

(1961) 12 BOM CK 0005
In the Bombay High Court
Case No : First Appeal No. 531 of 1956

The Jalgaon Borough Municipality

APPELLANT

Vs

The Khandesh Spinning and Weaving Mills Co. Ltd.

RESPONDENT

Date of Decision : 06-12-1961

Acts Referred:

Bombay Municipal Boroughs Act, 1925 — Section 82

Citation : (1962) 64 BOMLR 229

Hon'ble Judges : Shah, J;Patel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Patel, J.—This is an appeal which arises out of a suit instituted by the appellant for recovery of a sum of Rs. 17,000-15-0 as taxes for the official year 1950-51. The short facts are that in the year 1947 the appellant-Municipality (hereinafter called as the Municipality) altered one of its Rules, Rule 4, in respect of valuation of properties of factories. Under the new rule, the factories were to be valued at Rs. 60 per 100 sq. ft. or part thereof for built area and Rs. 2 per 100 sq. ft. for open space. This rule received the sanction of the Government as required under the provisions of the Bombay Municipal Boroughs Act on November 25, 1947, and became effective from April 1, 1948. In pursuance of this rule the Municipality prepared its assessment list as required by Section 81 of the Act. Bills were issued to factory owners. One of the factory owners by name Raghavji Kanji filed a suit, being Suit No. 186 of 1949, on April 27, 1949, against the Municipality for a declaration that the new rule was ultra vires and prayed for necessary injunction. During the pendency of the suit he obtained a temporary injunction. The suit succeeded and a decree was made in his favour on September 21, 1950. The Municipality went in appeal to the District Court, being Appeal. No. 191 of 1950. The present defendant-respondent also filed a suit, being suit No. 20 of 1951 on March 5, 1951, for similar reliefs.

2. This Court had an occasion to consider a similar rule and by its judgment

dated October 8, 1951, in *Borough Amalner Municipality v. Pratap Mill* (1951) 54 Bom. L.R. 451 held that the said rule was within the powers of the Municipality. As a result of this decision, the appeal of the Municipality, being Appeal No. 191 of 1950, against the decision obtained by Raghavji Kanji was allowed and his suit was dismissed. The defendant's suit also came to be dismissed.

3. For the years 1949-50 and 1950-51, the Municipality, respecting the judgment of the Civil Court, which held that the rule was ultra, vires, corrected its assessment list in accordance with the old rules—a conduct which one must appreciate very much. After the decision of the High Court in the case referred to above, the Municipality sought to amend the assessment list in respect of factories to which the new rule was applicable for the year 1951-52 and gave notice of the intended alteration u/s 82 of the Act. It also forwarded a bill to the defendant, the defendant-company being one of such factories. The defendant raised objections to the alteration, and when the bill was presented to it, it took an appeal to the Magistrate u/s 110 of the Act. The Magistrate, held the defendant-company liable to pay the higher amount of tax as calculated under the new rule from February 29, 1952. The plaintiff and the defendant went in revision to the Sessions Court where the defendant succeeded, the Sessions Court holding that since the, mistake was not proved, the alteration on the basis of the new rule was illegal. It, therefore, directed the Municipality to assess the defendant on the basis of the old rule for that year. This order was made on December 21, 1954,

4. On June 14, 1955, the Municipality, filed the present suit contending that it was entitled to recover the amount of the tax for the year 1951-52 which was not recovered because of the mistaken entry in the assessment list. It also prayed that the decision of the Magistrate and the Sessions Judge directing the Municipality to refund the amount of the bills be set aside as being wrong and illegal, and that the defendant be ordered to pay back the amount recovered "by it from the Municipality in pursuance of the order u/s 110 of the Act.

5. The defendant relied on the judgment of the Sessions Judge in revisions! application. It contended that the original entry in the assessment list for 1951-52 was not made erroneously due to fraud, accident or mistake, that it was prepared with full knowledge of the implications of the decision given by the Civil Court in Suit No. 186 of 1949 and that the Municipality had no right to correct the assessment list. It also contended that a wrong entry due to the decision of the Court could not be a ground for alteration of the same tinder ?s. 82 of the Act, that the question as to whether there was a mistake or not in making the entries under old rules had been finally decided by the Sessions Judge in revisional application against the bill and it was not now open to the Municipality to raise the contention in the Civil Court, and that the Court had no jurisdiction to set, aside the order of a Special Tribunal under the Municipal Boroughs Act. It also raised factual contentions by saying that, the notice which is required to be given u/s 82 of the Act was not given. This last contention, however, was given

up at the trial.

6. The learned trial Judge upheld the contention of the defendant holding that, the decision of the Magistrate, and the Sessions Judge u/s 110 of the Act was conclusive and it was not open to the Municipality to contest its legality. He also held that the Court had no jurisdiction to try the suit. In the result he dismissed the suit.

7. The first question that arises is whether the Court has jurisdiction to entertain the suit of the nature filed by the Municipality. It is true that a special liability is created under the Municipal Boroughs Act in respect of the, tax leviable by the Municipality. It is also true that it has provided the machinery for determining grievances under the Act in respect of those taxes. Section 111(1) provides that the decision of the Magistrate or Bench of Magistrates subject to the result of the revisional application shall be final. Sub-section (2) of Section 111 provides that the effect shall be given by the Chief Officer to every decision of the Magistrate or Bench of Magistrates on any appeal or any decision in revision on such appeal against any such entry or tax. Belying on these provisions it is contended that the Civil Court would have no jurisdiction.

8. For this purpose it is not necessary for us to consider the scheme of the Act inasmuch as it has formed the subject-matter of decision in two previous decisions of this Court. In *Ankleshwar Municipality v. Chhotalal* (1954) 57 Bom. L.R. 547, a contention was raised that u/s 86 of the Bombay District Municipal Act, 1901, jurisdiction of the Magistrate in, appeal was a limited one and the Magistrate was not entitled to decide the question as to the legality or validity of a tax. The Division Bench very carefully considered the scheme of the District Municipal Act as well as of the Municipal Boroughs Act and came to the conclusion that the appeal could only be with respect to matters with regard to which an objection could be taken in the enquiry made by the Municipality u/s 65 of the Act and the scope of the appeal was confined only to the grounds stated in the objections made to the Municipality under that section. They also pointed out that the enquiry made by the Municipality u/s 65 was limited to valuation and assessment so far as the rates on buildings and lands were concerned,

9. The next case is *Gopal Mills Go. Ltd. v. Broanh Bor. Muni* (1955) 58 Bom. L. R. 300 which arose under the present Act. It was held that Section 111 of the Bombay Municipal Boroughs Act, 1925, excluded the jurisdiction of the Civil Court to decide questions which were to be decided by the Magistrate and ultimately in revision by the Sessions Court. The jurisdiction of the Magistrate u/s 110 of the Act is limited to considering the question with regard to quantum of taxation. It is not open to him to consider whether the tax that was imposed was valid or ultra vires the Municipality. It was further held that it was open to an assessee to challenge the order of the Magistrate, but so long as that order stood, it would not be open to an assessee to have the quantum of tax reviewed by a tribunal other than the tribunal set up under the Act. Under these circumstances, if the question that is raised by the Municipality in its suit did not

fall within the jurisdiction of the Magistrate, then the Civil Court would have jurisdiction to deal with it; if it was within the competence of the Magistrate then the jurisdiction of the Civil Court is excluded.

10. Now, in this case the issue that was framed by the Magistrate was whether the Municipality could amend the assessment list with retrospective effect so as to entitle it to claim the tax for the preceding year. The revisional Court framed the issue in two parts, one being whether the Municipality was entitled to alter the assessment list for the year 1951-52 so as to levy tax upon the applicant's factory premises under the revised rule 4, and the other being whether for the years 1952-53, and 1953-54 the Municipality's action in taxing certain factory premises under the old rule and the rest under the revised rule was illegal. Both these issues were answered by the learned Sessions Judge in the negative. It is patent that both the Courts proceeded to judge the legality of the tax and not the quantum which was only within their jurisdiction. Therefore, to the extent to which they have gone beyond their jurisdiction, their decision is a nullity and ineffective.

11. It is, however, contended by Mr. Karnik that by the terms of Section 82 of the Bombay Municipal Boroughs Act the Magistrate and the revisional Court have jurisdiction to determine as to whether or not any occasion had arisen for the amendment of the assessment list. Sub-section (1) of Section 82 says:

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...through fraud, accident or mistake...

The rest of this sub-section is not necessary for our purpose. Sub-section (2) provides that the objection to such alteration shall be dealt with in all respects as if it were an application u/s 81(2). Sub-section (3) provides for the day from which the altered entry becomes effective. An appeal lies u/s 110 against the alteration made u/s 82. But the question is, while deciding that appeal would the Court be entitled to determine whether it was a legal tax or illegal tax. What the Court in effect did in the present case was to hold that the tax was illegal since it took the view that the tax could not be levied under the new rule. It, however, seems to us that in view of the limitations of an appeal u/s 110, the "Magistrate's Court would not be a proper forum to determine questions such as fraud, which is one of the reasons or the occasions for the alteration of an entry. Its decision, therefore, on this question must be regarded as null and void.

The revisional Court no doubt says that the entry could not be a mistake. It seems that both the Courts have imported the word "bona fide" while dealing with the word "mistake". What is not realised is that if it were not bona fide it would be fraudulent. It appears, however, that in view of the circumstances of the present case it was obviously a patent mistake and the Courts were in error in saying that it was not a mistake. If one looks to the injunction which was issued by the Civil Court in the final decree at exh. 29, it is at once apparent that

the Court issued a general injunction restraining the Municipality from giving effect to the new rule and did not limit it to the plaintiff in that suit. It is clear that if out of respect for that judgment the Municipal authorities thought that it was advisable to frame assessment list on the basis of the old rule, there is no reason why it should not be regarded as a mistake. Mistake can both be of fact and of law, and since there is nothing in the section which limits the exercise of the right in case of a mistake of fact only, there is no reason to hold that there was no mistake in this case as contemplated by Section 82 to justify the alteration of the assessment list.

12. The Magistrate and the revisional Court in our opinion, however, had no jurisdiction to go into the question as to the validity or otherwise of the alteration, or amendment of the assessment list, and accordingly, that part of their decision is a nullity and cannot bind the Civil Court in the subsequent suit. It must, therefore, be held that the Civil Court had jurisdiction to entertain the suit! on the ground alleged in the plaint.

13. If the decision of the Magistrate and the revisional Court is thus not binding on the Civil Court then is there anything which prevents the Municipality from filing a suit for recovering the tax? Section 203 provides:

In lieu of any process of recovery allowed by or under this Act or in case of failure to realise by such process the whole or any part of any amount recoverable under the provisions of Chapter VIII, or of any compensation, expenses, charges or damages payable under this Act, it shall be lawful for a municipality to sue in any Court of competent jurisdiction the person liable to pay the same.

It is clear, therefore, that though special rights and liabilities are created by the Municipal Act, inter alia in respect of levy of taxes, by Section 203 right is also vested in the Municipality to proceed to recover the taxes by the regular process of a civil suit. To the extent to which the decision of the Magistrate is binding and concessive the jurisdiction of the Civil Court would, of course, be excluded. It must, therefore, be held that the present suit is competent and is maintainable.

14. There can be no question with regard to the vires of Rule 4 under which the new tax was sought to be levied for the year 1951-52, and if there is no other objection that can be urged, clearly the Municipality is entitled to recover the amount of the tax from the defendant. Mr. Karnik, however, argues that the appeal which his client preferred u/s 82(2) was rejected on August 21, 1952, That being so, the list could only be amended thereafter and could be effective only from the earliest day of that official year in which it was amended i.e. April 1, 1952, and as the tax sought to be recovered is of the year 1951-52, the suit must fail. He relies for this purpose on two decisions of this Court:

(1) Sholapur Municipality v. Governor General (1946) 49 Bom. L.R. 752 and (2) Ahmedabad Mun. Corporation v. Kulinsinh (1954) 57 Bom. L.R. 259. In both these decisions it was held by two learned single Judges that u/s 82(5) the

corrected list must be deemed to have come into force from the earliest day of the official year in which the correction was made and, therefore, the Municipality could not recover arrears of the previous year in accordance with the corrected list. In Ahmedabad Mun. Corporation v. Kulinsinh, Mr. Justice Rajadhyaksha relied on the observations of Mr. Justice Dixit in Subbappa Mallappa v. Bonni (1947) 50 Bom. L.R. 701 to the effect that (p. 705) :

...Section 82(3) shows that although amendments are made in the course of the year they become effective from the commencement of the year.

The question that fell for decision in that case was entirely different and the observation does not really touch the present point. On a careful consideration of the provisions of Sub-section (3) of Section 82 of the Act, however, with respect, we are unable to follow the ratio of the decision in these two cases.

15. It is clear that Section 82(5) is a counterpart of s- 81(6). It provides that an entry or alteration made under the section shall subject to the provisions of Section 110 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 entry or alteration existed. In the judgment cited and referred to above, emphasis seems to have been laid on the words "current official year". It seems to us that decisive words in the sub-section are "circumstances justifying the entry or alteration". The first question, therefore, in each case to be determined is, when did the circumstances exist which justified the alteration? Once that is determined it would not be difficult to go to the earliest day of the current official year during which such circumstances existed. The circumstances which can justify the alteration of the entry, in our opinion, could only be the initial mistake, accident or fraud. If there is no mistake, then there can be no question of altering the entry. It is only because there is a mistake in the entry that the occasion arises to alter it. The section does not speak of the point of time when the-discovery of an omitted entry or the alteration of an entry is made for the purpose of giving effect to the new or amended entry. If it were to be held, as has been held in those cases, that it becomes effective on the earliest day in the current official year in which such entry is made or altered we will be changing the language of the section which is not justified. It is, therefore,, clear that the intention of the Legislature was to make it effective from the first day of the current official year in which the circumstances, i.e. the mistake, which justified the alteration of the entry, existed.

16. The construction that we have reached seems to be supported by the provisions of s- 81(6) and Section 82(5). Section 81(6) of the Act says-

Subject to such alterations as may be made therein under the provisions of section 82 and to result of any appeal or revision made u/s 110, the entries in the assessment list...and the entries, if any, inserted in the said list under the provisions of section 82 shall be accepted as conclusive evidence-

(i) for the purposes of all municipal taxes, of the valuation, or annual letting

value on the basis prescribed in the rules regulating the rate, of buildings, lands and both the buildings and lands to which such entries respectively refer, and

(ii) for the purpose of the rate for which such assessment list has been prepared, of the amount of the rate liable on such buildings or lands or both buildings and lands in any official year in which such list is in force.

This section shows that for the purpose of a tax or the rate for a particular official year, the list prepared for that year and authenticated or corrected both u/s 82 or by reason of a decision of the Magistrate u/s 110 would be operative for collection of taxes for that year. The section does not by its terms say that the tax under such corrected list cannot be recovered in the subsequent year. Experience has shown that no appeal u/s 110 is ever decided within the same official year. If an appeal is decided after years, may be after 2 or 3 or 4 years, of the authentication of the assessment list and it would still be effective for the purpose of recovery and levying of the tax for the official year for which it was prepared, there can be no justification for putting a different construction on the provision contained in Sub-section (3) of Section 82. By Section 81(6) both an alteration in the list under Section 82 and the result of an appeal u/s 110 are placed on the same footing so far as the operation of the list prepared for any official year is concerned.

17. If the Legislature had intended that the altered list should be effective from the earliest day in the current official year in which the mistake was either discovered or the list altered, nothing could have been easier than, to say that it would be effective when the mistake is discovered or the alteration is made. It has, however, advisedly not done so inasmuch as it would be obviously inconsistent with the scheme of the section itself. So far as a newly constructed or altered building is concerned, such an amended entry would be effective for the purposes of taxation from the date of completion of such building or when the new construction, was first occupied, whichever first occurs. In the case of a building which was overlooked but was a new building or the alteration was new, there is no limitation under the section on the power of the Municipality to correct the assessment list and the list would be operative from the time that the construction or the alteration was made or occupied. There can, therefore, be no justification for putting any different construction in respect of an alteration because of a mistake or fraud or accident. One must also bear in mind the fact that a mistake or accident cannot be discovered immediately within the financial year; most often, it would be discovered when the auditor audits the accounts of the Municipality after a year. The same difficulty would arise in the case of fraud, since an entry made by fraud is more likely to be suppressed and its discovery prevented. To limit the operation of the section as has been sought to be done would be to render this provision practically nugatory and ineffective and impair the powers of the Municipality to recover the tax which it has not done either through mistake, accident or fraud.

18. It is contended by Mr. Karnik that this is a taxing statute and, therefore, it

must receive a very strict construction and unless there is explicit provision in the statute for recovering taxes of the previous year we should not by construction enable the Municipality to do so. The established rule of construction of statute is to give a reasonable and fair meaning to the statute, and if on a fair construction liability is intended, then it must be enforced. Taking into account the language employed in Sub-section (3) of Section 82, we are of the view that neither the date on which the alteration in entry is made nor the date of the discovery of the mistake, accident or fraud is the relevant date for considering the question in issue.

19. It is also contended that even after correction the list must be authenticated as required by Section 81. Mr. Karnik in this connection relies on Ahmedabad Municipal Corporation v. Kulinsinh Manibhari Seth where at p. 260 Justice Rajadhyaksha says

...The crucial point of time is the date when the entry is authenticated in any particular official year, after hearing objections of the parties.

It seems that the question as to whether authentication of an amended entry is necessary or not was not argued in that case. The provision for authentication of the assessment list when newly made is contained in Section 81, Sub-section (4). Section 82 does make Section 81 applicable to the corrections of entries. The section, however, is self contained in that provision for notice and disposal of objections are made therein. It is clear, therefore, that no authentication of the amended entry is necessary. It may also be noted that this is a question of fact and not having been raised in the written statement or the issues cannot now be allowed to be raised.

20. It is true that in such cases some inconvenience may be caused to the tax payer when a mistake is discovered, after a considerable lapse of time. It cannot, however, be any more than that due to late decision of an appeal u/s 110 of the Act. It is, however, a matter for the Legislature to consider and it may limit the period during which the corrections in an assessment, list may be made. On the other hand, to adopt the other construction would cause greater hardship to public bodies who carry a large number of responsibilities for the benefit of the public.

21. The plaintiff would, therefore, be entitled to a decree. The plaintiff has claimed interest on the amount of the tax. Interest could be claimed either by reason of contract or under the Interest Act- or on grounds of equity under well-recognised heads. The learned Counsel for the appellant has not been able to justify the claim for interest on any of these grounds.

22. In the result, we allow the appeal and set aside the decree made by the learned trial Judge. We direct that the defendant do pay to the plaintiff the sum of Rs. 17,000-15-0 claimed by the plaintiff. The defendant will pay the costs of the suit and also of the appeal to the plaintiff.