

(1981) 11 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 140 of 1970

Municipal Corporation, Simla

APPELLANT

Vs

Deputy Commissioner, Simla and Others

RESPONDENT

Date of Decision : 26-11-1981

Acts Referred:

Himachal Pradesh Municipal Act, 1968 — Section 67
Punjab Municipal Act, 1911 — Section 67

Citation : AIR 1982 HP 126 : (1982) ShimLC 168

Hon'ble Judges : V.P. Gupta, J; T.R. Handa, J

Bench : Division Bench

Advocate : Chhabil Das, for the Appellant; P.A. Sharma, for the Respondent

Judgement

V.P. Gupta, J.—This writ petition has been filed with a prayer that the order of the Deputy Commissioner, Simla, dated 9th June, 1970, with respect to the direction that assessment of tax is to take effect from 1st Jan., 1970 instead of 1st April, 1968, be quashed.

2. The facts, in brief, are that respondents 2 and 3 are owners of Shop No. 76, Lower Bazar, Simla. This shop was old and for this reason respondents 2 and 3 demolished the same and reconstructed it in the beginning of 1968. The Municipal Committee assessed this building for the year 1968 at Rs. 8,525/- and a notice for this assessment was issued on 4th Dec., 1968 (Annexure PA). A reply to this notice was given by respondents 2 and 3 on 4th Jan., 1969 (Annexure PB). The Municipal Committee thereafter issued an order on 6th Sept., 1969 (Annexure PC) by which the assessment at Rs. 8,525/- for the year 1968 as from 1st May, 1968) was made subject to the remission of all taxes on the old assessment from 1st March, 1968 to 31st March, 1968, when the building was demolished for reconstruction. Respondents 2 and 3 feeling aggrieved from this order, dated 6th Sept, 1969, filed as appeal with the Deputy Commissioner, Simla, who vide his order, dated 9th June, 1970, held that the assessment should come in force with effect from 1st Jan., 1970. The other grounds of

appeal taken by respondents 2 and 3 were rejected.

3. Feeling aggrieved from this order of the Deputy Commissioner, this writ petition has been filed by the Municipal Corporation.

4. A return to the writ petition was filed on behalf of respondents 2 and 3 wherein they contested the writ petition.

5. We have heard Shri Chhabil Dass, Advocate, for the petitioner and Shri P. A. Sharma, Advocate, for respondent No. 1.

6. The learned counsel for the petitioner contended that the order of the Deputy Commissioner is based upon misappreciation of the relevant law as is given in Sections 63 to 67 of the Punjab Municipal Act and the Himachal Pradesh Municipal Act. According to the learned counsel, the assessment should have been from 1st April, 1968.

7. The learned counsel for respondent No. 1 only contended that the order of the Deputy Commissioner is a well reasoned order.

8. We have considered the contentions of the learned counsel for the parties.

9. It may be mentioned that the language of Sections 63 to 67 of the Punjab Act and the Himachal Pradesh Act is the same and hereinafter these will be called as Act.

10. In the present case there is no dispute that one-half portion of the building had been rented out from 1st May, 1968 and the remaining one-half was completed and occupied by the respondents Nos. 2 and 3 in Oct., 1968. These facts are admitted in Annexure PB. The building which had been reconstructed could not be included in the assessment list for the year 1968 as this list had to be completed up to 31st Dec., 1967. An assessment list is to be prepared u/s 63 and the same is to be completed and published u/s 64 of the Act. The objection could be made to this assessment list under Sec. 65 and the same had to be decided u/s 66 of the Act, when this assessment list would become final.

11. u/s 67 of the Act, the assessment list could be amended at any time by inserting the name of 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 by altering the assessment of 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. This amendment in the assessment list could be effected after giving notice to the 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, and such person could tender his objections to the committee.

12. The scope of Section 67 of the Punjab Act has been dealt with in Punjab National Bank Vs. New Delhi Municipal Committee, In this Punjab National Bank's case (supra) a building had been constructed and after completion it was

occupied on 1st July, 1958. This building was not entered in the assessment list which was operative from 1st April, 1958 to 31st March, 1959, and on 4th Sept., 1959, the New Delhi Municipal Committee purporting to act under Sec. 67 of the Punjab Act, issued a notice for amending the list for the year 1959-60 by inserting the said property in the assessment list for taxation purposes and the tax was proposed to take effect from 1st April, 1959. The owner objected to the assessment of tax and when the objections of the owner were not accepted then a suit was filed challenging the assessment. In the light of these facts the Hon'ble Judges of the Supreme Court held in para 10 of the judgment :

"The assessment list for the year commencing from April 1, 1959, had to be settled by March 31, 1959 at the latest: this list was liable to be amended u/s 67 even after March 31, 1959 on any of the grounds mentioned in that section. Section 66 does not say that the amendment of the assessment list should have been made before March 31, 1959. The expression "subject to such amendment as may thereafter be duly made" in Section 66 would indicate, that the amendment of the list could be made even after March 31, 1959. As Sec. 67 provides [or amendment of the list "at any time". And when the list was so amended, it shall be deemed to have been in force for the year which commenced from April 1, 1959, and ended on March 31, 1960, and the tax assessed therein shall be deemed to be the tax for the financial year commencing from April 1, 1959. In other words, it was not necessary that the assessment list should have been amended before March 31, 1959, in order that the Municipal Committee may impose house tax on the building for the period from April 1, 1959 to March 31, 1960. An amendment of the list u/s 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 Jan, or 1st April is liable to be amended thereafter u/s 67. The building was certainly liable to be included in the assessment list which was finalized on March 31, 1959, but by some mistake it was not so included. The list was, therefore, liable to be amended u/s 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." Thereafter it has been observed in para 13 of the judgment as follows :

"We do not think that any universal rule can be laid down as to the meaning of the expression "at any time". It all depends upon the context in which the expression occurs. We think that the expression "at any time" occurring in Section 67, when read in conjunction with the word "thereafter" in Section 66, can only lead to the conclusion that the amendment of the list in question was permissible even after March 31, 1959."

In view of the aforesaid judgment of the Supreme Court it was within the competence of the appellant to have included the present property in the

assessment list for the year 1969 even after 31st Dec., 1968. From the various annexures, we find that the notice was given to the respondents on 4-12-1968 and a reply to this notice was given by them on 4th Jan., 1969. If the assessment list for the year 1969 was to be revised u/s 67 of the Act then the appellant was competent to issue the notice Annexure PA on 4th Dec., 1968. Simply for the fact that the assessment order was passed on 6th Sept., 1969, would not mean that the building could not be included in the list of assessment for the purposes of municipal taxes for the year 1969. Thus in this case the assessment of tax should have been ordered from 1st Jan., 1969.

13. In view of the above discussion, we are of the view that the appellant is entitled to recover the tax from 1st Jan., 1969, and not from 1st Jan., 1970, as has been ordered by the Deputy Commissioner. The present writ petition is, therefore, accepted to the extent mentioned above and the assessment of the building shall be enforced from 1st Jan., 1969 onwards.

14. The parties are left to bear their own costs.