

BOMBAY HIGH COURT

Balkrishna Dharamdas Vora

Vs.

The Poona Municipal Corporation

Second Appeal No. 929 of 1957, Poona in Civil Appeal No. 115 of 1955, IV Joint Civil Judge,
Junior Division, Poona in Civil Suit No. 1177 of 1953.

(Patel and Palekar, JJ.)

29.08.1962

JUDGMENT

Patel, J.

1. His Lordships after setting out the facts, proceeded. The first question that arises is whether a suit of this nature is competent. It is argued on behalf of the Municipal Corporation that we are concerned with a taxation statute, that the proper machinery is provided for ventilating the grievances against the said taxation, and, therefore, a civil Court would have no jurisdiction to entertain a suit. According to him, the questions involved are questions which fall within the ambit of the machinery provided by the Act. On the other hand, it is argued on behalf of the plaintiff that the question involved in the present case is one of the power of the Municipality to recover this tax from the Institution in question, i.e. legality of imposition or levy of the tax, and does not fall within the ambit of the machinery provided for by the Act. Mr. Lalit on behalf of his client relied on *Western India Prospecting Syndicate Ltd. v. The Municipal Corporation of the City of Ahmedabad*¹ sitting as a single Judge which very clearly supports him. Mr. Rane seeks to challenge the correctness of this decision.

2. Now, the scheme of taxation adopted under the Act is practically similar to the one under the Bombay Municipal Boroughs Act and the Bombay District Municipalities Act except in some minor particulars. The right to tax is provided by Section 127 which enables the Corporation to impose property taxes and the other taxes mentioned therein. Section 129 defines what would be included within the meaning of the words "property taxes" and what should be the rate. Section 132 requires the corporation to levy general tax on all buildings and lands except those mentioned in it. The other provisions are in respect of water and conservancy taxes. In respect of these taxes, rules have been promulgated as part of the Act by a Schedule which has under Section 403 the same effect as if it formed part of the Act. Taxation rules are in Chap. VIII of

Schedule A. Rule 7 provides how rateable value has to be fixed. Rule 8 enables the Commissioner to call for any information or return from an owner or occupier or enter and inspect such assessable premises. Rule 9 requires the Commissioner to keep an assessment book which has to contain (a) a list of all buildings and lands in the city with proper description sufficient to identify them;(b) the rateable value of each such building and land; (c) the name of the person primarily liable for the payment of the property-taxes : (d) if any such building or land is not liable to be assessed to the general tax, the reason for such non-liability; (e) the rates of property taxes, the amount at which each building or land is assessed to each of the property-taxes, if any, leviable thereon. Entry at (e) is to be made after certain formalities are complied with, Rule 13 requires a public notice to be given after entries in Clauses (a), (b), (c) and (d) of Rule 9 have been completed. Rule 14 gives the right of inspection and taking extracts to those who claim to be owners or occupiers of premises. Rule 15 provides limit of time for filing complaints against entries made in the book. Sub-rule (2) of Rule 15 provides for a special notice in certain cases. Rule 16 enables a person aggrieved to make a complaint against the amount of any rateable value entered in the assessment book or against the mention of the name of any person as primarily liable for the payment of property taxes or against the treatment of any building or land as liable to be assessed to the general tax, in the manner provided. Rule 17 requires a register of all such complaints to be maintained and a notice of hearing of the day and time and place to be given to the party concerned. Rule 18 provides for a hearing to be given by the Commissioner. Rule 19 provides that when all such complaints have been disposed of and the entries required by Clause (e) of Rule 9 have been completed in the ward assessment-book, the book shall be authenticated by the Commissioner. Under this rule he has to certify under his signature that except as amendments have been made, no valid objection is made to the rateable value. Sub-rule (2) requires that such assessment book shall be accepted as a conclusive evidence of the amount of each property-tax leviable on each building. Rule 20 enables the Commissioner to amend the assessment-book under certain contingencies during the course of the year. It is clear that though Rule 16 enables an aggrieved person to make a complaint against, the treatment of any building or land, as liable to be assessed to general tax, Clause (e) of Rule 9 requires only an entry to show the taxes at which such building or land is assessed. Moreover the certificate under Rule 9 by the Commissioner is also to the effect that no valid objection has been made to the rateable values entered in the book. Sub-section (1) of Section 406 of the Bombay Provincial Municipal Corporations Act, 1949, provides for an appeal against rateable value or tax fixed or charged under this Act. Section 413 of the Act provides that every rateable value fixed under the Act against which no complaint is made as provided, and the amount of every sum claimed from any person under the Act on account of any tax, if no appeal therefrom is made as hereinbefore provided, and the decision of the Judge aforesaid upon any appeal against any such value or tax if no appeal is made therefrom under Section 411 and if such appeal is made the decision of the District Court in such appeal shall be final.

3. It is clear from all these provisions read together that the intention of the Legislature in

providing for this machinery is only to enable matters of rateable value and the fixation of the taxes on the basis of such rateable value to be decided by the machinery provided in the Act, and if this is the only machinery that is provided under the Act, the case, would clearly fall within the principles of the decision in *Ankleshwar Municipality v. Chhotalal*², and *Gopal Mills Co. Ltd. v. Broach Bor. Mun*³. In both these cases, it has been held that the jurisdiction of the civil Court is excluded only to the extent to which machinery is provided under the Act for ventilating the grievances of the tax-payers. In the first case it

²(1954) 57 Bom. L.R. 547

³(1955) 58 Bom. L.R. 300

was held that it is not within the competence of a Magistrate who hears appeals against the taxes to enter into the question as to whether or not the tax levied was within or without the powers of the municipality. In the second case, a right of filing a suit in a case where the plaintiff alleged that the tax levied or sought to be recovered was ultra vires or beyond the powers of municipality was held to be competent; in both the cases the principle followed being the same as mentioned above.

4. Mr. Rane, however, relied as we stated, on Rule 16 saying that the scope of appeal under Section 405 of the Bombay Provincial Municipal Corporations Act, 1949, must be decided by reference to what the Commissioner can decide, as was done in *Ankleshwar Municipality v. Chhotalal*. It is indeed true that we must also take the powers of the Commissioner into account while deciding the scope of the appeal under the Act. However, the words used in Section 406(1) of the Act, in our view, do not cover the vires of the tax or the legality of the tax which is sought to be levied. It provides for appeals against rateable value or tax fixed or charged, and, in our view, looking to the general scheme of the Act, by the words "tax fixed or charged" what was meant was the amount or quantum of tax and not the legality of the same. This view is further strengthened by Section 413 which gives finality to the rateable value fixed under the Act and the amount or the sum claimed and nothing else. Exclusion of the jurisdiction of the civil Court is not to be lightly inferred. There is no express provision by which the jurisdiction of the civil Court is excluded in all matters that the Commissioner may be able to decide. Moreover, finality is given only to decisions regarding the rateable value and the amount of tax and not to any other matter that the Commissioner may incidentally decide. It seems that the scope of the disputes that fall to be decided, under the rules of assessment and in appeals under Sections 406 and 411 was intended to be limited and for a good reason. There is no scope for testing the decision in any superior Courts with the result that the parties may in complicated cases suffer substantially. It seems to us, therefore, that it is always open for the civil Court to entertain a suit where the question is one of legality of the taxation or the liability of the assessee to pay the tax.

5. It is argued that the plaintiffs recover rent from the occupants of the Sanatorium, and, therefore, a general tax must be levied under Section 132 of the Act. The actual words used in the section, therefore, fall to be considered. The section is as follows:

(1) The general tax shall be levied in respect of all buildings and lands in the City except-

....

(b) buildings and lands or portions thereof solely occupied and used for public worship or for a public charitable purpose;...

(2)The following buildings and lands or portions thereof shall not be deemed to be solely occupied and used for public worship or for a public charitable purpose...namely:...

(b) buildings or lands or portions thereof in respect of which rent is derived, whether such rent is or is not applied solely to religious or charitable purposes.

The real dispute centres round Sub-clause (b) of Sub-section (2) and the question is whether the properties fall within the category of those for which "rent is derived, whether such rent is or is not applied solely to religious or charitable purposes." The intention of the Legislature is to distinguish between two kinds of properties even though it might appear that the properties are being applied to charitable purposes. Clause (b) of Sub-section (1) exempts buildings or lands which are solely occupied and used for the purpose, and an exception is created to that clause by Sub-clause (b) of Sub-section (2) in cases where rent is recovered but which, rent is used for the purposes of some charitable purpose, the difference being that in the first case the land or building is directly applied for a charitable purpose or for worship, while in the second case the property is indirectly applied for the worship or charitable purpose. This can be well illustrated by taking one or two concrete examples. In the case of a temple which is used for public worship and for housing the deity, the temple is clearly used directly for the public purposes. Supposing, however, that some shops are attached to the temple which are given to shop-keepers who pay rent and such rent is applied for the uses of the temple. The shops, in such a case, the income of which is used for the religious purpose, would fall within Clause (b) of Sub-section (2) and would be liable to tax. But if instead of the premises being shops, if they are Dharmashala rooms where visitors are given shelter without any charges, or such nominal charges as are necessary for the upkeep of the buildings, then they would fall within Clause (b) of Sub-section (1) and would not be liable to tax. To take another case, suppose an educational institution has got some property under its control which is being rented and the income derived from the rents is utilised for its purposes. In this case again, the property is not directly applied to the public purpose but only its income, that is, the property is indirectly applied for the public purpose, and, therefore, will fall within Clause (b) of Sub-section (2). The question, therefore, in each case that must be considered is whether the lands or the buildings are directly applied for worship or for charitable purpose. It is to this question, therefore, that we must address ourselves.

6. The rest of the judgment is not material to this report.

Suit decreed.