GUJARAT HIGH COURT

The Municipal Corporation of The City of Ahmedabad

Vs.

Jhaveri Keshavlal Lallubhai

First appeal No. 301 of 1961 with cross First Appeal No. 302 of 1961

(P.N. Bhagwati and N.K. Vakil, JJ.)

10/11.08.1964

JUDGMENT

P.N. Bhagwati, J.

1. These appeals which are 306 in number arise out of several suits filed by various rate-payers against the Ahmedabad Municipality (hereinafter referred to as the Municipality) in the Court of the Civil Judge (Senior Division) Ahmedabad. The suits related to the levy of tax on open lands for the official years 1947-48 1948 1949 and 1950 Prior to 1st July 1950 the Municipality was a Borough Municipality governed by the Bombay Municipal Boroughs Act 1925 (hereinafter referred to as the Boroughs Act). There were in force during the period upto 31st March 1947 the Valuation and Taxation Rules made by the Municipality under Section 58(j) and sanctioned by the Government by their Resolution dated 14th February 1931 under Section 76 prescribing various taxes leviable by the Municipality. It appears that sometime prior to 20th February 1947 the Municipality at a General Meeting passed a Resolution selecting tax on open lands for being levied by the Municipality and approving certain amendments in the Valuation and Taxation Rules prescribing such tax and specifying various particulars in relation to such tax set out in Section 75. These amendments were sanctioned by the Government by a Resolution dated 20th February 1947 under Section 76 and the amendments so sanctioned were published by the Municipality together with a notice reciting the sanction and the date and serial number thereof. The notice specified 1st April 1947 as the date from which the amendments shall come into force and the amendments accordingly came into force from 1st April 1947. One of the amendments was the substitution of Rule 243 and the new Rule defined valuation based upon capital. This definition became necessary because of the amendment of Rule 320. The amended Rule 320 in so far as it is material for our present purpose was in the following terms:

"320. The following direct and indirect taxes shall be levied by the Municipality.

...

II. A rate on open lands.

...

of these the Water Rates the rate on open lands and drainage tax shall be levied as rates on buildings and lands."

Rule 350-A was also added and the material portion of it read as follows:

"350-A. Except in the case of lands for which the water rates are leviable under Rules 322 to 350 the rate on open lands shall be levied as under:
(1) For the purpose of levy of rate on open lands the rateable area shall be determined as under:

...

(II) Rate on the area of open land as determined above shall be levied at 12 of the valuation based on Capital and all such lands subject to exemptions hereinafter provided shall be liable to be charged the same.

Exemptions: The following open lands shall be exempt from the levy of the rate on open lands.

...

It will be seen that the tax under these Rules was to be levied at a percentage of the valuation based on capital. The Chief Officer then got an assessment list of all open lands within the Municipal limits prepared for the official year 1947-48 containing the particulars set out in Section 78 and gave public notice of the assessment list and of the place where the assessment list or a copy thereof may be inspected. The public notice also invited objections to the valuation or assessment in the assessment list within the time fixed in the public notice. Objections to the valuation as also to the assessment were accordingly made by several rate-payers but before they could be heard and disposed of by the Standing Committee or the transferee under the Standing Committee one of the ratepayers namely Gordhandas filed Suit No. 124 of 1948 against the Municipality in the Court of the Civil Judge Senior Division Ahmedabad for a declaration that Rule 350-A read with Rule 243 for assessment of open lands to tax was ultra vires and that consequently the assessment list prepared pursuant to that Rule was illegal and void and for an injunction restraining the Municipality from collecting or causing to be collected any sum of money as assessment for the official year 1947-48 or for any other subsequent official year based on capital valuation on the strength of that Rule. There were two grounds on which these reliefs were claimed in the suit. In the first place it was contended that Rule 350-A read with Rule 243 was ultra vires Section 73 inasmuch as it permitted the fixation of rate at a percentage of capital value and this was not permissible since the word rate as used in Section 73(1)(i) had acquired a special meaning namely a tax on the annual value of lands and buildings and not on their capital value. In the second place it was urged that if Section 73(1)(i) permitted the levy of rate on the basis of a percentage of capital value of lands and buildings it was ultra vires the Provincial Legislature. The trial Court by a judgment dated 31st August 1949 held that Rule 350-A read with Rule 243 was ultra vires the powers of the Municipality under Section 73 and the

assessment list was therefore illegal and void and consequently decreed the suit. An appeal followed to the High Court of Bombay being Appeal No. 223 of 1950. In the appeal the High Court held that Rule 350-A read with Rule 243 was not ultra vires Section 73 nor was Section 73(1)(i) ultra vires the Provincial Legislature in authorizing levy of tax on the basis of a percentage of capital value of lands and buildings. The High Court accordingly allowed the appeal and dismissed the suit on 6th April 1953. In the meantime however the Bombay Provincial Municipal Corporations Act 1949 (hereinafter referred to as the Corporations Act) was passed and the area of the Municipality was constituted the City of Ahmedabad by a Notification issued under Section 3 with effect from 1st July 1950. The result was that the Boroughs Act ceased to apply to the area of the Municipality from 1st July 1950 by virtue of Section 490 save and except as provided by Section 493 read with Appendix IV. Since the Boroughs Act ceased to be in force in the area of the Municipality the Municipality which was a Borough Municipality ceased to exist and a new Corporation would have had therefore to be constituted for the City of Ahmedabad under the Corporations Act. In order however that there may be no hiatus between the extinction of the Borough Municipality and the coming into existence of the Corporation Appendix IV enacted certain transitory provisions and Section 493 declared that those provisions shall apply to the constitution of the Corporation and other matters specified therein. Paragraph 7 of the Appendix declared that on and from the appointed day which in the case of the City of Ahmadabad was as we have pointed out above 1 July 1950 the Borough Municipality shall be deemed to be the Corporation. Paragraph 2 provided for transfer of the rights of the Borough Municipality to the Corporation in the following terms:

> "2. All rights of the municipality or any other local authority for the area which has been constituted to be a City shall on the appointed day vest in the Corporation constituted for the said area."

Paragraph 3 dealt with recovery of sums due to the Borough Municipality and the provision it enacted was:

> "3. All sums due to the said Municipality or local authority for the area which has been constituted a City whether on account of any tax or any other account shall be recoverable by the Commissioner for the said City and for the purpose of such recovery he shall be competent to take any measure or institute any proceeding which it would have been open to the authority of the said municipality or local authority to take or institute if this Act had not come into operation and the said area had not been constituted to be a City."

Under Clause (1) of Paragraph 4 all debts and obligations incurred and all contracts made by or on behalf of the Municipality were deemed to have been made and incurred by the Commissioner in exercise of the powers conferred on him by the Corporations Act and they were declared to continue in operation accordingly. Clause (2) of Paragaph 4 provided for continuance of proceedings pending before any authority of the Borough Municipality and that clause ran as

follows:

> "(2). All proceedings pending before any authority of the said municipality or local authority on the said day which under the provisions of this Act are required to be instituted before or undertaken by the Commissioner shall be transferred to and continued by him and all other such proceedings shall so far as may be be transferred to and continued by such authority before or by whom they have to be instituted or undertaken under the provisions of this Act."

The continuity of appointments taxes budget estimates assessments employments etc. was safeguarded by Paragraph 5 and the material portion of it which concerns us in these appeals was as follows:

> "5. Save as expressly provided by the provisions of this Appendix or by a notification issued under paragraph 22 or order made under paragraph 23-"
>
> (a) any appointment notification notice tax order scheme licence permission rule by-law or form made issued imposed or granted under the Bombay District Municipal Act 1901 or the Bombay Municipal Boroughs Act 1925 or any other law in force in any local area constituted to be a City immediately before the appointed day shall in so far as it is not inconsistent with the provisions of this Act continue in force until it is superseded by any appointment notification notice tax order scheme licence permission rule by-law or form made issued imposed or granted under this Act or any other law as aforesaid as the case may be;

...

The office of the Chief Officer was also vacated from 1st July 1950 since the Borough Municipality ceased to exist and this was recognized in Paragraph 11. It would thus be seen that the Municipality which was Borough Municipality until the close of 30th June 1950 became a Corporation from the commencement of 1st July 1950 and Appendix IV set out the provisions which facilitated the transition from the Borough Municipality into the Corporation. This was the position when the High Court of Bombay allowed the appeal of the Municipality and declared Rule 350 read with Rule 243 intra vires Section 73 and also within the competence of the Provincial Legislature. Now as we have pointed out above the stage which the process of levy of the tax for the official year 1947 had reached at the date when Suit No. 124 of 1948 came to be filed was that the assessment list had been prepared and published and objections against the valuation and assessment in the assessment list had been filed by ratepayers. This process was not continued further by the Municipality presumably due to the filing of the suit with the result that at the date of disposal of the appeal by the High Court of Bombay the position was the same namely that the objection remained to be heard and disposed of and the assessment list remained to be authenticated The position with regard to levy of the tax for the official years 1948-49 and 1949-50 was no different. The Chief Officer of the Municipality when it was a Borough Municipality had adopted for the official year 1948 the valuation and assessment contained in the assessment list prepared for the official year 1947-48 (though the objections to the valuation and

assessment in that assessment list had not been heard and disposed of and that assessment list had not been authenticated) and likewise for the official year 1949-50 the valuation and assessment contained in the assessment list for the official year 1948-49 prepared as aforesaid had been adopted by the Chief Officer purporting to act under Section 84. Objections to the valuation and assessment in these assessment lists had been filed by rate-payers but these objections were yet to be heard and disposed of and the assessment lists were yet to be authenticated at the date when the Corporations Act came into force and the same position continued right upto the time the High Court of Bombay disposed of the appeal preferred by the Municipality. After the disposal of the appeal since Rule 350-A read with Rule 243 was held valid the Commissioner decided to proceed with the levy of tax in regard to the official years 1947 to 1949-50. The Commissioner also decided to levy the tax for the official year 1950-51 in regard to which no step-not even the preparation or adoption of an assessment list-had been taken by the Borough Municipality and he therefore prepared and published an assessment list for that official year and invited objections to the valuation and assessment in the assessment list in accordance with the procedure prescribed in the Boroughs Act.

The Commissioner then passed an order which is Exhibit 151 on the record of the case delegating under Section 69(1) to two appellate officers the power and duties of the Standing Committee under Subsections (2) and (3) of Section 81 in regard to the assessment lists for the official years 1947-48 to 1949-50 which he claimed were transferred to him under Paragraph 3 of Appendix IV since 1st July 1950. Two other similar orders of delegation were also passed by the Commissioner each in favor of two appellate officers. These orders of delegation were initially for a period of four months from 1st January 1954 but the period of delegation was subsequently extended and the delegation was ultimately made operative up to 31st October 1954. It appears that in regard to three of the appellate officers an order was passed by the Commissioner on 23rd October 1954 by which the delegation in their favor was extended upto 22 December 1954. No such extension of the period of delegation however appears to have been made in so far as the other three appellate officers were concerned. The six appellate officers thereupon registered the objections received against the valuation and assessment in the assessment lists for the official years 1947-48 to 1950-51 allowed the objectors an opportunity of being heard in person or by agent investigated and disposed of the objections caused the result thereof to be noted in the book kept for the purpose and caused the amendments necessary in accordance with such result to be made in the assessment lists. The said appellate officers thereafter also authenticated the assessment lists for all the four official years and the assessment lists so authenticated were deposited in the Municipal office. This was followed by issue of bills to rate-payers on the basis of the entries in the assessment lists and the bills were also in a number of cases followed by issue of notices of demand. Several of the rate-payers paid the amount of tax demanded by the Municipality for some of the official years leaving the amount of tax demanded for the remaining official years unpaid and there were some rate-payers who did not pay the amount of tax demanded for any of the official years. Several suits were thereupon filed by ratepayers against the Municipality in the Court of the Civil Judge Senior Division Ahmadabad challenging the validity of the assessment to open land tax made by the Municipality for the official years 1947-

48 to 1950-51 and the right of the Municipality to recover the amount of tax so assessed from the rate-payers. There were in the main two kinds of reliefs claimed in these suits apart from declaration and they were: (1) refund of the amount of tax paid and (2) injunction restraining the Municipality from recovering the amount of tax assessed on the open lands. The suits were tried by the Third Joint Civil Judge Senior Division Ahmadabad. The learned trial Judge came to the conclusion that the liability of rate-payers in respect of tax for the official years 1947-48 to 1949 arose when the respective assessment lists for those official years were prepared and sums on account of such tax were therefore due to the Borough Municipality on 1st July 1950 when the Corporation came into existence and being sums due the Commissioner was entitled under Paragraph 3 of Appendix IV to take measures for recovering the same including authentication of the assessment lists after hearing and deciding objections against the valuation and assessment in the assessment lists and submissions of bills and notices of demand on the strength of the entries in the assessment lists. The learned trial Judge accordingly upheld the validity of the assessments for the official years 1947-48 to 1949-50. So far as the assessment for the official year 1950-51 was concerned the learned trial Judge took a different view since in that case no assessment list was either prepared or adopted by the Borough Municipality prior to 1 July 1950 creating a liability on rate-payers and the assessment list adopted by the Commissioner was illegal inasmuch as the Commissioner had no authority to prepare or adopt any assessment list and moreover the tax in question being a tax based on capital value was inconsistent with the provisions of the Corporations Act and did not therefore continue in force on the coming into existence of the Corporation by reason of Clause (a) of Paragraph 5 of Appendix IV. The learned trial Judge accordingly decreed the suits in so far as they related to the assessment for the official year 1950-51 and dismissed them in so far as they related to the assessments for the official years 1947-48 to 1949-50. Hence the present appeals which are divided into two groups one group being of appeals preferred by the Municipality against the decision in regard to the assessment for the official year 1950-51 and the other group being of appeals preferred by rate-payers against the decision in regard to the assessments for the official years 1947-48 to 1949-50. In some of the appeals preferred by the Municipality the contesting rate-payers also preferred cross-objections challenging the decision in so far as it went against them in regard to the assessments for the official years 1947-48 to 1949-50. These appeals involve common questions of law and fact and though at one time it appeared that some special points peculiar to some of the appeals might be canvassed in those appeals it was stated before us at the close of the arguments that no special points were going to be advanced in any of these appeals. It will therefore be convenient to dispose of all these appeals by a common judgment.

2. Now before we examine the various contentions arising in these appeals it is necessary to point out that after the High Court of Bombay reversed the decision of the Civil Judge Senior Division Ahmadabad in Suit No. 124 of 1948 and held Rule 350-A read with Rule 243 intra vires the unsuccessful rate-payer preferred an appeal to the Supreme Court against the decision of the High Court. The Supreme Court by a majority judgment Sarkar J. dissenting held that having regard to legislative history and practice the word rate had acquired a limited meaning and that it

meant only a tax on annual value of lands and buildings and that Rule 350 read with Rule 243 by which the Municipality fixed the tax on open lands on the basis of capital value was therefore ultra vires and beyond the power of the Municipality under Section 73(1)(i). This decision was given by the Supreme Court on 22nd March 1963 and having regard to this decision it was clear that apart altogether from other objections to the validity of the assessments for the official years 1947-48 to 1950-51 there was one fatal objection namely that Rule 350-A read with Rule 243 was ultra vires Section 73 and was consequently null and void and could not support the assessments. This decision would have therefore been sufficient to dispose of these appeals in favour of the rate-payers but the Gujarat Legislature passed an Act called the Gujarat Imposition of Taxes by Municipalities (Validation) Act 1953 for the purpose of validating the levy and collection of taxes imposed by Municipalities on the basis of capital value of lands and buildings or on the basis of a percentage of such capital value. This Validation Act came into force from 26th January 1964 and was strongly relied on by Mr. M.P. Amin on behalf of the Municipality as a complete answer to the contention of the rate-payers that the tax being a tax based on capital value of open lands was illegal and ultra virus the powers of the Municipality. Mr. J.C. Bhatt learned advocate appearing on behalf of the rate-payers in some of the appeals however submitted that the Validation Act was ineffective to validate the levy and collection of tax on open lands and that notwithstanding the Validation Act the tax continued to suffer from the vice of want of authority in the Municipality to impose it. In other words the argument was that the Legislature had missed fire. Mr. J.C. Bhatt also contended in the alternative and in this contention he was strongly and vehemently supported by Mr. P.B. Patwari who appeared on behalf of the ratepayers in two of the appeals that the Validation Act was ultra vires and beyond the legislative competence of the State Legislature inasmuch as its pith and substance was tax on capital value of open lands which was a subject within Entry 86 of List I of the Seventh Schedule to the Constitution. These contentions were urged before us with a view to getting rid of the Validation Act but in the view we are taking of the other contentions urged on behalf of the rate-payers we do not think it necessary to examine the validity of these contentions.

3. Turning now to the other contentions we find that the main grounds on which the assessments for the official years 1947-48 to 1949-50 were challenged on behalf of the rate-payers were—

> (1) On a true construction of the various provisions of the Boroughs Act the liability of the rate-payers to tax for any official year could arise only on the authentication of the assessment list for the official year and the authentication in order to be valid and effective must be made before the expiry of the official year. The authentication of the assessment lists for the official years 1947-48 to 1949-50 made by the aforesaid six appellate officers as delegates of the Commissioner sometime in December 1954 long after the expiration of the respective official years was therefore invalid and ineffective and did not operate to create liability on the rate-payers for payment of tax.
> (2) In any event if the authentication could be made at any time the Commissioner was not entitled to exercise the powers under Sub-sections (2)(3) and (4) of Section 81 in

regard to the assessment lists for the official years 1947-48 to 1949-50 and the hearing and disposal of the objections against the valuation and assessment in the assessment lists and the authentication of the assessment lists by the aforesaid six appellate officers as delegates of the Commissioner was therefore ineffectual and inoperative.

(3) Even if the Commissioner was entitled to exercise the powers under Sub-sections (2)(3) and (4) of Section 81 in regard to the assessment lists for the official years 1947-48 to 1949-50 the Commissioner not having delegated his power under Sub-section (4) of Section 81 to any of the aforesaid six appellate officers they were not entitled to authenticate the assessment lists and the assessment lists not having been authenticated by the Commissioner were not valid lists which could create liability on the rate-payers.

The assessment for the official year 1950-51 was also challenged on the same grounds but there was an additional ground urged on behalf of the rate-payers in this case and that additional ground was that tax being a tax based on capital value of open lands was inconsistent with the provisions of the Corporations Act and did not therefore? continue in force after 1st July 1950 and consequently could not be levied by the Corporation for the official year 1950-51 after the Corporation came into existence. It was also contended that in any event the Commissioner had no authority to prepare or adopt the assessment list for the official year 1950-51 for the purpose of assessing the tax for that official year. The answer given on behalf of the Municipality to these contentions was that it was the preparation of the assessment list under Section 78 which gave rise to the liability of the rate-payers in respect of tax and though that liability was not enforceable until the assessment list was authenticated a debitum in praesenti did come into existence on the prerarration of the assessment list. The liability of the rate-payers to tax for the official years 1947-48 to 1949 was a therefore in existence on 1st July 1950 when the Corporation came into being. The liability being to the Borough Municipality there was a corresponding right in the Borough Municipality to the tax and this right was transferred to the Corporation under Paragraph 2 of Appendix IV and the Corporation was entitled to take all such steps for the enforcement of this right by quantification as the Borough Municipality could have taken under the provisions of the Boroughs Act. The Commissioner being the Chief Executive Officer of the Corporation was therefore entitled to exercise the powers under Sub-sections (2)(3) and (4) of Section 81 in regard to the assessment lists for the official years 1947-48 to 1949-50. The argument of the Municipality was also put on another ground and that ground was based on Paragraph 3 of Appendix IV. It was contended that there being debitum in praesenti of tax for the official years 1947-48 to 1949-50 sums on account of such tax were due to the Borough Municipality on 1st July 1950 when the Corporation came into existence and by virtue of Paragraph 3 of Appendix IV the Commissioner was entitled to recover the said sums and for the purpose of such recovery to take any measures which the Borough Municipality could have taken including exercise of powers under Sub-sections (2)(3) and (4) of Section 81 In regard to the assessment for the official year 1950-51 Paragraph 3 of course could not avail the Municipality since no assessment list for that official year had been prepared or adopted by the Borough Municipality prior to 1st July 1950 and the entire case of the Municipality was therefore

staked on Paragraph 2 of Appendix IV. The argument was that under Rule 350-A read with Rule 243 the Borough Municipality had a right to levy tax for the official year 1950-51 and that right was transferred to the Corporation under Paragraph 2 of Appendix IV and the Corporation was entitled to exercise that right and to take all such steps as were necessary for the purpose of bringing that right to frution. These were broadly the rival contentions of the parties and we shall now proceed to examine their validity and correctness.

4. In order to appreciate these contentions it is necessary to examine briefly the scheme of the Boroughs Act in regard to imposition assessment and recovery of Municipal taxes. Section 58 enables the Municipality to make rule and Clause (j) of that Section provides that a Municipality may make rules prescribing the taxes to be levied in the Municipal Borough for municipal purposes. Chapter VII makes detailed provisions in regard to Municipal Taxation. This Chapter is divided into several parts and each part bears an appropriate heading. The first part is headed Imposition of Taxes. Under this part come Sections 73 to 77A. Section 73 enumerates the taxes which may be imposed by a Municipality and it provides that the Municipality may impose any of those taxes subject to the provisions of Sections 75 and 76 and also subject to any general or special orders which the State Government may make in that behalf. Clause (i) of Subsection (1) of Section 73 provides for imposition of a rate on buildings or lands or both situate within the Municipal Borough. Section 75 prescribes the procedure which must be followed before a Municipality can impose a tax. Under Clause (a) of this section the Municipality has to pass a resolution at a general meeting selecting the tax proposed to be levied and approving rules prepared for the purpose of Section 58(j) prescribing the tax selected and in such resolution and rules it has to specify the various particulars set out in the section. The Rules so approved are to be published by the Municipality with a notice in the prescribed form under Clause (b) of Section 75. Any inhabitant of the Municipal Borough can thereafter object to the imposition of the tax or to the amount or rate proposed or to the classes of persons or property to be made liable thereto or to any exemptions proposed within one month from the publication of the notice. The Municipality is then required to consider all the objections or to authorize a Committee to consider the same and report thereon and the Municipality has to submit its final decision to the State Government for their approval under Clause (c) of Section 75. Section 76 empowers the State Government to refuse to sanction the Rules or to sanction them without modification or subject to such modifications as they may think fit to impose. After the sanction is received from the Government Section 77 requires that the sanctioned rules must be published by the Municipality together with a notice reciting the sanction and the date and serial number thereof and while publishing the rules the Municipality has also to specify the date from which the rules shall come into force. Under this section such date shall not be less than one month from the date of the publication of the notice. It was common ground between the parties that this procedure set out in Sections 73 to 77 was followed by the Municipality in regard to Rule 350-A read with Rule 243 and that the said Rule came into force from 1st April 1947 The Municipality was thus duly empowered to impose tax on open lands as provided in Rule 350-A read with Rule 243.

5. The second part consisting of Sections 78 to 89 deals with assessment of and liability to rates on buildings or lands. These Sections set out the procedure which must be followed for levy or rates on buildings or lands. Section 78 deals with the preparation of the assessment list. Under Sub-section (1) of this section the Chief Officer is required 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. Sub-section (3) of the section empowers the Chief Officer or any person acting under his authority to inspect any building or land in the Municipal Borough and requires the owner or occupier of any such building or land to furnish certain particulars which may be required by the Chief Officer. This provision has obviously been enacted for the purpose of enabling the Chief Officer or any person acting under his authority to prepare the assessment list. 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 appointed by the Municipality or with the permission of the Commissioner to any Officer or pensioner 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 agent and it is only after hearing the objections 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 decision on the objections has to be authenticated in the manner set out in Sub-section (4). The person or persons authenticating the assessment list are required to give a certificate that no valid objection has been made to the valuation and assessment contained in the list except in the cases in which amendments have been made therein. 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 rate-payers. The completion of this procedure leads to certain important consequences set out in Subsection (6) and since some argument was founded on the provisions of this subsection it would be desirable to set out the same in full. Sub-section (6) runs as follows:

> (6). Subject 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 110 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--
> (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 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 list is in force.

Section 82 then provides for amendment of assessment-list in certain cases. This section is also very material and we will therefore reproduce the same in full:

"82. (1) 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 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 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.

(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.

(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 proportion which the remainder of the year after such day bears to the whole year."

The next important section is Section 84 which provides for adoption of the 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 the list for any year with such alterations as may be deemed necessary for the year immediately following.

(2) But the provisions of Sections 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."

The other Sections in this part are not material and it is therefore not necessary to refer to them.

6. When the assessment list is authenticated by following the procedure set out in Section 81 the sum mentioned in the assessment list becomes due by the owner or occupier of the land or building against which it is shown and the Chief Officer can then proceed to recover it by following the procedure set out in Chapter VIII dealing with recovery of Municipal claims. Sub-section (1) of Section 104 which occurs in this Chapter provides as follows:

> "104. (1) When any amount--
> (a) which by or under any provisions of this Act is declared to be recoverable in the manner provided by this Chapter, or
> (b) which not being leviable under Sub-section (1) of Section 98 or payable on demand on account of an octroi or a toll is claimable as an amount or installment on account of any other tax which now is imposed or hereafter may be imposed in any municipal borough shall have become due the Chief Officer shall with the least practicable delay cause to be presented to any person liable for the payment thereof a bill for the sum claimed as due."

Sub-section (3) of Section 104 provides that if the person to whom a bill has been presented as aforesaid does not within fifteen days from the presentation thereof either pay the sum claimed as due in the bill or show cause to the satisfaction of the Chief Officer why he is not liable to pay the same or prefers an appeal in accordance with the provisions of Section 110 against the claim the Chief Officer may cause to be served upon him a notice of demand in the prescribed form. If the notice of demand is not complied with the Chief Officer can proceed to issue a warrant for distress and sale of the property of the person liable for payment of the claim made in the bill. Section 110 provides for an appeal against a claim included in a bill presented under Sub-section (1) of Section 104 and the decision on appeal is made subject to revision by the Court to which appeals against the dicisions of the Magistrate or Bench of Magistrates hearing the appeal ordinarily lie. This is broadly the scheme of the provisions of the Boroughs Act relating to imposition, assessment and recovery of Municipal taxes.

7. Now the first question which arises for consideration on these provisions is as to when does the liability of the rate-payers in respect of tax on open lands for any official year arise. Does it arise on the commencement of the official year by the force of the rule without anything having to be done by the Municipality or does it arise on the preparation of the assessment list or does it arise on the authentication of the assessment list? Now so far as the first possibility is concerned namely that the liability arises as soon as the official year commences irrespective of the fact whether any assessment list is prepared or any step is taken in that direction by the Municipality it may be pointed out at the outset that that was not the case of either party. The counsel appearing on behalf of the Municipality frankly stated that it was not possible to contend that the liability would arise on the commencement of the official year without anything more by mere force of the rules and the reason was obvious. The scheme of imposition of taxes which we have set out above clearly shows that imposition is not made by the rules made by the Municipality

under Section 58(j). Section 73 says that a Municipality may impose a tax subject to the provisions of Sections 75 and 76 and the conjoint effect of these Sections is that a Municipality can impose a tax only after it has passed a resolution selecting the tax and approved rules for the purpose of Section 58(j) prescribing the tax to be levied as required by Section 75 and the Government has given its sanction to the Rules as laid down in Section 78. The imposition which is contemplated is therefore an imposition after the making of the rules authorizing the tax. It-is not the making of the rules which imposes the tax nor is the tax imposed on the date when the Rules come into force. The rules merely empower the Municipality to levy the tax and it is in virtue of the authority conferred by the rules that the Municipality imposes the tax. As observed by Sarkar J. in *Municipality of Anand v. State of Bombay*[1]

> "The imposition contemplated by Section 59 is clearly not the passing of the resolutions under Section 60 selecting the tax and making the rule prescribing the tax to be levied in terms of Section 56(1) for Section 59(1)(a) expressly makes the imposition something happening after Section 60 has been complied with As we have earlier stated it (Section 62) provides that the tax shall be imposed from the date mentioned in the notice publishing the sanctioned rule. The choice of this date lies with the Municipality and not with the Government. The power to levy the tax is acquired by a Municipality when the rule prescribing the tax made by it is sanctioned by the Government. The Municipality at its own choice thereafter fixes a date from which it will collect the tax. Therefore the word impose in Section 62 does not refer to the acquisition of power to levy a tax by making the rule but to the actual levy of the tax under the power so acquired. It is of some significance to note that in Section 45(1) the words used are make... rules prescribing the taxes to be levied. What we wish to point out is that in connection with the making of the rules the Act uses the word levied in Section 46(1) and in connection with an actual impost the word imposed in Section 62. We therefore think that it would be legitimate to construe the word imposes in Section 59 in the sense in which it has clearly been used in a connected provision that is Section 62. Hence in our view impose in Section 59 means the actual levy of the tax after authority to levy it has been acquired by rules duly made and sanctioned and it is such imposition that is made subject to the general or special orders of the Government."

Ayyangar J., also in a separate but concurring judgment observed in the same case—

> "In my opinion the imposition of a tax is a continuing power in the sense that so long as it is in force it points to the existence of and derives vitality from the power of the authority to impose it. When the Municipality levies the tax in the sense of quantifying it with reference to an ascertained person and thereby creating a statutory debt payable by the tax-payer it is in reality exercising the power to

[1] A.I.R. 1962 S.C. 988

impose the imposition that furnishes the legal basis for the levy when made."

Of course these observations were made by the learned Judges of the Supreme Court when discussing the provisions of the Bombay District Municipal Act 1901 but those provisions are in all material respects identical with the provisions of the Boroughs Act and therefore what has been stated in these observations must apply with equal force in relation to the corresponding provisions of the Boroughs Act. It is therefore clear that the only effect of Rule 350-A read with Rule 243 was to empower the Municipality to impose tax on open lands and buildings and there could be no imposition or levy of the tax unless and until the procedure set out in Sections 78 to 81 was followed. No liability could therefore attach to the rate-payers on the passing of Rule 350-A read with Rule 243 or on the commencement of the official year by mere force of that Rule without any step having to be taken by the Municipality.

8. The only question which then remains to be considered is whether the liability in respect of tax would attach to the rate-payers on the preparation of the assessment list under Section 78 or it would attach only on the authentication of the assessment list under Section 81(4). The former position was canvassed on behalf of the Municipality while the latter was the position contended for on behalf of the rate-payers. Now the analysis of the provisions of Sections 76 to 81 which we have given above clearly shows that these Sections deal with one continuous integrated process of assessment culminating in a final conclusive assessment list on which recovery can follow under Section 104. The process of assessment is not complete on the preparation of the assessment list: it continues until the assessment list is authenticated and is only then completed it is at that stage that the liability arises. As the heading of the part under which these sections occur shows these sections deal with the assessment of and liability to rates and the liability to rates follows the assessment of rates which is complete only when the assessment list is authenticated. The assessment list prepared by the Chief Officer is only a provisional or draft list. It has no efficacy no force no life. It is a circumstance of some importance that it is not the Chief Officer who has been entrusted with the task of preparing the assessment list. The Chief Officer may get it prepared by any subordinate official and the reason why the Chief Officer has been permitted to get it prepared by any subordinate official is that it is only a draft list which is not intended by itself to have any force or efficacy. It is no doubt true that the assessment list as prepared under Section 78 has to show the amount of tax assessed on the property. But the assessment which is talked of in this context is only an ex parte assessment or provisional assessment. It is intended to initiate the process of assessment and it constitutes the proposal of the Municipality which sets in motion the machinery of assessment. Instead of requiring the Municipality to intimate to every owner or occupier of property the assessment which the Municipality thinks is the assessment leviable from such owner or occupier and calling upon such owner are occupier to show cause why such assessment should not be levied on him the Legislature has provided by Section 78 that an assessment list showing the assessment proposed to be levied shall be prepared and published and public notice thereof shall be given so that the owner or occupier of each property mentioned in the assessment list knows what is the assessment which the Municipality proposes to levy on his property. If there is no objection to the proposed assessment there is no difficulty. But if the

rate-payer objects the objection is to be heard and disposed of by the Standing Committee consisting of certain Councillors and the Standing Committee then authenticates the assessment list. When the Standing Committee gives its approval to the assessment list by authentication the assessment list becomes final and the process of assessment having come to an end the levy becomes complete and the liability arises. As observed by Gajendragadker J. as he then was in *Amalner Municipality v. Pratap Mill*[2] the process of levying the rates which begins with the preparation of the provisional assessment list is completed only when the list is authenticated under Section 81(4). Mr. M.P. Amin on be half of the Municipality contended that the liability arises on the preparation of the assessment list and debitum in praesenti comes into existence but it is solvendum in futuro when the assessment list is authenticated after objections are heard and disposed of. But we do not see any warrant for reading two different stages in this single continuous process which commences with the preparation of the assessment list under Section 78 and ends with the authentication of the assessment list under Section 81(4). There were two arguments which were advanced by Mr. M.P. Amin in support of his contention that the process of assessment laid down in Sections 78 to 81 really consists of two stages namely the stage of creation of liability and the stage of payability arising on quantification. Mr. M.P. Amin relied on the use of the words tax assessed thereon in Section 78(1)(e) and contended that these words showed that what was intended to be done by the preparation of the assessment list was assessment of tax on the property and that liability in respect of tax on the property was therefore created by the preparation of the assessment list. But these words in our opinion do not throw any light on the question which is before us. We have already pointed out that the assessment of tax referred to in these words is a provisional or-tentative assessment made for initiating the process of assessment and is not intended to be an assessment fastening liability on the rate-payers. Moreover it must be remembered that merely because reference is made to assessment of tax it does not necessarily mean that the assessment must result in imposition of liability. In every case it would be a question to be determined on a true interpretation of the various provisions of the statute whether assessment talked of in any particular context results in creation of liability. The context in the present case shows and we shall presently refer to several other considerations which support this view that the preparation of the assessment list showing the amount of tax assessed on each property does not attach liability on the rate-payer. Mr. M.P. Amin then pointed out that there were three stages in the imposition of a tax namely (1) declaration of liability; (2) assessment of tax; and (3) recovery of amount assessed and these three stages must be found to exist in the present scheme of taxation. The argument was that if liability was held to arise only on the authentication of the assessment list there would be no separate stage of declaration of liability independent of the assessment of tax and therefore the construction contended for on behalf of the Municipality should be accepted. But this argument is also in our opinion without force. It assumes that in every imposition of tax there must be three stages as set out above. There is no warrant for such assumption. What is the scheme of taxation in a particular case must always be determined on a construction of the provisions of the statute imposing the tax and there can be no hard and fast rule that in every case the scheme of taxation must follow a set pattern consisting of three stages. We do not see any reason why this process which is a perfectly

reasonable and intelligible process should be cut up into two stages as contended for on behalf of the Municipality. There are no words in Section 78 which support the contention that a debitum in praesenti arises on the preparation of the assessment list which is solvendum in futuro on the authentication of the assessment list nor is there anything in the scheme of these sections which supports any such conclusion.

[2](1951) 54 Bom. L.R. 451 at 459

9. As a matter of fact there are three very good reasons why in our opinion no liability can be held to arise on the preparation of the assessment list and the authentication of the assessment list must be regarded as the only stage at which liability can arise. In the first place the Legislature could never have intended that liability should be imposed on a rate-payer without having an opportunity to show cause why such liability should not be imposed on him. The argument of the Municipality comes to this that an ex parte liability is impose on the rate-payer by the preparation of the assessment list and it is open to the rate-payer to file an objection and to show that such liability has been wrongly imposed on him. We do not see any reason why the Legislature should have permitted ex parte imposition of liability and should have then given an opportunity to the rate-payer to repel it. Of course the rate-payer cannot show that the tax is invalid or illegal (Vide *Ankleshwar Municipality v. Chhotalal*[3] but he can certainly show that no tax is liable to be imposed on him either because his land is not within Municipal limits or his land falls within the exemption or for any other reason. It would indeed be a strange and unusual scheme of taxation that ex parte liability should be imposed on a rate-payer and he should then be told: you may now repel it. Is it not more consonant with reason and principle that no liability should be imposed on a rate-payer without giving an opportunity to him to show cause against the same? Secondly if the preparation of the assessment list creates a liability on the rate-payer to pay tax for the official year for which an assessment list is prepared the rate-payer who does not object to the valuation and assessment contained in the assessment list within the time fixed in the public notice issued under Section 81(1) should be liable to pay the amount of tax mentioned in the assessment list immediately on the expiration of such time. No objection having been filed by the rate-payer within the prescribed time the liability which is imposed by the preparation of the assessment list should be immediately enforceable against the rate-payer. But Mr. M.P. Amin conceded and in our opinion rightly that until the assessment list is authenticated no proceeding for recovering the amount of tax shown in the assessment list can be taken against such rate-payer. This would suggest that no liability attaches to the rate-payer on the preparation of the assessment list. It is only on the authentication of the assessment list that liability arises for the first time and when that liability arises it can be enforced by taking appropriate proceedings for recovery under Chapter VIII. Lastly a comparison of the provisions of Sections 78 to 81 with the provisions of Section 82 clearly supports the conclusion that there can be no creation of liability in the rate-payer until the authentication of the list. Section 82 provides that the Standing Committee may at any time in certain cases alter the assessment list by inserting or altering an entry in respect of any property after giving 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 proposed alteration may be made and if any objection to the proposed alteration

is made before the time fixed in such notice such objection is to be dealt with in all respects as if it were an objection under Section 81(2). If we look at this section closely it will be apparent that the scheme embodied in this section is the same as the scheme embodied in Sections 78 to 81. Where any alteration of the assessment list is found necessary in the circumstances set out in Section 82 a notice of the proposed alteration is to be given to the person interested in the alteration and he is to be given an opportunity to show cause against the proposed alteration by filing an objection. The objection is then to be investigated and disposed of by the Standing Committee in accordance with the procedure set out in Section 81(3) and the alteration necessary in

[3](1954) 57 Bom. L.R. 547)

accordance with the decision on the objection is to be made in the assessment list and the alteration is then to be authenticated as provided in Section 81(4). It is only when the alteration is made and authenticated after giving notice to the rate-payer interested in the alteration and investigating and disposing of any objection which may be made by him that liability attaches to the rate-payer. If this be the scheme of Section 82 it is difficult to see why the Legislature should have thought it necessary to introduce a different scheme when dealing with the main assessment list under Sections 78 to 81. If making of an ex parte entry in the assessment list was not intended to fasten liability on the rate-payer where such entry was by way of alteration we do not see why the Legislature should have provided that the making of an original ex parte entry in the assessment list should have the consequence of attaching liability to the rate-payer. The only answer which could be given on behalf of the Municipality was that Section 78 proaided for preparation of the original assessment list while Section 82 provided for alteration of the assessment list already prepared and that accounted for the difference in the schemes of the two sets of provisions. But this can hardly be a reason for any difference in scheme and as a matter of fact when we compare the provisions of Sections 78 to 81 with the provisions of Section 82 we find that there is no difference at all in the schemes of the two sets of provisions. In the case of an alteration in the assessment list it is not necessary to make a provisional entry to the person interested in the proposed alteration. In such a case the notice which would go to the person interested in the proposed alteration can conveniently set out the proposed alteration and the person to whom the notice goes would have an opportunity of filing an objection to the proposed alteration. But this procedure would be highly inconvenient at the original stage for the number of properties being very large it would be a Herculean task to set out the proposed assessment in each individual notice to the persons interested in the proposed assessment and the Legislature therefore provided that instead the proposed assessment in respect of all properties should be set out in one provisional or draft assessment list and it should be published and public notice thereof should be given so that persons interested in the proposed assessment may have an opportunity to object to the valuation or assessment shown in the assessment list. The scheme of Sections 78 to 81 is therefore no different rom the scheme 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 rate-payer These considerations in oUr opinion

clearly support the contention urged on behalf of the rate-payers that the liability to tax arises only on the authentication of the assessment list under Section 81(4) and not before.

10. Having examined this question on principle we will now turn to the authorities which were cited before us. Now in this case we have the rather unusual spectacle of both sides relying upon the same set of authorities and each side contending that the authorities support its point of view. We have carefully gone through these authorities and we have read and re-read them but even after the closest reading we do not see how these authorities can possibly be said to be supporting the contention urged on behalf of the Municipality. As we read them they clearly and unmistakably point to one and only one conclusion namely that no liability arises until the assessment list is authenticated. We will now proceed to examine these authorities and we think the best way of doing so would be to refer to them in the order in which they were cited before us.

11. The first decision which was cited before us was a decision of Lokur J in *Sholapur Municipality v. Governor General*[4] In this case the Municipality when preparing the assessment list under Section 78 for the official year commencing 1st April 1937 through mistake omitted to levy tax on certain buildings of the rate-payer situate within its limits. The mistake was discovered in May 1939 and after giving a proper notice to the rate-payer the assessment list was corrected under Section 82 and a bill was sent to the rate-payer for recovery of the arrears of the tax for the two previous years 1937 and 1938-39. The question arose whether the rate-payer was liable to pay tax for the years in which his property was not included in the assessment list. It was contended on behalf of the Municipality that the liability in respect of tax was imposed as soon as the sanction of Government was obtained to the Rules made by the Municipality for imposition of the tax and that the preparation of the assessment list was only a step towards the recovery of the arrears of tax and that it was therefore immaterial when the assessment list was amended. This contention was rejected by the learned Judge who held that the sanction to impose the tax dealt with in the first part of Chapter VII must be distinguished from the liability to pay the tax dealt with in the second part and that the liability in respect be the tax did not therefore arise on the sanction of the Government to the Rules. The learned Judge in this context made the following observations which were strongly relied upon by Mr. M.P. Amin one behalf of the Municipality:

> "But it clearly appears from Section 78 that the preparation of the assessment list is essential to the arising of the debt and it is only those properties which are included in that list that are liable to pay the tax as set out therein."

But it must be remembered that the learned Judge made these observations while emphasizing the point that the liability did not arise on the Rules being sanctioned. The learned Judge undoubtedly said that the preparation of the assessment list was essential to the arising of the liabi lity. But this observation does not mean and could not have been intended to mean that the preparation of the assessment list is sufficient for the arising of the liability. The procedure set out

in Sections 78 to 81 is a sine qua non to the levy of the tax and unless the entire procedure is followed the levy is not complete. These observations of the learned Judge were also understood in the same way by the High Court of Bombay in Amalner Municipalitys Case (supra) to which we have just referred. Gajendragadker J. in that case explained the observation of the learned Judge in these words:

> "It is the assessment list thus prepared and authenticated that gives rise to the liability of the assessee. No doubt the learned Judge has stated that it clearly appears from Section 78 that the preparation of the assessment list is essential to the arising of the debt and it is only those properties which are included in the list that are liable to pay the tax as set out therein. This observation must be read in its context. Mr. Justice Lokur was not dealing with the non-compliance of Sections 80 and 81 of the Act and therefore it was not necessary for him to consider whether it was essential for the Municipality to follow the procedure prescribed in these sections before they cold enforce the liability of the assessee to pay the assessment."

[4](1946) 49 Bom. L.R. 752

This decision of Lokur J. does not therefore assist the arguments of the Municipality. But on the contrary as explained by Gajendragadkar J. clearly establishes that it is the authentication of the assessment list which creates the liability of the rate-payer to pay the tax.

12. The next case to which reference was made was a decision of Chagla C.J. as he then was in *Shantaram Balaji v. Vengurla Municipality*[5], In that case the only question was whether under the corresponding provisions of the Bombay District Municipal Act 1901 there was any objection on the Municipality to prepare the assessment list prior to 1st April in order that it should be entitled to levy tax in respect of official year commencing from 1st April and the learned Chief Justice held that there was no such obligation on the Municipality and the Municipality was entitled to prepare the assessment list and to get it authenticated at any time subsequent to April 1 during the official year. This decision does not therefore throw any light on the question before us.

13. A reference was then made to the decision in Amalner Municipalitys Case (supra). That was a decision of a Division Bench of the High Court of Bombay consisting of Gajendragadkar and Vyas JJ. In that case the Municipality had prepared an assessment list but the assessment lilt was not in conformity with the requirements of Section 78 and the Municipality had also failed to comply with the procedure laid down in Sections 80 and 81 in finalising the assessment list. It was under these circumstances that the question arose whether the assessment list was a valid list which could form the basis for demand of tax from the rate-payers. Dealing with this question both the learned Judges made observations which are of considerable assistance to us in deciding the present case. Gajendragadkar J. examined the scheme of the Boroughs Act and observed:

> "Now, in dealing with the first point that the assessment itself is invalid because the provisions of Sections 78 80 and 81 have not been complied with it is necessary to

remember that these sections occur in the second topic dealt with by chapter VII. The first topic deals merely with the imposition of taxes and it provides for the powers of the Municipality to make rules in that behalf and to obtain the sanction of the Government for those rules. When the rules are sanctioned assessment lists have to be prepared in conformity with the said rules and there can be no doubt that unless the assessment lists are prepared the liability to pay the rates in question would not arise. The second topic itself makes it clear that it deals first with the assessment of the rates and then with the liability to pay them. So that there can be no doubt that the liability to pay a rate would not arise merely because rules have been framed by the Municipality in that behalf and they have been properly sanctioned and brought into force. The scheme of the provisions under this topic seems to be that when the rules have been prescribed by the Municipality for the levy of assessment the first step that the Municipality has to take is to prepare the assessment list. The list thus prepared would be a provisional or a draft list. Then the list has to be notified to the public giving them an opportunity to object to the list if they so desire. After the objections are received they have to be examined by a committee. The committee has then to confirm the list or modify it in the light of the objections and when that is done, the list has to be authenticated and finalized. In other words the process of levying

[5]52 Bom. LR 411

the rates which begins with the preparation of the provisional assessment list is completed only when the list is authenticated under Section 81(4)."

The learned Judge also further observed and these observations are of the greatest importance:

"It seems to us that the provisions of Sections 78 to 81 must be read as a whole and that the liability to pay the rates arises only when all these provisions have been complied with. It is hardly necessary to emphasise the importance of giving an opportunity to the assessees to make their objections under Section 81 and of giving them an opportunity to press for their objections before the standing committee. It is an important safeguard provided by the statute for the protection of the assessee and it is only when the assessee is enabled to avail himself of this safeguard that the list can be finalized and authenticated. A provisional list prepared ex-parte by the Chief Officer or any other municipal servant under his directions cannot in our opinion be treated as either final or effective..."

The learned Judge then summed up his conclusion in the following words:

"In our opinion therefore if the procedure laid down in Sections 80 and 81 is not followed by the Municipality in preparing and finalizing the assessment list the list that they may have prepared ex-parte under Section 78 would not be a valid list."

Vyas J.

14. also said to the same effect when he observed:

> "It is not until the stage of final approval of the list is reached that the list can be said to be effective (*Lipton Ltd. v. Shoreditch Assessment Committee*[6]*)* Similarly after the standing committee have heard and disposed of the objections under Sub-section (3)(a) and made such amendments under Sub-section (3)(c) as seem proper they finally approve the list by authentication on it and it is only after that stage is reached that the list which was provisional till then becomes conclusive and affective. No tax can be legally levied in consequence of an ineffective or inconclusive list...."

These observations clearly show that the assessment list prepared under Section 78 is merely a draft list prepared ex parte and it has no validity or efficacy for the purpose of creating liability on the rate-payers. It is only when the entire procedure set out in Sections 78 to 81 is complied with and the assessment list is authenticated that the liability of the rate-payers arises and when it does so arise it comes into existence as from the commencement of the official year. The assessment list on authentication comes into force from the commencement of the official year and it is that list which is the list for the official year. This decision being a decision of a Division Bench of the High Court of Bombay given prior to bifurcation has compulsive force on us and apart from the fact that even otherwise we are inclined to reach the same conclusion we do not see how in view of this decision we can come to any other conclusion.

[6](1934) 2 K.B. 470

14. Our attention was also invited to the decision of Rajadhyaksha J. in *Ahmedabad Municipal Corporation v. Kulinsinh*[7]. This was a case under Section 82 but the learned Judge made the following observations which were strongly relied upon on behalf of the rate-payers:

> "...The liability to the payment of the tax is contingent upon the authentication of the list or amendment thereof for under Sub-section (6) of Section 81 the entries in the assessment list are to be accepted as conclusive evidence of the valuation and the basis prescribed in the Rules."

The only answer which Mr. M.P. Amin made to these observations was that these observations were wrong and did not represent the correct law. We do not agree with Mr. M.P. Amin. These observations are consistent with the view which has been uniformly taken by the High Court of Bombay that liability arises on the authentication of the assessment list.

15. The last decision to which reference was made in this connection was the decision of a Division Bench of the Bombay High Court consisting of Shah and Vyas JJ. in *Chalisgaon Borough Municipality v. Multanchand*[8] In that case Shah J. analysed the provisions of Sections 78 to 81 and observed that the scheme of the Act was: that when the Municipality levies a rate on buildings or lands or on buildings and lands the municipality must prefer an assessment list give

notice of the preparation of the assessment list invite objections to the entries contained therein and consider the objections. After the objections are heard and adjudicated upon the assessment list has to be finalised and authenticated in the manner prescribed by the Act and then observed:

> "The liability to pay a rate arises from the assessment list and the entries made in the assessment list are conclusive as to the valuation or the annual letting value of the lands or buildings to which the entries relate and as to the amount of rate leviable on such buildings in any official year in which the list is in force. Machinery is provided for amendment of the assessment list where error has crept in and where liability has been incurred for the first time in respect of buildings constructed altered added to or reconstructed during the course of the year. Every assessment list is operative for one year only the year being one commencing on April 1 and ending on March 31 of the next year. On April 1 of each year notionally a fresh assessment list comes into existence even if the objections which have been raised are not disposed of before the commencement but are disposed of during the course of the official year. When the list is authenticated it is deemed to come into existence as on April 1 of the official year. This scheme of the Act necessarily postulates that if any alteration is to be made in the assessment list it must he carried out during the course of the official year...."

The learned Judge also said at the close of the judgment:

> "In other words the assessment list for each year comes to an end on the expiry of the official year and a fresh assessment list comes into existence as from the first

[7](1954) 57 Bom. L.R.259
[8](1955) 58 Bom. L.R. 375

> date of the official year and the assessment list of the previous year cannot be amended so as to impose fresh liability after the close of the official year."

We shall have occasion to refer once again to these latter observations when we examine the question as to whether the authentication must be made before the close of the official year but these observations clearly establish that the liability in respect of the tax arises on the authentication of the assessment list and when the assessment list is authenticated it is deemed to come into existence from the commencement of the official year.

16. That takes us to the next question which is also a question of some importance namely as to within what time the assessment list must be authenticated if it is to be a valid and effective assessment list. Now once we take the view that the process of levying the tax commences on preparation of the assessment list under Section 78 and is not completed until the list is authenticated under Section 81 it is difficult to resist the conclusion that the authentication must be made within the official year. The official year is the unit of time for the levy of the tax. The assessment list 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 decision on the objections are carried out in the assessment list. The assessment list is then authenticated. When it is authenticated the assessment list becomes effective as from the commencement of official year. Then it comes into force with effect from the first day of the official year and gives rise to the liability as from that date. Assessment list is thus brought into force from the commencement of the official year. Now the assessment list being operative only for the official year for which it is made it comes to an end on the expiry of the official year. See the observations of Shah J. in Chalisgaon Borough Municipalitys case (supra). In other words the assessment list ceases to be in force at the close of the official year. It is for this reason that Shah J. said in the case just cited that this scheme of the Act necessarily postulates that if any alteration is to be made in the assessment list it must be carried out during the official year. It would be incongruous to speak of amending an assessment list after it has ceased to be in force and a fresh assessment list has come into existence. For the same reason we think that there can be no authentication of an assessment list after the close of the official year for which it is made. It is difficult to see how life and force can be infused in an assessment list by authentication after the expiration of the period for which it is intended to invest it with life and force. The authentication must be before the close of the official year so that the assessment list comes into force and creates a liability to pay the rate before the official year ended. The tax being a tax for the official year must obviously be levied during the official year and cannot be levied after the expiration of the official year and since the levy of the tax is completed only when the assessment list is authenticated it must follow that the authentication on the making of which alone the imposition or levy of the tax is effected must take place during the official year. To take any other view would result in this anomaly that the tax for an official year can be levied at any time after the expiration of the official year. This would certainly be an untenable view and as a matter of fact when we put it to Mr. G.N. Desai who appeared on behalf of the Municipality along with Mr. M.P. Amin what would be the position if we take the view that the liability arises only on the authentication of the assessment list Mr. G.N. Desai frankly conceded that in that view it would have to be held that the authentication must be within the official year.

17. But apart altogether from this consideration we find that there is inherent evidence in the sections themselves which show that the authentication was intended by the Legislature to be something which must be done before the close of the official year. Section 84 provides that it shall not be necessary to prepare new assessment list every year but 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 the list for any year with such alterations as may be deemed necessary for the year immediately following. The Chief Officer is thus empowered to adopt the valuation and assessment contained in the assessment list for any year for the immediately following year. This provision postulates that there would be an assessment list for a particular 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 is contemplated here as being the assessment list which can be adopted for the immediately following year is an authenticated assessment list As pointed out by Gajendragadkar J. in Amalner Municipalitys case (supra) the assessment list prepared under Section 78 is merely a provisional or draft list and has no validity and it is only on authentication that the assessment list comes into force from the commencement of the official year. That is the final and effective list and when the Legislature provided that the valuation and assessment contained in the assessment list for any year may be adopted by the Chief Officer for the immediately following year the Legislature obviously referred to the valuation and assessment contained in the authenticated list which is the only final and effective valuation list. What we have said above may be pointedly brought out by means of an illustration. Suppose for a particular official year an assessment list is prepared under Section 78 which shows certain amounts in respect of valuation and assessment of certain property. On objections made such valuation and assessment may be amended and if that happens the amended valuation and assessment would be shown in the authenticated list. Now in such a case what would be connoted by the expression the valuation and assessment contained in the list for any year in its application to that particular official year? Would the expression mean the valuation and assessment as shown in the provisional or draft list or would it mean the valuation and assessment as shown in the authenticated list? The answer obviously is: the latter. The list for that particular official year would be the authenticated list and not the provisional or draft list and what the Chief Officer can adopt for the purpose of Section 84 would be the valuation and assessment contained in the authenticated list and not those contained in the provisional or draft list. If the valuation and assessment shown in the provisional or draft assessment list can be adopted and are adopted for the immediately following year it would be incorrect to say after the authentication of that assessment list that the assessment list for the immediately following year has adopted the valuation and assessment contained in the assessment list for the previous official year for the assessment list of the previous official year would be the authenticated list and not the provisional or draft list from which the valuation and assessment are adopted. Moreover if the view be taken that the assessment list which can be adopted for the immediately following year may even be a draft list we would have the rather startling result that there might be several draft lists for different years running at a time which result could certainly never have been intended by the Legislature. A consideration of this section therefore fortifies us in our view that the tax intended to be levied under Sections 78 to 84 is annual in its structure and organization and every official year is intended to be a distinct and separate unit in regard to which the assessment list must be prepared and authenticated and levy of tax must be completed within the official year.

18. We must also read Sections 81 and 82 together and if we do so it would be clear that the construction contended for on behalf of the rate-payers is correct. If the construction canvassed on behalf of the Municipality were accepted the result would be that if an entry has been omitted from the assessment list through the fraud of a rate-payer it can be inserted in the assessment list and liability in respect of tax can be fastened on the rate-payer only during the currency of the official year but if a rate-payer has been honest and in respect of his property an entry has been

made in the assessment list at the time of its preparation an enforceable liability can be created against him at any time after the expiration of the official year. This would certainly be an anomalous result which could never have been intended by the Legislature. The Legislature could never have contemplated that enforceable liability against a rate-payer who has been guilty of fraud should arise only if the entry is made during the currency of the official year but enforceable liability against a rate-payer who has been honest might be created at any time after the expiration of the official year. Moreover it is difficult to accept the view that the Legislature did not intend that there should be any time limit in regard to the levy of the tax for any official year and that the tax should be legally livable at any time after the close of the official year. There is in our opinion sufficient indication in the various provisions of the Boroughs Act to show that the authentication of the assessment list in order to be valid and effective must be made within the official year.

19. Mr. M.P. Amin contended that there was no express provision in Section 81 or in any other section of the Boroughs Act prescribing the time limit of the official year for authentication and that no time should therefore be imported by us requiring authentication to be made within the official year. Now it is undoubtedly true that it is not laid down in so many words in the Boroughs Act that the authentication in order to be valid and effective shall be made before the close of the official year but it is clear from the scheme of taxation embodied in the Boroughs Act and particularly having regard to the various considerations to which we have referred earlier that such is the position. Mr. M.P. Amin in the course of arguments conceded that the preparation of the assessment list was in any event required to be made within the official year but when we asked him whether there was any express provision to that effect he had to agree that there was none. But in that event we asked how was the limitation of time in regard to the preparation of the assessment list brought in: to which he replied that the assessment list was required to be prepared before the close of the official year for the levy of the tax must be made before the official year ends. But if the requirement that the assessment list must be prepared before the expiry of the official year can be spelt out as a necessary implication from the scheme of taxation embodied in the Boroughs Act there is no reason why the requirement that the authentication must be made within the official year also cannot be spelt out in the same manner. The same reason which Mr. M.P. Amin gave for the requirement that the assessment list must be prepared within the official year applies equally to establish that the authentication of the assessment list must also take place within the official year. Mr. M.P. Amin also relied on the provisions of Section 82 and contended that where the Legislature wanted to prescribe a time limit the Legislature has done so in express terms and the absence of any such express provision in Section 81 shows that the Legislature did not intend that any time limit should apply to the authentication of the assessment list. But in making this submission Mr. M.P. Amin forgets that so far as Section 82 is concerned it was necessary to make an express provision for otherwise it would have been possible to contend that an alteration could be made in the assessment list at any time after the expiration of the official year.

20. Mr. M.P. Amin then pointed out to us that the magnitude of the task involved in the investigation and disposal of objections to the valuation and assessment in an assessment list and the consequential authentication of the assessment list was so large that the Legislature advisedly did not prescribe any time limit within which authentication should be made as it did in the case of Section 82 where there would be only solitary cases which could easily be disposed of within a short time. But this reason suggested by Mr. M.P. Amin for the supposed distinction between Sections 81 and 82 is not well-founded for when we turn to Section 84A introduced by the Legislature in the Boroughs Act by Bombay Act 53 of 1954 we find that the Legislature did not consider that the period of the official year was insufficient for the Municipality to investigate and dispose of objections and authenticate the assessment list. Section 84 was introduced by the Legislature because the Legislature thought that the decision in Amalner Municipalitys case (supra) laid down that the authentication of the assessment list was required to be made within the official year. It is significant that through the Legislature thought that the effect of that decision was that the authentication should be within the official year the Legislature did not amend the Boroughs 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 Municipality not later then 31st July of the official year and if the authentication is not made within that time the State Government should be entitled to appoint a person for the purpose of authenticating the assessment list and the authentication by such person too must not be later than the last day of the official year. The difficulty of authenticating the assessment list before the close of the official year envisaged by Mr. M.P. Amin is therefore more imaginary than real.

21. Mr. M.P. Amin lastly urged that inasmuch as Rule 350A read with Rule 243 was held to be ultra vires by the Civil Judge Senior Division Ahmedabad on 31st August 1949 in Suit No. 124 of 1948 it was not possible for the Municipality to proceed with the hearing of the objections and the authentication of the assessment list and if therefore we accepted the view that the authentication of the assessment list must be made. within the official year the Municipality would be placed in a situation in which it would suffer loss of tax for not doing something which it was not possible for it to do and this would cause immense hardship to the Municipality. But as pointed out by me in *Nadiad Municipality v. Nadiad Electricity Co. Ltd*[9]. all arguments on the hardship of a case either on one side or the other must be rejected when I am pronouncing what the law is; for such arguments are only quicksands in the law and if indulged would soon swallow up every principle of it. If there is any hardship the appeal must be to the Legislature and not to the Court. Besides in the present case the predicament in which the Municipality finds itself is of its own making. It was because the Municipality attempted to levy an illegal tax that the levy

[9](1964) 5 G.L.R. 82 at page 107

had to be challenged and declared ultra vires. There would have been no difficulty if a legal levy had been effected. The present complaint therefore lies in in the mouth of the Municipality. Moreover in any event the Municipality could have proceeded to hear the objections and to

authenticate the assessment list for the years 1947-48 and 1948-49 before the expiry of the respective official years because there was no injunction against the Municipality and even so far as the official year 1949 was concerned the Municipality could have asked the High Court after filing the appeal to grant a stay of the order of the Civil Judge for the purpose of enabling it to proceed with the authentication of the assessment list. There is therefore no substance in this plea based on hardship which might be caused to the Municipality.

22. The integrated picture of the scheme of taxation embodied in the Boroughs Act which thus emerges is that before a Municipality can impose a tax it must comply with the procedure set out in Sections 75 76 and 77 and it is only after that procedure is complied with by the passing of the resolution selecting the tax and the approval of the Rules prescribing the tax and the sanction of the Government to the Rules so approved that the Municipality can impose the tax. Such imposition can be made only by following the procedure set out in Sections 78 to 81 read with Sections 82 and 84. There can be no taxation unless the procedure set out in these sections is complied with and it is only when the assessment list is authenticated and the final step in this procedure is taken that the tax is imposed or levied and the liability of the rate-payer arises. This procedure must a fortiori be completed before the expiry of the official year and the assessment list must consequently be authenticated before the official year is ended.

23. If this be the correct position as we think it is it is apparent that the authentication of the assessment lists for all the four official years namely 1947 1948 1949 and 1950-51 having been made in December 1954 long after the expiry of the respective official years was invalid and ineffective and no tax could be said to be legally imposed or levied for those official years so as to found the claim far tax made by the Municipality against the rate-payers. This conclusion arises irrespective of the question whether the Commissioner was entitled to avail himself of the machinery of the Boroughs Act for the purpose of levying the tax for these official years. But even on that question we find there is consider able difficulty in the way of the Municipality. On the appointed day i.e. 1 July 1950 the Boroughs Act ceased to be in force in the City of Ahmedabad by reason of Section 4 save and except as provided otherwise in Appendix IV. Barring paragraph 3 which for reasons we shall presently state does not apply there is no provision in Appendix IV which saves the operation of any portion of the Boroughs Act and the power to impose the tax derived from Rule 350A read with Rule 243 therefore came to an end from 1st July 1950. As a matter of fact the tax being a tax based on capital value was inconsistent with the provisions of the Corporations Act and Rule 350A read with Rule 243 as also the power to impose the tax derived therefrom could not therefore continue in force after 1st July 1950 by reason of Clause (a) of paragraph 5 of Appendix IV. The power to impose the tax therefore ceased to exist from 1st July 1950 and the power to impose the tax having gone and there being no saving provision it is manifest that the imposition also fell to the ground and the tax could not therefore be levied after 1st July 1950. (Vide the observations of Ayyangar J. in *Municipality of Anand v. State of Bombay* (supra) which we have quoted above). The only way in which the argument could be put on behalf of the Municipality was that under Paragraph 2 all rights of the

Borough Municipality were transferred to and vested in the Corporation and these rights included the right to levy the tax which in the case of the official years 1947-48 to 1949-50 was partly exercised and in the case of the official year 1950-51 was not exercised at all. But it is difficult to see how a power possessed by a Borough Municipality under a statutory rule to levy a tax could be said to be a right within the meaning of paragraph 2. Unless the power to levy the tax is exercised and the tax is actually levied no right could be said to have arisen in the Borough Municipality. The tax could be levied by the Corporation after 1st July 1950 only if there was some saving provision which continued the power to impose the tax. But since that power was not continued by any saving provision it is obvious that the Corporation was not entitled to levy the tax and the Commissioner had no authority to take advantage of the machinery of the Boroughs Act for the purpose of levying the tax.

24. This conclusion which we have reached is of course based on the permise that the liability of the rate-payers did not arise on the preparation of the assessment list but arose only on the authentication of the assessment list and we have given our reasons for accepting that premise. But even if the view be taken that the liability of the rate-payers arose on the preparation of the assessment list the Municipality would yet not be entitled to succeed. If the liability of the rate-payers arose on the preparation of the assessment list there would certainly be a corresponding right to tax in the Borough Municipality and that right would certainly vest in the Corporation under Paragraph 2 of Appendix IV but the question would still remain whether the Corporation would be entitled to proceed with the quantification of the amount of the tax by following the procedure prescribed in the Boroughs Act. It is here that the argument of the Municipality runs into difficulties. As pointed out by Ayyangar J. in *Municipality of Anand v. State of Bombay* (supra) the imposition of the tax not being complete until the Municipality levied the tax in the sense of quantifying it with reference to an ascertained person and thereby creating a statutory debt payable by the rate-payer the Corporation could not proceed to quantify the tax and to create a statutory debt payable by the rate-payers inasmuch as the power to impose the tax came to an end on 1st July 1950 and was not continued or saved by any saving provision in Appendix IV. The machinery of assessment or quantification of tax not having been continued or saved the right to the tax even if there was any could not be enforced by the Corporation and the Corporation and consequently the Commissioner could not proceed to take advantage of that machinery for the purpose of assessing or quantifying the tax and creating a statutory debt payable by the rate-payers by investigating and hearing objections and authenticating the assessment list. It is not altogether uncommon to find that there may be a right without there being the machinery for enforcement of that right. A similar situation also arose under the Indian Income-tax Act 1922 before the introduction of Section 24-B where the right to recover the tax accrued against a person during his lifetime but before the assessment could take place he died and the Bombay High Court held that though the right was there it could not be enforced since there was no machinery for enforcement of the right by assessment of the tax. Paragraph 2 of Appendix IV cannot therefore help the Municipality.

25. Reliance was then placed on behalf of the Municipality on paragraph 3 of Appendix IV. The

argument based on this paragraph was that the liability of the rate-payers having arisen on the preparation of the assessment lists there were debita in praesenti and sums on account of tax were therefore due to the Borough Municipality within the meaning of this paragraph and the Commissioner was accordingly entitled to recover the said sums and for the purpose of such recovery to take all such measures as would have been open to the authority of the Borough Municipality to take if the Corporations Act had not come into force. One of the questions which arose on this argument was as to the true connotation of the expression sums due in this paragraph but it is not necessary for us to go into that question since we are of the view that even if that expression be read in its widest sense to mean not only debita in praesenti which are solvenda in praesenti but also debita in praesenti which are solvenda in futuro that cannot help the Municipality. The reason is that the power which is conferred by this paragraph on the Commissioner is the power to be exercised for the purpose of recovery of sums due to the Borough Municipality and it is for the purpose of recovering such sums that he can take all such measures as could have been taken by the Borough Municipality. The investigation and hearing of objections and authentication of the assessment list cannot be said to form part of proceedings for recovery of the tax due from the rate-payers. The proceedings for recovery of the tax due arise after the objections are investigated and disposed of and the assessment list is authenticated and a statutory debt payable by the rate-payers is created. The scheme of the Boroughs Act which we have discussed also shows that recovery proceedings are dealt with in Chapter VIII which follows after Chapter VII dealing with imposition of tax and assessment of and liability to rates and comprising inter alia Sections 78 to 81. We are therefore of the opinion that even if it can be said in the present case that sums on account of tax became due to the Municipality on the preparation of the assessment lists the Commissioner was not entitled to investigate and hear objections and to authenticate the assessment lists and whatever was done by the six appellate officers as delegates of the Commissioner after 1st July 1950 was therefore invalid and ineffective.

26. That leaves out the last contention urged by Mr. J.C. Bhatt and that is that even if the Commissioner was entitled to investigate and dispose of objections under Section 81(8) and to authenticate the assessment list under Section 81(4) the Commissioner had not authenticated the assessment lists for the official years 1947-48 to 1950-51 and the assessment list for those official years were authenticated by the aforesaid six appeallate officers who had no authority to do so. Now when we turn to the orders of delegation which are Exhibits 151/9 and 151/12 we find that the only powers delegated by the Commissioner under Section 69(1) of the Corporations Act to the aforesaid six appellate officers were the powers under Sub-sections (2) and (3) of Section 81. The power to authenticate the assessment lists which is the power under Sub-section (4) of Section 81 was not delegated by the Commissioner to the aforesaid six appellate officers and a fortiori they were not entitled to authenticate the assessment lists. Mr. G.N. Desai made a valiant attempt to support the authentication of the assessment lists made by the aforesaid six appellate officers on the ground that the delegation of the powers under Sub-sections (2) and (3) of Section 81 carried with it also the delegation of the power under Sub-section (4) of Section 81. But this

contention was obviously futile. Sub-section (4) of Section 81 provides for authentication of the assessment list and the authenticating authority has also to certify that no valid objection has been made to the valuation and assessment contained in the assessment list except in the cases in which amendments have been made in it. Sub-section (6) of Section 81 invests the authentication of the assessment list with a special authority in that the entries in the authenticated list are declared to be conclusive evidence of the valuation or annual letting value of the properties to which such entries referas also of the amount of rate leviable on such properties.

27. The authentication is therefore no idle formality which has no consequence and which can therefore be omitted to be carried out without any invalidating consequence. The authentication of the assessment list has important consequences and is a matter of substance and the aforesaid six appellate officers were not entitled to authenticate the assessment lists in question unless power to do was so delegated to them by the Commissioner. The power to authenticate under Sub-section (4) of Section 81 was admittedly not delegated by the Commissioner to the aforesaid six appellate officers and the authentication of the assessment lists was therefore bad. Mr. G.N. Desai in this connection relied on Section 485(2) of the Corporations Act which provides that no informality clerical error omission or other defect in any assessment made shall be deemed to render the assessment invalid or illegal if the provisions of the Corporations Act and the rules regulations by-laws and standing orders have in substance and effect been complied with. But it is difficult to see how this provision can at all help the Municipality. How can it be said that the provisions of Sub-section (4) of Section 81 assuming that by reason of paragraph (2) or (3) of Appendix IV they are deemed to have become part of the Corporations Act-be said to have been complied with in substance and effect when we find that there has been no authentication at all by the Commissioner? We therefore take the view that in any event there being no valid authentication of the assessment lists in question the tax could not be said to have been levied on the rate-payers and the Corporation was not entitled to claim any amount by way of tax from the rate-payers in respect of the official years 1947-48 to 1950-51.

28. In this view of the matter we must hold that the learned trial Judge was right in taking the view that the assessment in regard to the official year 1950-51 was illegal and invalid but was wrong in taking the view that the assessments for the official years 1947-48 to 1949-50 were valid and legal. We therefore dismiss the appeals preferred by the Municipality and allow the appeals preferred by the rate-payers as also the cross-objections preferred by the rate-payers in the appeals preferred by the Municipality. In the result we pass decrees in the several suits in favor of the rate-payers for refund of the respective amounts of tax paid by them for the official years 1947-48 1948 and 1949-50 together With interest on such amounts at the rate of 4 per cent per annum from The dates of the respective suits till payment. There will also be an injunction in all the suits restraining the Municipality from recovering the amount of tax assessed on the rate-payers who have filed the suits for the official years 1947-48 to 1950-51. The decrees passed by the learned trial Judge in regard to the assessments tor the official year 1950-51 are confirmed. The Municipality will pay to the respective rate-payers who have filed the suits costs all

throughout.

Appeals by Municipality dismissed : Appeal by rate-payers allowed.