BOMBAY HIGH COURT

The Municipality of Ankleshwar

Vs

Chhotalal Ghelabhai Gandhi

(Rajadhyaksha, and Chainani, JJ.)

21.09.1954

JUDGMENT

Rajadhyaksha J.

1. These four applications raise a short but important point with regard to the interpretation of Section 86 of the Bombay District Municipal Act (III of 1901). The applicant in all these applications is the Municipality of Anklesh-war. It had levied a rate on buildings and lands situated within the Municipal District and also a general sanitary cess. It presented bills to the opponents for the recovery of tax on lands as also the sanitary cess for the year 1951-52 as provided for in Section 82 of the Act. The opponents preferred appeals against the claim included in the bills to the Judicial Magistrate, First Class, Ankleshwar, who was the Magistrate authorised to receive such appeals under Section 86 of the Act. It was contended that the bills were illegal, that the imposition of the levy and the assessment of the taxes were illegal, invalid and ultra vires of the powers of the municipality, that the municipality had not complied with the provisions of law in respect of the preparation and adoption of the assessment list and that the valuation was not proper. The learned Magistrate held that the bills issued by the municipality were not illegal, that the municipality had complied with the provisions of law with respect to the preparation of the assessment list of the house tax, but had not complied with the provisions of law with regard to the general sanitary cess. He found that the valuation put down by the municipality was proper. He, therefore, allowed the appeals so far as the claim in respect of the general sanitary cess was concerned, but he dismissed the appeals of the opponents with regard to the rate on buildings.

2. Against that decision, both the municipality and the opponents went in revision to the Sessions Court of Broach as provided for in Sub-section(2) of Section 86. The municipality contended that the decision of the learned Magistrate with regard to the imposition of the general sanitary cess was wrong, and the opponents contended that the decision of the learned Magistrate upholding the validity of the imposition of the rate on buildings was incorrect. "When the matter came

before the learned Judge, it appears to have been agreed between the parties that the learned Judge should give a decision on the validity of the bills presented under Section 82 of the Act. The learned Judge observes as follows in para. 6 of his judgment:The legality of the assessment, list made and the bills issued by the Municipality and the authority of the Municipality to levy the tax, to increase it and to recover it is also challenged. The learned Advocate for the applicant has raised several objections in, this application. Among the objections urged, one is that the bill presented by the Municipality does not comply with the requirements of Section 82 of the Act and is therefore invalid. If the bill itself is invalid, the power to make the recovery also becomes invalid and the recoveries made thereunder. In that case it is agreed by both sides that the other questions need not be gone into. This objection, to my mind, goes to the root of the whole question. I have therefore hoard that point first and raised the following point for determination:Does the bill presented by the Municipality comply with the requirements of Section 82 of the Bombay District Municipal Act, 1901 and is it valid?

The learned Sessions Judge held that the bill did not comply with the requirements of Section 82 in respect of two material points:

(1) the period for which the bill was presented was not specified as required by Clause (a) of Sub-section(2) of Section 82, and (2) that the time within which the bill may be preferred was also not specified as required by Clause (b)(ii) of Sub-section(2) of Section 82.In this view the learned Judge held that the bill was invalid and directed that the tax which was required to be deposited in Court under Clause (c) of Sub-section (1) of Section 86 as a condition precedent for the hearing and determination of the appeal should be refunded within three months. It is against that order that the municipality has come in revision in all these four applications.

3. Mr. S.M. Shah, who argued these applications on behalf of the municipality, has contended that both the learned Magistrate and the learned Sessions Judge had misdirected themselves as regards the scope of the appeal and revision. It is the submission of Mr. Shah that the scope of the appeal and revision is confined to the determination of the correctness of the valuation and the assessment and the learned Magistrate had acted in excess of his jurisdiction in going into the question of the validity of the imposition and in holding that the rate on buildings had been validly imposed and that the sanitary cess had not been validly imposed. He also urged that the learned Sessions Judge, in hearing the revision application, had also travelled beyond the scope of his jurisdiction when he held that the claim included in the bill could not be recovered because of certain defects in the presentation of the bill.

4. Upon these contentions being submitted it has been urged by Mr. Thakore by way of preliminary objection that the question of jurisdiction had not been raised either before the Magistrate or the Sessions Judge and could not be raised for the first time in the present revision

applications. We do not think that this preliminary objection can be allowed to prevail. These applications can be entertained by the High Court under Section 115 of the Civil Procedure Code, as has been laid down in *Surat Municipality v. Hamiduddin*[1] It was held in that case that the High Court can entertain a civil revision application under Section 115 of the Civil Procedure Code against an order passed by the Sessions Judge in revision under Section 111 of the Bombay Municipal Boroughs Act, 1925, from an order passed by a Magistrate under Section 110 of the Act. But it will not interfere unless it appears that there has been a grave abuse of power by the Sessions Court or the decision is manifestly erroneous or unjust. That decision of a single Judge was further approved by a division bench of this Court in Lokmanya Mills Ltd. v. Municipal Borough, Barsi . These decisions given in connection with the Bombay Municipal Boroughs Act, 1925, are equally applicable to the cases arising under the Bombay District Municipal Act whore also the provisions are similar to those of the Bombay Municipal Boroughs Act. The maintainability of these applications, raising a point which had not been taken either before the learned Magistrate or the learned Sessions Judge, has therefore got to be determined on the principles applicable in exercising the jurisdiction under Section 115 of the Civil Procedure Code. It was argued by Mr. Thakor, relying on Haridas v. Ratansey , that it is not the function of the High Court in revision to entertain a point of law which has not been taken in the Court below. But it is not merely a point of law which is being urged before us, but it is a question affecting the jurisdiction of the Magistrate and the Sessions Judge. It is true that this point was not taken before the learned Magistrate and the learned Sessions Judge and the parties submitted to their jurisdictions. But jurisdiction cannot be conferred upon a Court by the consent of parties. See *Raleigh Investment Co., Ltd. v. Gov.-General*[2] Mr. Thakore referred to the decision of a single Judge of the Calcutta High Court in Dananjoy Das v. Ram Chandra Dash , where it was stated that the High Court will decline to interfere in revision on an objection as to jurisdiction where it has been shown that no such objection was taken and that the parties submitted to the jurisdiction of the Court. But that was a case where a suit which was instituted as an ordinary money suit was subsequently tried by a Judge who was invested with Small Cause Court powers. An objection was taken subsequently that the trial Court had acted without jurisdiction and with material irregularity in disposing of the case summarily as a small cause suit instead of as a regular suit, to the great inconvenience and prejudice of the petitioners. It was therefore a case not of inherent want of jurisdiction, but of irregular exercise of jurisdiction to which the parties had submitted. This distinction between inherent want of jurisdiction and the irregular exercise of jurisdiction has been pointed out by Mr. Justice Wassoodew in *Ajam Ibram v. Hava Bibi*[3] where he held that where the defect in jurisdiction arises merely by reason of an irregularity in the commencement of the proceedings before a Court to which a case has been transferred by another Court in its administrative capacity and the defendant neglects to question the irregularity, ho cannot subsequently challenge the legality of the proceedings. What is alleged in

the present applications is that both the learned Magistrate and the learned Sessions Judge have misconceived the scope of their jurisdiction in appeal and revision respectively and have travelled far beyond what was within their power to decide. We are, therefore, of the view that as these applications raise an important question of jurisdiction, it is open to us to entertain these applications, even though the question of jurisdiction was not raised either before the Magistrate or the Sessions Judge. See *Meenakshi Naidoo v. Subramaniya Sastri*[4] where their Lordships held that "no amount of consent under such circumstances could confer jurisdiction where no jurisdiction exists" and quoted with approval their earlier decision in *Ledgard v. Bull*[5] viz., ...when the Judge has no inherent jurisdiction over the subject-matter of a suit, the parties cannot, by their mutual Consent, convert it into a proper judicial process, although they may constitute the Judge their arbiter, and be bound by his decision on the merits when these are submitted to him. But there are numerous authorities -which establish that when, in a cause which the Judge is competent to try, the parties without objection join issue, and go to trial upon the merits, the Defendant cannot subsequently dispute his jurisdiction upon the grounds that there were irregularities in the initial procedure, which, if objected to at the time, would have led to the dismissal of the suit.The question before us is not merely one of irregularities in procedure, but raises the question of jurisdiction to try an issue upon which the lower Courts purport to give a finding.

5. Coming now to the merits of these applications, it is the contention of Mr. Shah on behalf of the municipality that the learned Sessions Judge was wrong in rejecting the claim of the municipality on the ground that the bill was invalid because it did not comply with the provisions of Section 82 of the Act. He has urged also that the appeal to the Magistrate and the revision to the Sessions Judge are confined to "the claim contained in the bill" and that all submissions with regard to the legality of the imposition of the tax and with regard to the bill not having conformed to the requirements of Section 82 are extraneous to the limited nature of the jurisdiction vested in them. In order therefore to understand the proper scope of the inquiry by the Magistrate and the Sessions Judge, it is necessary to examine the scheme of the Act.

6. It is not disputed before us that the scope of the revisional jurisdiction of the Sessions Judge is co-extensive with the scope of the appellate jurisdiction of the Magistrate, If we hold that the appellate jurisdiction of the Magistrate is confined to certain matters only, then it is conceded, and rightly, in our opinion, that the Sessions Judge in revision cannot go into other matters.

7. We may, therefore, briefly review the scheme of the Act with regard to municipal taxation. Section 59 of the Bombay District Municipal Act, 1901, enumerates what taxes may be imposed, and among these taxes are (i) a rate on buildings or lands or both, situate within, the municipal district, and (vii) a general sanitary cess, the two taxes with which we are concerned in these

applications. Under Section 60, the municipality has to select, by means of a resolution passed at a general meeting, one or more of the taxes specified in Section 59 and prepare rules with regard to the matters specified in that section. When such a resolution has been passed, the municipality has to publish the draft rules relating to the tax for the information of the public. Any inhabitant of the municipal district objecting to the imposition of that tax or to the amount of rate proposed or to the class of persons or property made liable thereto or to any exemptions proposed has, within one month from the publication of the said notice, to send the objection in writing to the municipality. The municipality then takes into consideration these objections and, unless it decides to abandon the proposed taxation, submits the same with its opinion thereon, in the case of a city municipality, to the State Government and in the case of any other municipality, to the Commissioner. Under Section 61 of the Act, the State Government or the Commissioner, as the case may be, may sanction the said rules, either without modification or subject to such modifications as the Government or the Commissioner may deem fit, provided, however, that such modifications do not involve an increase in the amount to be imposed. Under Section 62, all rules sanctioned under Section 61 have to be published in the municipal district for which they are prescribed, together with a notice reciting the sanction, and the tax as prescribed by the rules shall be imposed accordingly and proceeds thereof shall be applied by the municipality in accordance with the conditions subject to which sanction has been given under Section 61. Section 63 prescribes further special procedure with regard to the imposition of a rate on buildings or lands. The municipality has to cause an assessment list of all lands and buildings in the district to be prepared containing, (a) the name of the street or division in which the property is situated ; (b) the designation of the property either by name or by number, sufficient for identification ; (c) the names of the owner and occupier, if known; (d) the annual letting value or other valuation on which the property is assessed; and (e) the amount of the tax assessed thereon. Under Sub-sections (2) and (3) of this section, the municipality has power to inspect a property and to call upon the owner or occupier of any building or land to furnish a return within a specified time, as to the name and place of abode of the owner or occupier or of both and as to the dimensions of the building and the annual letting value or other valuation thereof. After the assessment list is prepared, under Section 64 a public notice thereof has to be given stating the place where the list or a copy of the list could be inspected. Under Section 65, the municipality has to give a notice of not less than one month as to when they will proceed to revise the valuation and assessment and an individual notice has to be given where the property is assessed for the first time or where the assessment is proposed to be increased. Sub-section (2) of that section enables objections to the valuation and assessment to be filed in writing stating the grounds on which the valuation and assessment are disputed. All these applications have to be registered in a book to be kept by the municipality for the purpose. Sub-section (3) enables the Municipal Commissioner or the Managing Committee or any other Committee to which the

municipality may delegate its powers or any Government Officer to whom with the permission of the Commissioner, the municipality may delegate its powers, to investigate and dispose of the objections, cause the result thereof to be noted in the book kept under Sub-section (2) and cause the amendments necessary in accordance with such result to be made in the assessment list. Under Sub-section(4) when all objections have been disposed of and all amendments required under Sub-section(3) are made in the assessment list, the list is authenticated as stated in the sub-section. Under Sub-section(5), the list is authenticated and deposited in the municipal office and is open for inspection to all owners and occupiers of the properties specified therein. A notice that it is so open has to be published forthwith. Sub-section (6) provides that subject to such alterations as may thereafter be made therein under Section 66 and subject to the result of any appeal made under Section 86, the entries in the list so authenticated and deposited are to be accepted as conclusive evidence (i) for the purposes of all municipal taxes or the annual letting value or other valuation of all buildings or lands to which such entries respectively refer, and (n) for the purposes of any tax imposed on buildings or lands or the amount of each such tax leviable thereon throughout the official year. Section 66 enables the municipality to alter the list by inserting the name of any person whose name ought to have been inserted or by inserting any property which ought to have been inserted or by altering the valuation of or assessment on any property which has been erroneously valued or assessed through fraud, accident or mistake, after giving notice to any person interested in the alteration, of a time, not less than one month from the date of service of the notice at which the alteration is to be made. Every objection made by any person interested in any such alteration, before the time fixed in the notice, has to be dealt with in the manner provided by Sub-section(2) Section 65. Every alteration made under this section has, subject to the result of an appeal under Section 86, the same effect as if it had been made on the earliest day in the current official year in which the circumstances justifying the alteration existed.

8. Chapter VIII deals with the recovery of municipal claims. Under Section 82, when any amount which is recoverable or claimable has become due, the municipality, has, with the least practicable delay, to cause to be presented to the person liable for the payment thereof a bill for the sum claimed as due. Under Sub-section (2), every such bill has to specify (a) the period for which, and (b) the property, occupation or thing in respect of which the sum is claimed. It has also to give notice of (1) the liability which would be incurred in default of payment and (2) the time within which an appeal may be preferred against such claim. Sub-section (3) lays down that within 15 days from the presentation of the bill, the person to whom the bill is presented has three alternatives: (a) He may pay the sum claimed as due in the bill; or (b) he may show cause to the satisfaction of the municipality or of such officer as the municipality may appoint or in the case of a City Municipality, to the Chief Officer why he should not pay the same, or (c) he may

prefer an appeal in accordance with the provisions of Section 86 against the bill. If he does not do any of these three things, the municipality may cause to be served upon the person liable for the payment of the said sum a notice of demand in the form of Schedule B. Under Section 83 if the person to whom a notice of demand has been served does not, within 15 days from the service of such notice, pay the sum demanded in the notice, such sum with all costs of the recovery, may be levied by a warrant issued by the municipality or by the distress and sale of the moveable property or attachment and sale of the immoveable property of the defaulter. Then we come to Section 86, with the interpretation of which we are concerned in these applications. Under Sub-section (1) of that section appeals against any claim included in a bill presented under Sub-section (1) of Section 82 may be made to any Magistrate or a Bench of Magistrates by whom, under the directions of the State Government or of the District Magistrate, such class of cases is to be tried. Then the section says:

But no such appeal shall be heard and determined unless

(a) the appeal is brought within fifteen days next after presentation of the bill complained of ; and

(b) an application in writing, stating the ground on which the claim of the Municipality is disputed, has been made to the Municipality as follows, that is to say:

(i) in the case of a rate on buildings or lands, within the time fixed in the notice given under Section 65 or 66 of the assessment or alteration thereof, according to which the bill is prepared.

(c) the amount claimed from the appellant has been deposited by him in the municipal office.

Sub -section (2) states that The decision of the Magistrate or Bench of Magistrates in any appeal made under Sub-section (1) shall at the instance of either party, be subject to revision by the Court to which appeals against the decision of such Magistrate or Bench ordinarily lie.Finally, under Section 86A, Every entry in the assessment list made under the provisions of this Act against which no objection is made as hereinbefore provided, and the amount of every sum claimed from any person under this Act on account of any tax, if no appeal therefrom is made as hereinbefore provided, and subject to the provisions of Sub-section (2) of Section 86, the decision of the Magistrate or Bench of Magistrates in any appeal, shall be final.

Sub-section (2) of that section says:Effect shall be given by the municipality to every decision of the said Magistrate or Bench of Magistrates in any appeal or any decision in revision in such appeal against any such entry or tax.

9. The scope of the appeal or revision under Section 86 of the Act is indicated by several sections which have been briefly reviewed above. The basis of all the procedure, in the case of a rate on

lands and buildings, is the preparation of the assessment list which contains the name of the street where the property is situated, the designation of the property, the name of the owner or occupier, the letting value of the property and the amount of the tax assessed thereon. It is the entries in this assessment list that are the subject matter of objections to be filed under Section 65. The public notice given under Sub-section (1) of Section 65 is for the purpose of informing the public that the municipality proposes to revise the valuation and assessment. Under Sub-section (2) objections to the valuation and assessment are to be received and the objections have to state the grounds on which the valuation and assessment are disputed. After the objections are disposed of, necessary amendments have to be made in the assessment list. After the assessment list is duly authenticated, the entries in the authenticated list are conclusive evidence of the letting value of the property and of the amount of tax leviable thereon. But the entries are subject to the result of an appeal under Section 86. It would thus appear that the appeal under Section 86 is with respect to the valuation and assessment with respect to which objections are heard and disposed of under Section 65. When a bill is presented under Section 82 for the sum claimed as due by way of tax, the person to whom the bill is presented may either pay the sum due or snow cause to the satisfaction of the municipality why he should not pay the same or prefer an appeal in accordance with Section 86. Section 86 makes it clear that the appeal is against the claim included in the bill. But no appeal can be heard or determined unless (1) it is filed within 15 days from the presentation of the bill, (2) the amount claimed from the appellant is deposited by him in the municipal office and (3) (this is the most important clause) an application in writing stating the ground on which the claim of the municipality is disputed has been made to the municipality within the time fixed under Section 65 in the case of a rate on buildings or lands. It seems to us that this clause makes it clear that the appeal can only be with respect to the matters with regard to which an objection could be taken in the inquiry made by the municipality under Section 65 of the Act, and the scope of the appeal is confined only to the grounds stated in the objections made to the municipality under that section. As we have pointed out earlier, the inquiry made by the municipality under Section 65 is limited to the valuation and assessment so far as the rates on buildings and lands are concerned. Section 86A makes the position still clearer for, under that section every entry in the assessment list(and this refers in particular to the valuation and assessment)and the amount of every sum claimed from any person under the Act on account of tax(and this refers to the quantum claimed as due under the bill)is final subject to the decision of the Magistrate in any appeal that may be preferred. Sub-section (2) also makes it clear that the appeal before the Magistrate "is against any such entry or tax." This, in our opinion, makes it plain that the appeal is confined to the valuation and assessment shown in the entry in the assessment list and to the tax, i.e. the quantum of the sum claimed in the bill and to no other matters.

10. It was argued by Mr. Thakore that that would be placing a too restricted construction on Section 86 of the Act. He said that under Sub-section (1) an appeal could be preferred on any ground whatsoever. But where the appeal is in respect of a rate on buildings or lands, it is necessary that an application stating the grounds on which the claim is disputed should have been made in writing to the municipality under Section 65. Mr. Thakore's contention was that Clause (b) of Section 86(1) should be construed as a proviso imposing a restriction applicable only to a rate on lands and buildings to the effect that objection should have been taken by an application under Section 65, where the propriety of the assessment and rate is being challenged. But he argued that that did not preclude other points being raised in appeal, such as the defective nature of the bill presented or the legality of the tax imposed and the procedure followed in imposing it. In this connection Mr. Thakore referred to the case of M. & *S.M. Railway v. Bezwada Municipality*[6] where it was held by the Privy Council that:The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where the language of the main enactment is clear and unambigous, a proviso can have no re-percussion on the interpretation of the main enactment, so as to exclude from it by implication what clearly falls within its express terms.In our opinion, however, the provision contained in Clause (b) of Section 86(1) of the Act is not a proviso in any sense. It is really a condition precedent to an appeal being heard and determined, for, the section clearly says that no appeal shall be heard or determined unless an application in writing stating the ground on which the claim of the municipality is disputed has been made to the municipality within the time fixed under Section 65. Unless such an application has been made within the time specified, no appeal can be heard and determined. We can illustrate the point by taking a case where the valuation and assessment, as stated in the list prepared under Section 63, is not disputed by the person concerned, and therefore he does not file any objection under Section 65. In such a case, if he prefers an appeal against the claim included in a bill, the appeal cannot be heard and determined in respect of any matter, whether it is with regard to the validity of the tax or the defective nature of the bill presented. Clause (6) of Section 86(2) is, in our opinion, a clear pointer to the scope of matters to be dealt with in appeal. They must relate to the propriety of the valuation and the assessment as stated in the entry in the assessment list or to the quantum of the amount claimed as tax in the bill presented under Section 82.

11. It was argued by Mr. Thakore that the bill is not merely a formal document and that it forms the basis of a notice of demand, and if need arises, of a distress warrant. In this connection he invited our attention to the case of Surat Municipality v. Chabildas . There also, as in the present case, the bill under Section 82 did not fulfil the statutory requirement of that section in that it did not state the time within which an appeal might be preferred, and it was held that "the whole right of distress depended on the proper observance of the statutory formalities." But it would be

noticed that the question of the defective nature of the bill was raised in a suit which was filed to recover the arrears of house tax. The issue was not raised in an appeal to the Magistrate, as has been done in the present case. It may be that the opponents may succeed if they file a suit to recover from the municipality any tax levied under a distress warrant based on a defective bill, But what we are concerned with in the present case is the question whether this point can be raised in an appeal under Section 86 of the Act. It would thus appear that the question that the bill did not conform to the statutory requirements of Section 82 cannot be raised in an appeal before a Magistrate under Section 86. If it cannot be raised in respect of a rate on buildings or lands, it would follow that it cannot be raised also in respect of a bill for other taxes. It seems to us therefore that the learned Sessions Judge was wrong in rejecting the claim of the municipality on the ground that the bill did not conform to the statutory requirements of Section 82 in that it did not state the period for which the sum was claimed and did not state the time within which an appeal may be preferred. In this view, all the four applications must be allowed and the matter has to be sent back to the learned Sessions Judge for decision on other points.

12. It was argued by Mr. Thakore that ex hypothesi the ground with respect to the defective nature of the bill could not possibly be raised in the objections made to the municipality under Section 65 of the Act, and if a tax-payer was precluded from raising that issue before the Magistrate and he was restricted to the grounds of objection taken under Section 65, then he would be deprived of a speedier remedy. That, however, is not correct. There is a remedy provided for in Section 82(3)(b) of the Act, because within 15 days of the presentation of the bill he can show cause to the satisfaction of the municipality why he should not pay the amount claimed in the bill. In the present case, for instance, the opponents could have pointed out to the municipality that the bill was defective in that it did not state the period for which the tax was claimed and that it did not state the period within which an appeal could be preferred. Mr. Thakore further asked whether, if the assessment list showed that Rs. 50 were due by way of assessment, and a bill was presented for Rs. 500, it would be a point which could legitimately be taken in appeal. The answer, in our opinion, is clear. Such a point can be taken, for, the scope of the appeal is not merely confined to the propriety of the valuation and the assessment showed in the assessment list, but also to the quantum of the tax claimed. This is made perfectly plain when Section 86A says that an appeal is against such entry, i.e. valuation and assessment and also against "the tax" meaning the actual amount claimed by way of tax.

13. It was next argued by Mr. Thakore that although this may be the correct view, so far as the appeal with regard to the rates on buildings and lands are concerned, Clause (b) of Section 86(2) could not come into play with respect to other taxes such as the sanitary cess. In respect of these taxes he urged that the scope of the appeal could not be restricted only to the objections taken to Section 65 because ex hypothesi Section 65 applies only to assessment rate on lands and

buildings. In our opinion, this submission cannot be accepted. If the words "claim included in the bill" are given a restricted meaning and on that account the scope of the appeal in respect of a rate on lands and buildings is limited, they cannot be given an extended meaning in respect of appeals with regard to other taxes. In those eases the appeal must be restricted only to the amount claimed in the bill. For instance, in the case of a wheel tax, it would be open to a tax-payer to satisfy the Magistrate that the amount claimed is wrong because the assessment is based on a wrong valuation of the horse-power of his car, or because he was not in possession of the car for the whole of the period for which the tax has been claimed. We do not think it would be possible to give a wider ambit to an appeal in respect of minor taxes when a tax-payer is precluded from raising such wider questions in respect of the rate on buildings and lands.

14. It was argued by Mr. Thakore that it should be possible to raise a question about the validity of the tax in the proceedings before the Magistrate. In the case of a rate on buildings and lands, if the appeal is restricted to the grounds contained in the application under Section 65, a question arises whether the question as regards the validity of a tax can be raised in the objections taken under Section 65 of the Act. In our opinion, the question about the validity of a rate on lands and buildings cannot be raised in the objections under Section 65 of the Act and therefore in an appeal under Section 86. The objections are confined to the valuation and assessment "and not to the validity or the legality of the tax. The objections taken under Section 65 are to be decided in certain circumstances, i.e. by the Managing Committee or the Committee of the municipality to which the powers may be delegated or by a Government Officer to whom the powers of the municipality may be delegated. It would be an extremely anomalous position if objections were taken to the validity of the tax under Section 65 and a Committee of the municipality or a Government Officer exercising delegated powers were to hold that the tax imposed by the municipality was illegal or ultra vires of its powers. Secondly, it is important to note the stage at which the appeal is heard. The appeal is heard under Section 86 after a bill has been presented to an individual tax-payer. The point, therefore, that could be urged must be peculiar to the individual himself. If it were permissible to raise the question of validity and legality of the tax in an appeal under Section 86, it may conceivably happen that the Magistrate may hold that the tax is illegal or ultra vires or has been imposed without following the correct procedure. If he comes to that conclusion, the party appealing may get relief, but all other tax-payers who have not preferred an appeal would still have to pay a tax which is held by the Magistrate to be illegal and ultra vires. We do not think that such a contingency could have been contemplated by the Legislature.

15. It was then argued by Mr. Thakore that the expression "the appeal against the assessment" should be held to include an appeal against the validity and legality of the assessment and not merely against the quantum of the amount claimed. In this connection he invited our attention to

the decision of the Privy Council in Raleigh *Investment Co., Ltd. v. Gov. General*[7]. That was a case arising under the Income-tax Act, and it was held by the Privy Council that the question whether the assessment was made under the, provisions of the Act which were alleged to be ultra vires could be raised before the Income-tax Officer. But the Privy Council came to that conclusion because it held that the Income-tax Act provided a complete machinery by the use of which alone the total income assessable for income tax was to be determined without resort to the ordinary Courts. That, however, is not the position in the case of municipal Acts. For instance, if the Municipal Committee were to hold that the tax imposed was illegal or ultra vires, there would be no provision for an appeal by the municipality against such a decision. We do not therefore think that the analogy of the Income-tax Act could be applied to the construction of the provisions of the Bombay District Municipal Act. As pointed out in Stroud's Judicial Dictionary, the word "assessment" is used in the income-tax code in more senses than one. Sometimes by "assessment" is meant the fixing of the sum taken to represent the actual profit for the purpose of charging tax upon it. In another context the word "assessment" may mean the actual sum in tax which the taxpayer is liable to pay on his profits. In our opinion, the word "assessment" as used in the various sections of the Bombay District Municipal Act means the actual sum for which the tax-payer is liable and for which the bill is presented under Section 82 of the Act.

16. Then Mr. Thakore invited our attention to certain dicta in some of the reported cases. In *Chunilal v. Surat City Municipality*[8] there is an observation in the judgment of Mr. Justice Chandavarkar to the following effect (p. 407):There is nothing in the section itself '(meaning thereby Section 86 of the Bombay District Municipal Act)' which makes it incumbent in every cage upon a party complaining of an illegal levy of a tax by a Municipality to appeal against the action of the Municipality to a Magistrate or a Bench of Magistrates appointed by the Governor in Council to hear such appeals before suing in a Civil Court.

From this it is argued by Mr. Thakore that the question of legality of a tax could be raised before the Magistrate hearing an appeal. In that case, however, the learned Judges had only to decide whether a suit could be filed before the remedy provided in Section 86 was resorted to, and they held that a suit could lie. The observations did not mean that the legality of the tax could be challenged before the Magistrate. The learned Judges did not apply their mind to the scope of Section 86 and merely held that "there was nothing in the wording of the section to warrant the view that the remedy provided by that section should be resorted to before instituting a suit." In the head-note to the case of Municipal Borough of Ahmedabad v. Aryodaya Ginning & Manufacturing Company , it has been stated that in an appeal under Section 110 the question of assessment itself can be challenged. That was a case under the Bombay Municipal Boroughs Act, and Section 110 thereof corresponds to Section 86 of the Bombay District Municipal Act. But those observations were made in connection with the contention of Mr. Thakore that an appeal

under Section 110 being not against the assessment but against the notice of demand, the question of the assessment itself could not be challenged at all in such an appeal except on some ground of illegality, such as a wrong person being made liable. The learned Judges said that they were unable to put such a very restricted interpretation upon the language of Section 110. They observed as follows (p. 823):It is obvious that such an interpretation "would deprive the persons taxed of all right of appeal except in an extremely limited number of cases, and it does not seem to have been the intention of Legislature so to restrict the right of appeal.In that case also the precise scope of the powers of the Magistrate hearing appeals under Section 110 does not appear to have been considered, and the learned Judges merely rejected the contention of Mr. Thakore that in an appeal under Section 110 the question of assessment could bo challenged only on the limited ground of illegality, such as a wrong person being made liable. In the present case also we are not putting such a limited construction on Section 86 of the Bombay District Municipal Act. It is quite clear to us that the correctness of the valuation and the assessment and also the quantum of the tax claimed are matters which could properly be adjudged in an appeal before Magistrates under Section 86 of the Bombay District Municipal Act. We do not think therefore that these observations of the learned Judges help the contention of Mr. Thakore in this case.

17. Lastly, Mr. Thakore referred to an observation of Mr. Justice Gajendragadkar in *Amalner Municipality v. Pratap Mill*[9] There the learned Judge was considering the scheme of the Bombay Municipal Boroughs Act. With respect to Section 110, the learned Judge made the following remarks (p. 461):

...When these execution proceedings are enforced under the provisions of this chapter, a right of appeal is given to the assessee under Section 110. Section 110(2), however, gives the right to the assesses on two conditions, viz. that the appeal is brought within fifteen days next after service of the notice of demand complained of and an application in writing, stating the grounds on which the claim of the Municipality is disputed, has been made to the standing committee as mentioned in the section. In other words, before an assessee can challenge or dispute the validity of the demand made by the Municipality he must satisfy the appellate Court that ho had made an objection at the proper time under Section 81 of the Act.Mr. Thakore has relied on the words "dispute the validity of the demand" in the above quotation and has contended that in an appeal under Section 110 of the Bombay Municipal Boroughs Act, the validity of the demand could be canvassed. We do not think that the learned Judge intended to convey any such meaning. The word "validity" in this observation is not to be understood in the strict sense of the term. The learned Judge's attention was not directed to the scope and ambit of the appeal under Section 110. That was not the point that he had to decide. In the course of explaining the scheme of the Act, he merely intended to say that an appeal under Section 110 could not be entertained in respect of the demand unless the appellant satisfied the appellate Court that he had made an objection at the

proper time. The learned Judge found in that case that no such objection could be made because the municipality had not published the assessment list. We do not think that the learned Judge intended to lay down that the validity or the legality of a tax could be challenged when an appeal is filed under Section 110 of the Municipal Boroughs Act, which corresponds to Section 86 of the Bombay District Municipal Act.

18. It has to be remembered in this connection that the power of hearing appeals and revision applications has been given to criminal Courts when in fact the civil liability of a tax-payer is in question. The Legislature may have had its reasons as to why these appeals and revision applications should be heard by criminal Courts. But we do not think that it could have been the intention of the Legislature that they should decide complicated questions of validity and legality of assessments when hearing appeals against the valuation and assessment as contained in the assessment list and against the quantum of the tax as claimed in the bill.

19. In support of the argument that the Magistrate and the Sessions Judge can go into the questions of validity and legality of the assessment, Mr. Thakore urged that unless these Courts have power to go into this question, there will be no other remedy even by way of a suit, and in this connection he referred to Section 167 which says, No suit shall lie in respect of anything in good faith done or intended to be done under this Act against any municipality or against any committee constituted under this Act or against, any office or servant of a municipality or against any person acting under and in accordance with the directions of any such municipality, committee, officer or servant or of a Magistrate.We do not think it is necessary to express any opinion whether under Section 167, a suit against a municipality in respect of recovery of a tax alleged to be illegal is barred or not. We would, however, only refer to the judgment of the Privy Council in King Emperor v. Vimalabai Deshpande . There their Lordships had to construe a provision of the Defence of India Act, 1939, which provided that "no order made in exercise of any power conferred by or under this Act shall be called in question in any Court." Their Lordships observed (p. 430):...If the orders made by the police or the Provincial Government wore invalid, they wore not made in exercise of a power conferred by the Act.Similarly, in the present case, it is possible to argue that if the assessment levied by the municipality was invalid, for the reason that proper procedure was not, followed or that the municipality acted in excess of their own jurisdiction in imposing the tax, the assessment could not be said to have been made under the Act, and a suit would appear to lie. It is, however, not necessary for us to decide the point because on a construction of the relevant provisions of the Act, we are of the opinion that it is not open to a party to raise the question of validity and the legality of a tax in an appeal under Section 86 of the Act. It has also got to be noted, as we have pointed out earlier, that Section 86 deals with individual appeals preferred by tax-payers after a bill has been presented. If such questions are allowed to be raised in individual appeals, and assuming that the contention

succeeded, the individual concerned may get the relief, but those who have not chosen to file an appeal would be bound to pay the tax even if the Court has held it to be illegal. There cannot be a representative appeal before a Magistrate as there can be a representative suit on behalf of the tax payers in a civil Court. This consideration also is, in our opinion, of some significance in deciding the scope and ambit of an appeal under Section 86 of the Bombay District Municipal Act.

20. For alt these reasons we think that the view taken by the learned Sessions Judge in dismissing the Revision Applications on the ground that the bills did not conform to the statutory requirements of Section 82 of the Act is wrong. We must, therefore, set aside the orders passed by the learned Sessions Judge in all these Civil Revision Applications and send the papers back to the learned Judge for deciding the Revision Applications on their merits in the light of the observations made in this judgment.

21. As the points raised in these applications are of some importance, and as the municipality had not raised the contentions which it had raised in the arguments before us, we think that the parties should bear their own costs of these applications.

Cases Referred.

1(1937) 40 Bom. L.R. 387
2(1947) 49 Bom. L.R. 530, p.c
3(1938) 41 Bom. L.R. 892
4(1887) L.R. 14 I.A. 160
5(1886) L.R. 13 I.A 134, 145
6(1944) 47 Bom. L.R. 587, P.C.
7(1947) 49 Bom. L.R. 530, P.C
8(1903) I.L.R. 27 Bom. 403, S.C. Bom. L.R. 267
9(1951) 54 Bom. L.R. 451