**(1950) 02 BOM CK 0009**

**In the Bombay High Court**

**Case No :** Second Appeal No. 528 and Civil Revision Application No. 761 of 1948

Shantaram Balaji Naik APPELLANT

Vs

Municipality of Vengurla RESPONDENT

**Date of Decision :** 03-02-1950

**Acts Referred:**

Bombay District Municipal Act, 1901 — Section 48, 48(1), 64, 65, 66
Bombay District Municipal Rules, 1901 — Rule 175

**Citation :** AIR 1950 Bom 352 : (1950) 52 BOMLR 411

**Hon'ble Judges :** Chagla, C.J

**Bench :** Single Bench

**Advocate :** S.R. Parulekar, for the Appellant; S.S. Kavlekar and R.G. Samant, for the Respondent

**Final Decision :** Dismissed

## Judgement

Chagla, C.J.—This appeal arises out of a suit filed by the plaintiff for refund of excess house tax recovered from him by the municipality of Vengurla in respect of house tax for the year 1944-45. A revised assessment list for the year 1944-45 was prepared on 18th June 1944. A public notice was published on 26th June 1944 and again on 7th August 1944, and an individual notice was served on the plaintiff on 8th July 1944, as the tax with regard to his house was to be increased. The plaintiff filed objections on 8th September 1944, and they were disposed of in December 1944. A demand was then made by the municipality for the increased house tax. That demand was complied with by the plaintiff under protest. Two points were raised by the plaintiff in this litigation. One was that his objections had not been heard, and the other was that the levy of the increased tax was illegal. Both the lower Courts came to the conclusion that the plaintiff had been heard by the Chief Officer and after hearing him the objections were disposed of. The trial Court took the view, however, that the levy of the tax was illegal and, therefore, decreed the plaintiff''s suit. The lower appellate Court came to a contrary conclusion and held that the defendant municipality was entitled to levy the increased tax, and thereupon it allowed the appeal and dismissed the plaintiff''s suit. Therefore the only point really that survives in second appeal is whether the levy of the tax is illegal. With regard to the question whether the plaintiff was heard with regard to his objections by the Chief Officer or not, I am bound by the concurrent finding of fact by both the lower Courts.

2. Now, in order to appreciate the point urged by Mr. Parulekar, it is necessary to look at the scheme of levying house tax as laid down in the Bombay District Municipal Act, 1901. u/s 63, when a rate on building or lands or both is imposed, the municipality has to prepare an assessment list of all buildings or lands containing various particulars. Then u/s 64, when the assessment list has been completed, a public notice has to be given. Section 65 provides that at the time of the publication of the assessment list the municipality has to give notice of a time not less than one month thereafter when they will proceed to revise the valuation and assessment, and Section 65 further provides that in all cases in which any property is for the first time assessed or the assessment is increased, they shall also give notice thereof to the owner or occupier of the property, if known. Then Section 65, Sub-section (2), deals with how objections are to be made; Sub-section (8) deals with the hearing of objections ; and Sub-section (4) deals with the authentication of the list; and Sub-section (6) provides that once the list is authenticated the entries in the list shall be conclusive evidence for the purpose of all municipal taxes, of the annual letting value or other valuation of all buildings and lands to which such entries respectively refer, and for the purposes of any tax imposed on buildings or lands, of the amount of each such tax leviable thereon throughout the official year to which such list relates. The list is conclusive subject to one proviso, and that is to any alterations that may be made under the provisions of Section 66 or to the result of any appeal made u/s 68. Section 66 gives the power to the municipality to amend the assessment list by inserting the name of any person whose name ought to have been inserted, or by inserting any property which ought to have been inserted, or by altering the valuation of or assessment on any property which has been erroneously valued or assessed through fraud, accident or mistake, after giving notice to any person interested in the alteration; and Sub-section (2) deals with objections that might be made to such alteration and Sub-section (3) provides that every alteration made under this section shall have the same effect as if it had been made on the earliest day in the current official year in which the circumstances justifying the alteration existed. Then we come to Section 67 and that provides that it would not be necessary to prepare a new assessment list every year. It empowers the municipality to adopt the valuation and assessment contained in the list for any year, with such alterations as may be deemed necessary, for the year immediately following, but it makes it incumbent that the assessment list shall be completely revised every forth year. Then u/s 67 (2) it is provided that the provisions of Section 64, 65 and 66 shall be applicable every year as if a new assessment list had been completed at its commencement of the official year. There is one rule which has been framed by the municipality u/s 48 (1) to which

 

attention may be drawn, and that is Rule 175 and that provides that the taxes mentioned in Schedule "c" shall be payable on the dates indicated in Col. 6 of the schedule; and when we turn to Schedule c we find that house tax is made payable under Col. 6 on 1st April in each year.

3. Now briefly summarising Mr. Parulekar''s argument, it comes to this. Mr. Parulekar says that on 1st April 1944, the old assessment list was in existence. The house tax became payable on 1st April under Rule 175 and the tax that he was liable to pay was the tax in respect of the assessment list which was in existence on that date. Mr. Parulekar says that he cannot be bound by the revision of the assessment list which took place subsequent to let April 1944. Therefore, according to Mr. Parulekar, it is incumbent upon the municipality to prepare the assessment list prior to the official year which commences from 1st April. It is only in respect of the list which is prepared prior to 1st April that an assessee is liable to pay house tax. If the list is prepared subsequent to 1st April, then there is no liability to pay any increased tax which may be the result of the preparation of the revised iiat. I think that fairly summarises the contention of Mr. Parulekar. In my opinion, that contention cannot prevail looking to the scheme of the Act and to the rule on which Mr. Parulekar has relied. Turning to the rule itself, this rule merely lays down that the liability to pay house tax shall arise on 1st April every year. It does not indicate what the liability would be or what is the tax which the assessee would be liable to pay. The quantum of the tax is not indicated in this rule. In order to determine what the extent of the liability would be, one hag got to turn to the Act itself and that liability is to be found in Section 65 (6). Once the list is authenticated and becomes conclusive, it is that list alone which is determinative of the tax that the municipality can impose on buildings or lands throughout the official year to which such list relates. The amount of the tax which the municipality can levy can only be determined by looking at the list which has been authenticated and which has become conclusive u/s 65, and there is no dispute in this case that the revised list published by the municipality was authenticated and became conclusive and did refer to the tax which was payable by the assessee for the official year 1944-45. I see no provision in Section 65, which makes it incumbent upon the municipality to publish the revised list prior to 1st April and I do not read any such obligation from the terms of Rule 176. The mere fact that that rule fixes the date on which the liability arises does not necessarily mean that the quantum of the tax has to be determined prior to 1st April every year, and the Legislature has made the position perfectly clear by Section 67 (2) of the Act. Under that section the provisions of Section 64, 65 and 66 are to be applicable every year as if a new assessment list had been completed at the commencement of each year. Therefore the effect of Section 67 (1) is this that it is not incumbent upon the municipality to prepare a new list every year. They can revise the list in part from year to year, but the provisions with regard to publication etc., contained in Section 64, 65 and 66 will continue to apply as if the assessment list had been completed at the commencement of the official year. Therefore, Section 67 (2)

 

gives a retrospective effect to all changes that might be made in a list after 1st April of any year and therefore it assumes that the municipality can prepare the revised list after 1st April and makes it incumbent upon the municipality to follow the procedure laid down in Section 64, 65 and 66, and then it goes on to say that in the eye of the law a revised list will be looked upon as if it was a new list which had been completed at the commencement of the official year. Therefore, in my opinion, apart from any authority and looking to the provisions of the Bombay District Municipal Act, 1901, there was no obligation upon the municipality to prepare the list prior to 1st April in order that it should be entitled to levy tax in respect of the official year commencing from 1st April. If the municipality gets a list authenticated and follows the procedure laid down in Section 64, 65 and 66, then that list would govern the levy of the tax throughout the official year, even though that list might have been published subsequent to 1st April and also might have been authenticated and become conclusive after 1st April.

4. Now, turning to the authorities, the first case to which my attention has been drawn is a decision reported in Ambalal Sarabhai v. Ahmedabad Municipality 23 Bom. L. R. 48 : A.I.R 1921 Bom. 236. That was the case of the Ahmedabad Municipality and the Ahmedabad Municipality had framed a Rule 74 which laid down the time during the various periods for preparation of the list, submitting of objections, and the deciding of objections, and the rule ended up by stating :

"The Managing Committee after due investigation shall communicate its decision in each case to the owner or tenant before the 1st of April and the payment of tax shall be considered due on that date."

In that case before Shah and Crump JJ. the Ahmedabad Municipality published the revised list of assessment on 24th April 1911. There, fore clearly the publication of the list was much later than Rule 74 provided, and the tax levied in pursuance of this revised list was challenged on the ground that the municipality had acted contrary to the provisions of Rule 74 and thereby the levy of the tax was illegal. It was contended that Rule 74 was ultra vires. That contention was rejected by Shah J. and Crump J., and the Court came to the conclusion that Rule 74 was binding on the municipality, and as the municipality had not conformed to that rule, the levy of the tax was illegal. Shah J. in his judgment at p. 53 says that on a careful consideration of the scheme of Section 63, 64, 65, 66 and 67, it is clear that under Sub-section (2) of Section 67 it is permissible to the municipality to deal with the matters arising u/s 64, 65 and 66 after the commencement of the official year in question.

5. Then we hive a judgment of another division bench reported in Subbappa Mallappa v. Bonni 50 Bom. L. R. 701 : A.I.R 1949 Bom. 119. In that case Sen and Dixit JJ. were considering the provisions of the Bombay Municipal Boroughs Act, 1925, which correspond to the provisions of the Bombay District Municipal Act, and in that case the objections were disposed of much after 1st April of the year, and the contention of the assessee was that his liability to pay tax only

 

arose when his objections were considered and disposed of. That contention was rejected and the Court held that the liability to pay tax arose independently of the objections or the disposal of the objections and that the revised list became effective at the commencement of the official year, i.e. 1st April 1939, and the Court pointed out that the effect of Section 84 (2), which corresponds to Section 67 (2) of the Bombay District Municipal Act, was that it was applicable both to an annual assessment list as well as to a revised assessment list prepared once in every four years so that the annual assessment list or the revised assessment list becomes effective at the commencement of the official year from 1st April. We are here dealing with a revised assessment list and the effect of this decision is that that revised assessment list becomes effective from 1st April 1944. Mr. Parulekar points out that in this particular case the assessment list was published on 31st March 1939, and therefore, according to him this decision supports his contention that it is only when the list is published before the commencement of the official year that the tax is leviable in accordance with the revised list. In my opinion, the fact that in this particular case the list was published on 31st March has no bearing on the actual decision which was arrived at by the Court. The decision does not turn at all on the fact that the assessment list was published prior to 1st April. The ratio of the judgment is, as I have just pointed out, that the revised assessment list whenever published becomes effective from 1st April which is the official year of the municipality.

6. In my opinion, therefore, the lower appellate Court was right in coming to the conclusion that it did. The result is that the appeal fails and must be dismissed with costs.

7. The same result must follow in Civil Revision Application No. 761 of 1948. There the rule will be discharged with costs.

 