
(1977) 12 BOM CK 0001

In the Bombay High Court

Case No : Special Civil Application No. 2178 of 1973

Shivmanik Dattatraya Shivangikar

APPELLANT

Vs

Latur Municipal Council

RESPONDENT

Date of Decision : 02-12-1977

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1978) 80 BOMLR 457 : (1978) MhLj 826 : (1977) MhLj 826

Hon'ble Judges : Jahagirdar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Jahagirdar, J.—This is a group of petitions challenging the order passed by the learned Additional Sessions Judge of Osmanabad sitting in revision over the order passed by the learned Magistrate of Latur in appeals arising out of the Maharashtra Municipalities Act, 1965. All the petitioners are the owners of properties situated at Latur town a taluka place in Osmanabad District. The Municipal Council of Latur is a "B" class municipality as per Schedule I of the Maharashtra Municipalities Act, 1965, hereinafter referred to as "the Act of 1965". The Municipal Council of Latur fixed the rateable value of the buildings and after doing so imposed consolidated property tax at 19 per cent, of the rateable value u/s 105(2) of the Act of 1965. In pursuance of the imposition of this tax, a bill was presented to each of the petitioners who challenged the same in the appeals before the Judicial Magistrate u/s 169 of the Act of 1965. All the appeals came to be dismissed and the petitioners thereafter went in revision to the Court of Session and the revision applications were heard by the learned Additional Sessions Judge u/s 171 of the Act of 1965. He by his judgment and order dated October 31, 1972 disposed of the revisions with a direction that a copy of the judgment shall be kept in the file of each revision. By this order he dismissed two revision applications and partly allowed the rest. In allowing the revisions, the learned Additional Sessions Judge gave a direction that the cases

should be remanded for retrial and rehearing in the light of certain observations made by him in the judgment. I am not referring to the details of the observations. Suffice it to say that it appears that he directed the learned Magistrate to rehear the parties on the question of the quantum of the tax levied; but he also appears to have left open the question of the legality of the taxes levied to be considered by the learned Magistrate.

3. The petitioners who wanted the learned Additional Sessions Judge himself to hold in their favour on the question of the legality of the taxes levied by the Municipal Council, have approached this Court under Article 227 of the Constitution. The prayers in the petitions which are almost common to all the petitions indicate that the assistance of this Court is requested for declaring that the imposition of the tax which is challenged is without jurisdiction, illegal and void. The challenge undoubtedly is to the jurisdiction of the Municipal Council to levy the taxes in the manner in which it has done. Implicit in this challenge is also a question of the propriety or the legality of the Municipal Council following a particular rule while arriving at the quantum of the tax which has been imposed.

4. The basis of the challenge will be evident when I will proceed to mention some of the provisions of law relating to the power of the Municipal Council to impose property tax. As already mentioned, Latur Municipal Council is in Osmanabad District which was in the erstwhile Hyderabad State. Prior to 1956, there was an Act called Hyderabad Municipalities and Town Committee Act, 1951. In the year 1956 Hyderabad District Municipalities Act, 1956, was introduced and the Act of 1951 came to be repealed. The Act of 1956 itself was made applicable on August 11, 1956. As is now well-known, the Maharashtra Legislature passed an Act, being Maharashtra Municipalities Act, 1965, to bring uniformity in the constitution, administration and powers of the Municipalities in the State of Maharashtra and different parts of this Act came into force on different dates. For the present purpose it may be taken that the Act is now fully in force in the whole of Maharashtra. u/s 105 of the Act of 1965 there is an obligation on every municipal council to impose a consolidated property tax on lands or buildings or both situated within the municipal area on the basis of their rateable value as determined in accordance with Section 114. This obligation is however subject to any general or special orders which the State Government may make in that behalf. The consolidated tax on property is to include a general tax, a general water tax, a lighting tax and a general sanitary tax.

5. In exercise of the powers conferred upon it by Sub-section (2) of Section 321 read with the relevant provisions in Section 105 of the Act of 1965, the Government of Maharashtra has framed rules called the Maharashtra Municipalities (Consolidated Property Tax) Rules, 1969, hereinafter referred to as "the Rules" to provide for the procedure for imposing consolidated property tax as per Section 105 of the Act of 1965. Rule 3 of these Rules provides for, among other things, the maximum and minimum rates at which the tax shall be levied in different classes of municipal areas. Rule 4 prescribes the procedure

preliminary to imposing the tax by the municipal councils to which Rule 5 does not apply. It is therefore necessary to see what Rule 5 provides for. It mentions that in cases of municipal areas, where rateable values of the properties on the basis of their rental value were not determined under the provisions of the repealed Act, the Chief Officer shall, immediately on the coming into force of these rules, undertake assessment of rateable values of properties in accordance with Sections 113 to 131 of the Act and authenticate the assessment list by a date not later than March 31, 1971. The date on which such authentication is to be made has been extended upto March 31, 1977. Those municipal councils to which Rule 5 does not apply are to take action under Rule 4 which provides that every Council shall by a resolution passed at a special meeting convened on a particular date decide to levy the tax on lands and on buildings and approve the rate at which the tax shall be levied. In other words, Rule 5 provides for those cases where prior to the coming into force of the Act of 1965 there were no existing determined rates of rateable values of the properties situated in the respective Municipal Councils, whereas Rule 4 applies to Municipal Councils of those towns where the assessed rateable values of the properties had been determined.

6. According to the petitioners, the Latur Municipal Council has proceeded to impose the consolidated property tax by following the procedure prescribed under Rule 5 which it was not entitled to. According to them, prior to the Act of 1965 there was already the Act of 1956 under which property taxes were being levied on the rateable values which were fixed. To a possible objection that the rateable values of the buildings in Latur Municipal Council were not actually fixed under the Act of 1956 but had been fixed under the Act of 1951 it was contended by the petitioners that if the taxes were being levied under the Act of 1956 on rateable values which had already been fixed under the Act of 1951 it should be regarded that the rateable values were determined under the Act of 1956 for the purpose of levying the tax under the Act of 1956. It is therefore illegal for the Chief Officer of the Municipal Council to proceed to undertake the assessment of the rateable values of the properties afresh as mentioned in Rule 5 of the Rules. It is contended that the practical consequence of proceeding under Rule 5 has been a higher rate of tax than what would have been if the procedure under Rule 4 had been followed.

6. There is considerable substance in these contentions which have been urged in support of the petitions by Mr. Dudhat, the learned advocate appearing for the petitioners. He has also contended that by levying the tax on the rateable values of the properties the Municipal Council has violated the provisions of Section 112 of the Act of 1965. He further contended that the Municipal Council ought to have followed Sub-rule 3 of Rule 3 and not Sub-rule 2. It is not necessary to examine the various contentions of Mr. Dudhat because these petitions are liable to be dismissed on a preliminary objection taken by Mr. Agarwal, the learned advocate appearing for the Municipal Council. Prima facie there is considerable substance in what Mr. Dudhat contends about the applicability of Rule 4 to the

Municipal Council because Latur Municipal Council had been levying the property tax on properties whose rateable values had been determined prior to the Act of 1965. It is not necessary for me to determine this question because the petitioners' challenge to the legality of the tax cannot be agitated in forums to which they have resorted under the provisions of Section 169 and Section 171 of the Act of 1965. It is well-settled, as Mr. Agarwal has pointed out, that in an appeal u/s 169 of the Act of 1965 which is analogous to the provisions contained in other municipal laws, a challenge to the legality or vires of the tax cannot be made nor can an assessee challenge the legal competence of the Municipal Council to levy a particular tax in an appeal u/s 169 of the Act of 1965.

7. Section 169 provides that appeals against any claim for taxes or other dues included in a bill presented to any person u/s 150 or any other provisions of the Act of 1965 may be made to any Judicial Magistrate or Bench of such Magistrates by whom under the direction of the Sessions Judge such class of cases is to be tried. The procedure for preferring appeals has been prescribed u/s 170. The decision of the Magistrate who hears an appeal u/s 169, is final subject to an order in revision that may be passed by the Sessions Judge u/s 171 of the Act of 1965. Section 172 of the Act bars proceedings in any other Court in respect of questions which are to be decided by the Magistrate u/s 169. No objection can be taken to any valuation, assessment or levy nor shall the liability of any person to be assessed or taxed be questioned in any other manner or by any other authority than is provided by the Act of 1965. This bar of jurisdiction, of other Courts extends only to the items mentioned in Section 172 viz. valuation, assessment or levy of any tax. The legality of the valuation or of assessment or of levy is not an item mentioned in Section 172. Therefore the legality or the vires of any assessment made or tax levied under the provisions of the Act could be challenged in a civil Court whose jurisdiction in that respect is not barred by the provisions of Section 172.

8. Apart from these provisions contained in Section 169 of the Act, it is clear that an appeal can be preferred against any claim for tax or dues included in a bill and challenging the legal competence of the taxing authority. This appears to be so on a bare reading of the provisions of the Act itself. The proposition that legality of a levy or legal competence of the taxing authority or the vires of the action taken in pursuance of the provisions relating to the tax cannot be questioned in an appeal before the Magistrate, is also supported by a long line of decisions of this Court to which reference must now be made. It must, however, be mentioned that the decisions which are now being referred to were under different Municipal Acts and not under the Maharashtra Municipalities Act but the provisions which were noticed by these various decisions are analogous to the provisions contained in the Maharashtra Municipalities Act, especially the provisions relating to the scope of an appeal that is to be preferred to a Magistrate. In *Ankleshwar Municipality v. Chhotalal* (1954) 57 Bom. L.R. 547, a division Bench of this Court was considering the provisions of the Bombay District Municipal Act. Section 86 of the said Act provided that appeals against any claim

included in a bill presented under Sub-section (1) of Section 82 may be made to any Magistrate or Bench of Magistrates. Sub-section (2) of Section 86 further provided that the decision of the Magistrate or Bench of Magistrates shall at the instance of the either party be subject to revision of the Court of Session. A decision given by the Magistrate subject to the decision in revision was made final by Section 86A of the Act. The facts of that case show that one Chhotalal owned property within the municipal limits of Ankleshwar Municipality which had issued bills to him u/s 82 for sums due for house-tax, etc. Chhotalal preferred an appeal contending that the bills were illegal, that the imposition of the tax and the assessment of taxes were illegal, invalid and void and ultra vires of the rights, power and authority of the Municipality and that the Municipality had not complied with the provisions of law in respect of the preparation and adoption of the assessment list and therefore that valuation was not proper. It was manifest that the assessee had challenged not merely the quantum but the very basis, the manner and the procedure adopted for levying the tax. The Magistrate to whom the appeal had been preferred partly allowed the appeal in so far as the general sanitary cess was concerned. Both the Municipality and the assessee applied to the Sessions Judge for revision and the learned Sessions Judge held that the bills did not comply with the requirements of Section 82 of the Act and were invalid. The Municipality came in revision to the High Court. After an exhaustive analysis of the provisions of the Act and several previous decisions of not only this Court but also of other Courts, it was held that the scope of matters to be dealt in an appeal u/s 86 of the Bombay District Municipal Act was limited to the valuation and assessment of the property entered in the assessment list and to the quantum of the amount in the bill presented u/s 82 of the Act. It was also held that the inquiries in appeals and revisions before the Sessions Judge could not be extended to questions relating to the validity or legality of a tax imposed by the Municipality. It was not open to a party to raise a question as to the legality or validity of a tax in an appeal to the Magistrate. The rationale of this decision was especially pointed out by the division Bench in the following manner (p. 559):

...It has also got to be noted, as we have pointed out earlier, that Section 86 deals with individual appeals preferred by tax-payers after a bill has been presented. If such questions are, allowed to be raised in individual appeals, and assuming that the contention succeeded, the individual concerned may get the relief, but those who have not chosen to file an appeal would be bound to pay the tax even if the Court has held it to be illegal.

9. There was no provision for a representative appeal before a Magistrate. This consideration was also of some importance in deciding the scope and ambit of the appeal before the Magistrate.

10. Another division Bench has taken a similar view of the provisions contained in the District Municipal Act in *Gopal Mills Co. Ltd. v. Broach Bor. Mun* (1955) 58 Bom. L.R. 300. This Court held on the interpretation of the provisions contained in the Bombay Municipal Boroughs Act that it was not open to a Magistrate to

consider whether the tax that was imposed was valid or ultra vires the powers of the Municipality. The provisions relating to the appeals were analogous to the provisions noticed above in the case of Ankleshwar Municipality v. Chhotalal. A reference may also be made to a decision of another division Bench of this Court in Balkrishna v. Poona Municipal Corp. (1962) 65 Bom. L.R. 119, which related to the provisions under the Bombay Provincial Municipal Corporations Act. In this judgment the decisions in Ankleshwar Municipality v. Chhotalal and Gopal Mills Co. Ltd. v. Broach Bor. Mun. were approvingly cited and in fact were followed. Reading the provisions of the Provincial Municipal Corporations Act, this Court held that the various provisions were meant only to enable matters of rateable value and the fixation of the taxes on the basis of such rateable value to be decided by the machinery provided in the Act and the validity of the tax fixed or the authority could not be challenged before an authority provided by the Act. The reference was to Section 406 of the Act. It is not necessary to multiply the authorities because the above three authorities dealing with the provisions of three different types of laws have taken a view which has been consistently followed viz. that in appeals against the bills presented to a property-owner under any Municipal law the validity of the tax mentioned in those bills cannot be gone into by the Magistrate to whom the appeal is preferred.

11. Mr. Dudhat while not contesting the correctness of the views taken in the decisions mentioned above, sought to distinguish the present case by pointing out that the words in Section 172 of the Act of 1965 barring the jurisdiction of other authorities are somewhat different from what is contained in Ankleshwar Municipality's case or Gopal Mills's case. In particular, he says that the word "valuation" to be found, in Section 172 should be held to include not merely the quantum of valuation but the basis of the valuation. I am unable to agree with this interpretation. Apart from the provisions contained in Section 172, the provisions contained in Section 169 of the Act of 1965 are clear on the scope and ambit of the jurisdiction of the Magistrate hearing appeals and that does not extend to the legality, vires or the validity of a tax imposed or an action taken by the authorities under the Act of 1965.

12. It cannot be disputed for a moment that the thrust of the challenge made by the petitioners in these petitions is towards the foundation of the new assessment list which has been prepared by the Latur Municipal Council and not merely to the quantum of the tax. The averments made in this petition and the arguments advanced before the two Courts below clearly indicate that their main grievance was that the Municipal Council ought to have followed Rule 4 and not Rule 5. The Municipal Council has committed an error of jurisdiction by following Rule 5 and any tax imposed by following the procedure prescribed in Rule 5 is illegal and void. This is the substance of the attack the petitioners are marking on the bills presented to them by the Municipal Council. This they cannot be allowed to do in appeals which they preferred before the Magistrate u/s 169 of the Act of 1965. To that extent the proceedings in the appeals before the Magistrate and in revisions before the Sessions Judge are vitiated by lack of

jurisdiction. In so far as the grievance relating to the quantum of tax is concerned, the orders passed by the two Courts below are sustainable. These petitions carrying the proceedings further to this Court challenging the validity and legality of the tax. levied must therefore fail. The rule in each of these petitions is discharged with costs.