Municipal Corporation of City of Hubli

Vs

Subha Rao Hanumatharao Prayag and Others

Civil Appeal No. 2406 of 1968

(H.R. Khanna, P.N. Bhagwati, A.C. Gupta JJ)

24.03.1976

JUDGMENT

BHAGWATI, J. -

1. This appeal by special laws raises two questions relating to the interpretation of certain provisions of the Bombay Municipal Boroughs Act, 1925. The facts giving rise to the appeal are few and may be briefly stated as follows.

2. The respondents are ratepayers liable to pay property tax in respect of their lands and buildings situate within the limits of the erstwhile Municipal Borough of Dharwar now converted into the Hubli Dharwar Municipal Corporation. The Municipal Borough of Dharwar (hereinafter referred to as the municipal borough) was at the material time governed by the provisions of Bombay Municipal Boroughs Act, 1925 (hereinafter referred to as the Act). The Chief Officer of the municipal borough prepared an assessment list for the official year 1951-52 containing revised valuation and assessment of the lands and buildings situated within the limits of the municipal borough and published it on May 1, 1951 in accordance with the provisions of the Act. The respondents and several other ratepayers filed their objections against the valuation and assessment in the assessment list and consequently in the decisions on the objections, modifications were made in the assessment list and the assessment list so finalised was authenticate on July 24, 1952. Since the authentication of the assessment list was made after the expiry of the official year, the respondents and other ratepayers took the view that the assessment list was void and inoperative and the municipal borough was not entitled to recover property tax at the revised rates which were higher than the rates charged in the previous official year. It seems, however, that from a few persons, whose names do not appear in the record, property tax in accordance with the revised rates was collected by the municipal borough. There was consequently an agitation amongst the ratepayers and a body called the Citizens Welfare Association championing the cause of the ratepayers addressed a communication dated November 30, 1952 to the Director of Local Authorities requesting him to direct the municipal borough to refund the excess amount of property tax collected from the ratepayers, because according to them the levy and collection of property tax at the revised rates was illegal in view of the fact that the assessment list was authenticated only on July 24, 1952 beyond the expiration of the official year for which the property tax was sought to be levied. The Director of Local Authorities by his reply dated December 16, 1952 informed the Citizens Welfare Association that the levy of property tax under the authenticated assessment list was, according to him, perfectly valid. The President of the municipal borough thereafter issued a public notice dated November 10, 1954 calling upon the ratepayers to "pay immediately all the taxes still due from them and extend their full cooperation to the municipal borough". Since the municipal borough was determined to recover the amount of property tax from the ratepayers at the enhanced

rates appearing in the assessment list, the respondents, acting for and on behalf of themselves and other ratepayers, filed a suit against the municipal borough on June 6, 1955, after giving notice dated April 1, 1955 on the hypothesis that such notice was required to be given under Section 206A of the Act. The main reliefs claimed in the suit were, firstly, a declaration that the municipal borough was not entitled to recover property tax from the ratepayers at the revised rates since the assessment list was authenticated beyond the expiration of the official year and secondly, and order directing the municipal borough to refund the excess property tax recovered by it from the ratepayers.

3. The municipal borough in its written statement raised a preliminary objection that the suit was barred by limitation since it was not filed within six months of the accrual of the cause of action as required by Section 206A of the Act and it also disputed the claim of the ratepayers on merits on the ground that there was nothing in the Act which required that the assessment list should be authenticated before the expiration of the official year and that even if the assessment list was authenticated beyond the expiration of the official year, it did not have the effect of invalidating the assessment list.

4. The trial Court negatived the plea of limitation based on Section 206A of the Act and so far as the merits were concerned, held that since the authentication of the assessment list was admittedly made beyond the expiry of the official year, the assessment list was void and inoperative and the municipal borough was not entitled to levy and collect property tax at the revised rates on the strength of such assessment list. The municipal borough, being aggrieved by this decision, filed an appeal to the District Court, but the appeal was unsuccessful and second appeal to the High Court also failed. Hence the present appeal by the municipal borough with special leave obtained from this Court.

5. The principal contention that was urged before us on behalf of the municipal borough was that on a true construction of the relevant provisions if the Act, the authentication of the assessment list, in order to be valid and effective, need not be made before the expiry of the official year to which the assessment list relates and it is sufficient to impose liability to tax official year even if it is made at any time after the expiry of the official year and, therefore, in the present case, though the authentication of the assessment list for the official year 1951-52 was made on July 24, 1952 after the expiry of the official year, it was valid and effective and operated to create liability on the taxpayers for payment of tax at the revised rates. In order to appreciate this contention it is necessary to examine briefly the scheme of the Act in regard to assessment and levy of property tax. The fasciculus of sections from 78 to 89 deals with assessment of and liability to rates of buildings and lands. These sections set out the procedure which must be followed for levy of rates on buildings and lands. Section 78, sub-section (1) requires the Chief Officer to cause an assessment list of all lands and buildings in the municipal borough to be prepared containing various particulars set out in the section. When the preparation of the assessment list is completed, the Chief Officer is required under Section 80 to give public notice of the list and of the place where the list or a copy thereof could be inspected. Simultaneously the Chief Officer has also to give public notice under sub-section (1) of Section 81 of a date not less than one month after such publication before which objections to the valuation or assessment in such list shall be made. Sub-section (2) provides for the mode in which the objections must be made and sub-section (3) provides for the hearing and disposal of the objections by the Standing Committee and the proviso to this sub-section permits the powers and duties of the Standing Committee to be transferred to any other committee or to any officer of the Government. This sub-section provides that before the objections are investigated and disposed of, the objector shall be given an opportunity of being heard in person or by an agent and it

is only after the hearing the objectors that the objections can be disposed of. When the objections are thus considered and disposed of, the assessment list with the modifications which may have been made consequent upon the decisions on the objections has to be authenticated in the manner set out in sub-section (4). Sub-section (5) provides that the list so authenticated shall be deposited in the municipal office and shall be open for inspection during office hours to all ratepayers. The completion of this procedure leads to certain important consequences and they are set out in sub-section (6) which reads as follows :

> (6) Subjects to such alterations as may be made therein under the provisions of Section 82 and to the result of any appeal or revision made under Section 118, the entries in the assessment-list so authenticated and deposited and the entries, if any, inserted in the said list under the provisions of Section 82 shall be accepted as conclusive evidence -
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> #(i) * * * * *##
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> (ii) for the purposes 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 a list is in force.

Section 82 then provides for the amendment of assessment list in certain cases. This is rather material and it may be reproduced in full :

> 82. (1) The standing committee may be 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 had been completed after the preparation of the assessment-list, after giving a notice to any person interested 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.
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> (2). An objection made by any person interested in any such alteration, before the time fixed in such notice, and in the manner provided by sub-section (2) of Section 81, shall be dealt with in all respects as if it were an application under the said section.
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> (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 proportions which the remainder of the year after such day bears to the whole year.

The next important section is Section 84 which provides for the adoption of valuation and

assessment contained in the assessment list of any particular year for the year immediately following. That section, is in the following terms :

> 84. (1) It shall not be necessary to prepare a new assessment list every year. Subject to the condition that every part of the assessment list shall be completely revised not less than once in every four years, the Chief Officer may adopt the valuation and assessment contained in list for any year, with such alterations as may be deemed necessary, for the year immediately following.
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> (3) But the provisions of Section 80, 81 and 82 shall be applicable every year as if a new assessment list had been completed at the commencement of the official year.
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> The other sections in this group are not material and it is not necessary to refer to them.

6. It is clear from the scheme of these provisions that the official year is the unit of time for the levy of the tax. The provisional assessment is prepared for the official year. This may be done before the commencement of the official year or even thereafter in the course of the official year. Then objections are invited and when made, they are disposed of and amendments consequential upon the decisions on the objections are carried out in the assessment list. The assessment list is then authenticated. The process of assessment and levy of the tax which begins with the preparation of the provisional assessment list is thus completed when the assessment list is authenticated. The assessment list, when authenticated, becomes effective from the first day of the official year and gives rise to the liability to pay tax. It is on the authentication of the assessment list that the liability of the ratepayers to pay the tax arises and the tax is levied on the ratepayers. This position would seem to be clear as a matter of plain interpretation and in any event there is a long line of decisions of the Bombay High Court commencing from Sholapur Municipality v. Governor General (49 Bom LR 752 : AIR 1948 Bom 145) and ending with Sholapur Municipality Corporation v. Ramchandra (74 Bom LR 489 : 1972 Tax LR 2581), which has consistently accepted this position and the learned Counsel appearing on behalf of the municipal borough did not dispute the correctness of these decisions. The only contention raised by him was as to within what time the assessment list must be authenticated, if it is to be a valid and effective assessment list. It is to this contention that we must now address ourselves.

7. Now, once we take the view that the process of levying the tax is complete only when the assessment list is authenticated and it is only then that the tax is levied on the ratepayers, it is difficult to resist the conclusion that the authentication must be made within the official year. The tax, being a tax for the official year, must obviously be levied during the official year and since the levy of the tax is complete only when the assessment list authenticated, it must follow a fortiori that the authentication on the making of which alone the levy of the tax is effected, must take place in the official year. Any other view would result in an anomalous and rather absurd situation, namely, that the tax for an official year would be leviable at any time, even years after the expiration of the official year. That could not possibly have been intended by the legislature. That would indeed be a strange consequence in case of a tax which is annual in its structure and organisation and which is intended to be levied for each official year.

8. But, apart from this consideration, there is inherent evidence in the section themselves which shows that the authentication was intended by the legislature to be a step which must be taken before the close of the official year. Section 84 provides that it shall not be necessary to prepare a

new assessment list every year but, subject to the conditions that every part of the assessment list shall be completely revised not less than once in every four years, the Chief Officer may 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. This provision postulates that there would be an assessment list for each official year at the close of that official year, so that the valuation and assessment contained in it can be adopted by the Chief Officer for the immediately following year. Now clearly the assessment list which can be adopted for the immediately following year is the authenticated assessment list and it would, therefore, seem that the legislative assumption underlying this provision is that in respect of each official year, there would be an authenticated assessment list before the close of that official year, so that the valuation and assessment contained in it can be adopted by the Chief Officer for the immediately following year. Otherwise, it would not be possible for the Chief Officer to adopt the valuation and assessment of the preceding official year and he would have to prepare a new provisional assessment list every time when the assessment list for the preceding year is not finalised and authenticated and this might lead to rather startling result of there being several provisional assessment list for different official years in the process of finalisation at the same time. We should be slow to accept an interpretation which might lead to such a strange consequence.

9. Then again considerable light on this question is thrown by the provision enacted in Section 82. It is a well settled rule of interpretation that the court is entitled and indeed bound, when construing the terms of any provision found in a statute, to consider any other parts of the Act which throw light on the intention of the legislature, and which may serve to show that the particular provisions ought to be construed as it would be alone and apart from the rest of the Act.

The statute must be read as a whole and every provision in the statute must be construed with reference to the context and other clauses in the statutes so as, as far as possible, to make a consistent enactment of the whole statute. Obviously, therefore, Sections 78 to 81 must be so construed as to harmonise with Section 82. They must read together so as to form part of a connected whole. Section 82, sub-section (1) provides for making of an amendment in the assessment list by insertion or alteration of an entry in certain events after hearing objections which may be made by any person interested in opposing the amendment. Sub-section (3) of Section 82 makes an amendment effective from "the earliest day in the current official year on which the circumstances justifying the entry or alteration existed". The expression 'current official year' in the context in which it occurs in Section 82, sub-section (3) clearly signifies the earliest day in the official year which is current when the amendment in the assessment list takes place and that expression refers only to the official year which is running at the time when the amendment is made by insertion or alteration of an entry under sub-section (1) of Section 82. It would, therefore, seem clear, on a combined reading of sub-sections (1) and (3) of Section 82, that an amendment, in order to be effective in levying tax for an official year, must be made during the currency of the official year. That is now well settled as a result of several decisions of the Bombay High Court culminating in the Full Bench decision in Sholapur Municipal Corporation v. Ramchandra (supra) and we do not see any reason to take a different view. Now the scheme of Section 78 to 81 is identical with that of Section 82 and in both cases what is contemplated first is a proposal to which objections are invited and after the objections are investigated and disposed of, the assessment list in the one case and the altered entry in the other are authenticated giving rise to liability in the ratepayer. It must follow a fortiori that if an alteration in the assessment list, in order to fasten liability on the ratepayer, is required to be made during the currency of the official year, equally, on a parity of reasoning, the assessment list, in order to give rise to liability in the ratepayer, must also be authenticated before the expiry of the official year. Moreover, it is difficult to believe that the legislature did not intend

that there should be any time limit in regard to the levy of tax for an official year and that the tax should be legally leviable at any time after an official year. There is, in our opinion, sufficient indication in the various provisions of the Act to show that the authentication of the assessment list, in order to be valid and effective, must be made within the official year, though the tax so levied may be collected and recovered even after the expiry of the official year.

10. We may point out that the Karnataka High Court is not alone in taking this view in the present case. This view has been consistently taken by the Bombay High Court in a series of decisions over the years and it has also been followed by the Gujarat High Court. When we find that three High Courts having jurisdiction over the territories in which the Act is in force have all taken this view over a course of years, we do not think we would be justified in departing from it, merely on the ground that a different view is possible. This Court is ordinarily loathe to interfere with interpretation of a State statute which has prevailed in the State for a long number of years and which the State legislature has chosen not to disturb by legislative amendment. As a matter of fact, we find that, in the present case, the Bombay Legislature accepted this interpretation of Section 78 to 81 and gave legislative recognition to it by introducing Section 84A by Bombay Act 53 of 1954. That section provides that where in any year a new assessment list is prepared, or a list is revised, or the valuation and assessment contained in the list for the year immediately preceding is adopted with or without alteration, such new, revised or adopted assessment list shall be authenticated in the manner provided by Section 81 at any time not later than thirty-first day of July of the official year to which the list relates, and if it is not so authenticated, then the State Government shall appoint such person or persons as it thinks fit to prepare, revise or adopt and authenticate the assessment list, and thereupon such person or persons shall duly authenticate the assessment list at any time before the last day of the official year to which the list relates, and Sections 78 to 81 or Section 84 shall, as far as may be, apply to the preparation, revision or adoption of the list, as the case may be, by the person or persons appointed by the State Government. It is clear from this provision that the legislature not only did not amend the Act for the purpose of removing the time limit of the official year or enlarging such time limit, but on the contrary, made the time limit more stringent by providing that the authentication shall be made by the municipal borough not later then July 31, of the official year and if the authentication is not made within that time, the State Government shall be entitled to appoint a person for the purpose of authenticating the assessment list and the authentication by such person shall not, in any event, be later than the last day of the official year. We are, therefore, of the view that the assessment list, in order to be effective in levying the tax, must be authenticated before the expiry of the official year and if it is not, the assessment list would be void and inoperative and not give rise to liability in the ratepayers to pay tax.

11. That takes us to the second contention urged on behalf of the municipal borough based on Section 206A. That section provides inter alia that no suit shall lie against a municipality or against any officer or servant of any municipality in respect of any Act, or in respect of any alleged neglect or default in the execution of the Act, unless it is commenced within six months next after the accrual of the cause of the action. The argument of the municipal borough was that the cause of action for the suit arose in favour of the respondents and the other ratepayers on July 24, 1952 when the assessment list was authenticated and since the suit was not filed within six months from that date, it was barred by limitations under Section 206A. This argument is plainly unsustainable. The assessment list being authenticated on July 24, 1952, after the expiry of the official year 1951-52, was void and inoperative and the respondents and other ratepayers were entitled to ignore it as a nullity. It is only when the municipal borough sought to recover the amount of tax from them on the strength of the assessment list, that it became necessary for them to challenge the validity of the assessment list with a view to resisting the demand of the municipal borough. Then and then only

could a cause of action be said to have accrued to them which they were required to enforce within a period of six months. Now, in the present case there is no material to show as to when notices of demand requiring the respondents and other ratepayers to pay the amount of tax were issued by the municipal borough or which ratepayers paid the amount of tax and when. It is not possible to say, in the absence of such material, as to when the cause of action for filing the suit arose to the respondents and other ratepayers and whether it arose within six months before the filing of the suit or at a point of time earlier than that. The municipal borough cannot, in the circumstances, be held to have established that the suit was not commenced by the respondents and other ratepayers within six months after the accrual of the cause of action and the plea of limitation based on Section 206A must fail.

12. We are, therefore, of the view that there is no substance in the appeal and it must be dismissed, but in the peculiar circumstances of the case we make no order as to costs.

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