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(2002) 02 BOM CK 0125

In the Bombay High Court

Case No : Writ Petition No. 543 of 1993

Dr. Satish Dattatray Shivalkar APPELLANT

Vs

Pimpri Chinchwad Municipal Corporation and Another RESPONDENT

Date of Decision : 06-02-2002

Acts Referred:
Bombay Provincial Municipal Corporations Act, 1949 — Section 2(44)

Citation : AIR 2002 Bom 244 : (2002) 4 BomCR 183 : (2002) 2 BOMLR 25 : (2002) 2 MhLj 619

Hon'ble Judges : S.A. Bobde, J;R.M. Lodha, J

Bench : Division Bench

Advocate : Aniketa Aher-Sawant, for A.V. Anturkar, for the Appellant;

Final Decision : Partly Allowed

Judgement

R.M. Lodha, J.—By this petition, the petitioner prays for quashing and setting aside the special notice dated 8-1-1991 (Annexure "D"), special notice dated 8-1-1991 (Annexure "E"), bill dated 12-12-1991 (Annexure "G") and bill dated 12-12-1991 (Annexure "H).

2. The grievance of the petitioner arises in the following circumstances :

The petitioner has properties bearing Nos. P/B/3/1/101 and P/B/3/1/103 being residential flats at Ajmeera Housing Complex, Pimpri, Pune, (for short, "the said property"). The petitioner is running his hospital in the said property since 1985. The said property has been assessed as residential complex for the purposes of property taxes. By the impugned notices and bills, the said property is sought to be assessed as commercial complex with retrospective effect from 1985 for the purposes of property taxes. According to the petitioner, the demand raised by the respondents is unlawful and in contravention of the provisions of the Bombay Provincial Municipal Corporations Act, 1949 (for short, "Act of 1949") and the rules framed thereunder. It is the case of the petitioner that he has filed objections to the notices both dated 16-1-1991, but the respondents have not considered the petitioner''s objections and if considered, has not intimated the decision taken on the said representations and instead issued two bills dated 12-12-1991. The only challenge to the aforesaid notices dated 8-1-1991 and the bills dated 12-12-1991 is to the extent the amendment has been made in the assessment book with retrospective effect. According to the petitioner, the said action is in clear violation of Rule 20 of Taxation Rules (Chapter VIII) of the Act of 1949.

3. Rule 20 reads thus:

"20. (1) Subject to the provisions of Sub-rule (2) the Commissioner may upon representation of any person concerned or upon any other information at any time during the official year to which the assessment-book relates amend the same --

(a) by inserting therein the name of any person whose name ought to be so inserted or any premises previously omitted;

(b) by striking out the name of any person not liable to the property tax;

(c) by increasing or reducing the amount of any rateable value and of the assessment based thereupon;

(d) by altering the assessment on any land or building which has been erroneously valued or assessed through fraud, accident or mistake;

(e) by inserting or altering an entry in respect of any building erected, re-erected, altered, added to or reconstructed, in whole or in part after the preparation of the assessment-book;

(f) by making or cancelling any entry exempting any premises from liability to any property tax.

(2) Where any amendment is made under Sub-rule (1) which has the effect of imposing on any person any liability for the payment of property taxes which would not be incurred but for such amendment or which has the effect of increasing the rateable value of premises as stated in the assessment-book, a special written notice as provided in Sub-rule (2) of rule 15 shall be given by the Commissioner and, as far as may be, the procedure laid down in rules 16, 17 and 18 shall be followed.

(3) 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."

4. The similar provision occurring in Bombay Municipal Boroughs Act, 1925 (for short, "Act of 1925"), came up for consideration before the Full Bench of this Court in Solapur Municipal Corporation v. Ramchandra Ramappa Madgundi, 1973 Mh.L.J. 128 . The expression "current official year" occurring in Section 82(3) of

the Act of 1925 was construed to mean the earliest day in the official year which is current when the amendment of the assessment list takes place. In other words, the expression "current official year", as per the Full Bench, refers to only that official year which is running at the time when the amendment is made by insertion or alteration of an entry.

5. The aforesaid view of the Full Bench was approved by the Apex Court in Municipal Corporation of City of Hubli Vs. Subha Rao Hanumatharao Prayag and Others, . The Apex Court in paragraph 9 observed thus :

"9. Then again considerable light on this question is thrown by the provision enacted, in Section 82. It is a well settled rule of interpretation that the court is entitled and indeed bound, when construing the terms of any provision found in a statute, to consider any other parts of the Act which throw light on the intention of the legislature, and which may serve to show that the particular provision ought not to be construed as it would be alone and apart from the rest of the Act.

The statute must be read as a whole and every provision in the statute must be construed with reference to the context and other clauses in the statute so as, as far as possible, to make a consistent enactment of the whole statute. Obviously, therefore, Sections 78 to 81 must be so construed as to harmonise with Section 82. They must be read together so as to form part of a connected whole. Section 82, Sub-section (1) provides for making of an amendment in the assessment list by insertion, or alteration of an entry in certain events after hearing objections which may be made by any person interested in opposing the amendment. Subsection (3) of Section 82 makes the amendment effective from "the earliest day in the current official year on which the circumstances justifying the entry or alteration existed". The expression ''current official year'' in the context in which it occurs in Section 82, Sub-section (3) clearly signifies the earliest day in the official year which is current when the amendment in the assessment list takes place and that expression refers only to the official year which is running at the time when the amendment is made by insertion or alteration of an entry under Sub-section (1) of Section 82. It would, therefore, seem clear, on a combined reading of Sub-sections (1) and (3) of Section 82, that an amendment, in order to be effective in levying tax for an official year, must be made during the currency of the official year. That is now well settled as a result of several decisions of the Bombay High Court culminating in the Full Bench decision in Sholapur Municipal Corporation v. Ramchandra (supra) and we do not see any reason to take a different view. Now the scheme of Sections 78 to 81 is identical with that of Section 82 and in both cases what is contemplated first is a proposal to which objections are invited and 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 liability in the ratepayer. It must follow a fortiori that if an alteration in the assessment list, in order to fasten liability on the ratepayer, is required to be made during the currency of the official year, equally, on a parity of reasoning, the assessment list, in order to give rise to liability in the ratepayer, must also be authenticated before the expiry of the official year. Moreover, it is difficult to believe that the legislature did not intend that there should be any time limit in regard to the levy of tax for an official year and that the tax should be legally leviable at any time after the close of the official year. There is, in our opinion, sufficient indication in the various provisions of the Act to show that the authentication of the assessment list, in order to be valid and effective, must be made within the official year, though the tax so levied may be collected and recovered even after the expiry of the official year."

6. Subsequently in Kalyan Municipal Council and Others Vs. Usha Paper Products (P) Ltd. and Another, , the Apex Court while dealing with the identical provisions contained in Maharashtra Municipalities Act, 1965 followed its earlier judgment given in Municipal Corporation of City of Hubli (supra) and in paragraph 5 of the report held thus :

"5. The aforesaid statement in the judgment of this Court clearly shows that the decision of the Full Bench of the Bombay High Court in Sholapur Municipal Corporation v. Ramchandra was approved by this Court. The decision of the aforesaid Bench of this Court is binding on us and is clearly applicable to the case before us. In that judgment this Court pointed out that once it was accepted 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 that the authentication must take place in the official year."

7. Section 2(44) of the Act of 1949 defines "official year" thus : "2(44) "official year or year" means the year commencing on the first day of April."

8. The law laid down by the Full Bench of this Court in Solapur Municipal Corporation and approved by the Apex Court in Municipal Corporation of City of Hubli and further re-iterated in Kalyan Municipal Council is applicable on all fours in the light of the statutory provision contained in Rule 20(1)(e) and definition of the expression "official year" occurring in Section 2(44). Any amendment in the assessment book by inserting or altering an entry in respect of any building erected, re-erected, altered, added to or reconstructed in whole or in part of the assessment book shall be and can only be effective during the currency of official year. The expression "official year" defined u/s 2(44) of the Act of 1949 read with Rule 20(1)(e) indicates without doubt the legal position that the property tax being tax for the official year must be levied only during the official year. In view thereof, it was not open for the Commissioner to amend or alter assessment entry of petitioner''s property with retrospective effect. In other words, the demand of property tax raised for the period from 1-4-1985 to 31-3-1990 vide demand notices dated 8-1-1991 cannot be justified and to that extent the notices as well as the demand bills have to be modified.

9. We, accordingly, partly allow the writ petition and partially quash the special notices dated 8-1-1991 (Annexures "D" and "E") and bills dated 12-12-1991 (Annexures "G" and "H") to the extent demand of property tax has been raised with retrospective effect for the period from 20-5-1985 till 31-3-1990. The respondents may, accordingly, issue fresh demand of property taxes as per the aforesaid observations.

10. No costs.