

(1962) 02 BOM CK 0004

In the Bombay High Court

Case No : A.F.O.D. No's. 195 and 196 of 1956 and Appeal No's. 291 and 292 of 1960

Municipal Committee, Dhamangaon and Another

APPELLANT

Vs

Hirabai and Others

RESPONDENT

Date of Decision : 20-02-1962

Acts Referred:

Bombay District Municipal Act, 1901 — Section 167A
Bombay Municipal Boroughs Act, 1925 — Section 206
Central Provinces and Berar Municipalities Act, 1922 — Section 241(1), 48, 48(1), 48(2), 66(1)
Constitution of India, 1950 — Article 276, 276(2)
Contract Act, 1872 — Section 72
Government of India Act, 1935 — Section 142A, 142A(1), 142A(2)
Professions Tax Limitations Act, 1941 — Section 2, 3

Citation : AIR 1963 Bom 225 : (1962) 64 BOMLR 602 : (1963) ILR (Bom) 612

Hon'ble Judges : Palekar, J;Naik, J

Bench : Division Bench

Advocate : C.P. Kalele, in A. Nos. 195 and 196 of 1956, S.V. Natu and N.A. Athalye, for the Appellant; C.P. Kalele in A. Nos. 291 and 292 of 1960, S.N. Kherdekar, G.R. Mudholkar, B.R. Mandlekar and M.R. Mndlekar, for the Respondent

Judgement

Palekar, J.—These four appeals arise out of four suits filed for the recovery of certain amounts by way of refund of tax alleged to have been illegally recovered by the Municipal Committee, Dhaman-gaon. The two First Appeals are from decrees passed by the learned Second Additional District Judge, Amravati in Civil Suits Nos. 17-A of 1952 and 18-A of 1952 respectively. The other two Second Appeals arise out of two suits filed in the Court of Civil Judge (Junior Division), Chandur, being suits Nos. 100-B of 1956 and 70-B of 1957 respectively. All the suits were substantially decreed by the trial Courts. From the suits decreed by the learned Civil Judge, Junior Division, Chandur, appeals were filed to the District Court, the appeals being Nos. 44-B and 45-B of 1959. The learned District Judge reversed the two decrees passed by the trial Court and dismissed

the suits. From that order the two Second Appeals have been filed in this Court.

2. All these appeals were heard together as the more important points involved were common to all the appeals. The principal point is about limitation and the question for determination is whether under the provisions of Section 48 of the Central Provinces and Berar Municipalities Act, 1922, which provides for a notice of two months and a limitation of six months from the date of accrual of the cause of action, all these suits are barred. If not so barred, the next questions would be whether in view of the particular pleadings made in the various suits, the suits will not be barred by the relevant provisions of the Limitation Act. Incidentally it was also argued for the Municipal Committee that the suits did not lie in view of the provisions of Sections 83, 84 and 85 of the C. P. and Berar Municipalities Act, 1922.

3. A few facts are necessary to be stated to understand the principal issues involved in the case. The Municipal Committee, Dhaniangaon, which is the defendant in all these suits, was prior to 1940 a Notified Area Committee. In exercise of the powers conferred by clause (a) of Sub-section (1) of Section 241 of the C. P. and Berar Municipalities Act, 1922, on 22nd December 1936, the Local Government imposed a tax under Clause (b) of Sub-section (1) of Section 66 of that Act on persons carrying the trade of ginning and pressing cotton by means of steam or mechanical process within its limits. The tax was one anna for each boza of 392 lbs. ginned and one anna for each bale of 392 lbs pressed.

4. The Notified Area Committee became a Municipal Committee in the year 1940, and by an amendment dated 10th April 1941, the Municipal Committee, in exercise of the powers conferred by Section 6S of the C. P. and Berar Municipalities Act, 1922 amended the notification dated 22nd December 1936 by substituting the rate of four annas in the place of one anna. It also directed that the amendment shall come into operation on 1st August 1941. Taxes were recovered at the enhanced rate from all persons carrying on the trade of ginning and pressing cotton by means of steam or mechanical process within the Municipal limits, including the plaintiffs in these suits, without challenge, right down to 1950.

5. It is the case of the plaintiffs in the suits from which the two First Appeals have been filed that they came to know for the first time in December 1951 that the recovery of the enhanced tax from them was illegal and ultra vires. The Municipal Committee was contemplating further enhancement of the tax to one rupee per bale and boza and since the proposed taxation was going to affect them very much adversely, they consulted their legal adviser who told them that not only the contemplated tax was illegal but even the recovery made so far under the enhanced rate imposed from 1st August 1941 was illegal. Therefore, after considering the position, they gave a notice on 10th January 1952 not only demanding the refund of the excess amount paid by them but also informing the Municipal Committee that the tax which was being recovered from them was illegal in view of the provisions of Section 142A of the Government of India Act,

1935 and Article 276 of the Constitution of India which prohibited recovery of a tax on profession or trade in excess of Rs. 50/- and Rs. 250/- respectively. They agreed that in view of the proviso to Sub-section (2) of Section 142A of the Government of India Act, 1935 and similar proviso to Sub-clause (2) of Article 276 of the Constitution of India, the original tax at the rate of one anna which was in force on 31st March 1939 was legally leviable, but they alleged that as the maximum limit laid down in Section 142A of the Government of India Act, 1935 was much below the then existing incidence of tax, no further enhancement was permissible so far as the plaintiff's factories were concerned which had been paying all through the years in excess of the ceilings imposed by the above two constitutional provisions. They, therefore, contended flat the enhancement of the rate by the notification dated 10th April 1941 was illegal and hence they were entitled to claim back the amount they had paid to the Municipal Committee under a mistake of law as provided in Section 72 of the Indian Contract Act. The plaintiff in Civil Suit No. 17-A of 1952 (First Appeal No. 195 of 1956) alleged that the excess amount recovered from her from 1-8-1944 to 13-6-1952 was Rs. 7373/7/- and the plaintiff in Civil Suit No. 18-A of 1952 (First Appeal No. 196 of 1956) alleged that the excess amount recovered from them was Rs. 11215/33/- for the period 29-3-1949 to 27-8-1952.

6. In the two suits which have given rise to the two Second Appeals, no mistake of law was pleaded but, otherwise, contentions were raised with regard to the illegality of the imposition, and recovery on similar grounds. In Civil Suit No. 100-B of 1956 (Second Appeal No. 291 of 1960) the excess amount claimed is Rs. 1723/11/3 recovered by the Municipal Committee from the plaintiff on 27-8-1953. In Civil Suit No. 70-B of 1957 (Second Appeal No. 292 of 1960) the excess amount has been recovered on two dates, namely. 15-3-1954 and 20-3-1954 and amounts to Rs. 2633/1/9.

7. The Municipal Committee did not admit that the levy was illegal or in contravention of the constitutional provisions. Its principal contention was that though bills were served by the Committee for the recovery of sums above the limits permitted by the two constitutional provisions and recoveries were also made accordingly, the act of imposition and recovery of the tax had been done or purported to be done under the C. P. and Berar Municipalities Act, 1922 and, therefore, u/s 48(2) of that Act the suits were liable to be dismissed as they had not been instituted within six months from the date of the accrual of the cause of action for the refund, that is to say, from the date of the payment. In respect of a few items which had been recovered within six months prior to the filing of the suit, no suit could lie in respect of them as no notice had been given as required by Section 48(1).

8. Section 48 referred to above reads as follows:

"48. (1) No suit shall be instituted against any committee or any member, officer or servant thereof or any person acting under the direction of any such committee, member, officer or servant for anything done or purporting to be

done under this Act, until the expiration of two months next after notice in writing, stating the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims, has been, in the case of a committee, delivered or left at its office, and, in the case of any such member, officer or servant or person as aforesaid, delivered to him or left at his office or usual place of abode; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) Every such suit shall be dismissed unless it is instituted within six months from the date of the accrual of the alleged cause of action.

..... "

9. Now it is contended for the plaintiffs that the recovery of the enhanced tax was illegal and ultra vires and, therefore, a claim for the refund of the same fell outside the provisions of Section 48 of the C. P. and Berar Municipalities Act, 1922. For this proposition reliance was placed on the decision of the former Nagpur High Court in AIR 1949 215 (Nagpur) . In that case the Municipal Committee Karanja had enhanced a tax on ginned cotton from 10 picas per boja to two annas per boja. It was contended in that case that this enhancement contravened the provision of Section 142A of the Government of India Act, 1935 and it was held that it did. As regards the application of Section 48 of the C. P. and Berar Municipalities Act, 1922 the learned Judges said:

"Section 48 comes into play only when the act is done or is purported to be done under the Municipalities Act. As we have said, that is not the case here because its action is something which is prohibited by law, and so wholly beyond its jurisdiction, and therefore Section 48 does not apply."

Reliance was further placed on a recent decision of this High Court in Gajadhar Hiralal Vs. The Municipal Committee, Basim, . In that case the Municipal Committee, Washim was recovering a tax for cotton pressed in a factory at the rate of Rs. 0-2-3 per bale till 1-4-1941. The tax was raised to 0-4-0 from 1-4-1941. The amount of the tax for a year at that rate amounted to more than Rs. 250/-. The assessee contended that this tax was ultra vires the Committee on the ground that it contravened the provisions of Section 142A of the Government of India Act, 1935 and also those of Article 276(2) of the Constitution. It was held that the enhancement of the tax in excess of Rs. 50/- was ultra vires the provisions of the Government of India Act, Section 142A, and in excess of Rs. 250/- ultra vires the provisions of Article 276(2) of the Constitution. The plaintiffs rely on these decisions for contending that what was ultra vires or illegal cannot be regarded as having been done or purported to be done u/s 48(1) of the C. P. and Berar Municipalities Act, 1922 and, therefore, Section 48(2) of that Act was no bar to the suit. The above two decisions are by a Division Bench. There is a subsequent decision by a Single Judge of this Court reported in Municipal Committee, Warud v. Govirdji, 1959 Nag LJ (NC) 1. In that case the Municipal Committee, Warud levied a boja tax at annas 8 per boja on

raw cotton as a result of which the plaintiff in that suit had to pay Rs. 447/8/-. He sued for refund of the excess over Rs. 250/- and the question arose whether want of notice u/s 48(1) of the C. P. and Berar Municipalities Act was a bar to the suit. It was held that the tax was in contravention of Article 276(2), Constitution of India and was ultra vires of the powers of the Municipal Committee and hence no notice u/s 48 was necessary. Relying on these decisions it was contended for the plaintiffs that Section 48 had no application to the case and the question about the limitation should be considered apart from that section.

10. On the other hand, it was contended on behalf of the Municipal Committee that the nice distinction between what is illegal or ultra vires and what is merely wrongful had not been considered in the above cases, and the decisions which really apply to the facts of this case were those reported in the Jalgaon Borough Municipality Vs. Khandesh Spinning and Weaving Mills Co. Ltd., and the The Municipality of Chopda Vs. Motilal Manekchand and Another, . both of which decisions are by a Division Bench. In the first mentioned case the Municipality levied an octroi duty on fuel oil or furnace oil which was not comprised in the items enumerated in the Octroi Rules and by-laws. . In a claim for refund of the amount wrongfully levied the question had to be considered whether the recovery of the tax from the Mills was done or purported to have been done under the Bombay Municipal Boroughs Act, 1925. Section 206 of that Act, which is analogous to Section 43 of the C. P. and Berar Municipalities Act, 1922, provided as follows:

"No person shall commence any suit against any municipality or against any officer or servant of a municipality or any person acting under the orders of a municipality for anything done or purporting to have been done in pursuance of the Act, without giving two months" previous notice in writing of the intended suit and of the cause thereof, nor after six months from the date of the net complained of;"

Explaining the expression "done or purporting to have been done in pursuance of this Act", Bhag-wati, J. remarked:

"The acts which would fall within the category of those "done or purporting to have been done in pursuance of this Act could only be those which were done under a vestige or semblance of authority or with some show of a right. If an act was outrageous and extraordinary or could not be supported at all, not having been done with a vestige or semblance of authority, or some sort of a right invested in the party doing that act, it would certainly not be an act which is "done or purports to have been done in pursuance of the Act.". The distinction between ultra vires and illegal acts, on the one hand, and those purporting to be done in pursuance of the Act, on the other, is quite well known.....

The distinction is really between ultra vires and illegal acts, on the one hand, and wrongful acts, on the other--wrongful in the sense that they purport to have been done in pursuance of the Act; they are intended to seem to have been done

in pursuance of the Act and are done with a vestige or semblance of authority, or sort of a right invested in the party doing those acts. If the defendants, therefore, not having the power to levy octroi duty at all, either wholly or in regard to some classes of goods, had purported to levy the same, it would certainly have been an act which was outrageous and extraordinary, with not a vestige or semblance of authority, or not even a shadow of a right."

The learned Judges held in that case that the defendants did have power to impose octroi duty and, though on a wrong interpretation, the Municipality thought that it was entitled to levy octroi duty on fuel oil or furnace oil, what the Municipality purported to do could not be said to be illegal or outrageous and extraordinary but purported to be done in pursuance of the Act and the Municipality's action was well within the terms of Section 206 of the Municipal Boroughs Act and, therefore, Section 206 applied to the case. This decision was followed in *The Municipality of Chopda Vs. Motilal Manekchand and Another*, referred to above, where the facts are very similar to the facts of the cases before us so far as this particular point is concerned. In that case the Municipality had levied a tax known as the "cotton manufacturing tax" at the rate of one anna for every bale of cotton pressed within the municipal limits. In 1924 the tax was enhanced to annas eight for each pressed cotton bale. In 1949, that is to say, after Section 142A of the Government of India Act, 1935 came into force the Municipality enhanced the tax to one rupee for every bale of cotton full-pressed within the municipal limits. Bills were served at the enhanced rate in 1950 and 1951 and the same were paid under protest. Thereafter a notice was served on the Municipality on May 20, 1952 challenging the validity of the tax and calling upon the Municipality to refund the tax already paid under protest. The plaintiffs pleaded inter alia that the levy of the cotton manufacturing tax contravened Section 142A of the Government of India Act, 1935 and Article 276 of the Constitution in that the amount demanded as tax from the plaintiffs was in excess of the maximum permissible. The learned Judges held that the cotton manufacturing tax was a tax on trade and subject to the ceiling provided by Article 276 of the Constitution. Coming to the question of refund, however the learned Judges pointed out that u/s 167-A of the Bombay District Municipal Act, 1901, which was held to be analogous to Section 206 of the Bombay Municipal Boroughs Act, 1925, a suit will not lie against a municipality in respect of any act done in pursuance or execution or intended execution of the Act unless it was commenced within six months next after the accrual of the cause of action and until the expiration of one month after notice in writing had been delivered or left at the office of the municipality. The learned Judges held that the Municipality had been levying the cotton manufacturing tax with the sanction of the local Government since the year 1920, and even after Act XX of 1941 was passed the tax was continued to be levied and the local Government permitted alteration of the incidence of taxation, The Municipality, on the assumption that it was entitled to levy the tax, continued to demand and collect the same. In these circumstances the learned Judges held that the tax was levied and collected in

"execution or intended execution of" the Act. The words used in Section 206 of the Bombay Municipal Boroughs Act, 1925, are "acts done or purporting to have been done in pursuance of" and the words used in Section 167-A of the Bombay District Municipal Act, 1901 are "Acts done in pursuance or execution or intended execution of" that Act. This distinction was pointed out to the learned Judges, but the learned Judges remarked that the difference in the phraseology did not justify them in holding that the principle in *Jalgaon Borough Municipality Vs. Khandesh Spinning and Weaving Mills Co. Ltd.*, referred to above was inapplicable. They remarked that the municipality levied the cotton manufacturing tax in execution or intended execution of the Bombay District Municipal Act, 1901, and even if the municipality acted beyond its authority, the act may be regarded as wrongful or irregular, but it cannot be regarded as ultra vires.

11. It is contended for the Municipal Committee here, relying on these two decisions, that the tax had been duly imposed to start with, that it was duly increased in 1941 and all the acts necessary for the proper imposition and levy of the tax under the C. P. and Berar Municipalities Act, 1922, had been duly done. The most that could be said was that some constitutional provisions made the recovery of the tax above a certain ceiling wrongful; otherwise, everything that had been done by the Municipal Committee was done or purported to be done under the provisions of the C. P. and Berar Municipalities Act, 1922 and hence no challenge could be made to that act except in the manner and within the time provided by Sec, 48 of. the Act. It was argued that the Committee had the power to impose a tax because Section 66(1)(b) permits the imposition of a tax on persons exercising any profession or art, or carrying on any trade or calling, within the limits of a municipality. The procedure required for imposing the tax, as provided in Section 67, had been gone through. Section 68 made provision for the procedure for abolishing or varying the taxes. Accordingly, following the procedure prescribed by this section, the Municipal Committee varied the incidence of the tax by increasing the rate from one anna to four annas. No limit has been placed by the Act itself on the power of the Municipal Committee to impose the tax and, therefore, merely because in certain given cases the bill to be recovered may exceed the limits imposed by the Government of India Act or the Constitution, it could not be contended that the variation made in the rate in 1941 was illegal or ultra vires. For that matter, it was possible to contemplate cases where, in spite of a charge being made at the rate of four annas per boja or bale, the total recovery to be made from a party may not exceed the limits of Rs. 50/- or Rs. 250/-imposed by the Constitutional provisions. It was hence contended that the levy of the tax as per the rates prescribed by the amendment of the Rules in 1941 was nothing but an act done or purported to be done under the Act, and not ultra vires the Act.

12. It is clear from what has been stated above that the question of the application of Section 48 of the C. P. and Berar Municipalities Act, 1922, really depends on the determination of the question whether the act of recovery of the

tax in excess of the limits provided by the Constitutional provisions is an illegal act or merely a wrongful act purported to be done under the Act. The decision cited for the plaintiffs seem to hold that since the enhanced tax was in contravention of the Constitutional provisions, it was ultra vires. On the other hand, the decisions relied upon by the Municipal Committee seem to suggest that the recovery of the excess over the Constitutional limits was not ultra vires but merely wrongful or irregular. The view taken in *The Municipality of Chopda Vs. Motilal Manekchand and Another*, is that the tax after enhancement was merely subject to the ceiling provided by Article 276 of the Constitution, and when the Municipality levied the same in execution or intended execution of the Act (Bombay District Municipal Act, 1901), the act was to be regarded as wrongful or irregular but could not be regarded as ultra vires.

13. Sub-sections (1) and (2) of Section 142A of the Government of India Act, 1935, provide as follows :

"142A. (1) Notwithstanding anything in section one hundred of this Act, no Provincial Law relating to taxes for the benefit of a Province or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.

(2) The total amount payable in respect of anyone person to the Province or to any one municipality, district Board, local board, or other local authority in the Province by way of taxes on professions, trades, callings and employments shall not, after the thirty-first day of March nineteen hundred and thirty-nine, exceed fifty rupees per annum :

Provided that, if in the financial year ending with that date there was in force in the case of any Province or any such municipality, board or authority a tax on professions, trades, callings or employments the rate, or the maximum rate, of which exceeded fifty rupees per annum, the preceding provisions of this Sub-section shall, unless for the time being provision to the contrary is made by a law of the Dominion Legislature, have effect in relation to that Province, municipality, board or authority as if for the reference to fifty rupees per annum there were substituted a reference to that rate or maximum rate, or such lower rate, if any (being a rate greater than fifty rupees per annum), as may for the time being be fixed by a law of the Dominion Legislature; and any law of the Dominion Legislature made for any of the purposes of this proviso may be made either generally or in relation to any specified Provinces, municipalities, boards or authorities."

This section came in by way of amendment in 1940. The object of this section is quite clear. Parliament knew that various local bodies in India had imposed taxes on professions, trades, callings etc. and since these taxes were liable to be challenged on the ground that they were a tax on income which was in the federal Legislative List it was necessary to safeguard the position of the local

bodies in this respect. Accordingly, by Sub-section (1) these taxes were saved and by the proviso to Sub-section (2) they were saved to the extent they were in force on 31st day of March 1939. So far as taxes after that date were concerned, Parliament considered fit to impose a limit and, therefore, provided that the total amount payable in respect of any one person to a local body by way of taxes on professions, trades, callings etc. shall not exceed fifty rupees per annum. It is, hence, clear that if there was any tax of the kind described in force till 31st day of March 1939, the same was permitted to continue in force regardless of the upper limit. But if a new tax were to be levied after that date, then the amount recoverable from any one person by way of tax on profession, trade etc. was subject to the maximum limit of Rs. 50/- per annum. Indeed, legislation foreshadowed in the proviso to Sub-section (2) was passed soon after by the Indian Legislature and that is Professions Tax Limitations Act (Act No. XX of 1941). By Section 2 of that Act an upper limit of Rs. 50/- was imposed in the case of all such taxes thus making the proviso to Sub-section, (2) of Section 142A of the Government of India Act inoperative. But so far as we are concerned, that did not apply to taxes imposed under clause (b) of Sub-section (1) of Section 66 of the Central Provinces and Berar Municipalities Act, 1922, by virtue of Section 3 of Act XX of 1941 read with item No. 4 in the Schedule. Therefore, so far as the present Municipal Committee is concerned, the passing of this Act No. XX of 1941 made no difference, and the tax in force on 31st March 1939 was permitted to continue in force irrespective of the limit imposed by Sub-section (2) of Section 142A of the Government of India Act. That position is admitted by the plaintiffs in this case by specifically stating that they did not challenge the levy at the rate of one anna which was in force prior to 1-4-1939. The challenge is to the enhancement of the rate from one anna to four annas made in 1941. This rate, according to them, operated on the general turnover of the business and large amounts, very much in excess of the Constitutional limit, were beneficial recovered from them. Since conceivably there may be cases in which even at the-enhanced rate, the total amount payable may not be more than Rs. 50/- the imposition and the levy may to that extent -be said to be lawful. But as soon as that limit was crossed and a bill for the recovery of a larger amount was served on the parties, the result actually amounted to levying of a tax in contravention of Sub-section (2) of Section 142A of the Government of India Act, 1935 and therefore it was illegal and ultra vires. It was also suggested that after the coming into force of Section 142A it was the bounden duty of the Municipal Committee to specify in the Rules by which the rates have been fixed that the recovery shall not exceed in any case more than Rs. 50/- per annum, as provided in the Government of India Act. Failure to make the necessary amendment in the Rules was, it was argued, also a contravention of the provisions of the Government of India Act, 1935 and, therefore, illegal. The same argument applied to the situation after the Constitution came into force since the provisions of Article 276(2) "were analogous except that the ceiling was increased to Rs. 250/-.

14. It appears to us that "the mere fact that the rate prevailing before March 1939 is varied or increased cannot make the imposition invalid as contravening the provisions of Sub-section (2) of Section 142A of the Government of India Act, 1935. All that the section says is that the total amount payable in respect of any one person in one year shall not exceed Rs. 50/-. Where an imposition has been made on the turnover, as in the present cases, the mere variation in the rate from one anna to four annas will not automatically lead to the result in all cases of bills being issued for the amounts in excess of Rs. 50/-. In conceivable cases the total amount payable may not exceed Rs. 50/- per annum even at the rate of four annas. Therefore, the mere fact that the old rate had been varied or increased will not necessarily lead to a contravention of Sub-section (2) of Section 142A of the Government of India Act, 1935. Indeed, the question of contravention would arise only after the Municipal Committee presented bills to parties in which the demand is made for amounts exceeding Rs. 50/-. The question therefore is whether the imposition itself could be regarded as illegal or ultra vires because in some cases the demand is made for the recovery of an amount exceeding Rs. 50/-. In our opinion, all that could be said in such cases is that the demand is wrongful, irregular or even unauthorised but cannot be deemed to be ultra vires.

15. It is true that in AIR 1949 215 (Nagpur) the Nagpur High Court held the view that the imposition of a tax in excess of a certain amount in contravention of Government of India Act, 1935 -- Section 142A was something which was prohibited by law and so wholly beyond its jurisdiction and on that basis held that Section 48 of the C. P. and Berar Municipalities Act, 1922, did not apply. It is noteworthy that this decision had been cited before the learned Judges in the 60 Bom LR 45: AIR 1958 Bom 437 and, in fact, reliance was placed on it for holding that the tax levied by the Municipality on ginned cotton was a tax on a profession, trade, calling or employment within the meaning of Section 142A of the Government of India Act, 1935. But the learned Judges were not prepared to go, it appears, in spite of this case being before them, so far as to hold that the enhanced tax imposed in similar circumstances was ultra vires. In fact, the learned Judges remarked:

"The municipality levied the cotton manufacturing tax in execution or intended execution of the Act, and even if the municipality acted beyond its authority, the act may be regarded as wrongful or irregular, but it cannot be regarded as ultra vires."

This opinion of our High Court is binding on us in preference to the opinion given in AIR 1949 215 (Nagpur). It is true that in *Gajadhar Hiralal Vs. The Municipal Committee, Basim*, the learned Judges (Vyas and Kotval, JJ.) have held that the enhancement of tax in excess of the limit is ultra vires, but the specific question of the application of Section 48 of the C. P. and Berar Municipalities Act, 1922 was not before them. They did not consider whether the tax was ultra vires in the sense that it fell outside the expression "anything done or purporting to be

done under this Act" In Section 48(1) of the C. P. and Berar Municipalities Act. The question was indeed considered by a single Judge. Kotval, J. in (C. R. Appn. No. 714 of 1956, D/- 19-7-1957, a suite about which appears in 1959 NLJ 1. It was held there that the tax in excess of Rs. 250/-was in contravention of Article 276(2) of the Constitution of India and was ultra vires of the powers of the Municipal Committee and hence no notice u/s 48 of the C. P. and Berar Municipalities Act, 1922, was-necessary. The decision in The Municipality of Chopda Vs. Motilal Manekchand and Another, is a later decision besides being a decision of a Division Bench.

16. Next it was contended by Mr. Bobde that the decision of this Court in AIR 1949 215 (Nagpur) which was decided on 3rd August 1948, must have been generally known in these parts and, therefore, when in spite of that decision the Municipal Committee continued to levy the tax in contravention of Sub-section (2) of Section 142A of the Government of India Act, the levy cannot be regarded as done or purporting to have been done under the Act. In fact, the levy almost appeared to be mala fide and should be regarded as having no semblance of authority. Indeed, he contended, it was outrageous and extraordinary, as described in Jalgaon Borough Municipality Vs. Khandesh Spinning and Weaving Mills Co. Ltd., . The answer to this contention is provided by Parvateppa Mallappa v. Hubli Municipality, 39 Rom LR 881: AIR 1937 Bom 491. In that case a prosecution had been launched by the Municipality for an alleged infringement of some provisions of the Bombay Municipal Boroughs Act, 1925 and it was contended in a suit for malicious prosecution against the Municipality that the prosecution launched by the Municipality was mala fide and, therefore, the provisions of Section 206 of the Act did not apply. It was held that Section 206 of that Act applied both to acts done bona fide by the Municipality or its officers as well as to acts done mala fide. It was held that since the suit had not been filed within six months as required by Section 206, it was barred by limitation. The important thing is not whether a thing done is bona fide or mala fide or irregular, but whether the thing complained of purports to be done under the Act. The bills have been served in all these cases as required by the Act in respect of a tax duly imposed under the Act, and, therefore, although the amount mentioned in the bills may have exceeded the limits prescribed by the Constitutional provisions, the recovery of the tax must be regarded as purporting to have been done under the Act which by itself, or by its rule, prescribes no maximum limit,

17. Reference was made to the judgment of Bose. J. reported in District Council. AIR 1949 190 (Nagpur) and the relevant passage in the judgment at page 93 (of ILR Nag): (at p. 193 of AIR). After referring to the decision of the Privy Council in AIR 1948 128 (Privy Council) and of the Federal Court in AIR 1939 43 (Federal Court) the learned Judge has remarked that "when the Legislature limits the authority of a Committee to the maximum of Rs. 50/-, it could not be said that it purported to act within the scope of the Act if it travelled beyond its limited provisions". As observed in the same judgment, the question whether a thing is purported to be done under the Act is substantially a question of fact and must

be examined with reference to the act complained of and the attendant circumstances. The observations of the Privy Council which have been cited by the learned Judge are not very pertinent to our present purpose because the question to be determined is whether the levy of the tax was done or purported to be done under the C. P. and Berar Municipalities Act, 1922. There is no question of deciding whether a public servant acted or purported to act in the discharge of his official duty. As a matter of fact this very decision of AIR 1949 190 (Nagpur) seems to have been brought to the notice of the Bench which decided the case of The Municipality of Chopda Vs. Motilal Manekchand and Another, and still we find that the reasoning in this decision has not been accepted to hold that the bar of Section 167-A of the Bombay District Municipal Act, 1901, was inapplicable.

18. On the whole, therefore, on the authorities applicable to the facts of this case we are inclined to hold that the thing complained of by the plaintiffs fell within the expression "purporting to be done under this Act", found in Section 48(1) of the C. P. and Berar Municipalities Act, 1922. Since most of the items in respect of which the suits have been filed had been recovered by the Municipal Committee from the parties concerned prior to six months of the suit, the claim in respect of them is barred u/s 48(2) of the Act. In respect of a few items which have been recovered within six months prior to the filing of the suit, admittedly, there was no notice as required by Section 48(1) of the Act, and, therefore, the suits in respect of them also must fail. On the whole, therefore, by the combined operation of Sub-sections (1) and (2) of Section 48 of the Act on the claims for refund made in the four suits, the suits should fail.

(The rest of the judgment is not material for reporting).

19. Appeals dismissed.