

Kalyan Municipal Council and Others

Vs

Usha Paper Products (P) Ltd. and Another

Civil Appeal No. 317 of 1984

(CJI R.S. Pathak, M.H. Kania JJ)

03.05.1988

JUDGMENT

KANIA, J. –

1. This is an appeal against the judgment of a Division Bench of the Bombay High Court delivered on January 10, 1980. The appellants before us are the Kalyan Municipal Council (referred to hereinafter as 'the Municipal Council'), its Chief Officer and the State of Maharashtra respectively. Respondent 1 is a private limited company and is the owner of an industrial undertaking within the limits of the Municipal Council. We propose to refer to respondent 1 as 'the Company'.

2. The relevant facts lie within a narrow compass and there is no dispute regarding the same. Property tax was levied by the Municipal Council on the immovable properties of the Company within the territorial limits of the Municipal Council in respect of the years 1970-71, 1971-72 and 1972-73. In September 1973, the Municipal Council claimed that it had detected certain new construction and alterations in the existing construction belonging to the Company and a report to that effect was made to the Standing Committee. A proposal was submitted to the Standing Committee to increase the property tax in respect of the said immovable property from April 1, 1970 to March 31, 1974. On October 3, 1973, the Standing Committee passed a resolution increasing the rateable value of the said immovable property of the Company from April 1, 1970 to March 31, 1974. After serving a notice on the Company, as required under the provisions of Section 123(1) of the Maharashtra Municipalities Act (referred to hereinafter as the 'said Act'), and hearing the objections filed by the Company against the proposed increase, a demand notice was issued on the Company on January 9, 1975 demanding an amount of Rs. 51,626.69 and an appropriate amount of educational cess and additional health tax. This notice of demand was challenged by the Company by way of Special Civil Application No. 147 of 1975 before the High Court of Judicature at Bombay. The Division Bench of the Bombay High Court which decided the said special civil application held that the case was covered by the decision of a Full Bench of the Bombay High Court in Sholapur Municipal Corporation v. Ramchandra Ramappa Madgundi [(1972) 74 Bom LR 469 (FB)]. The Division Bench of the Bombay High Court in the impugned judgment has pointed out that there was no dispute that a notice dated November 17, 1973, being the notice as contemplated by Section 123(1) of the said Act was issued to the Company for amending the assessment list. This notice was served after November 17, 1973. After analysing the provisions of Section 123 of the said Act and following the aforesaid decision of the Full Bench, the Division Bench took the view that alteration made in the assessment list after following the procedure under Section 123(1) of the said 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 the Municipality is not entitled to levy tax for an official year or any part thereof which is already expired. The Division

Bench pointed out in the present case the alteration in the assessment list was made after March 31, 1974 and before March 31, 1975. In view of this the said alteration could not have the effect of increasing the assessment for any year prior to the year commencing from April 1, 1974. It is the correctness of this decision, which is sought to be assailed before us in this appeal.

3. Since the decision under appeal is based mainly on the said decision of a Full Bench in the case of Sholapur Municipal Corporation v. Ramchandra Ramappa Madgundi, [(1972) 74 Bom LR 469 (FB)], we may briefly refer to the said decision. That decision was based on the provisions of the Bombay Municipal Boroughs Act, 1925, but the ratio of the decision applies to the case before us, because the relevant provisions of the Bombay Municipal Boroughs Act and the said Act are in para materia. As far as the question raised before us is concerned, the provisions of Section 82, sub-section (3) of the Bombay Municipal Boroughs Act are in pari materia with the provisions of Section 123(3) of the said Act. The Full Bench of the Bombay High Court in that case came to conclusion that the alteration made, under Section 82(3) of the Bombay Municipal Boroughs Act, in the assessment list prepared under Section 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 thereof which has already expired. It was also held that the expression "current official year" in Section 82(3) of that 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 that official year which is running at the time when the amendment is made by insertion or alteration of any entry under Section 82(1) of the Act.

4. The submission of Mr Parekh, learned counsel for the appellant, is that the aforesaid case before the Full Bench was wrongly decided and, as the judgment under appeal follows the said decision of the Full Bench, that judgment is also erroneous and liable to be set aside. In our view, this connection must be negated in view of the decision of this Court rendered by a Bench of three learned Judges in Municipal Corporation of City of Hubli v. Subha Rao Hanumatharao Prayag [(1976) 4 SCC 830 : (1976) 3 SCR 883 : AIR 1976 SC 1398 : 1976 Tax LR 1720]. A perusal of the said decision makes it clear that this Court took the view that the scheme of relevant provisions of the Bombay Municipal Boroughs Act, 1925 shows that the official year is the unit of time for the levy of property tax under that Act. It was further held that 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. Thereafter this Court goes on to point out as follows : (SCC p. 836, para 9)

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. This 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 [(1972) 74 Bom LR 469 (FB)] and we do not see any reason to take different view.

5. The aforesaid statement in the judgment of this Court clearly shows that the decision of the Full Bench of the Bombay High Court in Sholapur Municipal Corporation v. Ramchandra [(1972) 74 Bom LR 469 (FB)] was approved by this Court. The decision of the aforesaid Bench of this Court is binding on us and is clearly applicable to the case before us. In that judgment this Court pointed out

that once it was accepted 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 rate payers, 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 is authenticated it must follow that the authentication must take place in the official year.

6. Mr Parekh urged, although not with much conviction, that the decision of this Court in the case of *Municipal Corporation of City of Hubli v. Subha Rao Hanumatharao Prayag* [(1976) 4 SCC 830 : (1976) 3 SCR 883 : AIR 1976 SC 1398 : 1976 Tax LR 1720] can be distinguished because in that case there was no question of any additional construction or new construction being detected. In our view it is not possible to make any such distinction. The question which arose before the court was whether an assessment list which was finalised and authenticated on July 24, 1952, after the expiry of the official year 1951-52 on March 31, 1952, could be regarded as a good or valid assessment list for the official year 1951-52. The entire scheme of the provisions pertaining to the preparation of the assessment list and the levy of property tax under the Bombay Municipal Boroughs Act, which is materially similar to the scheme under the said Act, was considered and the aforesaid conclusions were arrived at. There is no substance in the contention that the said decision can be distinguished. Moreover, with respect, we see no reason to take a different view from the one taken in the aforesaid case. The official year is the unit of taxation as far as municipal property taxes are concerned and, if the contention of Mr Parekh is accepted, the result would be that an assessment list could be altered at any time if the conditions set out in Section 123 of the said Act are satisfied, with the result that there would be complete uncertainty in the field of the taxation of property and the unwary purchasers of immovable property might be put to the difficulty of having to discharge the liabilities for property taxes for years long prior to the time when they purchased the immovable property in order to save the property from being sold in recovery proceedings.

7. In the result, the appeal fails and is dismissed with costs.

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