
(1989) 04 BOM CK 0045

In the Bombay High Court

Case No : Second Appeal No. 354 of 1975

Municipal Council, Amravati

APPELLANT

Vs

Shriram Shaligram Malviya

RESPONDENT

Date of Decision : 17-04-1989

Acts Referred:

Specific Relief Act, 1963 — Section 38

Citation : (1993) MhLj 484

Hon'ble Judges : M.S. Ratnaparkhi, J

Bench : Single Bench

Advocate : J.N. Chandurkar, for the Appellant; V.R. Manohar and Mrs. V.A. Naik, for the Respondent

Final Decision : Allowed

Judgement

M.S. Ratnaparkhi, J.—The decree passed by the Second Joint Civil Judge. Junior Division, Amravati, on 5-10-1972 in Regular Civil Suit No. 130/70 restraining permanently the defendant/appellant, Amravati Municipal Council, from imposing, assessing and levying the three taxes (conservancy tax. water tax and lighting rate) for the period from 1-4-1969 to 31-3-1971, duly confirmed by the District Judge, Amravati on 28-8-1975 in Regular Civil Appeal No. 226/72, has been challenged in this Second Appeal.

2. The facts giving rise to this litigation run as follows:

There was a Municipal Council at Amravati created under the Statute. Under its ordinary powers, it revised the scavenging tax and water tax. It also imposed a new tax called "The lighting rate" with effect from 1947. Three bills came to be served on the present respondent-Shriram Shaligram Malviya (original plaintiff), who owned houses bearing Nos. 380, 381, 382, 383, 384 and 385. Under the Bill bearing No. 77 (dated 6-12-1969) he was asked to pay Rs. 1043.97 P. Under Bill bearing No. 28 dated 4-11-1969 he was asked to pay Rs. 1228.61 P. Under the third bill dated 5-2-1970, he was asked to pay Rs. 230.14 P. by way of lighting

rate. These bills came to be challenged by the plaintiff, the scavenging tax and the general water tax were imposed at increased rate, whereas the lighting tax was imposed afresh. According to the plaintiff, the increase in the rate as well as the imposition of new light tax, is illegal, ultra vires and void. Sub-section 5(B) of section 66 of the Central Provinces and Berar Municipalities Act, 1922, prohibited the increase in the rates. In addition, all these taxes are inconsistent with the provisions of the Maharashtra Municipalities Act. It is alleged that according to the Maharashtra Municipalities Act. these taxes are to be imposed according to the annual letting value which has not been considered. It was also contended that the rateable value was not at all calculated. The next objection was that the assessment list for the years 1966-1967 to 1969-1970 were neither authenticated, nor published and hence there could not be any assessment. It was lastly contended that the imposition of a special rate of light tax amounts to double taxation and hence it is bad. On these counts the bills were challenged. The injunction was secured against the Municipality from claiming and recovering these bills.

3. The defendant by their written statement. Ex. 13. opposed the claim. According to them, the bills are quite valid and the assessment has been proper according to the procedure prescribed. It is alleged that these taxes were imposed in pursuance of the provisions of Central Provinces and Berar Municipalities Act, 1922 and it was quite valid according to those provisions. Nearly 30 years have been elapsed after the assessment, and therefore, their validity cannot be challenged by the plaintiff. According to them, the Municipal Council had a right under the Statute to vary the rate of taxes. In short, their defence is that, the Municipal Council was governed by the provisions of the Central Provinces and Berar Municipalities Act, 1922 till Maharashtra Municipalities Act was made applicable to this region. Whatever assessment was made under the old Act continued during the transitory period and this taxation has been validated by the Statute itself. On these grounds the claim is opposed. It is further contended that the suit is bad for want of notice u/s 304 of the Maharashtra Municipalities Act.

4. The learned Judge of the trial Court framed necessary issues, and directed the parties to trial. On merits, the learned Judge felt that the imposition, assessment and levy of these taxes by the defendant is illegal and ultra vires. The learned Judge negated the defence of the defendant that the suit is bad for want of notice u/s 304 of the Maharashtra Municipalities Act. On these findings, the learned Judge decreed the suit and clamped the injunction against the defendant restraining it from recovering the taxes.

5. Feeling aggrieved with this decree, the defendant went in appeal before the District Judge. The learned District Judge, Amravati on hearing both the parties negated the contention of the defendant that the suit is bad for want of notice u/s 304 of the Maharashtra Municipalities Act. The learned District Judge also held that the demand made under the bills in dispute was illegal. With these

findings, he agreed with the learned trial Judge and dismissed the appeal.

6. Feeling aggrieved with the decree, the defendant has come in Second Appeal. The learned advocate for the appellant/defendant. Mr. Chandurkar. strenuously urged before me that both the Courts fell into error in adjudicating that the imposition of tax as contained in the bills in dispute is illegal. He took me through the judgments of both the Courts, through the pleadings of the contesting parties and also through the different provisions of the Maharashtra Municipalities Act. Before going to the merits of the case, it will be proper at this stage to consider the defence raised by the defendant that the suit is bad u/s 304 of Maharashtra Municipalities Act. Mr. Chandurkar urged before me that the Statute has created a bar u/s 304, that no suit shall lie against the Municipal Council or against any Committee constituted under this Act or against any officer or servant of the council in respect of any act done in pursuance or executing or intending execution of this Act. He invited my attention to sub-clauses (a) and (b) of clause (1) and urged before me that the suit not having been brought within the time specified under clauses (a) and (b) is bad and the Court could not take cognizance thereof Sub-section (4) of section 304 however, carves out an exception. This sub-clause lays down that "Nothing in clauses (a) and (b) of sub-section (1) shall apply to any suit u/s 38 of the Specific Relief Act. 1963 or under sub-section (1) or (2) of section 96 of this Act." Admittedly, the present suit is for injunction and injunctions are covered by section 38 of the Specific Relief Act. Mr. Chandurkar invited my attention to sub-clause (3) of section 38 and urged before me that the Court has powers to grant perpetual injunction only in cases when the conditions mentioned in sub-clauses (a), (b) and (e) of sub-section (3) of section 38 are fulfilled. I find myself unable to agree with this argument. Sub-clauses (a), (b), (c) and (d) enumerate the conditions which may justify the Court in granting a perpetual injunction. But that does not necessarily mean the converse. On the other hand sub-section (3) of section 38 permits the remedy of perpetual injunction when this remedy is required to contravene the breach of an obligation arising in favour of the plaintiff. What Mr. Chandurkar contended before me was that there was no obligation in favour of the plaintiff as far as the present case is concerned, and therefore, no relief of injunction can justifiably be claimed. The Municipality in this case is imposing the tax against a subject and it is an obligation on the Municipality not to impose or collect the tax which is not according to law. The plaintiff is complaining of the breach of this obligation in the present case. It is his case that the Municipality is trying to collect taxes from him. though these taxes are in contravention with the provisions of the Municipalities Act. Thus, virtually, the plaintiff wants to contend the breach of obligations, and therefore, the relief of injunction is available to him u/s 38. Sub-section (4) of section 304 permits the suit to be instituted against the Municipality even though no notice u/s 304(1)(a) and (b) is served, particularly when the suits are for injunctions. Thus, there is no bar as contended by Mr. Chandurkar. The learned Judges of both the Courts were quite correct in their approach as far as this point is concerned.

7. This brings me to the merits. Admittedly, the bills dated 6-12-1969, 4-11-1969 and 5-2-1970 are served on the plaintiff and he has been threatened with coercive steps if these bills are not paid within a specified time. Admittedly, these bills are for the period commencing on 1st April 1969 and terminating with 31st March 1971. Admittedly the assessment is according to the provisions of the Central Provinces and Berar Municipalities Act, 1922. The Maharashtra Municipalities Act (Maharashtra Act No. XL of 1965) came on the Statute Book on 10th September 1965. Other provisions of the Act came subsequently. Suffice it to point out at this stage that the Central Provinces and Berar Municipalities Act, 1922 came to be repealed. The bills that are served on the plaintiff are relating to the assessment which is in normal course triannually made and this assessment was only for 2 years 1968-1969 and 1969-1970. Till this assessment was made, no rules under the Maharashtra Municipalities Act were framed, and the assessment under the Maharashtra Municipalities Act was never made during this period. It is an admitted position which is prevalent today that these bills are in pursuance of the assessment made under the Central Provinces and Berar Municipalities Act, 1922.

8. A short history of the Municipal Legislation is necessary at this stage. The four districts of this region (viz. Akola, Buldhana, Amravati and Yavatmal) were known as Berar and for the purpose of municipal administration, they were governed by the Berar Municipal Law, 1886. Enough to point out at this stage that the Central Provinces and Berar Municipalities Act, 1922 was made applicable to this part of the region only in 1941 and at the same time the Central Provinces Municipalities Act was renamed as "Central Provinces and Berar Municipalities Act". Till this Act was made applicable to this region, the municipal administration of these districts was governed by the Berar Municipal Act, 1886. The sources for municipal taxes were enumerated in section 41 and the mode of taxation was further clarified in sections 42, 43 and 44 of the Act. Suffice it to point out at this stage that the main sources of taxation were the property tax, scavenging tax, water (ax and other taxes enumerated in sub-clauses (A) and (B) of section 41(1). For imposing these taxes, Notifications were issued by the appropriate authorities on 10-3-1914, 5-10-1914 and 17-12-1941 and these notifications were amended from time to time. Suffice it to point out at this stage that the scavenging tax and the water tax were imposed under these Notifications which were in vogue at the relevant time. These Notifications were issued under the substantive law which was the part of the Berar Municipalities Act.

9. When the Central Provinces and Berar Municipalities Act, 1922 was made applicable to this part of the region in 1941, the old Berar Municipalities Act, 1886 was repealed. A transitory provision came to be made for the purpose of municipal taxation, because the old law was repealed and the processing required under the new Act could not be completed. Sub-section 5A and sub-section 5B were added to section 66 of the Central Provinces and Berar Municipalities Act in 1941 (by Act 15 of 1941). It is interesting to note at this stage that the Central Provinces and Berar Municipalities Act was made

applicable to this region only under that Statute. Sub-section 5A made the provision as follows:

Any tax imposed in a Municipality in Berar before the date on which this Act comes into force shall continue in operation notwithstanding that it is not a tax specified in sub-section (1)."

10. Sub section 5(B) reads as under:

"A committee in Berar may abolish any tax to which sub-section (5A) applies as if it were a tax imposed under this Act but may not vary the amount or rate thereof."

The readings of these sub-sections would thus clearly show that it was meant to be a transitory provision only till new arrangement was made under the new Act. However, a reduction of the tax was not permitted during the transitory period, though abolition was permitted. Thus at least for some time till the new arrangements were made, the old taxation under the Berar Municipalities Act, 1886 continued.

11. With the application of the C. P. and Berar Municipalities Act, 1922 to this part of the region, the subsequent follow up actions consistent with the C. P. and Berar Municipalities Act were taken. Under the Notification dated 17-12-1941, the Notifications issued on 10-3-1914 and 5-10-1914 were cancelled with effect from 1-4-1942. (These Notifications were issued under the old Berar Municipalities Act, 1886). This Notification dated 17-12-1941 was issued u/s 68, sub-section (5) of the Central Provinces and Berar Municipalities Act, 1922 and publication u/s 68(7) was also made. By this notification, a method was provided for fixing the gross annual letting value and then imposing the conservancy tax on the basis of the gross annual letting value as provided for in section 66(1)(J) of the main Act. Similarly, another Notification was issued on 14-2-1942 u/s 68(5) of the Central Provinces and Berar Municipalities Act and the Rules were published u/s 68(7) of the said Act. By this very Notification, the old Notification issued on 17-12-1941 and subsequent amendment was repealed with effect from 1-4-1942. Rules came to be framed for assessment of water rate.

12. On 9-3-1947, another Notification came to be issued in exercise of the powers conferred in section 67, sub-section (5) of the Central Provinces and Berar Municipalities Act, 1922, and the lighting rate came to be imposed u/s 66(1)(L) of the parent Act.

13. Thus, the arrangement made during the transitory period was cancelled and fresh assessment in respect of the scavenging tax and water tax came to be made under the provisions of section 66 of the C. P. and Berar Municipalities Act right since 1-4-1942. This arrangement continued and the taxes were only revised from time to time thereafter. However, a fresh tax known as a "lighting rate" was imposed for the first time by the Notification issued on 9-3-1947 and that was under the Central Provinces and Berar Municipalities Act, 1922 [section

66(1)(L)]. These three taxes continued even thereafter.

14. It is more or less an admitted position that the Maharashtra Municipalities Act, 1965 came to be applied to this region on 10-9-1965 and with this the Central Provinces and Berar Municipalities Act, 1922 stood repealed. The transitory period again came, inasmuch as the old Act was repealed and the procedure contemplated under the new Act was yet to be completed. The repeal of the Central Provinces and Berar Municipalities Act was with effect from 15-6-1966. Thus, on this date the old statute was not available as it has gone off the Statute Book and the steps required under the new Statute were not complete. It is from this point of view a transitional period. The Legislature was conscious of this period and the difficulties arising in the ways of the Municipality. To cope up with these difficulties, the arrangement came to be made in section 346 of the Maharashtra Municipalities Act. Sub-clause (i) with Proviso (ii) thereto are the main provisions which call for scrutiny in the present case. Section 346 reads as follows :

With effect on and from the appointed day, the following consequences shall cause, that is to say--

- (a) ...
- (b) ...
- (c) ...
- (d) ...
- (e) ...
- (f) ...
- (g) ...
- (h) ...

(i) any appointment, notification, notice tax, order, scheme, licence, permission, rule, bye-law, regulation or form held, made, issued, imposed or granted by or in respect of an existing council under any of the repealed laws or any other law for the time being in force in the area of such existing council, and in force immediately before the appointed day, shall, in so far as it is not inconsistent with the provisions of this Act, continue to be in force as if made, issued, imposed or granted in respect of the corresponding area of the successor Council until superseded by any authority competent to do." (Emphasis added)

This Rule was accompanied with the Proviso. The Second Proviso reads as follows:

Provided further that, any assessment made or any tax levied by any existing Council before the appointed day and in force immediately before that day shall notwithstanding the fact that it is inconsistent with the provisions of this Act.

continue to be in force until it is replaced by assessment made or tax levied by the successor Council in accordance with the provisions of this Act or till the 31st day of March 1977, whichever is earlier.?

It must be stated here that this Proviso is in the nature of a validating Statute and this was added for the first time in 1975.

15. Thus by bringing sub-clause (i) of section 346 along with the Second Proviso on the Statute Book, the old assessment and taxation were deemed to be a valid taxation during the transitional period till the new arrangements were made. It has also to be borne in mind that the property referred to above was added for the first time in 1975 and it had the retrospective operation right since the date when the Central Provinces and Berar Municipalities Act, 1922 stood repealed. The purpose of this proviso has been to validate the old assessment and taxation which were made by the old Municipal Councils.

16. It is on the background of these statutory provisions that we have now to examine the bills that came to be served on the plaintiff and which came to be harshly challenged by the plaintiff. Mrs. Naik, the learned Advocate for the respondents urged before me that the rates of scavenging tax and the water tax were revised and the bills that are tendered to the plaintiff contain this revision. What Mrs. Naik strenuously urged before me was that the Amravati Municipal Council had absolutely no authority or power under law to enhance the taxes. For this purpose reliance was placed on sub-clause 5(b) of Central Provinces and Berar Municipalities Act, 1922. I have already reproduced this sub-clause in the earlier part of this judgment. There appears to be an inherent infirmity in the arguments, because the learned Advocate for the respondent presumes that the enhancing in the water tax and scavenging tax (which were imposed under the Berar Municipalities Act, 1886) were in fact made by the Municipality. This pre-supposition itself is wrong. As I have already pointed out, the Central Provinces and Berar Municipalities Act, 1922 was made applicable to Berar only in 1941. With the application of this Act, to this part of the region, the old Notifications issued in 1914 under the Berar Municipalities Act, 1886 were cancelled. New Notifications were issued under sections 67 and 68 of the Central Provinces and Berar Municipalities Act and they were brought into force with effect from 1-4-1942. The position which prevailed on 1-4-1942 was that the taxation under the old Act, 1886 was stopped and the taxation as provided under the Central Provinces and Berar Municipalities Act was undertaken. Water tax scavenging tax and lighting rate were imposed after 1-4-1942 not in accordance with the provisions of the Berar Municipalities Act, 1886, but in pursuance of the provisions of the Central Provinces and Berar Municipalities Act, 1922. It may also be pointed out at this stage that along with section 60, section 68 was also on the Statute Book. Just as section 66 dealt with the imposition of the Tax, section 68 dealt with the variation and abolition of the taxes already in vogue. What Mrs Naik complained before me was that this assessment came to be made contradictory to the mandate of sub-clause 5(B) of section 66 of the Act. As I

have already pointed out. with the issuance of the Notification under sections 66 and 67, the transitory provisions contained in sub-clause 5(A) and 5(B) became absolute. The assessment was under the provisions of section 66(1) of the Act of 1922 and the subsequent variation was also u/s 67 of the said Act. In these circumstances, the argument that the Municipal Council had no powers to change or vary the assessment cannot be accepted. These powers are vested in the Municipal Council by section 68 of the Statute and the Municipality has exercised their powers under this very Statute. It cannot, therefore, be said that the increase in the rates of scavenging tax and water tax is ultra vires of the powers of the Municipal Council.

17. Regarding the imposition of the lighting rate. Mrs. Naik complained before me that though the Statute permits the Municipal Council to assess the lighting rate, it does not permit of double taxation. What she urged before me was that the Rules framed u/s 66(1)(1) permits the imposition of lighting rate in two ways to different persons and therefore, it is inconsistent with the Statute. It will be interesting at this stage to look to the Notification which permitted the Municipality to impose lighting rate. This Notification has been issued on 9-3-1947 and it reads as follows:

In exercise of the powers conferred by section 67, sub-section (5), of the Central Provinces and Berar Municipalities Act, 1922 (II of 1922), the Provincial Government is pleased to sanction the following rules made by the Amraoti Town Municipality in the Amraoti District, for the imposition of lighting rate under clause (L) of sub-section (1) of section 66 of the said Act within the limits of the Amraoti Town Municipal Committee, in the Amraoti district.

Rule 1 reads as follows :

"There shall be imposed on every building within the limits of the Amraoti Town Municipality a lighting rate payable by the owner thereof, under clause (L) of sub-section (1) of section 66 of the Central Provinces and Berar Municipalities Act, 1922 (II of 1922), on the basis of its gross annual letting value according to the following scale per annum".

(The different scales are provided according to the valuation of the annual letting value of the building).

Then comes Rule 2 which reads as follows:

"In addition to the general rate as shown in rule I above, a special rate shall be imposed on every building payable by the owners thereof the frontage of which is exposed to street or street lighted by electric light as follows."

(It gives the maximum rate on the basis of the gross annual letting value).

A note is appended which reads :

"For the purposes of this rule, street lighted by electric light shall include that portion of the street also, which is within 200 feet of the last street electric light

lamp post on it."

18. What Mrs, Naik urged before me was that Rules 1 and 2 created separate categories and persons coming in both the categories are taxed twice -- one for the general lighting tax and second for a special lighting tax by the person the frontage of whose house is near the electric pole supplied by the Municipal Council. This argument also contains an infirmity, inasmuch as these Rules do not speak for two taxes. If Rules 1 and 2 are scrutinised, it will be clear that Rule 1 contemplates of a general tax on lighting and this general tax is imposed on the person because the Municipality has given them an additional amenity of street lighting. The category covered by Rule 2 consists of a persons who get a special benefit of the amenity supplied by the Municipality, whereas others may not get it. What is provided by Rule 2 is not a special tax, but only a special rate in addition to a general rate shown in Rule 1. The tax is the same. It remains a lighting rate. Ordinary inhabitants who do not get the special benefits have to pay the general rate and the persons who get a special benefit because of the situation of their houses have to pay an additional rate in addition to the general rate. Looked from this angle, it cannot be said that it amounts to double taxation. It is not necessary for us to go into the question of quid pro quo as far as the present case is concerned. The situation of the house which is made assessable to this special rate does get an additional benefit vis-a-vis the other persons. But still we need not go into that arena. Suffice it to say, at this stage that it is not a question of double taxation, but it is only a case where higher rate is charged on the person who gets a greater benefit of the services supplied by the Municipality. From that point of view, it cannot be called either illegal or ultra vires.

19. What we find from the established circumstances is that the Amraoti Municipal Council was preparing the assessment list and then levying the taxes as permitted under the Statute. On the day the Maharashtra Municipalities Act was made applicable to this part of the region and the Central Provinces and Berar Municipalities Act was repealed, this Municipality assessed the taxes according to the scheme provided by the Act. All these three taxes which are challenged in this suit were imposed by the Amravati Municipal Council under the provisions of the Statute itself. On the repeal of the Central Provinces and Berar Municipalities Act, 1922 section 346(i) (Proviso 2) made all these taxes to continue by fiction as if these taxes were imposed by New Act. The imposition and the legality, therefore, cannot be challenged. If the legality of the old taxes (when they were in existence) was not challenged, it cannot be challenged when they covered only a transitional period. Thus, these taxes cannot be challenged on the grounds raised by the plaintiff.

20. Another attack of the plaintiff was that these taxes came to be imposed without following the necessary procedure prescribed in sections 115 to 124 of the Maharashtra Municipalities Act. As a matter of fact, this argument becomes redundant in view of the admitted position that these taxes are not imposed

under the Maharashtra Municipalities Act. These taxes are admittedly imposed under the Central Provinces and Berar Municipalities Act, 1922. Procedure prescribed under that Act governs the imposition of these taxes. Procedure prescribed under the Maharashtra Municipalities Act did not govern the imposition of these taxes. Thus, to say that the taxes under the old Municipalities Act are not preceded with the procedure prescribed under the new Act, is an argument which is nothing but redundant.

21. Both the Courts below got themselves trapped into two errors. Firstly, according to both the Courts below, the taxes were imposed not under the Central Provinces and Berar Municipalities Act, 1922, but under the Berar Municipalities Act, 1886, and therefore, whatever continued after the repeal of the latter Act, did not empower the Municipality to enhance the rates. There is a factual mistake in this position, because the old Notification came to be cancelled and taxes came to be imposed under the new Act. The appellate Court also fell into the second error (like the trial Court) when they found that the imposition of the taxes were not preceded by the procedure established under sections 115 to 125 of the Maharashtra Municipalities Act. Undisputedly, these taxes were imposed not under the Maharashtra Municipalities Act, but under the Central Provinces and Berar Municipalities Act, 1922. The procedure governing the imposition of taxes under the Maharashtra Municipalities Act would not be applicable in the present case. Apart from that, the Courts below ignored the positive provision of sub-clause (8) of section 67 as well as sub-clause (9) of section 68 of the Central Provinces and Berar Municipalities Act where these Notifications have a mandate of conclusiveness that the tax has been imposed in accordance with the provisions of this Act.

22. Disagreeing with both the Courts below, I hold that the bills served on the plaintiff are quite proper and valid and they are saved under Proviso 2 to sub-clause (1) of section 346 of the Maharashtra Municipalities Act. The taxes imposed by the existing Municipality prior to the commencement of the Maharashtra Municipalities Act are deemed to be valid, irrespective of the fact they are inconsistent with the provisions of the Maharashtra Municipalities Act. In these circumstances, it was not proper for the Courts below to decree the claim of the plaintiff. Disagreeing with the Courts below, the decrees passed by both the Courts below are hereby set aside and the suit of the plaintiff stands dismissed throughout with costs. The appeal is allowed accordingly.