

(1978) 08 DEL CK 0007

In the Delhi High Court

Case No : Civil Writ Petition No. 860 of 1969 and Civil Writ Appeal No's. 846, 847, 848, 849, 850, 851, 852, 855, 856, 857, 858, 859, 861, 862, 863, 864, 865, 866, 867, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 882, 1092, 1093, 1094, 1096, 1097, 1099, 1100

New Delhi Municipal Committee

APPELLANT

Vs

Chaman Lal Chopra

RESPONDENT

Date of Decision : 21-08-1978

Acts Referred:

Citation : AIR 1979 Delhi 108 : (1978) 2 ILR Delhi 762

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Advocate : B.J. Nayar and W.N. Gujral, for the Appellant;

Judgement

Avadh Behari Rohatgi, J.

(1) These are 130 writ petitions filed by the New Delhi Municipal Committee (the Committee). All these writ petitions raise a common question of law about the interpretation of s. 67 of the Punjab Municipal Act 1911 (the Act). I shall take the facts of C.W. No. 860 of 1969 as fairly representative of these writ petitions.

(2) The first floor and barsati of property No. 162 Golf Links, New Delhi bearing No. IV-P/Q-178 was assessed to house-tax at an annual value of Rs. 4716.00 less ten per cent for repairs for the year 1966-67 and for the years immediately preceding thereto on the basis of actual rent paid by the tenant in occupation of the said premises. Sometime at the end of 1967 it came to light that there had been a change in the tenancy with respect to the first floor and the barsati of the said building and the same had been let out at an increased annual rent of Rs. 7800.00 with effect from 1st May, 1963. Consequently, the Committee passed a resolution dated January 27, 1968, making a proposal to amend the house-tax assessment list for the year 1965-66. In pursuance of the said resolution the Committee issued a notice to the owner respondent dated February 13, 1968, under s. 67 of the Act. The notice said : "Your building No. 162 Golf Links

situated at New Delhi had been under assessed through mistake on the part of the Committee" and that the annual value of Rs. 4716.00 "ought to be revised by amending the list under s. 67 of the Punjab Municipal Act." It was further said that the proposed annual value of Rs. 7800.00 less ten per cent for repairs being the actual rent will be the "basis of the revised tax" with effect from April 1, 1965 to March 31, 1966. The Committee invited objections to the proposal and fixed 19th May, 1968 for hearing the owner. The owner filed objections. His principal objection was that the Committee was not competent to amend the list with retrospective effect. The Committee rejected the objections and affirmed the annual value of Rs. 7800.00 less ten per cent on the basis of actual rent and passed the resolution dated March 19, 1968, saying "that the assessment be confirmed as proposed and the assessment list be amended accordingly."

(3) On May 3, 1968, the Committee informed the owner that the assessment of house-tax on his building had been finally settled and confirmed at an annual value of Rs. 7800. Aggrieved by the resolution dated March 19, 1968, the owner appealed to the Additional District Magistrate, a tribunal constituted under s. 84 of the Act. The tribunal allowed the appeal on 6th March, 1969. It held that the Committee can invoke the provisions of s. 67 for the current assessment year but not for the previous years. The tribunal said:

" THE respondent committee can invoke the provisions of section 67 only for the current assessment year and not for the previous, year. Once the year has passed the committee has no remedy but to realise the rent as determined in the assessment prepared u/s 66--. Therefore, the assessed tax cannot be realised with retrospective effect."

(4) It is this order of the tribunal which is being challenged by the Committee in these writ petitions. Identical orders were passed in other cases,

(5) If it is not disputed before me that in these 130 writ petitions the property had been assessed previously but at a much lower valuation. Later on, sometimes after a year and sometime after several years, the Committee decided to amend the assessment list on the ground that in the earlier years the property had been by mistake under assessed .

(6) I will now state the point of law involved in these cases. The Committee has purported to revise the valuation by virtue of the powers conferred on it by s. 67. S. 67 reads:

"67. Further amendments of assessment list-(1) The Committee may at any time amend the list by inserting any property which ought to have been or ought to be inserted, 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 assessed, 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 at 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."

(7) Section 67 was interpreted. The facts of that case were these. Life Insurance Corporation is the owner of a building known as "Jeevan Vihar" Parliament Street, New Delhi. The Committee assessed the building to house-tax for the year 1963-64, 1964-65. 1965-66. 1966-67 and 1967-68 on the basis of actual rent received by the L.I.C. The L.I.C. paid the tax as assessed for these years. In February 1968 it received five notices from the Committee stating that in exercise of the powers conferred by s. 67 of the Act the Committee had decided by a resolution dated January 27, 1968, to amend the list of assessment for the aforesaid five years by including therein rent of a portion of the basement of the building which had escaped inclusion in the respective lists. The Lic filed a writ petition in this court praying that the aforesaid resolutions of the Committee be quashed and that it be restrained from Realizing the additional tax which it proposed to levy under its resolution on the ground that it had no jurisdiction under s. 67 of the Act to amend the assessment list of previous years. A full bench of this court upheld the contention of the LIC. It decided that the Committee had no jurisdiction to make the amendment in the list for any of the previous years except for the current year 1967-68. The court quashed the resolutions of the committee.

(8) Against the decision of the High Court the Lic appealed. Overruling the High Court the Supreme Court held that a part of the basement having escaped assessment the Committee had jurisdiction to amend the assessment lists of past years. On reading ss. 66 and 67 together the court came to the conclusion that:

" 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."

(9) Counsel for the property owners say that the Supreme Court has held that s. 67 deals with a case of escapement. Escapement, it is urged, is different from under valuation or erroneous valuation. A property is said to have escaped assessment within the meaning of s. 67 when it has not been included in the assessment list and thereby not subjected to the liability to pay tax in the proper assessment year or years. It means that the property has not been assessed at all in a certain year and the mistake is discovered later. To such cases it is said s. 67 will have application. Unlike the Supreme Court decision which was a case of escapement the cases before me are cases where the Committee had purported to amend the list retrospectively on the ground that the property had been erroneously valued or assessed through mistake. It is said that to cases of

erroneous valuation or assessment of properties included in the assessment list s. 67 has no application. It is contended that valuation or assessment already made, though erroneous, will remain valid for the past years. It is argued that in cases of escapement the legislature has invested the Committee with wide powers which can be used "at any time", to use the words of s. 67. But then it is said that in cases of erroneous valuation or under valuation the legislature was not prepared to confer a like power unlimited in time and retrospective in operation. This in short is the case of the property owners who maintain that these writ petitions should be dismissed in view of the decision in N.D.M.C. v. L.I.C. supra.

(10) It is important to study the Supreme Court decision in N.D.M.C. v. L.I.C. carefully and determine its ratio decidendi.

(11) Here I would make two observations of a general character- one is that judgments must be read in the light of the facts of the cases in which they are delivered. Lord Halsbury in said :

" EVERY judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expression which may be found there are not intended to be expositions of the whole law but govern and are qualified by the particular facts of the case in which such expression are to be found".

(12) To quote Lord Halsbury again :

"A case is only authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to flow logically from it."

(13) Secondly, as Lord Reid has said, much of the difficulty has arisen "in seeking to treat expressions of judicial opinion as if they were words in an Act or Parliament" [per Lord Reid in]. Keeping these observations in mind I turn to the Supreme Court decision. Now the Supreme Court says:

"S.67 of the Act itself shows the object and purpose of conferring on the Municipal Committee the power to amend an assessment list. If the name of a person whose name ought to be inserted in the list has been omitted or if a property which ought to be included in the list has been omitted or if a property has been erroneously valued or assessed through fraud, accident or mistake on the part of either party or if the tenancy has changed in those cases in which the tax is payable by the occupier, it becomes manifestly necessary to make appropriate amendments in the assessment list." (p. 284).

(14) An analysis of the section shows that it comprehends the following cases:

(1) insertion of the name of a person.

(2) insertion of a property.

(3) alteration of the assessment of a property which has been erroneously valued

or assessed through fraud, accident or mistake of either party.

(4) change in the tenancy in case of tax payable by the occupier.

(15) In *Punjab National Bank Vs. New Delhi Municipal Committee*, Mathew J. said :

" THE purpose behind S. 67 was to enable the Municipal Committee to amend the assessment list at any time on any of the grounds mentioned therein."

(16) Section 67 provides for amendment of the list "at any time". "The Committee's power to amend an assessment list is not limited by the consideration that the list has already become final by authentication. It has the power to amend a list even after it is finalised and has already come into force". *N.D.M.C. case*, supra (p. 284).

(17) The reason why the legislature has conferred on the Committee power to amend the list at any time is that "the larger interest of the general public requires in such cases that the municipal committee which is under a statutory obligation to provide civic amenities to the people, must have the power to do what ought to have been done but which for some reason or the other, had remained to be done." (*N.D.M.C. case*, supra, p. 284).

(18) As the Supreme Court has said sections 66 and 67 have to be read as two integral parts of a scheme which the legislature has enacted for preparation of the assessment and amendment of assessment lists. The list is authenticated under s. 66(1) for the year, commencing on the first day of January or first day of April next ensuing as the committee may determine. But the authenticated list is "subject to such amendments as may thereafter be duly made". This evidently refers to the exercise of the amending power under s. 67. The words "subject to such amendments as may thereafter be duly made" in s. 66 postulate that a list finalised before 1st January or 1st April is liable to be amended thereafter under s. 67. The amendment will have a retrospective operation. The list in force during a particular year in which the property was not included or was erroneously valued will stand corrected as a result of the amendment. Amendment though made later shall relate back to the year of the error. The defect in the list has to be cured. The defect may be of Non-inclusion of a person or a property or erroneous valuation of a property. The defect may be discovered a long time after the list has ceased to be operative. The statute confers power on the committee to cure that defect by amending the list at any time under s. 67.

(19) Counsel for the property owners contend that the Supreme Court in *N.D.M.C. v. L.I.C.* has ruled that s. 67 applies only to cases of escapement of property. I do not agree. It is true that in *N.D.M.C. v. L.I.C.* the court was concerned with a case where basement had escaped assessment. But s. 67 also includes a case where the committee may at any time have to amend the list :

" 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 assessed."

(20) These words have to be given full force and effect. The plain meaning of these words is that though the property had been included in the assessment list of previous years it was "erroneously valued or assessed", may be by mistake on the part of the committee. The erroneous valuation or assessment of the immovable property has to be corrected. The Committee Therefore is given the power to amend the list "by altering the assessment" of the property erroneously assessed. The phraseology of the section is significant. The first two class of cases in s. 67 are of insertion. They deal with "inserting" the name of a person or "inserting" any property. The third class is of alteration of the assessment list. The property was subject to assessment but it had been erroneously assessed. Therefore the amendment of the authenticated list in cases of erroneous valuation is by "altering the assessment" and not by "inserting" a property as in the preceding class of cases. The words "altering" and "inserting" are as different as chalk and cheese but both are species of the genus "amendment". In all these cases there is loss of revenue to the civic body. Loss of revenue can result both where a property escapes assessment also gether or is under assessed .A local authority cannot afford to loose revenue. "The Municipal Committee has to find funds, within the limits of its authority, for discharging its statutory obligations" (N.D.M.C., supra p. 285). Therefore, the Committee is empowered to amend the list by inserting the name of a person or property or by altering the assessment. So wide is this power that it knows no time limit. The words "at any time" used in s. 67 are a clear "recognition of the Committee's power to amend an assessment list even after the expiry of the year following the one in which the list was finalised by due authentication" (N.D.M.C., supra p. 285).

(21) Counsel for the property owners heavily rely on N.D.M.C. v. L.I.C. and contend that s. 67 deals only with cases of escapement and not erroneous valuation. N.D.M.C. v. L.I.C. it is true, was a case of escapement. The rent of a portion of the basement of the building had not been included in the list of assessment for five years. The Committee amended the list by including the rent of those years which had escaped inclusion in the aforesaid lists. The action of the Committee was upheld by the Supreme Court. But we must always remember that judgments "are not intended to be expositions of the whole law", as Halsbury said. "A case is only authority for what it actually decides". And Life Insurance Corporation, case is no exception.

(22) In these 130 writ petitions we are not concerned with the non-inclusion of a person or non-insertion of a property. We are concerned with cases of erroneous valuation or underassessment. The words in the section, viz.,

" THE Committee may at any time amend the list-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 assessed."

have to be given some meaning in any judicial interpretation. Undoubtedly the

language of the statute is the starting point in each case. We must remember the salutary advice that

" IN order to determine the scope and extent of the Municipal Committee's power to amend an assessment list and the effect of an amendment made in a list, regard must necessarily be had to the language of the statute under consideration and its overall scheme governing the preparation and amendment of assessment lists" [N.D.M.C. v. L.I.C. p. 279(283)].

(23) To ignore the words "by altering the assessment on any property which has been erroneously valued or assessed" is to overlook "the true purpose and purport of the committee's power to amend a list at any time and rob that power of its meaningful content" [N.D.M.C. v. L.I.C. (279, 286)]. Not only will we be robbing that beneficent power of its meaningful content but we shall also be flying in the face of the statute by curtailing the width of that power. On no principle of construction of statutes is a court justified to ignore the explicit words of a statute. Its first and foremost duty is to give plain meaning to plain words of the statute. Where the words of a statute are clear, they must be followed. The only safe canon of construction I can adopt is to give the words their natural meaning, unless the context otherwise requires. In a taxing Act one has to look merely at what is clearly said. There is no equity about a tax. One can only look fairly at the language used. (Per Rowlatt J.

(24) There was considerable debate before me about the new section 68A introduced in Act 3 of 1911 by the Amending Act 8 of 1974. S. 68A reads:

"68A.Power to amend assessment list in certain cases-

(1)Notwithstanding anything contained in this Chapter, where the prescribed authority is satisfied that any property has been erroneously valued or assessed through fraud, accident or mistake, whether on the part of the committee or of the assessed, it may, after giving to the assessed an opportunity of being heard and after making such enquiry as it may deem fit, pass an order amending the assessment already made and fixing the amount of tax payable for that property and on the issue of such an order the assessment list then in force shall, subject to the order, if any, passed in appeal, be deemed to have been amended accordingly with effect from first day of January, or first day of April, or first day of July, or first day of October next following the month in which the order is passed.

(2)Any person aggrieved by an order of the prescribed authority may, within, a period of thirty days of the date of communication to him of the order, file an appeal to the State Government which shall decide the appeal after giving to the appellant an opportunity of being heard."

(25) The Supreme Court in N.D.M.C. v. L.I.C. has referred to s. 68A as it "facilitates a clearer understanding" of s. 67. Of s. 68A the court said:

"SECTION68A does not deal with cases in which a property has escaped

assessment altogether. It deals with that limited class of cases in which a property has been included in the assessment list but has been erroneously valued or assessed. In such cases of erroneous valuation or assessment, the amendments made in the assessment lists have no retrospective operation with the result that the valuation or assessment already made, though erroneous, remains valid for the past years. Amendments falling within s. 68A operate in the future and can be effective only from the dates mentioned in the section and not from any earlier point of time. A comparison of the provisions of s. 68A with those of s. 67 shows that the words of limitation contained in the former section as regards the time from which an amendment can come into force are conspicuously absent in the latter. Since the purpose of s. 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 s. 68A." (p. 286).

(26) Counsel for the N.D.M.C. informs me that s. 68A has not been extended to Delhi. Counsel for the property owners have not been able to controvert this. The result Therefore is that s. 68A cannot be invoked by the property owners. S. 68A is a recent innovation. It curtails the width of the power conferred on the Committee under s. 67. As I read it, it is in the nature of a proviso to s. 67. It repeats the words of s. 67 and then limits them by providing that the amended list which alters the assessment of a property erroneously valued "shall be deemed to have been amended accordingly with effect from first day of January or first day of April or first day of July or first day of October next following the month in which the order" altering the assessment is made. S. 68A has no retrospective effect. It does not govern the past. It controls the future. In the Punjab the legislature has reduced the brunt of taxation to a minimum by enacting s. 68A. It has gone out of its way to find some relief and refuge for the harassed tax-payer. But in Delhi the legislature has done little to make the hard path of the taxpayer an easier.

(27) SS. 67 and 68A have to be taken together and construed together as one system and as explanatory of each other. But that is so in the Punjab. In Delhi s. 67 stands alone and by itself. Unaided it has to be interpreted.

(28) There is yet another reason why we are not concerned with s. 68A in these cases. S. 68A was enacted in 1974. In the representative case we are dealing with, the assessment list was amended in 1968 to cure the defect in the list of 1965-66. The Committee purported to act under s. 67 and expressly so stated. S. 68A was introduced in the Act by the Punjab Municipal (Amendment) Act 1974 which received the assent of the Governor of Punjab on March 31, 1974. It cannot apply to the cases in hand.

(29) A property is said to have escaped assessment within the meaning of s. 67 when it has not been assessed to property tax in the hands of the assessed in the proper assessment year. In the assessment list the property is not included. This is one case. A property can also be said to have escaped assessment when it

has been assessed at too low a valuation. There the revenue escapes the hands of the tax-gatherer. For example where the tax has been evaded by the use of stratagems or it may be a case of mistake. Mistake the legislature is prepared to view with indulgent eyes. For mistake can be corrected "at any time". A property which should have been assessed at Rs. 40,000 for instance has been assessed at Rs. 20,000 per year by "fraud, accident or mistake." The mistake is discovered long after the list has ceased to be operative. Cannot the Committee amend the list by altering the assessment ? It can. The concept of escapement is wide enough to cover a case of under-assessment or erroneous valuation. Such is the scheme of the section.

(30) "ESCAPEMENT" is "a means of escape; and outlet" (Shorter Oxford Dictionary). The legislature is plugging the avenues of escape. This is well known in taxing mechanics. If a taxing precedent is needed it can be found in s. 147 of the Income Tax Act 1961 where a case of underassessment is included in the concept of "income escaping assessment".

(31) The legislature was careful to see that it does not leave any easy loophole through which the evasive taxpayer may find escape. Even in 1911 it was aware that in the twists and turns of the tax maze it was always possible to find avenues of escape. Therefore, it decided to confer the power of reopening the previous assessment and reassessing the property so to speak. This is what the key words "altering the assessment" really mean. The property has been erroneously assessed. It must Therefore be reassessed if the error is to be set right. So wide is the power and so tight is the net that it closes upon the taxpayer from all possible sides. But the case must fall within the strict words used in the section.

(32) The only point that appears to have been argued before the Additional District Magistrate was about the competence of the Committee to revise assessment with retrospective effect. On this question his decision, I think, was erroneous.

(33) For these reasons all these writ petitions are allowed. The orders of the Additional District Magistrate are quashed. The parties are however left to bear their own costs.