
(1990) 12 BOM CK 0007
In the Bombay High Court
Case No : Writ Petition No. 284 of 1990

Pimpri Chinchwad Municipal Corporation, Pimpri	APPELLANT
Vs	
Shiva Dular Misra, Pune	RESPONDENT

Date of Decision : 10-12-1990

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1991) MhLj 150

Hon'ble Judges : I.G. Shah, J

Bench : Single Bench

Advocate : P.S. atankar, for the Appellant; A.V. Anturkar with Vahikar, Kakirdeand Sanjay Kshirsagar, for the Respondent

Final Decision : Dismissed

Judgement

I.G. Shah, J.—Pimpri Chinchwad Municipal Corporation, the petitioner, has preferred this petition under Article 227 of the Constitution of India to challenge the order passed in Municipal Appeal No. 55/88 by the Principal Judge. Small Causes Court. Pune, whereby the rental value fixed by the present petitioner by order dated 15-4-1988 is set aside, and the rental value is fixed at Rs. 1, 080/- . and the retrospective effect given by the petitioner to the said order dated 15 4-1988 is also set aside, and it is ordered that the assessment would come into effect from 1-4-1988. and. it is further directed that the excess tax collected, if any. be refunded to the present respondent.

2. Briefly stated the facts giving rise to the present writ petition are as under:-

The present respondent is the owner of the premises situated at plot No. 112. Pradhikaran, Pune; that the said premises consists of two rooms having an area of 722 sq. ft.; that the said premises is alleged to have been constructed in or about 1984 and it is being used for the purposes of residence by the present respondent: that the petitioner fixed the rental value of the house of the respondent at Rs. 2.160/and on the strength of the fact that the construction of

the same was completed in 1984 and the same was occupied since 1984. the petitioner gave retrospective effect to the assessment from 1985-86. The respondent preferred an appeal u/s 406 of the Bombay Provincial Municipal Corporation Act and challenged the rental value fixed by the petitioner and also the retrospective effect sought to be given to the assessment from 1985-86 before the Court of the Principal Judge. Small Causes Court at Pune. The learned Principal Judge of the Small Causes Court allowed the appeal and reduced the rental value to Rs. 1.080/- and also quashed the retrospective effect given to the assessment. Being aggrieved by the said order, the petitioner has come to this Court.

3. At the outset, it may be stated that the quantum of rental value is not very much challenged before this Court and it is contended even on behalf of the petitioner that the rental value fixed by the learned Principal Judge of the Small Causes Court at Pune is not the question that is being agitated before this Court. The only question, that is being agitated, is the retrospective effect sought to be given by the petitioner to the assessment and which has been quashed by the Appellate Court.

4. In view of this, a very short question that arises for determination is of the interpretation of Rule 20(3) of the Taxation Rules provided under Chapter VIII of the Bombay Provincial Municipal Corporations Act. Rule 20(3) 1 reads as under: -

"20(3). Every such amendment shall be deemed to have been made. for the purpose of determining the liability or exemption of the person concerned in accordance with the altered entry, from the earliest day in the current official year when the circumstances justifying the amendment existed."

5. On behalf of the petitioner. Shri Patankar contended that the Appellate Court erred in holding that the ratio of 1973 Mh.L.J. 128 = 74 BLR 469. The Sholapur Municipal Corporation vs. Ramchandra Ramappa Madgundi is applicable to the present case. It is tried to be contended that in the abovesaid case this Court has considered the provisions of section 82(1). (2) and (3) of the Bombay Municipal Boroughs Act and the wordings of the said provisions which were under consideration in the said decision are materially different from the wordings used in Rule 20. Reliance was also tried to be placed on the ruling reported in New Delhi Municipal Committee Vs. The Life Insurance Corporation of India, wherein the Supreme Court has considered the question of assessment list in respect of the property tax under the Punjab Municipal Act. Therefore, it is necessary to consider the provisions of section 67 of the Punjab Municipal Act. The said section reads as under: -

"67(1). The committee may at any time amend the list 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 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 of the said Act further provides as to how the assessment list is to be prepared and the Municipal Committee is given a discretion to prepare a new assessment list every year or to adopt the valuation and assessment for the following year. Section 68A also deals with the power to amend assessment list and it reads as under:-

"68A(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 assessee. it may after giving to the assessee 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.

While considering section 67 the Supreme Court held that the said section itself shows the object and purpose of conferring on the Municipal Committee the power to amend an assessment list. The Supreme Court observed that the reason why the Legislature, by section 67. has conferred on the Municipal Committee the power to amend an 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, and 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. "The Supreme Court further observed that in the instant case, a part of the basement is alleged to have escaped assessment and if that be true, they were unable to understand that the assessee. the L.I.C. there, could in face of section 67 raise a contention that the assessment lists of past years, though faulty, cannot now be corrected, and the Municipal Committee has to find funds, within the limits of its authority, for discharging its statutory obligations. The Supreme Court also considered the argument that if through mistake or oversight, or even due to fraud, a property has escaped assessment. the mistake cannot be corrected retrospectively and

the fraud has to be suffered except in regard to a correction limited to the ensuing year, and the Supreme Court felt that that was denying to the expression "at any time" even its plain, grammatical meaning, quite apart from ignoring the context in which it occurs and the beneficent purpose of its incorporation. The Supreme Court further observed that the expression must, be given its full force and effect which requires the 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 the authentication. Relying on this decision, it is contended that in the present case also the construction was completed some time in 1984 and the same was occupied also, but it escaped the assessment for whatever reason it may be and. therefore, if the petitioner has tried to tax the same by amending or altering the assessment list retrospectively. it cannot be said that the petitioner has exceeded its right. As against this, on behalf of the respondent, it is contended that the Supreme Court in a decision, which is cited, considered the provisions of Pun jab Municipal Act and particularly section 67 of the said Act. It is tried to be contended that it is not *pari materia* or similar to the provisions contained in Rule -0 and. therefore, the said decision has no application to the facts of the present case. On behalf of the respondent, it is contended that the Appellate Court was right in applying the ratio of 1973 Mh.L.J. 128 = 74 BLR 469 (Full Bench decision of this Court). It is contended that in the said decision this Court held that an alteration made u/s 82(3) of the Bombay Municipal Boroughs Act. 1925. in the assessment list prepared u/s 78 of the Act does not become effective for any period prior to the commencement of the official year in which the alteration in the assessment list is made and. therefore, the Municipality is not entitled to levy tax for an official year or any part (hereof which has already expired, and that the alteration becomes effective from the commencement of the official year in which it is made as to entitle the Municipality to levy tax with effect from the commencement of that year only, and that the expression "current official year" in section 82(3) of the Act means the earliest day in the official year which is current when the amendment of the assessment list takes place, that is to say. the expression refers to only that official year which is running at the time when the amendment is made by insertion or alteration of an entry u/s 82(1) of the Act. Shri Anturkar tried to contend that the provisions of section 82(1) and (3) are similar to the provisions of Rule 20(1) and (3). if not *pari materia*. It is contended that Rule 20(1) gives a power to the Commissioner of the Municipal Corporation to amend the assessment list at any time during the official year to which the assessment book relates and it provides further in which cases the amendment should be made. He further contended that sub-rule (3) of Rule 20 read as a whole shows that it is similar to section 82(3) of the Bombay Municipal Boroughs Act. He tried to contend that Rule 20(1) is also similar to section 82(1) and. therefore, the ratio laid down in the Full Bench decision of this Court referred to earlier, is on all force applicable to the facts of this case also. Now it is true that Rule 20(1) provides for amendment of the assessment list and it also provides under clause (d) that the alteration in the assessment list could be also

made when it is found that the assessment made earlier was known as the valued or assessed through fraud, accident or mistake. Similarly clause (e) of the said Rule also provides for insertion or alteration in respect of any building erected, re-erected, altered, added to or reconstructed in whole or in part after the preparation of the assessment book. Similarly clause (a) of the said Rules provides for insertion of any name of any person whose name ought to be so inserted or any premises previously omitted. Therefore, wide power is no doubt given under sub-rule (1) of Rule 20 to correct the assessment list if due to any reason the name of any person or property has escaped from being included in the assessment list. Similarly, it also provides that this could be done at any time during the official year to which the assessment book relates. However, sub-rule (3) of Rule 20 clearly provides that the amendment made in sub rule (1) shall be deemed to have been made for the purpose of determining the liability or exemption of the person concerned in accordance with the altered entry, from the earliest day in the current official year when the circumstances justifying the amendment existed (Emphasis supplied). Obviously this provision or the similar provision did not exist in the Punjab Municipal Act. But a similar provision existed in Bombay Municipal Boroughs Act. It would be proper to state the provisions of section 82(1) and (3) of the Bombay Municipal Boroughs Act which read as under:-

"82(1). The Standing Committee may at any time alter the assessment-list by inserting or altering an entry in respect of any property, such entry having been omitted from or erroneously made in the assessment-list through fraud, accident or mistake or in respect of any building constructed, altered, added to or reconstructed in whole or in part, where such construction, alteration, addition or reconstruction has been completed after the preparation of the assessment-list after giving notice to any person inserted in the alteration of the list of a date, not less than one month from the date of service of such notice, before which any objection to the alteration should be made....."

(3) An entry or alteration made under this section shall subject to the provisions of section 110, have the same effect as if it had been made in the case of a building constructed, altered, added to or reconstructed on the day on which such construction, alteration, addition or reconstruction was completed or on the day on which the new construction, alteration, addition or reconstruction was first occupied, whichever first occurs, or in other cases, on the earliest day in the current official year on which the circumstances justifying the entry or alteration existed; and the tax or the enhanced tax, as the case may be shall be levied in such year in the proportion which the remainder of the year after such day bears to the whole year."

(Emphasis supplied)

On perusal of this provision with Rule 20(3), it is clear that the two provisions are more or less similar.

6. On behalf of the petitioner, Shri Patankar tried to rely on the word used "fraud" and the word used "when" in the phrase from the earliest day in the current official year on which the circumstances justifying the entry or alteration existed, and he tried to contend that in clause (3) of section 82 instead of word "from" and instead of word "when", "on" and "on" which are used and. therefore, the decision of the Full Bench of this Court has no application to the present case. He also tried to contend that the said clause "on the earliest day in the current official year on which the circumstances justifying the entry or alteration existed" is applicable only in respect of the other cases as the tax is sought to be levied in respect of the new construction. The similar clause in Taxation Rule 20(3) under Chapter VIII of the Bombay Provincial Municipal Corporations Act., even if construed to be *pari materia* and similar to section 82(3) of the Bombay Municipal Boroughs Act. will have no application. He tried to contend that there is a material difference in the wordings of sub-rule (3) of Rule 20 and sub-section (3) of section 82. Now if one reads the said clause in Rule 20(3). using words "on" and "on which" in place of words "from" and "when" respectively, one is unable to come to the conclusion which is sought to be drawn. No difference would occur even if the said words are actually used instead of the words "from" and "when". Therefore. sub-rule (3) of Rule 20. in my view, is practically similar to sub-section (3) of section 82. The material words, as has been held in the Full Bench decision, in fact are "in the current official year". this Court while considering the said provision in the above said decision, also considered that if they were intended to include in the context" in which it was used any of the past years prior to the date on which the amendment of the assessment list is made, the expression, according to the said decision, would not be on the earliest day in the current official year, but the expression would be "on the earliest day in the then current official year". this Court in the said decision held that it would not be warranted to introduce the word then" before current official year in the sialulc which is not there. Merely by using the word "from" instead of "on" before the earliest day and using the word "when" instead of "on which" before the words "circumstances justifying the amendment existed", in my view, do not change the meaning of sub rule (3) of Rule 20 to one different than in subsection (3) of section 82. If the words "on" and "on which" used in subsection (3) of section 82 are inserted in the said clause which is to be interpreted, it would read as under:-

"On the earliest day in the current official year on which the circumstances justifying the amendment existed."

Obviously words "on" and "from" could be used interchangeably. Similarly, the words "on which" and "when" could be used interchangeably and the meaning would continue to remain the same. Therefore, the use of the said words "from" and "when" does not in fact change the situation which arises under sub-section (3) of section 82 of the Bombay Municipal Boroughs Act.

7. Relying on the ruling and some observations made in New Delhi Municipal

Committee Vs. The Life Insurance Corporation of India, to which I have referred to earlier. Shri Patankar tried to contend that there are two categories envisaged u/s 82(3) and they are: (i) those in regard to the buildings constructed, altered, added to or reconstructed, and (ii) those in regard to other cases. As regards the first category section 82(3) of the Bombay Municipal Boroughs Act provides that the amendment of the alteration shall have the same effect as if it had been made in the case of a building constructed, altered, added to or reconstructed on the day on which such construction, alteration, addition or reconstruction was completed or on the day on which the new construction, alteration, addition or reconstruction was first occupied whichever is first. As regards the second category, viz. the other cases, the alteration takes effect as if it had been made on the earliest day in the current official year on which the circumstances justifying the entry or alteration existed. Shri Patankar tried to contend that the present case on the facts and circumstances would fall under the first category and. therefore, the clause "on the earliest day in the current official year on which the circumstances justifying the entry or alteration existed" will have no application. Now before considering the said aspect, it must be stated that in the said decision which is relied upon, the Supreme Court clearly observed that there is no parallel between section 82(3) of the Bombay Municipal Boroughs Act and section 67 of the Punjab Municipal Act which was then under consideration. In view of this. it is very clear that the provisions of section 67 which were under consideration by the Supreme Court. were entirely different than section 82(3) of the Bombay Municipal Boroughs Act. Now if the said provision of section 82(3) of the Bombay Municipal Boroughs Act is similar to Rule 20(3) of Taxation Rules under Chapter VIII of the Bombay Provincial Municipal Corporations Act which is under consideration in this case, then the said decision of the Supreme Court clearly will have no application. I have already found that the provisions of section 82(3) are similar to the provisions of Rule 20(3) with which we are concerned.

8. Now I will deal with the aspect in respect of the two categories of cases envisaged u/s 82(3). To my mind, it clearly appears that the two categories arise because of the provisions of section 82(1) as it provides for alteration at any time in the assessment list by inserting or altering any entry in respect of any property could be made on three grounds given below viz. (i) that an entry has been omitted, (ii) erroneously made in the assessment list through fraud, accident or mistake or (iii) in respect of any building constructed, altered, added to or reconstructed in whole or in part and where such construction, alteration, addition or reconstruction has been completed after the preparation of the assessment list. The said section provides that if these conditions are fulfilled the standing committee has the right to alter at any time the assessment list by inserting or altering an entry in it. provided of course there is notice given to the aggrieved party and their objections considered. Now the question that arises for consideration is if an entry is thus amended, what is the effect of that amendment? and that is provided by sub-section (3) of section 82 and the said

sub-section (3) contemplates three different categories in which a different effect takes place, viz. (i) In the case of a building constructed, altered, added to. or reconstructed, the amendment will take effect from the day on which such construction, alteration, addition or reconstruction was completed; or (ii) On the day on which the new construction, alteration, addition or reconstruction was first occupied whichever of the two occurs first. These two clauses therefore make it clear that the amendment will operate from the date of completion or the date of occupation whichever event occurs first. Then comes the third category of cases, which is a crucial category with which we are concerned, (iii) It is the residuary category. In the cases other than the two mentioned above, the amendment shall become effective "on the earliest day in the current official year on which the circumstances justifying the entry or alteration existed". Now therefore though it is true that to the other case the said clause "on the earliest day in the current official year on which the circumstances justifying the entry or alteration exist" will become applicable, it would clearly mean that the other cases will include the cases which have been entered into because of the omission of the entry or because erroneously they were made in the assessment list through fraud, accident or mistake. Clause (a) in respect of any building constructed, altered, added to or reconstructed in whole or part, where such construction, alteration, addition or reconstruction has been completed after the preparation of the assessment list definitely shows that the said category applies only to the new construction which is made after the preparation of the list. Shri Patankar tried to contend that the new construction admittedly was completed in 1984-85 and it was occupied in 1984 85 itself. Therefore, it is not a new construction which is made after the preparation of the assessment list. It is a construction which was made prior to the preparation of the assessment list, but remained to be included in the assessment list, may be accidentally, fraudulently or for any other reason. If that is so. then it would be included in the category of the other cases and the clause which is under consideration will apply. As. I have already held that sub-rule (3) of Rule 20 which is under consideration, is similar to sub-section (3) of section 82 of the Bombay Municipal Boroughs Act. The said interpretation will apply even in the present case and, therefore, in view of the decision reported in 1973 Mh.L.J. 128 = 74 BLR 469 which has been approved in Kalyan Municipal Council and Others Vs. Usha Paper Products (P) Ltd. and Another, , view taken by the Appellate Court cannot be said to be erroneous. The Appellate Court has rightly applied the ratio of the said decision and concluded that the amendment could be made only in the current official year and not retrospectively as was sought to be done by the petitioner. The Appellate Court, therefore, was right in setting aside the assessment order and making it effective retrospectively. Hence the petition has no merit and the same will have to be dismissed.

9. In the result, the petition is dismissed. No order of costs is necessary as the petition involves interpretation of the Rule. Rule discharged.