(1979) 01 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 537 of 1975

Municipal Committee, Khanna APPELLANT

Vs

Sub-Divisional Officer (C) Samrala RESPONDENT

Date of Decision : 18-01-1979

Acts Referred:

Citation : (1979) ILR (P&H) 269 : (1979) PLJ 174 : (1986) RRR 334

Hon'ble Judges : Prem Chand Jain, J and K.S.Tiwana, J

Advocate : Mr. T.S. Doabia, Advocate., Advocates for appearing Parties

Judgement

K.S. Tiwana, J.

1. Letters Patent Appeals No. 537, 538 and 574 of 1975 have under clause X of the Letters Patent been filed by the Municipal Committee, Khanna, (hereafter referred to as the appellant) against the judgment of a learned Single Judge of this Court in Civil Writ Petitions No. 2384, 2385 and 2386 of 1972. All the three civil writ petitions having common questions of law and facts were decided by a single Judgment. These three appeals are also being decided by one judgment by us.

2. The facts leading to these letters patent appeals in brief are that housetax was levied in the town of Khanna on 1st of April, 1961. Assessment list was prepared for the assessment year 196162 in accordance with the provisions of Chapter V of the Punjab Municipal Act, 1911 (hereinafter referred to as the Act). A fresh assessment list was prepared during the assessment year 196465, which remained in force till 31st of March, 1972. The appellant vide resolutions dated 12th of July, 1970 and 23rd of December, 1970 adopted the list for years 197071 and 197172, as it stood in the assessment year 196970. Some persons including a few of the respondents, residents of Khanna, took appeals against these resolutions before the Sub Divisional Officer (Civil), Samrala, under section 84 of the Act, challenging the assessment of house tax on the houses and buildings. Vide orders dated 27th of January, 1972, the SubDivisional Officer (Civil) Samrala, set aside the aforesaid resolutions. The appellants filed the civil writ

petitions giving rise to these letters patent appeals, challenging the orders of the SubDivisional Officer (Civil), Samrala, and delending the validity of the resolutions. The learned Single Judge held that the list mentioned in section 68 of the Act has to be prepared in advocate before the commencement of the following year and upheld the order of the SubDivisional Officer (Civil) regarding the resolution dated 12th of July, 1972 adopting the assessment list for 196970 for assessment year 197071. The other resolution dated 23rd of December, 1970 was upheld and the order of the SubDivisional Officer, (Civil) to the extent was set aside.

3. In these appeals the only argument raised by Shri T.S. Doabia, learned counsel for the appellant, is that the Municipal Committee has power under section 68 of the Act to draw a new assessment list or to adopt the list of any previous year without any modification or adopt the list of any previous year after making modifications in the valuation and assessment at any time in the assessment year. Even if, according to him, this assessment list is made effective during the currency of the assessment year, it shall be operative from the beginning of that assessment year. He has urged that only the initial levy of the house tax has to be made before the commencement of the assessment year and not the subsequent lists. He has reclined for support against the judgment reported in New Delhi Municipal Committee v. Life Insurance Corporation of India, A.I.R. 1977 S.C. 2134.

4. Since the Life Insurance case was under section 67 of the Act and not under section 68, it becomes necessary to notice the relevant provisions about the imposition of tax by the Municipal Committee under the Act. Chapter V of the Act deals with taxation. It comprises of sections 61 to 68A. Section 61(1)(a) authorises the imposition of a tax payable by the owners of buildings and lands. Section 62 empowers the Municipal Committee, at a special meeting, to pass resolution proposing the imposition of any tax under section 61. Section 63 provides that the Committee shall cause the assessment lit to be prepared of buildings and lands on which any tax is proposed to be imposed. According to section 64, on the completion of the assessment list, the Committee is required to give public notice of the place where the list or a copy thereof may be inspected by the persons adversely affected by the proposed tax. Section 65 requires the Committee at the time of publication of this list to give public notice as to the time when it will proceed to revise the valuation and assessment made in the list. The Committee is required to invite objections to the proposed valuation and assessment within the time fixed by this notice. Section 66 deals with the settlement and authentication of the list by at least two members of the Committee after allowing the persons, affected, of being heard. Such a list comes into force on the first day of January or first day of April of the next ensuing year, as the Committee may determine. For purposes of reference, sections 67 and 68 of the Act are reproduced as under :

"Section 67. Further amendments of assessment list. (1) The Committee may any time amend the list by inserting the name of any person whose name ought to have been or ought to be inserted, or by altering the assessment on any property which has been erroneously valued or assessed through fraud, accident or mistake, whether on the part of the Committee or of the assessee, or in the case of a tax payable by the occupier by a change in the tenancy, after giving notice to any person affected by the amendment, of a time not less than one month from the date of service, at which the amendment is to be made.

(2) Any person interested in any such amendment may tender his objection to the Committee in writing before the time fixed in the notice, or orally or in writing at that time, and shall be allowed an opportunity of being heard in support of the same in person or by authorised agent, as he may think fit.

Section 68. New list need not be prepared every year. It shall be in the discretion of the Committee to prepare for the whole or any part of the municipality a new assessment list every year or to adopt the valuation and assessment contained in the list for any year with such alterations as may in particular cases be deemed necessary, as the valuation and assessment for the year following, giving to persons affected by such alterations the same notice of the valuation and assessment as if a new assessment list had been prepared."

Section 68A was introduced vide Punjab Act No. 8 of 1974, giving powers to the Committee to amend the assessment list in case the property had been erroneously valued or assessed through fraud, accident or mistake. The assessment is to be made after giving an opportunity to the assessee of being heard.

5. A reading of section 67 makes the purpose of its enactment manifest. It has nothing to do with the preparation of the new list every year or the adoption of valuation of assessment contained in the previous years etc. as is the purpose of the provisions of section 68. Its only purpose is to amend the list by inserting the name of the any person, whose name ought to have been or ought to be inserted, or by inserting any property which ought to have been or ought to be inserted, or the properties which have been erroneously valued or assessed through fraud, accident or mistake. The purpose of section 67 does not extend further to overlap any part of section 68. In the Life Insurance case, the facts were that the New Delhi Municipal Committee assessed the building belonging to the Life Insurance Corporation for house tax for the years 196364, 196465, 196566, 196667 and 196768 on the basis of actual rent received by the Life Insurance Corporation. The Life Insurance Corporation paid the tax. In February, 1968, the Life Insurance Corporation received five notices from the New Delhi Municipal Committee dated 27th of January, 1968, to amend the list of assessment for the aforesaid five years, including therein the rent of a portion of basement of a building, which escaped inclusion in the respective lists. The Life Insurance Corporation objected that the New Delhi Municipal Committee had no jurisdiction under section 67 of the Act to amend the assessment lists of the previous year''s. In that case, their Lordships of the Supreme Court analysed to

position for the purpose of provisions of section 67 in the statute as under :

"The reason why the legislature, by section 67, has conferred on the Municipal Committee the power to amend as assessment list at any time is that the omission, by reason of which a property has escaped assessment, may be discovered a long time after the list has ceased to be operative......."

It was further observed at page 2140 of the report :

"Since the purpose of section 67 is to bring to assessment properties which have altogether escaped assessment, the legislature evidently thought that amendments made under it should have a wider operation as contrasted with those made under section 68A".

On the facts of that case, it was observed :

"In the instant case, a part of the basement is alleged to have escaped assessment and if that be true, we are unable to understand that the assessee, the LIC here, could in face of section 67 raise a contention that the assessment lists of past years, though faulty, cannot now be corrected."

The facts of the Life Insurance Corporation case were altogether different and their Lordships of Supreme Court were only examining the provisions of sections 66 and 67 in that case, as is apparent from their observations at page 239 of the report :

"Thus the two sections read together yield the result that the list can be amended at any time after its finalisation, subject of course to the prescription of reasonableness."

The Life Insurance Corporation case does not extend any help to the appellant. In that case the challenge was that the Municipal Committee had no jurisdiction under section 67 of the Act to amend the assessment list of the previous year in spite of the fact that the assessment list was faulty in the sense that certain property had escaped assessment due to oversight, mistake, fraud etc. In those circumstances, their Lordships giving width to the phrase "at any time" occurring in section 67 observed that the list under section 67 of the Act can be amended at any time, of course subject to the prescription of reasonableness.

6. Another case cited by Shri T.S. Doabia is reported as Punjab National Bank v. New Delhi Municipal Committee, A.I.R. 1973 S.C. 674, which also relates to section 67 of the Act. The facts of that case were that the Punjab National Bank completed the building and occupied it on 1st of July, 1958. The New Delhi Municipal Committee vide its resolution dated 10th of July, 1958, proposed to include this building in the assessment year from April 1, 1959 in para 10 of the judgment observed :

"An amendment of the list under section 67 was permissible on any of the grounds mentioned in the section even after March 31, 1959, as otherwise, the expression "at any time" would have no meaning. The words "subject to such amendments as may thereafter be duly made", in section 66 postulate that a list finalized before 1st January or 1st April is liable to be amended thereafter under section 67. The building was certainly liable to be included in the assessment list which ws finalized on March 31, 1959, but by some mistake it was not so included. The list was, therefore, liable to be amended under section 67. That was done. When the list was, amended, the tax assessed for the building shall be deemed to be the tax for it in the year which commenced from April 1, 1959 and ended on March 31, 1960."

Even this case does not lend any support to the counsel for the appellant to argue that the list under section 68 after amendment can be made applicable any time. In none of the cases section 68 figured even for a remote consideration.

7. The scheme of Chapter V and the language of the sections contained in it are sell speaking the specify the purpose for their enactment. Section 68 is a self contained provision. It gives discretion to the Committee to do any of the three things, that is, (i) to prepare a new assessment list every year; or (ii) to adopt the valuation and assessment of the previous year; or (ii) to adopt the valuation and the assessment of any previous year; or (iii) to adopt the valuation and assessment of the previous year with such alterations as may be necessary. The only controversy between the parties is as to the time when such lists can be made operative and effective. A careful reading of section 68 shows that the period of the operation of the list so prepared or adopted is described in the section as "the year following". The "year following" as used in the section is the assessment year, which is to follow the action of the Committee taken under section 68 after the preparation of the new assessment list of adoption of the list of any previous year by opting to any of the two modes given. It is for that year that the list has to be prepared or adopted. This intention becomes more clear when the word "every year" as used in the earlier part of the section in relation to the assessment list is read in conjunction with the term "for the year following". After the assessment year has commenced and the list is then adopted, at some later time, the remaining part of that year cannot in any case be termed as "the year following" in the context of the language of the section and the purpose for which the assessment list has to be settled every year.

8. The phrase used in section 67 is "at any time". No term of such wide amplitude is to be found in section 68. It would be doing violence to the principles of the interpretation of the statutes to accept the argument of Shri Doabia to read the phrase "at any time" in section 68 when the legislature deliberately omitted it from the use in this provision. A reading of both the sections shows that section 68 is independent and is not subservient to section 67 nor is in any form dependent on it for the interpretation of its intention. It language was given plain meaning in a Single Bench decision of this Court reported in British India Corporation v. The Deputy Commissioner, Gurdaspur, 1969 P.L.R. 554 : 1969 R.C.R.(Rent) 720, in which it was held :

"The liability to pay tax can arise only when the list has been finally settled after following the prescribed procedure as contained in Chapter V of the Act. The assessment for any particular year must, therefore, be completed by the Municipal Committee before the relevant year of assessment commence."

9. The liability to pay tax arises when the list has been finally settled after the procedure prescribed under Chapter V of the Act has been resorted to. Unless that is done strictly in accordance with the provisions of that Chapter, the tax cannot be levied. Section 68 provides that the new list prepared or the previous list adopted has to be effective "for the year following". This means that the assessment list whether prepared a new or adopted from the previous year with or without modifications should be ready before the first day of January or the first day of April of the assessment year, as the case may be. The Committee cannot in the middle of the year enforce the assessment list mentioned in section 68 from the beginning of the assessment year.

10. For the foregoing reasons, finding no merit in the contention of the learned counsel for the appellant, the appeals are dismissed with no order as to costs.

Appeals dismissed.

