validity of this action on the part of the State Government which is challenged by the petitioners in these two petitions.

12. We now turn to a few sections of the Act which have a bearing on the contention raised before us. Chapter VIII in Gujarat Municipalities Act, 1963 deals with Municipal Taxation Section 99 empowers a municipality to impose any of the taxes specified therein for the purposes of the said Act subject to any general or special orders which the State Government may make in that behalf and also subject to the provisions of Sections 101 and 102. The tax with which we are concerned in these two petitions is covered by clause (i) of sub-section (1) of Section 99. It empowers, subject to the conditions laid down in the

section, a municipality to impose a tax on buildings or lands situate within the municipal borough and it is to be based on the annual letting value or the capital value of the buildings or lands or both. Reference to the rest of the section is not necessary for the purpose of these petitions. Section 100 is not material for the purpose of the present case. Section 101 lays down the procedure to be followed as a preliminary to the imposition of a tax. It, inter alia, requires a municipality to pass a resolution at a general meeting selecting one or more taxes specified in Section 99 and approving "rules prepared for the purposes of clause (1) of Section 271". A detailed reference to Section 101 is not necessary for the purpose of these petitions. Section 102 confers upon the State Government power to refuse to sanction the rules submitted to it u/s 101 and further empowers it to return them to the municipality for further consideration. Section 103 deals with publication of the sanctioned rules with notice thereof to the public. Section 104 enables the State Government to empower a municipality to levy any tax or to increase or reduce the amount or rate of any tax levied u/s 99 within such maximum and minimum limits either as to the amount or as to the rate as may be specified in the notification issued in that behalf. A detailed reference to this section is also not necessary. Section 105 which deals with the preparation of the assessment list is very material for the purpose of these two petitions. Sub-section (1) thereof, inter alia, provides thus:

"When a tax on building or land or both is imposed, the chief officer shall cause an assessment list of all buildings or lands or lands and buildings in the municipal borough to be prepared containing..."

Sub-section (3) thereof, inter alia, provides as under: -

"For the purpose of preparing such assessment list the chief officer or any person acting under his authority may inspect any building or land in the municipal borough and on the requisition of the chief officer the owner or occupier of any such building or land shall, within such reasonable period as shall be specified in the requisition, be bound to furnish a true return, to the best of his knowledge or belief and subscribed with his signature, of the name and place of abode of the owner or occupier or of both and the annual letting value and his estimate of the value of such building or land."

Section 107 which deals with the publication of the notice of assessment list provides as under:

"When the assessment list has been completed, the chief officer shall give public notice thereof and of the place where the list or a copy thereof may be inspected; and every person claiming to be either the owner or occupier of property included in the list, and any agent of such person, shall be at liberty to inspect the list and to make extracts therefrom without charge".

Section 108(1) empowers the chief officer to give a public notice of a date not less than one month after the publication of the assessment list u/s 107 before which objection to the valuation or assessment entered in such list shall be

made. Sub-section (2) thereof provides for the manner in which objections can be made to the assessment list, Sub-section (3) empowers the executive committee of the municipality to hear and decide the objections made to the assessment list after giving the applicant an opportunity of being heard in person or by agent. Sub-section (4) thereof, inter alia, requires that the assessment list shall be authenticated by the signature of the chairman and at least one other member of the executive committee. Section 110 provides that when any building or any portion of a building which is liable to the payment of a tax on buildings or lands or both is demolished or removed, otherwise than by order of the executive committee, the person primarily liable for the payment of the said tax shall give notice thereof in writing to the chief officer. Section 111 provides that it shall not be necessary to prepare a new assessment list every year but requires that the assessment list shall be completely revised every four years. During these four years it is open to the chief officer u/s 111 to adopt the valuation and assessment contained in the list for any year, with such alterations as may be deemed necessary, for the year immediately following.

13. A brief re'sume" of the relevant sections of the Act clearly shows that it is the statutory duty of the chief officer to cause an assessment list of all buildings or lands or lands and buildings in a municipal borough to be prepared when a tax on buildings or lands or both is imposed. Power has been conferred upon the chief officer to inspect any building or land in the municipal borough for the purpose or to authorise any person to perform that function. Next, it is a statutory duty of the chief officer to give public notice of the assessment list after it has been completed. Next, it is also his statutory duty to publish a public notice inviting objections to the assessment list prepared by him or under his authority. Objections which may be lodged against the assessment list are, under the statute, required to be decided by the executive committee of the municipality. It is the chairman of the executive committee and a member thereof who authenticate the assessment list. It is the duty of the owner or occupier of a property, when it or a part thereof has been demolished, to report the fact in writing to the chief officer if it was liable to payment of the aforesaid tax. u/s 111 it is the chief officer whose statutory function it is to have the assessment list revised every four years and to adopt during the intervening years the assessment list earlier prepared with such alternations as he may deem necessary. We have no doubt in our mind, therefore, that under the scheme of the said Act it is the chief officer upon whom jurisdiction and power have been conferred to have the assessment made and the assessment list prepared. The Act nowhere contemplates that the assessment can be made and the assessment list can be prepared by the Assessment Officers appointed by the Government. In our opinion, therefore, the general direction issued to all municipalities by the Director of Municipalities by his letter dated 9th September, 1969 that the four-yearly revision of the assessment list should be got prepared by the municipalities under the said Act by the Assessments Officers appointed by the Government was contrary to and violative of the aforesaid sections of the

said Act to which we have referred. The directions issued by the Director of Municipalities by the aforesaid letter to all municipalities were, in our opinion, absolutely void and of no consequence because they contravened the provisions of the aforesaid sections of the said Act, particularly Sections 105 and 111 thereof. In pursuance of the general directions contained in the aforesaid letter dated 9th September, 1969 the action on the part of the Director of Municipalities, the Collector of Rajkot or the State Government requiring Rajkot municipality to get the revised assessment done and the fresh assessment list prepared during 1972-73 by the Assessment Officers appointed by the State Government was void and of no effect whatsoever. We have no doubt in our mind that the Government had no jurisdiction to issue the said directions to all municipalities in general and to Rajkot municipality in particular.

14. The aforesaid directions have been issued in complete derogation of the statutory provisions referred to above. The aforesaid directions give us a picture of a parallel scheme having been prepared by the Government. The aforesaid directions completely supplant and destroy the aforesaid provisions of the said Act and substitute for the statutory scheme envisaged by the said sections a scheme administratively prepared by the State Government.

15. Mr. Nanavaty who appears on behalf of the State Government has tried to justify it on more than one ground. We see no merits in any of the arguments raised by him. His first argument is that the grant which is paid to a municipality towards the dearness allowance payable to its employees is paid u/s 144 of the said Act. Sub-section (1) of Section 144 empowers the State Government to appoint a Committee to determine whether it is necessary to make any grant to a municipality or municipalities and if so, the amount thereof. This power has been conferred upon the State Government with the object of augmenting the finances of the municipalities for any of the purposes of the said Act. Sub-section (2) thereof upon which Mr. Nanavaty has placed reliance requires to be reproduced in order to understand the implications of the arguments which have been raised before us. It is as follows:

"The grant so determined shall be made to the municipality every year but it may be revised after a period of every five years and for that purpose, the State Government shall appoint a Committee to make recommendations regarding the revision of grants to municipalities and the State Government, before revising the amount of grant, shall take into consideration the recommendations of the Committee."

Relying upon the expression "the State Government shall take into consideration the recommendations of the Committee" used in sub-section (2) of Section 144. Mr. Nanavaty has argued before us that the Committee appointed by the State Government u/s 144 has made a recommendation in its report that those municipalities should be given grant towards dearness allowance under the said section which have got the assessment made and the assessment list prepared by officers appointed by the Government. This argument advanced by Mr.

Nanavaty cannot be accepted for the following reasons. Section 144 does not empower the Committee, appointed thereunder, to make recommendations contrary to the provisions of the statute it does not empower the State Government to implement any such recommendations in violation and supersession of the provisions of the statute. In our opinion, any recommendations, which the Committee makes must be consistent with the provisions and the scheme of the Act. Otherwise they are no recommendations at all. If the Committee makes recommendations which are contrary to the provisions of the Act, they cannot override and supersede the provisions of the Act. They can at the most serve as recommendations for amending the statute, if so thought fit. Such recommendations cannot be accepted and directly implemented so as to nullify the law and abrogate it.

16. The next argument which Mr. Nanavaty has raised in reply is founded upon the opening part of sub-section (1) of Section 99. It reads thus: -

"Subject to any general or special orders which the State Government may make in this behalf and to the provisions of Sections 101 and 102, a municipality may impose for the purposes of this Act any of the following taxes, namely: -"

Reliance has been placed by Mr. Nanavaty on the expression "Subject to any general or special orders which the State Government may make in this behalf" used in sub-section (1) of Section 99. According to him, the aforesaid expression empowers the State Government to lay down or prescribe any kind of conditions it thinks fit. In our view, the argument advanced by Mr. Nanavaty is unsound and devoid of merit for the following reasons. The aforesaid expression has, in our opinion, the narrow connotation. It empowers the State Government to issue general or special orders only in relation to the subject-matter of sub-section (1) of Section 99, that is to say, selection of any of the taxes for imposition and matters incidental thereto as laid down in sub-section (1). The aforesaid expression does not empower the State Government to make orders or issue directions superseding and supplanting the other express provisions of the Act. It also does not empower the State Government to superimpose its own scheme of making the assessment and preparing the assessment list on the statutory scheme laid down by Sections 105 to 111.

17. The third argument which Mr. Nanavaty has raised before us is founded upon sub-section (3) of Section 105. He has relied upon this sub-section and subsection (3) of Section 108 to justify the directions issued by the Director of Municipalities by his letter dated 9th September, 1969 (Annexure "D" to the petition). Sub-section (3) of Section 105 provides as follows: -

"For the purpose of preparing such assessment list the chief officer or any person acting under his authority may inspect any building or land in the municipal borough and on the requisition of the chief officer the owner or occupier of any such building or land shall, within such reasonable period as shall be specified in the requisition, be bound to furnish a true return, to the best of his knowledge or

belief and subscribed with his signature, of the name and place of abode of the owner or occupier or of both and the annual letting value and his estimate of the value of such building or land."

Mr. Nanavaty has relied upon the expression "the chief officer or any person acting under his authority" used in subsection (3) quoted above. According to him, Government Officers appointed for the purpose of carrying out the assessment work would be acting under the authority of the chief officer. Therefore, according to him, the aforesaid directions issued by the Director of Municipalities satisfy the requirements of sub-section (3) of Section 105 in so far as the appointment of Assessment Officers is concerned and they are valid. We see no merit in this argument raised by Mr. Nanavaty. If a municipality is directed to appoint Government Officers as Assessment Officers under the threat of suspending or withholding the grant payable to it u/s 144, they cannot be said to be persons acting under the authority of the chief officer. A person can be said to act under the authority of the chief officer if the chief officer has freely, willingly and without any duress, compulsion or threat and without any extraneous or irrelevant considerations has authorised him under sub-section (3) of Section 105 to act. An action done by a chief officer at the point of a bayonet is no action at all and cannot be said to have been done in compliance with law enacted by a democratic legislature in a free society governed by Rule of Law.

18. So far as the aforesaid directions relate to the appointment of Government Officers as Appellate Officers, Mr. Nanavaty has tried to justify them under second proviso to sub-section (3) of Section 108. Sub-section (3) and second proviso thereto provide as follows:

"The executive committee, after allowing the applicant an opportunity of being heard in person or by agent, shall-

- (a) investigate and dispose of the objections.
- (b) cause the result thereof to be noted in the book kept under sub-section (2), and
- (c) cause any amendment necessary in accordance with such result to be made in the assessment list

Provided further that powers and duties of the executive committee under this sub-section may be transferred to any other committee appointed by the municipality or with the permission of the Development Commissioner, to any officer or pensioner of the Government".

This argument raised by Mr. Nanavaty is also unsound and devoid of any merit. Second proviso to sub-section (3) of Section 108 enables a municipality to transfer powers and duties of the executive committee inter alia to any officer or pensioner of the Government. The transfer by a municipality of the powers and duties of the executive committee to any such officer or pensioner must be a free and willing act and not done under the duress, compulsion or threat of losing the

grant. If a municipality is forced at the point of a bayonet to transfer to Government Officers the powers and duties of the executive committee or if it has done so for extraneous or irrelevant considerations or for considerations not germane to the Act, it is no transfer at all. That, in our opinion, is the essence of rule of law in a free democratic society.

19. If the municipality or the chief officer is asked by the Government to choose between two evils- (i) appointment of Government Officers as Assessment Officers and Appellate Officers and (ii) the loss of grant in case such appointments are not made and if the Government has done so with the object of assuming to itself the power which the municipality or the chief officer will otherwise exercise and if the municipality or the chief officer chooses a lesser evil and abdicates its or his statutory functions in favour of the Government, it cannot be justified under the law. In other words, law cannot be prostituted to justify such an action. In our opinion, the Government has no power, authority or jurisdiction to create circumstance, to force a local body or its statutory officer to abdicate its or his statutory functions. That is what exactly the Government tried to do by issuing the directions through the Director of Municipalities by letter dated 9th September, 1969 (Annexure "D" to the petition). The four-fold defence which Mr. Nanavaty has raised has, in our opinion, no merits. It is, therefore, rejected.

20. For the reasons stated above, we hold that the directions contained in the letter dated 9th September, 1969 from the Director of Municipalities to all municipalities in the State are void, illegal and ultra vires Sections 105 and III of the Gujarat Municipalities Act, 1963. Mr. Mehta, appearing for Rajkot Municipality has supported the petitioners on this aspect.

21. The next question which has arisen for our consideration is whether the two orders issued by the Government appointing Assessment Officers and Appellate Officers (Annexures "O" and "P" to the petition) are otherwise justified and valid under sub-section (1) of Section 112. Sub-section (1) provides as follows:

"Where in any year a new assessment list is prepared or a list is revised or the valuation and assessment contained in the list for the year immediately preceding is adopted with or without alteration, such new, revised or adopted assessment list shall be authenticated in the manner provided by Section 108 at any time not later than the thirty-first day of July of the official year to which the list relates, and if it is not so authenticated, then the State Government, shall appoint such person or persons as it thinks fit to prepare, revise or adopt and authenticate the assessment list and thereupon such person or persons shall duly prepare, revise or adopt, or as the case may be, authenticate such list at any time before the last day of the official year to which such list relates, and Sections 105 to 108 or Section 111 shall, so far as may be necessary, apply to the preparation, revision or adoption of the list, as the case may be, by the person or persons appointed by the State Government to authenticate the list."

The argument, which has been advanced by Mr. Nanavaty, is that in any case the municipality had not authenticated the assessment list before 31st July, 1973 and that, therefore, the Government was justified in making the two orders (Annexures "O" and "P" to the petition). In our opinion, the Government derives its power to act under this section if failure of the municipality to authenticate the assessment list has occurred on account of its inaction, indifference, negligence, carelessness, incompetence or inefficiency to discharge its duties or such other reasons whose occurrence it could have prevented, given vigilance and efficiency on its part to perform its statutory functions and discharge its statutory duties. However, if a superior authority like the Government has created circumstances or held out threats by which a municipality has been prevented from performing its statutory functions and discharging its statutory duties, it is not the failure on the part of the municipality to authenticate the assessment list within the contemplation of sub-section (1) of Section 112 more particularly so when such a failure has been forced on it by the Government with the object of assuming to itself the power to take over the functions of the municipality. Where there are such circumstances, it is a blatantly colourable exercise of power. Therefore, if the two impugned orders (Annexures "O" and "P") have been made by the State Government, under the aforesaid circumstances, in colourable exercise of its power with the object of forcing upon the municipality failure to perform its functions and discharge its duties under the pain of losing its statutory grant u/s 144, they would be liable to be struck down. However, in the instant case it is difficult to say that the municipality has not voluntarily succumbed to the pressure from the Government and entered the trap laid for it. The circumstances which we chronologically mention below bear a testimony and show how the municipality has behaved in the matter. On 29th January, 1972 it passed a resolution to appoint Government Officers for the purpose of carrying out the assessment work and did not challenge the directions issued by the Director of Municipalities by his letter dated 9th September, 1969 (Annexure "D" to the petition). The municipality really appears to have acquiesced in them. The next event which happened was that on 22nd March, 1972 four officers were appointed by the Government for the purpose of carrying out the assessment work. This fact is borne out by the letter which the chief officer of the municipality wrote on 30th April, 1972 to the President of the municipality (Annexure K to Special Civil Application No. 287 of 1973). The municipality did not challenge that action of the Government but also acquiesced in it. It really should have challenged the validity of that action. Thirdly, the municipality carried out no assessment work until 31st July, 1973. It spent or wasted time in correspondence with the Government. In reality the chief officer ought to have carried out the assessment work in discharge of his statutory duty and the executive committee ought to have heard and decided the objections against the assessment made or caused to have been made by the chief officer and the assessment list ought to have been duly authenticated. If the municipality had discharged its statutory duties and performed its statutory functions we would have found no hesitation whatsoever in quashing the

appointments made by the Government by the aforesaid two orders of the Assessment Officers and the Appellate Officers and all work done by them. The chief officer and the executive committee after having fully performed their statutory duties ought to have faced any actions which the Government might take against them including one of withholding the statutory grant and challenged them before us or in the Civil Court. Failure on the part of the chief officer and the executive committee to act in the manner indicated above led to the failure on their part to authenticate the assessment list. Such a failure cannot be solely attributed to compulsion exercised by the Government by issuing unlawful directions. It is, in our opinion, more attributable to the unwillingness on the part of the chief officer and the executive committee to perform their statutory duties. Therefore, irrespective of whether the Government had issued the aforesaid unlawful directions to all the municipalities there was some justification for the State Government to act under sub-section (1) of Section 112 to save the loss revenue to the municipality. Under these circumstances, we are of the opinion that it is not open to the petitioners to challenge the validity of the two impugned orders (Annexures "O" and "P"). Since they are in our opinion, valid, public notice of the assessment list published for the benefit of the members of the public (Annexure "Q" to the petition must be necessarily held to be valid. The public notice (Annexure "Q", only represents a follow-up action. For these reasons we uphold the validity of the two impugned orders (Annexures "O" and "P") and the public notice (Annexure "Q"). Mr. Mehta, appearing for Rajkot municipality has supported the respondent No. 1, State of Gujarat on this second aspect. Special Civil Application No. 287 of 1973 therefore fails and is dismissed.

22. In Special Civil Application No.285 of 1973 Mr. Hathi has raised two more contentions before us. According to him, Rule 6 of the Rules of Rajkot Borough Municipality "for the levy of rate (tax) on buildings and lands" is ultra vires Section 99(1)(i) read with Section 2(1) of the Act. He has tried to argue that the criteria of valuation laid down by Rule 6 do not conform to those laid down by sub-section (1) of Section 2.

23. Mr. Mehta who appears on behalf of Rajkot municipality has made a statement to us that the municipality while making the assessment shall apply the criteria and principles laid down by clause (i) of sub-section. (1) of Section 99 read with sub-section (1) of Section 2 of the Act in light of the principles laid down by the Supreme Court in Corporation of Calcutta Vs. Life Insurance Corporation of India, in The Guntur Municipal Council Vs. The Guntur Town Rate Payers' Association etc., and by this High Court in the Anant Mills Co. Ltd. v. State of Gujarat, (1973) 14 Guj LR 826. In view of this statement made by Mr. Mehta to us Mr. Hathi has not pressed for our decision on the contention raised by him.

24. The next contention which Mr. Hathi has raised relates to the merits of the assessment made by the Assessment Officers appointed by the Government. We do not think we can examine the merits in these petitions of all individual

assessments made by the Assessment Officers. It would be open to the petitioners or the persons aggrieved to challenge them on their merits before the appropriate forum. Mr. Hathi has raised no other contentions in any of these petitions before us.

25. In the result, Special Civil Application No. 285 of 1973 fails and is dismissed.

26. Rule in both the petitions is discharged with no order as to costs in the circumstances of the case.

27. Applications dismissed.