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sub-s. (*3*) of s. 25 was enacted it would have been open to a money-lender to charge a rate of interest exceeding the maximum rate of interest fixed by the Provincial Government and in doing so he would not be committing any offence. He would only have run the risk of his not being able to recover such interest because no Court could have given him relief on the basis of an agreement which provided for a rate of interest exceeding the maximum rate. Therefore, in order to make s. 34 applicable to s. 25 the Legislature had expressly to provide by sub-s. 3 that when a money-lender charges or receives from a debtor interest at a rate exceeding the maximum rate he commits an offence and contravenes the provisions of the Act for the purposes of s. 34.

In my opinion, therefore, the conviction of the accused under s. 5 is proper. With regard to his conviction under s. 25 (*3*), on the same parity of reason, his conviction cannot be justified because s. 25 (*3*) was enacted in 1949 and the offence committed was during the period January 6, 1948 to October 24, 1948. Therefore, while upholding the conviction of the accused under s. 5 of the Bombay Money-lenders Act, I must set aside his conviction under s. 25 (*3*). The sentence under s. 25 (*3*) will also be set aside and the fine paid in respect of the offence under s. 25 (*3*) will be refunded to the accused. The accused is acquitted of the offence under s. 25 (*3*) and his conviction under s. 5 is confirmed.

Order accordingly.

M. W. P.

APPELLATE CIVIL

Before Mr. Justice Gajendragadkar and Mr. Justice Vyas.

1951. Oct. 8

THE BOROUGH MUNICIPALITY OF AMALNER (ORIGINAL DEFENDANT No. 1), APPELLANT *v.* THE PRATAP SPINNING WEAVING AND MANUFACTURING CO., LTD. AMALNER (ORIGINAL PLAINTIFF), RESPONDENT.*

Bombay Municipal Boroughs Act (XVIII of 1925), ss. 78, 80 and 81—Omission to mention material particulars in the assessment list and failure to call for objections to the valuation in the assessment list, whether renders whole assessment list invalid—Jurisdiction of Civil Court to decide the amount of assessment—Amalner Municipal

* First Appeal No. 654 of 1950.

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Borough General Property Tax Rules, rule 3 (2),—Whether ultra vires—Doctrine of benevolent interpretation of rules or bye-laws—When applicable.

When the requirements of s. 78 of the Bombay Municipal Boroughs Act, 1925, are not duly complied with by the Municipality and the assessment list omits to mention material particulars, the assessment list is wholly invalid.

The procedure laid down by ss. 80 and 81 of the Bombay Municipal Boroughs Act, 1925, which require the publishing of the assessment list and calling for objections, is an essential and integral part of the assessment of the rates itself and unless this essential procedure is followed the assessment list cannot be complete or final.

Although the bye-laws and rules made by a public representative body should receive a benevolent interpretation, this approach would be wholly inappropriate where the rules are challenged on the ground that they are *ultra vires* the power conferred upon the local body or where the assessment list is impugned on the ground that the condition precedent for making it final has not been complied with. Where the Municipalities are exercising their right of taxing the property of their citizens they must strictly comply with the obligations imposed upon them by the statute under which they derive authority to levy the tax itself.

Kruse v. *Johnson*[1], and the *Queen* v. *Ingall*[2], distinguished.
Surat Municipality v. *Chabildas*,[3] followed;

If the assessment list is not finalised and authenticated by the Municipality by following the procedure laid down by ss. 80 and 81 of the Bombay Municipal Boroughs Act, 1925, the question as to the amount due from the assessee in respect of his property cannot be decided by a Civil Court.

When the legislature constitutes a Special tribunal to deal with a special class of disputes it would not be appropriate to the ordinary civil court to deal with those disputes.

Karsondas v. *Karachi Municipality*,[4] dissented from.

Ambalal Sarabhai v. *Ahmedabad Municipality*,[5] doubted.

Sabbappa Mallappa v. *Bonni*[6], *Sholapur Municipality* v. *Governor General*[7], *Shantaram Balaji* v. *Vengurla Municipality*[8], *The Queen* v. *Chorlton Union*,[9] and *Assessment Committee of Reigate Union* v. *South-Eastern Railway Co.*,[10] referred to.

Rule 3 (*2*) of the General Property Tax Rules framed by the Borough Municipality of Amalner is not *ultra vires.*

The method of fixing rates by reference to the extent of the property is not unknown to the law of rating and the Municipality would be justified in adopting this method if it came to the conclusion that it

(1) (1898) 2 Q. B. 91.
(2) (1876-77) 2 Q. B. 199.
(3) (1914) 16 Bom. L. R. 749.
(4) (1936) A. I. R. Sind 114.
(5) (1920) 23 Bom. L. R. 48.
(6) (1947) 50 Bom. L. R. 701.
(7) (1946) 49 Bom. L. R. 752.
(8) (1950) 52 Bom. L. R. 411.
(9) (1872) 2 Q. B. 5.
(10) (1894) 1 Q. B. 411.

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yielded a satisfactory result in deciding what rent the hypothetical or imaginary tenant would pay in respect of the buildings.

Poplar Assessment Committee v. *Roberts*,[1] *Gulam Ahmed* v. *Bombay Municipality*,[2] *M. & S. M. Ry. Co. Ltd.* v. *Municipal Council Bezwada*,[3] *M. & S. M. Railway* v. *Bezwada Municipality*,[4] *Liverpool Corporation* v. *Leanfyllin Assessment Committee*,[5] relied upon.

Prithwiraj v. *Lonavla Municipality*,[6] distinguished.

First Appeal against the decision of R. M. Kulkarni, Civil Judge, S. D., Dhulia.

The Pratap Spinning Weaving and Manufacturing Co. Ltd., Amalner (Plaintiff) owned and possessed lands and buildings for its factories at Amalner. The Borough Municipality of Amalner (Defendant No. 1), in exercise of its powers to impose a general tax on lands and buildings situated within its limits framed rules for the purpose of levying the said tax. Rule 3 (*2*) of the said rules prescribed the basis and the manner in which the tax on the factory premises was to be levied. A flat and uniform rule was framed by the Municipality for the purpose of ascertaining the annual letting value of the factory premises and they decided to recover a tax at the rate of 20 per cent. of this valuation.

On June 27, 1949 the Company sued the Municipality in the Court of the Civil Judge, S. D., at Dhulia for a declaration that the claim made by the Municipality on November 3, 1948 by its bill No. 3 and rule 3 (*2*) of its General Property Tax Rules on which the said bill was based were *ultra vires*, illegal and void and for an injunction restraining the Municipality from making any claim or demand on the strength of the said rule. The Company also claimed a refund of Rs. 18,934-11-0 which had been paid by it under protest on November 20, 1948 in pursuance of the aforesaid bill. The case for the Company was that the said rule was *ultra vires* of the Municipality and was otherwise illegal and invalid because it was capricious, arbitrary and unreasonable. The plaintiff further alleged that the demand made by the aforesaid bill was illegal for the reason that the procedure prescribed by the Bombay Municipal Boroughs Act, 1925 in that behalf had not been followed.

The Municipality resisted the plaintiff's claim and contended that rule 3 (*2*) was *intra vires* and was neither capricious,

(1) [1922] 2 A. C. 93.
(2) (1950) 53 Bom. L. R. 145.
(3) [1941] Mad. 897.
(4) (1944) 47 Bom. L. R. 587, P. C.
(5) [1899] 2 Q. B. 14.
(6) (1932) 35 Bom. L. R. 138.

nor arbitrary, nor unreasonable. The Municipality denied the plaintiff's allegation that the procedure laid down by the Bombay Municipal Boroughs Act, 1925 had not been followed and urged in defence that the said procedure had been substantially complied with.

The Province of Bombay, who were impleaded as defendant No. 2, contended that they were neither a necessary nor a proper party since no relief was claimed against them. Without prejudice to this contention, they supported the plea of the Municipality on the merits.

The trial Judge found that the Province of Bombay was a proper party to the suit. On merits, he held that in assessing the rate for the plaintiff's property the Municipality had not followed the proper procedure prescribed by the Bombay Municipal Boroughs Act, 1925 and that in consequence the assessment levied against the plaintiff was *ultra vires* and void. He also held that rule 3 (2) which was challenged by the plaintiff was *ultra vires* mainly on the ground that it was capricious, arbitrary and unreasonable. On these findings, he decreed the plaintiff's claim for declaration and injunction and directed the Municipality to refund the amount paid by the plaintiff under protest.

The Municipality preferred an appeal to the High Court.

R. B. Kotwal, for the appellant.

A. G. Desai with *B. N. Gokhale* for the respondent.

Gajendragadkar J. This appeal arises from a dispute between the Pratap Spinning, Weaving & Manufacturing Company, Limited, Amalner, and the Borough Municipality of Amalner. The Pratap Spinning, Weaving & Manufacturing Company, Limited, had sued the Municipality in the Court of the Civil Judge, Senior Division, at Dhulia, for a declaration that the claim made by it on November 3, 1948, by its bill No. 3 and r. 3 (2) of its General Property Tax Rules on which the said bill was based were *ultra vires,* illegal and void and for an injunction restraining the Municipality from making any claim or demand on the strength of the said rule. The company had also claimed a refund of Rs. 18,934-11-0 which had been paid by the company under protest on November 20, 1948, in pursuance of the aforesaid bill. To the suit filed by the company the Borough Municipality of Amalner was

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impleaded as defendant No. 1 and the Province of Bombay as defendant No. 2.

The plaintiff is a company registered under the Indian Companies Act and it owns and possesses lands and buildings for its factories at Amalner bearing City Survey Nos. 3264 to 3267. The Municipality in exercise of its powers to impose a general tax on lands and buildings situated within its limits framed rules for the purpose of levying the said tax. Rule 3 (*2*) of the said rules prescribes the basis and the manner in which it was decided to levy the tax on the factory premises. A flat and uniform rule has been framed by the Municipality for the purpose of ascertaining the annual letting value of the factory premises and they have decided to recover a tax at the rate of 20 per cent. of this valuation. The case for the company was that the rule thus made was *ultra vires* of the Municipality and was otherwise illegal and invalid because it was capricious, arbitrary and unreasonable. The plaintiff further alleged that the demand made by the bill issued by the Municipality against the plaintiff was illegal for the reason that the procedure prescribed by the Bombay Municipal Boroughs Act, XVIII of 1925, in that behalf had not been followed.

The Municipality resisted the plaintiff's claim and pleaded that r. 3 (*2*) was *intra vires* and was neither capricious, nor arbitrary or unreasonable. The Municipality denied the plaintiff's allegation that the procedure laid down by the Bombay Municipal Boroughs Act had not been followed, and it was urged in defence that the said procedure had been substantially complied with. The Province of Bombay contended that they were neither a necessary nor a proper party since no relief was claimed against them. Without prejudice to this contention they supported the plea of the Municipality on the merits.

On these pleadings the learned Judge framed appropriate issues. He found that defendant No. 2 was a proper party to the suit. On the merits he held that in assessing the rate for the plaintiff's property the Municipality had not followed the proper procedure prescribed by the Act and that in consequence the assessment levied against the plaintiff was *ultra vires* and void. He also held that r. 3 (*2*) which was challenged by the plaintiff was *ultra vires* mainly on the ground that it was capricious, arbitrary and unreasonable.

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On these findings he decreed the plaintiff's claim for declaration and injunction and directed defendant No. 1 to refund the amount paid by the plaintiff under protest. It is this decree which has given rise to the present appeal by the Municipality.

On behalf of the appellant Mr. Kotwal has raised for our decision the same points as were in issue in the trial Court. He has argued that the learned Judge was wrong in holding that the assessment levied by the Municipality against the company was invalid because the Municipality had not followed the procedure prescribed by the Bombay Municipal Boroughs Act in that behalf, and he has further contended that it is clearly erroneous to hold that r. 3 (*2*) is *ultra vires*. Before dealing with these points it would be convenient to set out the material facts in regard to the assessment in dispute.

In 1947 the Municipality felt that it was necessary to raise the municipal taxes in order that the Municipality may be able to meet its commitments to its servants. The rate of dearness allowance payable to the Municipal servants and the teachers working under the Municipality had been gradually increasing from time to time and this increase became inevitable because Government had made a similar increase in the dearness allowance paid by them to their employees. Besides, it was necessary to provide for the large expenditure which the Municipality proposed to incur for the purpose of the drainage scheme which they wanted to undertake. It had been found by the Municipality that the said proposed drainage scheme was an amenity which it was their duty to provide for the citizens of Amalner however costly it may be. Acting on these considerations the general body of the Municipality met on February 28, 1947, to consider the question of raising the Municipal taxes for improving the financial condition of the Municipality. At this meeting it was unanimously resolved to raise the taxes leviable against the properties within the municipal limits. In regard to the factories the General Body decided to sanction the property tax on a fixed basis. On the area built upon for every floor Rs. 50 per 100 sq. feet and on open area Rs. 2 per 100 sq. feet was the basis agreed in respect of factories which worked for the whole year. The basis for factories which worked only during the season was Rs. 30 per 100 square feet in respect of area built upon for every floor and Rs. 1-8-0 per 100 square feet in respect of open

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area. It was also decided that the three respective taxes collected as house tax, general bhangi-patti and lighting tax should thereafter be consolidated into one general property tax and as such it should be levied on all buildings, open spaces and factories on the annual rent according to the schedule fixed at the meeting. The meeting decided that the rules of altered taxation should be published for the information of the public. This resolution was passed as required by s. 75 (*a*) of the Bombay Municipal Boroughs Act. Accordingly the new scheme was duly published and objections to it were invited from the tax-payers of Amalner. 18 objections to the proposed scheme were received. On May 22, 1947, a general meeting was held and a sub-committee was appointed to consider these objections. The President, who was the chairman of this sub-committee, was authorised to co-opt five members on behalf of the citizens. This was done under s. 75 (*c*) of the Municipal Boroughs Act. Five members from the citizens were accordingly co-opted by nomination made by the President and this larger sub-committee met to consider the proposed rules for taxation. Mr. Trivedi, who is the secretary of the plaintiff-company, was one of the co-opted members. It would appear that at the meeting of this sub-committee three of the co-opted members objected to the proposed increase in the tax. These objections and the objections raised by applications received from other citizens were duly considered by the sub-committee and they unanimously made their recommendations. The basis for valuation for factory buildings was changed by the sub-committee from Rs. 50 to Rs. 40 for every 100 sq. ft. in regard to the factories working for the whole year, and from Rs. 30 to Rs. 25 in regard to the factories working only for the season. The rest of the scheme as originally proposed was upheld. I should have stated that the plaintiff-company had itself sent objections under s. 75 (*c*) in response to the public notice issued by the Municipality and these objections were subsequently voiced by the Secretary of the Company at the meeting of the sub-committee to which he was co-opted. These objections were merely against the extent of the increase in the tax proposed by the Municipality; no objection was made either by the plaintiff's secretary or by any other member co-opted from the citizens that the rules as framed were otherwise invalid or *ultra vires*. In fact, it is common ground that in substance

the rules framed were the same as they had been in force since 1929 except for the increase made in the taxation under different heads. After the sub-committee made its report on August 12, 1947, the General Body met again on September 7, 1947. The sub-committee's report was approved and accepted and it was resolved to send the said rules to Government for their approval and sanction. Thus the procedure prescribed under s. 75 (*c*) was completed. In due course Government accorded their sanction to these rules by their resolution, Health and Local Government Department, No. S 91 (43) dated April 29, 1948. After the Municipality received the sanction of the Government, the General Body resolved at their meeting held on July 31, 1948, that the rules should be brought into force from October 1, 1948. A public notice was accordingly published on August 23, 1948, and individual notices were served on the factory owners including the plaintiff-company. Thus the procedure prescribed by ss. 76 and 77 was duly complied with. Thereafter on October 8, 1948, the standing committee met and sanctioned the supplementary assessment list submitted before it. In accordance with this supplementary list bills were issued and a demand made on the assessees. The plaintiff-company received its bill on November 3, 1948, and a notice of demand accompanied the bill. On November 20, 1948, the plaintiff-company paid Rs. 18,954-11-0 as demanded, but they made the payment under protest. They followed up this protest by giving a notice to the Municipality on March 3, 1949, of the suit that they proposed to file and on June 6, 1949, the suit was filed.

Now, before dealing with the points raised in this appeal it would be convenient to examine the scheme of the Bombay Municipal Boroughs Act, XVIII of 1925, in regard to the imposition and recovery of municipal taxes. Section 58 of the Act enables the Municipalities to make rules. Sub-section (*j*) of s. 58 deals with the rules which the Municipality can make prescribing the taxes to be levied in the municipal borough for municipal purposes. Amongst the topics on which rules can be framed under s. 58 (*j*) are, the time at which and the mode in which such taxes or rates shall be levied or recovered or be payable. Chapter VII deals with municipal taxation and the two topics with which we are directly concerned are "imposition of Taxes," which is dealt with by ss. 73 to 77A and "Assessment of the liability to rates on buildings or lands," which is covered by ss. 78 to 89. With the other topics

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in this Chapter we are not directly concerned. Chapter VIII deals with the recovery of municipal claims. It provides for the presentation of a bill of taxes, it sanctions the issue of a warrant in case the bill is not paid within the statutory time and lays down the manner in which the warrant should be executed. Section 110 of this chapter gives the right of appeal to the assessee, and s. 11 makes the entries in the assessment list and taxes and decisions arrived at under this chapter final. In the present case it is necessary to examine the procedure with regard to the imposition of taxes in some detail.

Section 73 enumerates the taxes which may be imposed by the Municipality subject to the general or special orders which Government may make in that behalf and subject to the provisions of ss. 75 and 76. A rate on buildings or lands or both situated within the municipal borough is under these sections within the competence of the Municipality. Similarly, it is within the competence of the Municipality to levy a general sanitary cess, a general water rate or a special water rate and a lighting tax. Section 73 (*i*) (*c*) allows the Municipality to impose a consolidated tax in lieu of the aforesaid four taxes separately as a rate on buildings or lands or both. Thus far there is no difficulty; it is common ground that the Municipality was entitled to levy a consolidated tax on the factory buildings belonging to the plaintiff. Section 75 prescribes the procedure preliminary to imposing the tax. Under s. 75 (*a*) the Municipality has, by resolution passed at a general meeting, to select for the purpose of one or other of the taxes specified in s. 73 and approve rules prepared for the purposes of clause (*j*) of s. 58, prescribing the tax selected, and in such rules it has to specify: (1) the classes of persons or of property or of both proposed to be taxed and any exemptions proposed to be allowed, (2) the amount or rate at which the tax is proposed to be assessed on each of such classes, (3) in the case of a rate on buildings or lands or both the basis for each class of the valuation on which such rate is to be imposed, and (4) all other matters which the State Government may require to be specified therein. Section 75 (*b*) requires the Municipality to publish the rules so approved with a notice in the prescribed form. Under s. 75 (*c*) objections have to be invited in writing within the time mentioned and the Municipality is required to authorise a committee to consider the

said objections and to make a report with its opinion thereon. This report the Municipality must consider, and the final decision of the Municipality has to be sent to the Government for their approval. The explanation to s. 75 says that "In the case of lands the basis of valuation may be either capital or annual letting value." So far as the procedure prescribed by this section is concerned, it is common ground that it has been followed. It may be added at this stage that by the rules framed by the Municipality under this section they have adopted the annual letting value for the purpose of valuation of the factory buildings in question. S. 76 deals with the Government's power to sanction the said rules with modification or subject to conditions imposed by them. This has been duly done and sanction from the Government has been properly obtained. After the sanction is received from Government, s. 77 requires that the sanctioned rules with a notice reciting the sanction and the date and serial number thereof must be published; while publishing these rules the Municipality has also to specify the date from which the said rules are intended to be brought into force. Under this section this date must not be less than one month from the date of the publication of the notice. The procedure prescribed by s. 77 has been complied with by the Municipality and there is no complaint on that account. Thus, so far as the procedure for the purpose of imposition of taxes is concerned, it is common ground that it has been duly followed as prescribed by ss. 73 to 77 of this Act.

The second topic under chapter VII relates to the assessment of and liability to rates on buildings or lands, and it is the procedure under ss. 78, 80 and 81 which according to the plaintiff has not been followed by the Municipality. The plaintiff's case is that this procedure is obligatory, and the failure of the Municipality to comply with the requirements of this procedure as prescribed makes the entire assessment invalid. Section 78 deals with the preparation of the assessment list. Under this section it is the Chief Officer who shall cause an assessment list of all buildings or lands or lands and buildings to be prepared containing five material particulars. Amongst these particulars are:

"(*d*) The valuation based on capital or annual letting-value, as the case may be, on which the property is assessed; and

(*e*) The amount of tax assessed thereon."

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Section 78 (*2*) requires the Municipality to deduct a sum equal to 10 per cent of the valution determined under cl. (*d*) of sub-s. (*1*) by way of allowance for repairs or on any other account whatever. Sub-section (*3*) empowers the Chief Officer to inspect the properties and to call for returns. When the assessment list is thus prepared, under s. 80 the Chief Officer has to give public notice of the list and of the place where the list or copy thereof may be inspected. Simultaneously the Chief Officer has to give public notice under s. 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 have to be made, sub-s. (*3*) provides for the hearing 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 Crown. When the objections are thus considered and disposed of, the assessment list with the modifications which may have been made has to be authenticated by the signatures of the Chairman and at least one other member of the standing committee under sub-s. (*4*). Sub-section (*5*) requires that the list so authenticated shall be deposited in the municipal office and shall be open for inspection during office hours to all the assessees. The completion of this procedure leads to the important provisions of sub-s. (*6*), under which the list thus authenticated has to be accepted as conclusive evidence, for the purposes of all municipal taxes, of the valuation, or annual letting value on the basis prescribed in the rules to which such entries respectively refer and for the purposes of the rate for which such assessment list has been prepared, of the amount of the rate leviable on such buildings in any official year in which such list is in force. The plaintiff-company contends that in the present case the assessment list was not duly and properly prepared as required by s. 78 and the same has not been published as required by s. 80, no objections have been called and no objections have been considered, with the result that the list has not been authenticated, and their case is that these irregularities committed by the Municipality make the whole of the assessment invalid. This, therefore, is the first question which we have to determine in this appeal. In the trial Court an attempt was made on

behalf of the Municipality to suggest that the requirements in question have been substantially complied with. But Mr. Kotwal for the Municipality has fairly conceded that the procedure under ss. 80 and 81 has not been followed, though according to him the requirements of s. 78 have been substantially complied with.

Mr. Kotwal says that in dealing with the assessment list prepared by the Municipality in this case and the rules which have been challenged as *ultra vires* by the plaintiff-company, we must adopt a benevolent rather than a strict interpretation of the same. On the other hand, Mr. Desai has contended that we are dealing with the provisions of a fiscal or taxing statute and it is necessary that we must construe the rule and the list very strictly. It would thus appear that these two rules of construction represent different modes of approach; but there is really no conflict between the rules themselves because they apply to different topics and not the same. Now, as pointed out by Beal in his "Cardinal Rules of Legal Interpretation," 3rd edn. (p. 459):

"A distinction is to be drawn between by-laws made by railway companies, dock companies, or other like bodies, and by-laws made by public representative bodies; the former receiving a strict, the latter a benevolent interpretation."

The application of this rule is illustrated by the well known judgment in *Kruse* v. *Johnson.*[1] In this case the Court was dealing with a by-law made by a County Council purporting to act under their statutory powers by which persons were prohibited from playing music or singing in any public place or highway within fifty yards of any dwelling-house after being requested by a constable, or by an inmate of such house personally, or by his or her servant, to desist. This by-law was challenged as being *ultra vires* on the ground that it was capricious and utterly unreasonable. Lord Russell C. J. rejected this contention and observed (p. 99):

"...when the Court is called upon to consider the by-laws of public representative bodies clothed with the ample authority which I have described, and exercising that authority accompanied by the checks and safeguards which have been mentioned, I think the consideration of such by-laws ought to be approached from a different standpoint. They ought to be supported if possible. They ought to be, as has been said, 'benevolently' interpreted, and credit ought to be given to those who have to adminster them that they will be reasonably administered."

(1) [1898] 2 Q. B. 91.

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Dealing with the attack against this by-law that it was unreasonable, his Lordship' asked (p. 99):

> "...But unreasonable in what sense? If, for instance, they were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say 'Parliament never intended to give authority to make such rules; they are unreasonable and *ultra vires*.'"

There is another principle which is sometimes invoked in dealing with these by-laws, and that has been laid down in *The Queen* v. *Ingall.*[1] In this case the Court was dealing with certain provisions of the Valuation (Metropolis) Act, 1869, which prescribed certain dates on which certain acts had to be done and steps taken by the Assessment Committee. In fact these acts were done and steps taken, but not on the dates mentioned by the sections. The question which arose was whether the failure to comply with the dates prescribed by the sections made the entire assessment itself invalid. Mellor J. held that the provisions as to the dates were merely directory and not imperative, so that the assessment itself could not be challenged merely on the ground that the provision as to the dates had not been strictly and literally complied with. Lush J. who concurred with this conclusion observed (p. 208):

> "...But we must, in construing the Act, strike a balance between the inconvenience of holding the list to be null and void and the risk of allowing injury to be done by the delay in making the list; the former seems to me the greater evil, and therefore in my opinion we ought to hold the list to be valid."

But it must be remembered that this approach would be wholly inappropriate where the rule is challenged on the ground that it is *ultra vires* the power conferred upon the local body or where the assessment list is impugned on the ground that the condition precedent for making it final has not been complied with. If there is no doubt that the local body is acting within its jurisdiction and the irregularity which is alleged against the rule or list is merely in respect of a matter which is not essential, Courts would and should be reluctant to declare the rule or the list *ultra vires* on the technical ground of these irregularities. In this limited sense Mr. Kotwal may be entitled to invoke the doctrine of the

[1] (1876) 2 Q. B. D. 199.

benevolent interpretation in support of his case. But, on the other hand, where the local body, purports to levy a tax, it must submit the rules framed by it in that behalf to a strict construction at the hands of the Court. As Maxwell points out, "statutes which impose pecuniary burdens are subject to the rule of strict construction." Usually this rule of strict construction is applied in cases where it is doubtful whether the taxing Act really touches the person or the subject taxed. But the same approach will have to be adopted if it is found that power is conferred upon a local body to levy taxes on condition that the local body follows the procedure prescribed by the Act before levying such a tax. In other words, if the provisions of the Act in effect emphasise that compliance with the preliminary procedure amounts to a condition precedent before the levy of the tax, it would not be open to the local body to contend that the tax levied by it or the rule framed by it in that behalf should be benevolently construed and its failure to comply with the preliminary procedure should be condoned. In our opinion, the question as to whether the strict or the benevolent rule of construction should be adopted will always depend upon the nature of the rule or by-law in question and the nature of the attack levelled against it.

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Now, in dealing with the first point that the assessment itself is invalid because the provisions of ss. 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,

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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 finalised. In other words, 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 s. 81 (4). When it is thus authenticated, it becomes conclusive for the purposes mentioned in sub-s. (6). It must be pointed out that though the procedure thus prescribed may take time, it does not prevent the Municipality from bringing the assessment list into force in the official year in which it is made, because s. 81 (6) (*ii*) expressly provides that the authenticated list shall be conclusive evidence for the purposes of the rate in any official year in which such list is in force, and the "official year" means the year commencing on the 1st day of April. Mr. Kotwal, however, contends that as soon as the assessment list is prepared under s. 78 it gives rise to the liability of the assessee to pay the rates, and according to Mr. Kotwal the only effect of the failure of the Municipality to comply with the provisions of ss. 80 and 81 is to deprive them of the benefit of s. 81 (6). Mr. Kotwal says that if this procedure is followed and the list is authenticated, it becomes conclusive evidence for the purposes mentioned in sub-s. (6); if, therefore, the list is not authenticated as required, the Municipality may not be entitled to claim for their list prepared under s. 78, the conclusive character mentioned in sub-s. (6). We, however, feel some difficulty in accepting this argument. The first point which must be emphasised is that the list on which Mr. Kotwal relies does not satisfy the requirements of even s. 78 of the Act. Unfortunately for the Municipality the Chief Officer has not given evidence in the case and we do not know how, by whom and in what circumstances the supplementary assessment list was in fact prepared. The document which has been produced in the case purports to be a part of the supplementary list relating to the properties of the plaintiff-company. Now, this document shows the assessment under

the old rates in columns 4 to 20. The half yearly assessment due for the first half of the year amounted to Rs. 5,200-5-0 and the same had been paid by the plaintiff in due course. This amount is shown in column 20 in the document. Column 4 shows the annual rent under the old rates, column 5 shows the amount on which the tax is leviable after deducting 10 per cent. as required by the Act; then are shown the respective taxes and the total of Rs. 10,400-10-0 is reached, half of which had already been paid by the plaintiff-company. Now, columns 21 onwards deal with the demand made under the supplementary assessment list. At the top of these columns there is an endorsement to the effect that the rate is Rs. 40 per 100 sq. ft., calculated at 20 per cent. Unfortunately under the columns "Annual rent" and "Amount on which the tax is to be assessed"......no entry has been made. We have the house tax mentioned at Rs. 22,880, under column 24, the drainage tax of Rs. 1,255, under column 26, and under column 29, we have the total of Rs. 24,135. Column 30, which requires the number and date of the resolution passed by the committee, is blank, column 31 (annual rent) is blank, similarly column 32 (amount on which the tax is to be levied) is blank and in column 33 the amount for which the demand was made is mentioned. This amount is Rs. 18,934-11-0. It would thus be clear that two of the five material particulars which it is obligatory upon the Chief Officer to mention in the assessment list in respect of every property taxed are not mentioned in the document. Mr. Kotwal says that this is a mere irregularity and that it would have been very easy for the assessee to verify the correctness of the amount demanded from him if he had taken into account the fact that the rate and the percentage of the tax have been endorsed on the top of the columns in this document itself. In this connection Mr. Kotwal asks us to adopt a benevolent interpretation of this list and to hold that the list is good despite the fact that it has omitted to mention material particulars as required by s. 78 (*1*). He has also relied on the observations made in *Kruse* v. *Johnson* and *The Queen* v. *Ingall,* to which I have already referred. It must be conceded that Mr. Kotwal's argument is not without some force. On the other hand we cannot ignore the fact that the Municipality are exercising their right of taxing the property of their citizens, and in matters of taxation the taxing authorities must scrupulously comply with the obligations imposed upon them by the statute under which they

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derive authority to levy the tax itself. This is not a matter of interpreting the assessment list, as a matter of deciding whether the assessment list has been duly prepared under s. 78. There is, therefore, no question of any benevolence or strictness in dealing with this aspect of the matter. We are satisfied that the Municipality have failed to comply with the requirements of s. 78 (*1*), and on the whole we would feel disposed to take the view that this failure itself would be enough to make the assessment list so defective as to be unenforceable. Since the Municipality have not put before the Court the whole of the assessment list and since they have chosen not to examine their Chief Officer in the case, we are entitled to assume that the defects which are disclosed in the document produced in this case are common to the whole of the list prepared under s. 78 at this time. We are fortified in our conclusion by the decision of this Court in *Surat Municipality* v. *Chabildas*.[1] In this case Scott C. J. and Davar J. were dealing with a claim by the Surat Municipality to recover the arrears of house tax from the plaintiff and the contention made by the plaintiff in that behalf that the said house tax could not be recovered because the procedure followed by the Municipality in making a claim in that behalf was illegal. This procedure had been prescribed by s. 32 (*2*) of Bombay Act III of 1901, and it required that every bill issued by the Municipality shall specify, amongst other things, the time within which an appeal may be preferred as thereinafter provided against such claim. The bill served on the plaintiff was otherwise in order, but it did not specify the time for the appeal. The Municipality contended that the failure to comply with this requirement was a mere irregularity and was no worse than a formal defect. This argument was rejected by Scott C. J. who observed that (p. 754):

> "The whole right of distress depends upon the observance of the statutory formalities, it being a right conferred by the statute only upon those conditions."

Acting on this view it was held that the amount of arrears could not be recovered by the Municipality from the plaintiff. Now, it would be clear that the failure giving rise to this dispute was comparatively much less serious than the failure committed by the Municipality in the present case. The assessment list with which we are dealing is the basic document on which a claim for rates has been made against

[1] (1914) 16 Bom. L. R. 749

the plaintiff and this basic document is defective in regard to two material particulars. When the claim for rates was made by the Municipality against the plaintiff in the present case, it was quite obviously necessary that the list on which the claim was based should have indicated the valuation based on annual letting-value and the amount of the tax. It is not open to the Municipality to contend that the assessee could by arithmetical calculations have ascertained these amounts and he could thereby have verified whether the amount claimed was proper or not. We are, therefore, disposed to hold that the assessment list prepared in this case was defective in material particulars and this defect makes it wholly invalid.

In support of his plea that these defects would not make the list invalid Mr. Kotwal has invited our attention to s. 44 of the English Rating and Valuation Act, 1925. This section provides that any failure on the part of a rating authority or assessment committee to complete any proceeding with respect to the preparation of a valuation list within the time required by part II of the said Act, or the omission from a valuation list of any matters required by the said part to be included therein, shall not by itself render the list invalid. Mr. Kotwal says that we should adopt this principle in dealing with the valuation list before us. We do not think that we would be justified in applying the principle underlying this section when this principle has not been adopted in any corresponding section of our Act. It would perhaps be legitimate to argue that if s. 44 had not been included in the English Rating and Valuation Act, the valuation list would have been rendered invalid by the failures and omissions condoned expressly by the section. If that is so, the absence of a corresponding section in our Act leaves the question at large and we have to decide whether the failure or omission from which the assessment list suffers is such as to make it wholly invalid. Since we are referring to s. 44 of the English Act in this connection, we may as well like to point out that the failures and omissions which are condoned are only those that are mentioned in the said section itself, and no others. It would, therefore, appear that if the rating authority in England fails to comply, for instance, with the requirements of Sch. IV, part 1, of the Rating Act, the list prepared by the authority may be rendered invalid. In other words, non-compliance with the other provisions of the Rating Act would

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not probably attract the protection of s. 44 (*Vide*: The Commentator's note under s. 25 of the English Rating and Valuation Act, "The Complete Statutes of England," Volume XIV, page 653.) Therefore, our conclusion is that even if we were to hold that the liability of the plaintiff to pay the rates would arise as soon as the assessment list is prepared under s. 78, in the present case the plaintiff would be entitled to challenge the municipal claim for enforcing the said liability because even the requirements of s. 78 have not been duly complied with in preparing the assessment list in question.

But we do not wish to put our decision on this ground alone, since in this case we feel satisfied that the failure of the Municipality to comply with the requirements of ss. 80 and 81 makes the assessment list incapable of enforcement. It seems to us that the provisions of ss. 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 s. 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 finalised 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 provisions of the English Rating and Valuation Act of 1925 are somewhat similar to the provisions of chapter VII, and in regard to the assessment lists prepared under the provisions of the English statute "Ryde on Rating" has observed:

> "When the assessment committee have heard and determined all objections, and made such alterations, corrections and insertions as seem proper, they are to finally approve the list. It is not until this stage is reached that the list can be said to be 'made' or to be effective." (8th edn., p. 869).

We think that these observations apply with equal force to the list prepared under s. 78 of the Act with which we are concerned. How essential and important is the consideration of the objections made by the assessee can be realised if we examine the provisions of s. 110 of this Act. As I have already

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mentioned, chapter VIII deals with the recovery of municipal claims and under s. 105 it is open to the Municipality to issue a warrant for the recovery of the dues and to execute it. When these execution proceedings are enforced under the provisions of this chapter, a right of appeal is given to the assessee under s. 110. Section 110 (2), however, gives the right to the assessee 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 he had made an objection at the proper time under s. 81 of the Act. In the present case no assessee could have made any such objection for the simple reason that the Municipality had not published the assessment list as required by s. 80 and had not called for the objections as required by s. 81. The result, therefore, would be that if a demand notice was issued by the Municipality against the assessees, they would be deprived of the right of making an appeal under s. 110 owing to the default of the Municipality itself. These provisions, in our opinion, support our conclusion that the procedure laid down by ss. 80 and 81 is an essential and integral part of the assessment of the rates itself, and unless this essential procedure is followed, the assessment list cannot claim to be either final or effective. Mr. Kotwal, however, contends that the failure to comply with the provisions of ss. 80 and 81 would not be fatal to the Municipal claim to levy the assessment; it would only deprive the Municipality of the benefit of the provisions of sub-s. (6) of s. 81. According to Mr. Kotwal if the assessment list has not been finalised and authenticated, the question as to the amount due from the assessee in respect of his property would be at large and the same should be decided by a civil Court if a dispute between the assessee and the Municipality becomes the subject matter of a suit. In such a case Mr. Kotwal says the Municipality should be given an opportunity to prove that the amount claimed by them is properly assessed. The rules for the imposition of the taxes have been duly published and brought into force and the preparation of the assessment list means nothing more than working out these rules in reference to the properties of the

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individual assesssses. In support of this argument Mr. Kotwal has referred us to a decision of the Judicial Commissioners of Sind in *Karsondas* v. *Karachi Municipality.*[1] It is true that this judgment supports Mr. Kotwal's contention; but, with respect, we are not prepared to accept the view expressed in this judgment. The provisions with regard to the imposition of taxes and the assessment of and liability to rates on buildings which are contained in chapter VII of the Municipal Boroughs Act are self-contained, and by s. 81 a special tribunal has been authorised to deal with the disputes between the local body and the assessees. When these disputes are thus settled by the special tribunal, the decision of the special tribunal is open to be challenged before the appellate Court constituted under s. 110 of the Act; and entries made in the assessment list as a result of the appellate judgment are made final under s. 111 of the Act. When Legislature constitutes a special tribunal to deal with a special class of disputes, we do not think it would be appropriate to the ordinary civil Court to deal with those disputes. It is quite true that under s. 203 of the Act it would be competent to the Municipality to have recourse to a regular suit to recover the assessment in lieu of the special process for recovery permitted under chapter VIII. But that would not justify a claim by the Municipality that the civil Court should deal with the disputes which would have arisen under s. 81 if the proper procedure had been followed by the Municipality in due course and that the civil Court itself should virtually finalise the assessment list and put its seal of authentication on it. In our opinion, therefore, if the procedure laid down in ss. 80 and 81 is not followed by the Municipality in preparing and finalising the assessment list, the list that they may have prepared *ex parte* under s. 78 would not be a valid list.

In this connection we must now examine some of the decisions which have been cited at the bar. Strong reliance has been placed by Mr. Kotwal on the judgment of this Court in *Ambalal Sarabhai* v. *Ahmedabad Municipality.*[2] The assessee in the said case had challenged the validity of the Municipal assessment on two grounds. He alleged that the assessment list had not been authenticated as required by s. 65 (4) of Bombay Act II of 1884, and in preparing the assessment list the Municipality had not complied with the requirements

(1) [1936] A. I. R. Sind 114. (2) (1920) 23 Bom. L. R. 48.

of r. 74 framed by them. This rule had specified certain dates on which the material steps in regard to the preparation and finalisation of the assessment list had to be taken by the Municipality, and the assessee's case was that though the steps mentioned in the said rule had been taken, they had not been taken on the dates mentioned in the rule. This irregularity, according to the assessee, made the assessment invalid. Mr. Justice Shah who delivered the judgment of the Bench accepted this contention of the assessee. He held that the rule bound both the Municipality and the assessee and that non-compliance with that rule entitled the assessee to recover what had been levied by way of house and property tax in excess of what was payable at the beginning of the year. In other words Mr. Justice Shah took the view that it was incumbent upon the Municipality not only to take the several steps as mentioned in r. 74, but to take them on the dates specified in the rule itself. In this connection we may point out that on very similar facts a contrary view was taken in *The Queen* v. *Ingall,* to which we have already referred. As to the objection that the list had not been authenticated, Mr. Justice Shah observed that it may be that if the list is not signed it could not be accepted as conclusive evidence as provided by sub-s. (*6*) of s. 65. (The provisions of this subsection are similar to those of sub-section (*6*) of s. 81 with which we are dealing). Mr. Kotwal says that the view of Mr. Justice Shah clearly was that the failure to get the assessment list signed and authenticated means nothing more than that the Municipality would not be entitled to treat the list as conclusive under sub-s. (*6*). Prima facie, the observations made by Mr. Justice Shah do appear to support Mr. Kotwal's contention. But it must be remembered that in *Ambalal's* case the substantial and the important part of the procedure had been followed. The assessment list had been duly published, objections had been invited, and when they were received, they had been considered by the standing committee, and all that the Municipality failed to do was to obtain the formal signature to and authentication of the list which had been finally prepared as a result of the decision of the standing committee. We must, therefore, read the observations of the learned Judge as applicable only to the failure of the Municipality to comply with the formal and somewhat non-substantial part of the procedure. With very great respect to the learned Judges who decided this case, we

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would however like to express our doubt as to whether even this formal failure would not make the list invalid. Besides it is clear that this observation was clearly *obiter*. The assessee had succeeded on the other ground raised by him under r. 74 and it was really unnecessary for the assessee to rely in addition on the ground that the list was not signed or authenticated. In the present case the position is very much worse. In fact the whole of the procedure contemplated by ss. 80 and 81 has been dropped by the Municipality, with the result that the assessment list prepared *ex parte* under s. 78 has never been examined by the standing committee, has never been submitted to the assessees for making their objections and it has never been finalised at all. We do not think that the observation on which Mr. Kotwal relies could be extended to the present case.

Mr. Kotwal has also relied upon certain observations made by Mr. Justice Dixit who delivered the judgment of the Bench in *Subbappa Mallappa* v. *Bonni*.[1] In this case the Court had to deal with the effect of the provisions of s. 84 (2) of Bombay Act XVIII of 1925. The assessment list had been published on March 31, 1939. Objections filed against this list were not considered until August, 1939, and it would appear that the list was not finalised and authenticated until October 1939. On these facts the assessee contended that his liability would not arise in the official year commencing on April 1, 1939, because the list had not been finalised on that date. This plea was rejected by Sen and Dixit JJ. who held that the Municipal claim to recover the increased taxes as per the revised assessment list which was published on March 31, 1939, could be enforced in the official year 1939. It would at once be noticed that this decision was based on the provisions of s. 84 (2), which in terms applies the provisions of s. 81 to the new assessment lists prepared under s. 84, and s. 81 (6) (*ii*) in clear terms provides that the assessment list when finalised and authenticated is conclusive evidence for the purposes of the rate for which the assessment list has been prepared in any official year in which such list is in force. In other words as soon as the assessment list is duly authenticated, it takes effect not from the date of authentication but from the date on which it is brought in force. This in fact was the view taken by the learned Judges, and with respect there can be no possible quarrel with this view. In dealing with the

(1) (1947) 50 Bom. L. R. 701.

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arguments, however, Mr. Justice Dixit referred to the contention urged by the assessee that the assessment list does not become effective until it is made final, i.e. until after the objections are considered and amendments made as contemplated by s. 81 (3) (c) and after the result of an appeal or a revision, if any, under s. 110, and he added that they were unable to accept this contention. Mr. Kotwal says that this observation shows that the assessee's liability to pay the tax arises independently of the objections or the disposal of the objections, and so he argues that even if the Municipality failed to comply with the provisions of ss. 80 and 81 of the Act, that would not wipe out the assessee's liability which arises as soon as the assessment list is prepared under s. 78 of the Act. We take the view that the observation on which Mr. Kotwal relies should be read in its context, and if it is so read, it does not support Mr. Kotwal's contention. With respect, we must point out that this aspect of the matter did not arise for decision before the Court and the only question which they had to decide was whether the assessee's liability to pay the tax arose only as on the date when all the objections urged by him against the assessment list had been finally disposed of; and as we have pointed out, what the learned Judges decided was, the liability can be enforced in the official year in which the list in question is in force. In fact the procedure laid down by ss. 81 and 82 had been duly complied with and there was therefore no occasion to consider the effect of non-compliance with the said sections.

Then there are two other decisions to which our attention has been drawn by Mr. Desai on behalf of the assessee. In *Sholapur Municipality* v. *Governor-General*[1] Mr. Justice Lokur, while dealing with the provisions of s. 82 (3) of Bombay Act XVIII of 1925, observed that a clear distinction is made between the imposition of taxes and the liability to rates on buildings or lands. In his opinion, the preparation of an assessment list is incumbent on the Chief Officer, and after objections are heard the list is to be finally settled and authenticated as required by s. 81 (4). 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 s. 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

(1) (1946) 49 Bom. L. R. 752.

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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 ss. 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 could enforce the liability of the assessee to pay the assessment. This judgment merely emphasises the fact that the preparation of a proper list under s. 78 is an essential part of the procedure which the Municipality must adopt before the assessee's liability to pay the rates can validly arise.

Then there is a judgment of Chagla C. J. in *Shantaram Balaji* v. *Vengurla Municipality,*[1] where the learned Chief Justice was dealing with ss. 65 and 72 (2) of Bombay Act III of 1901. The argument that it was incumbent upon the Municipality to prepare the assessment list prior to the official year which commences from April 1 was rejected by the learned Chief Justice because he held that the mere fact that the rule fixes the date on which the liability arises does not necessarily mean that the quantum of the tax has to be determined prior to April every year and the Legislature had made the position perfectly clear by s. 67 (2) of the Act. Under that section the provisions of ss. 64, 65 and 66 are to be applicable every year as if a new assessment list had been completed at the commencement of each year. The corresponding provisions in Bombay Act XVIII of 1925 with which we are dealing are ss. 80, 81 and 82. With respect, we are in agreement with the views expressed by the learned Chief Justice in his judgment. Incidentally, we may point out that the learned Chief Justice in *Shantaram's* case and Mr. Justice Sen and Mr. Justice Dixit in *Subbappa's* case have referred to the judgment of Mr. Justice Shah in *Ambalal Sarabhai* v. *Ahmedabad Municipality* in terms which would suggest that they felt some doubt about its correctness.

In this connection we may with advantage refer to two English decisions. In *The Queen* v. *Chorlton Union*[2] the Court was dealing with ss. 17 and 21 of the Union Assessment Committee Act, 1862. These sections required that if a valuation list for a parish was altered by the Assessment Committee, it should be deposited by the Committee for inspection. In fact the altered valuation list with which the Court was concerned had not been so deposited by the Assessment

(1) (1950) 52 Bom. L. R. 411. (2) (1872) 8 Q. B. 5.

Committee, and the question which arose for decision was whether the failure of the Assessment Committee so to deposit the altered valuation list rendered the said list invalid. It was contended by the assessee that by the want of deposit and notice the overseers and other parties aggrieved had no opportunity of objecting under s. 18 and of appealing under s. 32 and so the list and the orders based upon it should be held to be invalid. This contention was accepted, presumably on the ground that compliance with the requirements of ss. 17 and 21 was a condition precedent to the validity of the valuation list. A somewhat similar point under s. 18 of the same Assessment Act of 1862 was raised in *Assessment Committee of Reigate Union* v. *South-Eastern Railway Co.*[1] In this case the Assessment Committee had approved of the supplemental valuation list before the expiration of the period of 28 days from the date of the public notice of the deposit of the list mentioned in s. 18 (*1*). The Court of Quarter Sessions held that the list could not be said to have been duly approved and was not, therefore, legally in force as a supplemental valuation list for the parish. The Assessment Committee challenged this view, but they failed because, as Lord Coleridge C. J. observed (p. 415):

"...The approval of the valuation list by the committee before the expiration of the twenty-eight days deprived the respondents of a right of objection to the list which they would otherwise have had."

It would thus appear that failure to comply with the provisions of the Union Assessment Committee Act which are very similar to the provisions contained in ss. 81 and 82 of Bombay Act XVIII of 1925 was held to make the assessment list invalid.

In our opinion, therefore, the assessment list which the Municipality seek to enforce against the plaintiff in the present case is invalid and the plaintiff is entitled to claim a refund of the excess amount paid by him under protest.

That takes us to the next question as to whether r. 3 (*2*), which has been framed by the Municipality for levying the assessment on factory buildings and on the strength of which the Municipality purported to make a claim against the plaintiff, is *ultra vires*. It would be convenient at this stage to refer to the material rules in some detail. The Municipality had decided to adopt the basis of the annual letting-value while levying the property tax on all buildings situated

(1) [1894] 1 Q. B. 411.

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within their jurisdiction. Rule 2 lays down the principles in accordance with which the annual letting-value of buildings and lands would have to be fixed. The first five sub-rules under r. 3 (*1*) deal with the residential buildings divided into five different classes. The first class of buildings is bungalows, houses and shops which are let, and the principle laid down is that the rental actually realised in each case should be considered to be the annual letting-value unless the Chief Officer has reason to believe that the said rental does not represent the correct letting-value. Class 2 consists of buildings which are sub-let, and in the case of this class the rent paid by the occupiers has to be taken to be the annual letting-value. Class 3 consists of buildings part of which is let and part is used by the owners, and it is provided in respect of such buildings that the letting-value of the portion occupied by the owners shall be determined in the light of the rent derived from the portion which is let and in the light of the size and the use of the premises occupied by the owner. Class 4 consists of bungalows, shops and houses which are used by the owner, and it is provided that the annual letting-value of these shall be determined in the light of the rental recovered from adjoining buildings by their respective owners. The last class deals with buildings occupied by the owners where no data about the rental are available, and in respect of such buildings it was provided that the annual letting value of the buildings shall be five per cent. of the cost of superstructures and of the value of the site. Thus it would be seen that the principles which have been laid down by r. 3 (*1*) in respect of non-factory buildings take cognizance of different kinds of buildings and provide for appropriate principles to be applied to them. As regards the factory premises, however, r. 3 (*2*) provides that the annual letting-value of these premises shall be determined on the following scale namely:—

Area	Annual letting-value.	
Built area (each storey)	Mill and factories working for the year. Rs. 40 for 100 sq. ft.	Factories working for the season (6 months). Rs. 25 for 100 sq. ft.
open space	Rs. 2 for 100 sq. ft.	Rs. 1-8-0 for 100 sq. ft.

The Municipality had decided that 20 per cent. of the annual letting value thus determined should be recovered as the

consolidated property tax from the factory premises. It is important to remember that these rules have been in force in Amalner from 1929 substantially in the same form. It is quite true that the rates have been increased and so has the percentage been increased in fixing the tax. But the principles applied in determining the annual letting-value have not been altered in the main. In other words since 1929 the Amalner Municipality has classified the non-factory buildings into different classes and worked out their annual letting-value by reference to different principles. But as regards the factory premises the Municipality has always applied the rule that the annual letting-value should be determined by reference to the built area or open area though the amount chargeable for such a specified area in determining the annual letting-value has been changed from time to time. The extent of the increase made by the present rules would be realised if it is remembered that whereas for the plaintiff's factory buildings he was liable to pay Rs. 10,400-10-0 under the old rules for the four taxes (house-tax) general bhangi-patti, drainage tax and lighting tax) he is now made liable to pay Rs. 48,370 as one consolidated tax. There is no doubt that the tax has been considerably increased. But that clearly is a matter within the competence of the Municipality and the increase in the tax by itself would not justify the plaintiff's contention that the rule is *ultra vires*. Besides, we cannot ignore the fact that according to the Municipality the factories in Amalner have been making much larger profits during recent years. It would appear from the judgment of the trial Court that rule 3 (2) was attacked principally on the ground that it was capricious, arbitrary and unreasonable. It does not appear to have been urged before the learned trial Judge that the rule was *ultra vires* of the local body itself. Before us the emphasis has considerably shifted. The principal argument urged before us by Mr. Desai on behalf of the plainitiff-company has been that the rule in question is *ultra vires* the Municipality, though he has also supported the finding of the learned Judge that it is also arbitrary, capricious and unreasonable. In dealing with the argument that the rule is arbitrary, capricious and unreasonable, it would be necessary to remember the principles laid down by Lord Russell C. J. in *Kruse* v. *Johnson*. After all the local authority has been given jurisdiction by the Municipal Boroughs Act to impose taxes and they must

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be presumed to be the best judges as to the reasonableness of the tax which they wish to impose. The power conferred on the Municipality is also subject to two important checks and safeguards. The rules that the Municipality may make under s. 75 and the list that they may prepare under s. 78 are published and objections are invited from the citizens concerned. So that at both the stages the citizens are given a voice in the matter. Besides, there is the overriding safeguard provided by the Act by insisting upon the sanction of the local Government before the original rules framed under s. 75 can take effect. Therefore, in our opinion, it is not as if the Municipality are given unfettered discretion to increase the taxes at their sweet will. In dealing with the argument that the rules framed by the Municipality are *ultra vires* this position must not be ignored.

There is another circumstance which also must be taken into account. As I have already mentioned, the principles laid down by the rules in determining the annual letting-value of the buildings have substantially remained the same from 1929 onwards. These rules were submitted to the scrutiny of the standing committee to which were co-opted five representatives of the citizens. Objections were invited to these rules and these objections and the opinions of the representatives of the citizens co-opted in the standing committee were duly considered by the standing committee. It is significant that there has been no objection either from the citizens or from the members co-opted to the standing committee to the principles enunciated in the rules. The only objection which was raised was to the amount of the increase contemplated by the Municipality. It is true that if the rules are *ultra vires,* the fact that they have not been challenged at the preliminary stage on the present occasion or even that they had not been challenged during all the time that they have been in force since 1929 would not help the Municipality; but in dealing with the argument that the rule is arbitrary or capricious this fact is not wholly irrelevant. We would, therefore, not be prepared to hold that the rule is *ultra vires* because it permits of a very large increase in the tax payable by the factory buildings.

The argument urged for the plaintiff, however, is that having adopted the anual letting-value as the basis for deter-

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mining the valuation of the factory buildings, r. 3 (*2*) provides for the method of determining the said value which is inconsistent with the basis of the annual letting-value itself. This argument may be stated in another form. Whereas in the case of non-factory premises distinction has been made between different kinds of buildings, no such distinction has been made in regard to the factory premises themselves. The character and the quality of the buildings, the special amenities available to them, as for instance the proximity or the distance from the railway station, the use to which they may be put and all other points of distinction between these factory premises have been ignored when r. 3 (*2*) provides for one uniform method of ascertaining their valuation by reference to the extent either of the built area or of the open area in question. In examining this argument it is necessary to refer to the definition of the expression "annual letting-value" on which the whole argument is based. Section 3 (*1*) defines annual letting-value as meaning the annual rent for which any building or land might reasonably be expected to let from year to year. Mr. Desai contends that when the Municipality accepts the basis of the annual letting-value for determining the valuation of the factory buildings for the purpose of assessment, it is absolutely incumbent upon the Municipality to consider the case of each factory building by itself in order to determine what its annual letting-value would be, and in so far as r. (*3*) authorises the Municipality to determine the valuation of all the factory premises on one flat and uniform basis, it is clearly inconsistent with the meaning of the expression "annual letting-value" and as such it must be held to be *ultra vires*. In support of his argument Mr. Desai has relied upon the observations of "Ryde on Rating" that the ascertainment of rateable value depends upon the construction of a statutory definition, and the precise words of that definition must be the sole criterion (8th edn., p. 257, para. 244). Prima facie the argument undoubtedly looks very attractive. The part played by the hypothetical tenant in determining the annual letting-value as thus defined is well known to the law of rating. It is in reference to the rent which this hypothetical tenant may reasonably be expected to pay for the building in question that the valuation has to be determined on the basis of the annual letting value. In *Poplar Assessment*

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Committee v. *Roberts*[1] Lord Atkinson L. J. observed (p. 107):

"...This tenant has been, therefore, appropriately styled the 'hypothetical tenant', and so unreal may his existence be that the owner-in-fee of the hereditament, who is in beneficial occupation of it, may play the part of the hypothetical tenant, ready to pay the annual rent mentioned in the statute for his own property. *This imaginary rent* is not to be confounded with the rent which an actual tenant in possession in fact pays. It may naturally be assumed that the hypothetical tenant would take this latter into consideration, along with many other things, including the capacity of the hereditament and its adaptabilities, in calculating the amount of the rent, he might be expected to pay; but the actual rent paid by the actual tenant is not, and cannot be, treated as a measure of, or a substitute for, the hypothetical rent which conceivably might be expected from a hypothetical tenant. It therefore appears to me that where you find a statute dealing exclusively with actual rent paid by actual tenants actual increases of such rent evictions from the hereditament in respect of which the actual rent is paid, and the interest paid by the mortgagors of such a hereditament, the natural conclusion to arrive at is that this statute was not designed or intended to deal with the rating of hereditaments at all."

Similarly, Lord Parmoor observed that rateable value is an assumed value based on an assumed rental. Therefore, there can be no doubt that it would be competent to the Municipality to work out the valuation of the factory buildings on the basis of such a hypothetical tenant. It may also be pointed out that in determining the amount which a hypothetical tenant would be expected to pay in respect of any building, the local body is free to exceed the maximum standard rent which may have been fixed by any such restriction laws (vide *Gulam Ahmed Rogay* v. *Bombay Municipality.*[2]) Under s. 75 it is in the discretion of the Municipality to adopt either the capital value or the annual letting-value. In terms the Explanation to s. 75 which gives this option to the Municipality refers only to lands and not to buildings. But there can be no doubt that even as to buildings the Municipality may adopt either of the two methods of valuation. The capital value is usually determined by applying the contractor's test, i.e. the interest on cost which a contractor would require if he provided the land and buildings for their present occupier. As observed by "Ryde on Rating," this test must be not what the contractor would demand, but what he would be likely to get, and the reasonable expectation of the contractor is a rough test and some prima facie evidence, capable

[1] [1922] 2 A. C. 93. [2] (1950) 53 Bom. L. R. 145.

of being cut down by evidence on the other side, but not altogether to be put out of sight (9th edn., p. 288). Under this method you take into account the value of the land on which the building is constructed and the value of the building itself. It is not seriously disputed that in some cases where the annual value has to be determined it would be permissible to employ the contractor's test in the process of such determination. In other words, it would be legitimate to ascertain the value of the building by applying the contractor's test and then to lay down that the particular rate of interest on the capital value should be taken as equivalent to the annual letting-value. Mr. Desai, however, says that in deciding the question of the annual letting-value of the factory buildings it is not permissible to the Municipality to rely solely on the extent of the built area. This basis, says Mr. Desai, is blind. It does not take account of the several points on which one building may be distinguished from another, and according to Mr. Desai this basis is altogether unjustified. We do not think it would be correct to say that the method of determining the value of the property by reference to the extent of the property is altogether unknown to the law of rating. The Madras District Municipal Act, V of 1920, for instance provides for this method in dealing with lands not built upon. Under s. 81 (*3*) the Municipal Council may, in the case of lands which are not used exclusively for agricultural purposes and are not occupied by, or adjacent and appurtenant to, buildings, levy those taxes at such percentages of the capital value of such lands or *at such rates with reference to the extent of such lands as it may fix.* That is to say, in respect of lands falling under s. 81 (*3*) it would be competent to the Municipal Council to fix the valuation of these lands at rates solely with reference to the extent of such lands. Similarly, under s. 62 (*1*) of Burma Municipal Act, III of 1898, the Municipality is authorised to impose a tax on lands covered by buildings at a rate not exceeding three pies per square foot per annum, or, if the lands are covered by a building of two or more storeys, at a rate not exceeding four pies per square foot per annum. It would thus be noticed that the method of determining the valuation of the property on the basis of the extent of the property is not altogether unknown to the law of rating. In *M. & S. M. Ry. Co. Ltd.* v. *Municipal Council, Bezwada,*[1] the Court had to consider the effect of the proviso to s. 82 (*2*) of the Madras

[1] [1941] Mad. 897.

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Municipal Act, V of 1920. In dealing with the said question Somayya J. observed that in the case of lands which cannot ordinarily be let, the Legislature does not evidently wish to confine the rating authority to the one method, viz., of taking 6 per cent of the capital value as the rental value, but it leaves it to the rating authority to find the letting value by *any of the methods known to law* and apply that test which is applicable to the facts of a particular case. The rating authority may take the capital value basis or it may take the profit basis or it may find the rental value by some other method. It is left free to adopt that method which is suitable to the facts of each case. The same case had gone to the Privy Council in *M. & S. M. Railway* v. *Bezwada Municipality,*[1] and it was urged before them that the proviso to s. 82 (*1*) authorised the determination of the annual value on the basis mentioned in the proviso only in respect of the two classes of property included therein. The argument was that in so far as the said method had been applied in respect of the properties not included in the proviso and assessment determined on that basis, the whole of the assessment was illegal. Their Lordships of the Privy Council rejected this argument and they held that though the properties with which they were concerned did not fall within the proviso, they did not read the proviso as laying down that the method of calculating the valuation mentioned in the proviso was by necessary implication excluded while dealing with the properties outside the proviso. In their Lordships' view the assessing authority was left unfettered as to the manner in which they might determine the capital value of the properties outside the proviso. In the result they concurred with the judgment of the Madras High Court and dismissed the appeal. In other words, this decision shows that the method of fixing rates by reference to the extent of the property is recognised in the law of rating and can be applied by Local Bodies if they so choose. In this connection it may also be relevant to refer to the observations made by A. L. Smith L. J. in *Liverpool Corporation* v. *Llanfyllin Assessment Committee.*[2] This is what Smith L. J. said about the rule of thumb which can legitimately be adopted in levying assessment against hereditaments like those with which we are concerned in the present appeal (p. 20):

"It is familiar law that, where a hereditament can be compared with other hereditaments of a like nature which are the subject of letting, its

(1) [1941] Mad. 897. (2) [1899] 2 Q. B. 14.

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rateable value may be arrived at by shewing what rent tenants from year to year will in fact give for such hereditaments; but a difficulty in rating law arises with regard to hereditaments which cannot be compared with other similar hereditaments so as to ascertain the rent which a tenant will actually give for them. Therefore, inasmuch as a rateable hereditament cannot be allowed to escape from being rated because no such comparison can be made, in such cases it has come to be a recognised position that the rent which a hypothetical tenant would give for the hereditament must be estimated in some other way. In a case like the present, where no profits are earned in the parish by the use of the hereditament, a rough way of arriving at the rateable value by rule of thumb, there being no other way available, is to see what the site and the construction of the works cost, and take a percentage on the capital amount so expended as representing the rent which a tenant would give."

Now, in dealing with r. 3 (*2*) we have to bear in mind the fact that the factory buildings have never been let and are not intended to be let, and it would, therefore, be very difficult if not impossible for the Municipality to obtain the usual data for determining the rent which a hypothetical tenant would pay in respect of them. In determining such rent, therefore, the Municipality may make calculations in several ways. They may consider the value of the buildings by adopting the capital value basis and then they may decide that the hypothetical tenant would reasonably be expected to pay as rent a certain percentage of the said capital value. If on examining the cases of all the factory buildings within their jurisdiction the Municipality came to the conclusion that the rent which the hypothetical tenant may reasonably be expected to pay with respect to these buildings fits in with the rent which they have fixed by adopting the flat and uniform principle underlying rule 3 (*2*), we do not see why they should not adopt the said principle in respect of all the buildings. It is very likely that all the factory buildings are alike in essential features, they are intended to be used for purposes which are alike, and it may be that the Municipality were satisfied that the principle enunciated by them in r. 3 (*2*) on the whole works out as a fair basis for determining the valuation of the buildings in question. As I have already pointed out, the method of fixing rates by reference to the extent of the property is not unknown to the law of rating, and in our opinion the Municipality would be justified in adopting this method if they came to the conclusion that it yielded a satisfactory result in deciding what rent the hypothetical or imaginary tenant would pay in respect of these

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buildings. It would of course have been better if the Municipality had led some evidence to show what calculations they made and how they worked out the case of the hypothetical tenant before they arrived at this particular rule. But, in our opinion, we would not be justified in declaring the rule *ultra vires* unless we are satisfied that the rule is so completely inconsistent with the basis of the annual letting value that it must be held to be invalid. It is the plaintiff-company who challenge the rule as *ultra vires* and the onus would, in the first instance, be on them to show how it is *ultra vires.* No attempt has been made by the company to show that if the case of their buildings was dealt with in the light of the rent which a hypothetical tenant would be prepared to pay the resulting valuation would differ from the valuation determined by the rule in question. In fact it is very significant that though the plaint has attacked the rule on several grounds, it is not even alleged that the rate actually levied under the said rule is excessive or unreasonably high. We must, therefore, hold that it has not been shown by the plaintiff that r. 3 (*2*) is *ultra vires* for the reason that it is inconsistent with the basis of annual letting-value adopted by the Municipality under s. 75. Incidently it may be mentioned that the rule in question has been in force for many years and we are told that a similar rule has been adopted by other Municipalities in the State.

Besides, this was not the principal attack made against the rule by Mr. Desai before us. His principal attack was on the ground that the rule is outside the competence of the Municipality, and in support of this plea he relied upon the provisions of s. 58 (*j*) of the Act. Now, s. 58 confers upon the Municipal Boroughs the power to make rules, and s. 58 (*j*) is the section under which all the rules in question have been made by the Municipality. Under s. 58 (*j*) it is competent to the Municipal Borough to make rules as to the time at which and the mode in which taxes shall be levied or recovered or be payable. And Mr. Desai says that the mode in respect of which rules can be framed by the Municipality cannot refer to the basis for making the valuation of the buildings. We do not think that Mr. Desai is right in this contention. In our opinion, the expression "the mode in which taxes shall be levied" may well include the steps which are necessary to be taken in ascertaining the valuation of the properties and determining the tax payable in respect of them. Section 75

which prescribes the procedure preliminary to imposing taxes requires that the Municipality should select by a resolution the taxes which they propose to levy and approve rules prepared for the purpose of cl. (*j*) of s. 58. This section further provides that the resolution to be passed and the rules to be approved should specify amongst other things the basis to be adopted for determining the valuation of the buildings or lands or both. There is, therefore, no doubt that it would be perfectly competent to the Municipality to make a rule providing for the basis in ascertaining the valuation of the buildings, and this basis is either the capital value or the annual letting-value. Mr. Desai concedes that the Municipality can and in fact must decide what basis it wants to adopt. But Mr. Desai contends that once the basis is thus determined, it is not competent to the Municipality to lay down any principles for working out this basis. That, according to Mr. Desai, is the function exclusively assigned to the Chief Officer under s. 78. It is clear that under s. 78 the Chief Officer can ask some other Municipal officer to prepare an assessment list, and Mr. Desai had to concede that it would be competent to the Chief Officer to lay down principles for the guidance of the other officer whom he may ask to prepare the assessment list. But he says that when the Municipality itself laid down the rules, it virtually trespassed upon the exclusive jurisdiction of the Chief Officer. Mr. Desai invited our attention to the fact that in Act III of 1901, s. 63, which corresponded to present s. 78, it was the Municipality that was required to cause an assessment list to be prepared. Instead of the Municipality now s. 78 refers to the Chief Officer, and the whole basis of Mr. Desai's argument is, what may be competent to the Chief Officer to do is outside the competence of the Municipality itself. We are not prepared to accept this argument. The reason why "the Chief Officer" was used for "the Municipality" in s. 78 is not very difficult to find. If it was the Municipality that had to get the assessment list prepared under s. 78, the Municipality would necessarily have to do it by means of a resolution and that made the procedure unnecessarily cumbrous. That is why it was left to the Chief Officer instead of the Municipality to cause an assessment list to be prepared. When Mr. Desai seeks to make the Chief Officer a *persona designata* authorised to perform the special duties mentioned in s. 78, his argument overlooks the fact that the Chief Officer is not expected to do the work of

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preparing the assessment list himself, but in terms he is expected to get such a list prepared by some other Municipal servant. Therefore, in our opinion, apart from s. 58 (*j*) it would be perfectly competent to the Municipality to lay down principles for the guidance of its officers in preparing the assessment list under s. 78. In other words the impugned rule would be valid even if it is not in terms justified by s. 58 (*j*). If the Chief Officer while asking his subordinates to prepare the list could give such guidance, we see no reason why the Municipality itself could not. Mr. Desai has drawn our attention to s. 81, sub-ss. (*2*) and (*3*), and s. 84 (*1*) to emphasise the fact that throughout it is the Chief Officer who is mentioned and not the Municipality. That no doubt is true; but the reference to the Chief Officer in these sections cannot, in our opinion, denote that the Chief Officer alone can guide his subordinates in preparing the assessment list and not the Municipality. It may also be mentioned that if this objection is good, it renders all the rules invalid; because on Mr. Desai's contention all that the Municipality could do is to say whether they adopt the capital value or the annual letting-value as the basis under s. 75, and when that is done, the rest of the work must be left exclusively and solely to the Chief Officer. We do not think this contention is sound. Mr. Desai has sought to derive some assistance in support of his contention by reference to the judgment of this Court in *Prithviraj* v. *Lonavala Municipality.*[1] This case however, can have no application to the facts before us because the rule with which the Court was there concerned delegated the powers of the standing committee to the president and as such was clearly *ultra vires*. In our opinion, therefore, r. 3 (*2*) framed by the Amlner Municipality is not *ultra vires* as alleged by the plaintiff.

The result is, we confirm the decree passed by the trial Court by which it declared that the claim made by defendant No. 1 under its bill No. 3 was illegal and void and directed defendant No. 1 to pay to the plaintiff the amount of Rs. 18,934-11-0. We would, however, modify this part of the decree by reducing the rate of interest from 6 to 4 per cent. The other part of the decree by which the learned Judge declared that r. 3 (*2*) of the General Property Tax Rules is illegal and by which he issued an injunction restraining defendant No. 1 from making a claim or demand on the strength

[1] (1932) 35 Bom. L. R. 138.

of the said rules for subsequent years is set aside. Since the appeal has partly succeeded, we think the best order as to costs would be that parties should bear their own costs throughout.

C.A.: Rule discharged. No order as to costs.

Vyas J. One of the questions raised and argued before us in this appeal is whether the assessment-list prepared under s. 78 of the Bombay Municipal Boroughs Act, 1925 (Bom. Act XVIII of 1925), which does not state the valuation on which the property to be rated is assessed and which is not subjected to the procedure referred to in ss. 80 and 81 of the Act, is a valid assessment-list so as to create a liability on the tax-payers to pay the property rate. Mr. Kotwal for the appellant Municipality contends that it is a valid list and submits that the non-mention of the valuation of property (vide s. 78 (*1*) (*d*)) and non-compliance with the provisions of ss. 80 and 81 are matters of mere irregularities which would not render the assessment-list a nullity. On the other hand Mr. Desai for the respondent mills says that the assessment list prepared under s. 78 is only a draft list or provisional list which becomes conclusive and effective only after compliance with the procedure provided by ss. 80 and 81, that therefore the provisions of ss. 80 and 81 must be considered to be imperative and not merely directory provisions and that the non-mention of the valuation of the property as required by cl. (*d*) of sub-s. (*1*) of s. 78 is a defect not regarding a mere matter of form, but an infirmity which goes far deeper and cuts at the root of the fundamental basis of the assessment of the property rate, without which basis the tax-payers will not be in a position to understand how the rate is levied and will not therefore be able to object to the rate. Liberty of a tax-payer to object to the assessment-list is an integral part of the scheme of the Act and the effective exercise of that liberty is seriously affected by the omission to mention the valuation of property in the list made under s. 78.

The assessment list in this case is exhibit 68, and it is clear that the column No. 22 in it is blank. In other words, the valuation of property to be rated is not stated, although s. 78 (*1*) (*d*) requires that it shall be stated. It is also an admitted position in the case that no public notice of the list was given as required by s. 80 and therefore the persons claiming to be owners or occupiers of properties included

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in the list did not have an opportunity to inspect the list and make extracts therefrom. It is also admitted that no public notice as required by s. 81 for the making of objections was given, with the result that no objections from the tax-payers were received or heard and there was no authentication as required by s. 81 (4). Now, in support of the Municipality's contention that the above mentioned departures from the statutory provisions in respect of the assessment of, and liability to, rates on buildings or lands amount merely to irregularities which would not nullify the assessment-list, Mr. Kotwal has relied on the case of *The Queen* against *The Inhabitants of Fordham*(1). In that case, on July 3, 1838, a rate was made and allowed by the Magistrates, duly published, and afterwards partially collected. In this rate the properties rated were not numbered according to the schedule annexed to the stat. 6 and 7 Will IV, c. 96; but the numbers were for the most part wholly omitted, or else attached to the names of the occupiers instead of the properties. The columns intended for the number of votes were left entirely in blank. The names of many persons were inserted without any sums being carried out against them in the assessment. In many cases the column which should contain the name of the occupier was left entirely in blank, without even the word "ditto" under the name immediately preceding the blank; and the column which should contain the arrears due or excused was improperly left in blank. The appellants and others having refused to pay the sums for which they were therein rated, summonses were obtained against them August 7, 1838. The parties summoned appeared before the magistrates August 14, and three warrants of distress were granted, but not acted upon by the respondents, in consequence of their solicitor afterwards considering the rate bad and void. The parish officers of Fordham, considering the rate of July 3 a nullity, on August 21 ensuing made another rate. That rate had various defects on the face of it also. No entry was made under the head (c) of "Amount not recoverable, or legally execused." On appeal by the poor of the parish of Fordham, the sessions, on preliminary objections, quashed both the rates and referred the matter to the Court of Queen's Bench. The Court of Queen's Bench affirmed the first rate and set aside the order of the sessions by which the first rate was quashed. As the first rate was affirmed, the

(1) (1839) 11 Ad. & El. 73.

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order of the sessions regarding the quashing of the second rate was confirmed. Mr. Kotwal relies on this decision and argues that just as in that case the first rate was affirmed notwithstanding non-compliance with several particulars which were required to be stated by the form given in the schedule to the Act, so also here the assessment-list, exhibit 68, made under s. 78 was good in spite of non-compliance with the provisions of ss. 78 (*1*) (*d*), 80 and 81 of the Bombay Municipal Boroughs Act, 1925. Mr. Kotwal is not right in his submission. The section which came up for consideration of the Court of Queen's Bench was s. 2 of the Act to regulate Parochial Assessments (6 & 7 Will IV, c. 96); and s. 2 enacted that every poor-rate made after the period prescribed by that Act

> "shall, in addition to any other particular which the form of making out such rate shall require to be set forth, contain an account of every particular set forth at the head of the respective columns in the form given in the schedule to this Act annexed, so far as the same can be ascertained; and the churchwardens and overseers, or other officers whose duty it may be to make and levy the said rate, or such a number of the said churchwardens and overseers or other officers as are competent to the making and levying of the same, shall, before the rate is allowed by the justices sign the declaration given at the foot of the said form; and otherwise the said rate shall be of no force or validity."

In construing the scope of the words "and otherwise the said rate shall be of no force or validity" Lord Denman C. J. said that those words applied only to the signing of the declaration and did not apply to the non-compliance with the particulars referred to in the earlier part of the section. His Lordship went on to say (p. 83):—

> "...We shall do no violence to the language of the Act by confining the application of the clause in question to the case of non-signature of the declaration; and no bad consequence will follow: though, whether it was worth while to attach so much importance to this ceremony," (i. e. ceremony of signing the declaration) "it is not for me to say",

and concluded (p. 83):

> "...The sessions, therefore, were wrong in quashing the rate of the 3rd of July; for, though the act requires the other particular provisions to be complied with, the nullity of the rate must attach only to the provision which comes last."

Mr. Justice Patteson, agreeing with Denman C. J., observed that although stat. 6 & 7 Will. IV, c. 96, s. 2, did indeed provide that the rate "shall" contain certain particulars, it did

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not lay down what was to be the consequence of omitting such particulars, and said (p. 84):

"...We cannot say that the words 'otherwise the said rate shall be of no force or validity' apply to the whole : they must be taken to apply only to the case of a declaration not being signed."

Mr. Justice Williams also shared the above view and said that the consequence of nullity of the rate would arise only on the omission to sign the declaration.

Mr. Justice Coleridge's observations on the point are interesting. He said (p. 85):

"But, where the effect may be grammatically confined to the clause immediately preceding, and there is as good reason, so far as the language is concerned, for one interpretation as for the other, one may fairly look at the consequences of each interpretation, in order to determine the choice. Now in sect. 2 we find two distinct periods; at the end of the latter comes the clause in question: it may, therefore, grammatically, be applied to the latter alone as well as to both. Then, being at liberty to look at the consequences, we see that the doctrine contended for in support of the order quashing the first rate would lead to results most fatal to a large parish. Numerous requisites are prescribed; and we see how unimportant some of them are : and it is said that the whole rate is null and void, if the form fail to satisfy any one of them. But, if you confine the clause to the last requisite, the enactment becomes so reasonable and easy in practice that one is glad to find the construction admissible."

The important point in the decision in *The Queen* against *The Inhabitants of Fordham* was that the nullity clause of s. 2 of the Act to regulate Parochial Assessments was held to apply only to the non-signing of the declaration. But it is to be noted that the present case with which we are dealing is not a case in which it could possibly be said that the statute does not lay down what is to be the consequence of non-compliance with the procedure of ss. 80 and 81. The statute does say (see s. 81 (*6*)) that the entries in the assessment-list shall be conclusive only if the procedure provided by s. 80 and sub-ss. (*1*), (*2*), (*3*), (*4*) and (*5*) of s. 81 has been complied with. The words "entries in the assessment-list so authenticated and deposited" in sub-s. (*6*) of s. 81 necessarily presupposes the giving of public notices under ss. 80 and 81 (*1*) and the making of objections (s. 81 (*2*)), the hearing of objections (s. 81 (*3*), authentication s. 81 (*4*)) and deposit of the authenticated list (s. 81 (5)). Clearly, therefore, in the words of Lord Denman C. J., we shall be doing "Violence to the language of the Act" if we were to accept Mr. Kotwal's submission that non-compliance with the provisions of ss. 78 (*1*) (*d*), 80 and 81

amounts to mere irregularity and does not render the assessment-list a nullity. In the words of Mr. Justice Coleridge, in *The Queen* against *The Inhabitants of Fordham,* the nullity clause could be applied only to the non-signing of the declaration; but here it would be travesty of language to say that the clause "entries in the assessment-list so authenticated and deposited" (s. 81 (*6*)) applies only to cls. (*a*), (*b*), (*c*) and (*e*) of sub-s. (*1*) of s. 78. In fact s. 78 does not refer to authentication and deposit at all. Here, therefore, we are dealing with a case where the conclusiveness clause in respect of entries in the assessment-list applies to the procedure provided by all the ss. 78, 79, 80 and 81, sub-ss. (*1*), (*2*), (*3*), (*4*) and (*5*). In the English case cited above, some of the "numerous requisites" which were prescribed by s. 2 which was construed were "unimportant," and that circumstance weighed considerably with Lord Denman C. J. and Coleridge J. Here it need scarcely be said that the provisions regarding giving of notices, receiving and hearing of objections, amendment, authentication, etc. are all important provisions. Accordingly, *The Queen* against *The Inhabitants of Fordham* which has been pressed into service by Mr. Kotwal does not really help the appellant Municipality.

The Queen v. *Ingal,*[1] is also relied upon by Mr. Kotwal for the appellant Municipality. In that case the appellants were the occupiers of rateable property situate in a parish within the limits of the Valuation (Metropolis) Act, 1869. Section 42 of the Act enacts.

> "The overseers shall make and deposit the valuation list before June 1, ...and shall transmit the valuation list to the assessment committee not sooner than fourteen, and not later than seventeen days after notice is given of the deposit of such list; ...the assessment committee shall finally approve...the valuation list...before November 1;"

and special sessions might be held at any time after November 30 and before January 1. The overseers of the parish of All Saints, Poplar, made and deposited a valuation list for that parish on September 27, 1875. On October 18, 1875, the list was transmitted to the assessment committee of the Poplar Union. On December 7, 1875, at a meeting of the assessment committee to hear objections to the list, the appellants urged objections to the amounts at which their property was assessed and adduced evidence in support of the objections; and

[1] (1876) 2 Q. B. D. 199.

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after duly weighing and considering the objections, the assessment committee altered the valuation of the said premises, reducing it from 666l. gross, and 555l. rateable, to 550l. gross, and 460l. rateable. The assessment committee approved the valuation list as altered by them on January 4, 1876, and sent the list to be redeposited on January 7, 1876. The appellants gave notices of appeal to the assessment sessions before January 14, 1876. On January 21, 1876, the valuation list was finally approved by the assessment committee. On appeal it was held that the non-compliance with the various time limits for making, depositing, transmitting and approving the valuation list, as prescribed by s. 42 of the Valuation (Metropolis) Act, 1869, did not make the valuation list a nullity. Mr. Kotwal draws upon this authority for contending that the non-observance of the provisions of ss. 80 and 81 of the Bombay Municipal Boroughs Act, 1925, would not make the assessment-list made under s. 78 of the Act a nullity. Mr. Kotwal must fail in his submission for the reason that the facts in the English case were materially very different. There the appellants had full opportunity of appealing to the assessment sessions upon the merits of the case and the list was confirmed after hearing their objections. There, in the words of Mr. Justice Mellor: "The real question" was, "whether the valuation list of the parish of All Saints, after it had been approved on January 21, was a valid instrument," and his Lordship held that it ought not be treated as a nullity as the provisions of s. 42 of the Valuation (Metropolis) Act, 1869, regarding the time limits were, in his opinion, directory. His Lordship observed (p. 207):

> "The more reasonable construction is to hold that the terms of s. 42 are only directory, and that the valuation list was, after its final approval, a valid insrument."

In other words, the provisions regarding time limits for making, depositing, transmitting, etc., of the valuation list were considered to be relatively unimportant and what was held to be of importance was that the objections to the valuation list were received, heard and considered and *then*, and not till then, the list was finally approved by the assessment sessions. In the case before us, the provisions of the Act violated by the Municipality are not provisions in respect of mere time limits, but are provisions regarding receiving, hearing and disposing of objections to the assessment-list—precisely the provisions in the nature of those which were observed

(and not violated) in the English case. In our opinion, not only does this English case of *The Queen* v. *Ingall*[1] not help Mr. Kotwal in his contention that the violation of the provisions of ss. 80 and 81 constitutes a mere irregularity, but effectively negatives his another submission that the assessment-list made under s. 78 is by itself, i.e. irrespective of compliance with the sections that follow a valid assessment-list. *The Queen* v. *Ingall*[1] is an authority for holding that the assessment-list becomes a valid instrument only after its final approval after the hearing and disposal of objections against it urged by the tax-payers.

It is true that in *Ambalal Sarabhai* v. *Ahmedabad Municipality*[2] it was held by this Court that the absence of authentication on an assessment list, as required under s. 65 (*4*) of the Bombay District Municipal Act, 1901, did not by itself render the levy of the tax illegal. But, in our opinion, to rely on this case in the present context for the purpose of contending that the non-observance of the procedure of ss. 80 and 81 is not an illegality is to misapprehend the principle of its decision. What was held by Mr. Justice Shah sitting with Mr. Justice Crump was that the Municipality's failure to follow a certain procedure on certain fixed dates, in accordance with rule 74 of the rules framed by that Municipality, amounted, not to a mere irregularity, but to an illegality which vitiated the Assessment Register of the Municipality and entitled the plaintiff, who was the property owner, to recover what was levied from him by way of house and property tax in excess of what was payable by him at the beginning of the year. Mr. Justice Shah who disagreed with the two Courts below on the question as to the effect of the Municipality's violation of r. 74 observed (p. 52):

"If the rule is not *ultra vires* it is clear to my mind, from the provisions of this rule, that the intended increase in the house and property tax was to be notified to the house-owners concerned before March 1. All objections to the proposed increase were to be lodged in writing in the Municipal office before March 15, and the investigation was to be completed before April 1 and the payment of the tax for official year was to be considered due on that date. That is, in the present case, if the provisions of this rule had been duly followed, by April 1, 1911, all objections should have been considered and the amount payable for the year 1911-12 determined... The rule distinctly indicates that the amount payable for the year is the amount fixed at the commencement of the year. Unless the increased amount was determined in the manner contemplated by rule 74 the only amount that

(1) (1876) 2 Q. B. 199.

(2) (1920) 23 Bom. L. R. 48.

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could be said to be due by the owner for 1911-12 was the amount which was fixed for the next preceding year. I do not see anything unreasonable in this rule, and if it is consistent with the provisions of the present Act, I am of opinion that it should be given effect to. If effect is given to it, it follows that the levy of the increased tax for the year 1911-12 was not justified."

Thus this decision cannot reinforce an argument that the Municipality's breaking away from the procedure prescribed by ss. 80 and 81 is just irregular and will not render the assessment-list a nullity.

It is true, as I pointed out above, that while dealing with the point of want of authentication on the assessment-list Mr. Justice Shah said: "I do not see how the mere fact that the officer did not sign the list could affect the question as to whether the levy was legal or not;" but with very great respect, we are not able to see eye to eye with his Lordship in this regard. His Lordship's view on the point is, in effect, directly contrary to the observations of Mr. Justice Mellor in *The Queen* v. *Ingall* (at p. 207) that the valuation list becomes a valid instrument, after its final approval. So long as it is not a valid instrument, the levy of tax under it must obviously be illegal. Now, on construction of sub-ss. (*4*) and (*6*) of s. 81 it would appear that the authentication of the list imparts finality to it or signifies its final approval by the standing committee. Under sub-s. (*3*) the objections to the list are investigated by the standing committee and are disposed of. The decision of the standing committee is noted in a separate book maintained under sub-s. (*2*). If any amendments to the list are ordered by the standing committee, they are caused to be made in the list. The list so amended has obviously got to be finally approved, and that approval is signified by authentication of the list by the signatures of the Chairman of the Standing Committee and at least one other member of that committee. The persons authenticating the list have not merely to sign, but to certify 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 in the list. Clearly, therefore, it would appear that the authentication of the list is not a mere mechanical act of signing the list, but signifies the final approval of the list by the standing committee after the objections to it have been investigated and dealt with by the standing committee under sub-s. (*3*). In Ryde

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on Rating, 8th edn., at p. 869, we find the following observations:

"When the assessment committee have heard and determined all objections, and made such alterations, corrections and insertions as seem proper, they are to finally approve the list,"

and for that proposition reliance is put on U. A. C. Act, 1862, ss. 20, 21 and 14 Halsbury's Statutes 536, 537. 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.*[1] Similarly, after the standing committee have heard and disposed of the objections under sub-s. (*3*) (*a*) and made such amendments under sub-s. 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 effective. No tax can be legally levied in consequence of an ineffective or inconclusive list, and it must therefore follow from the spirit of the authorities—*The Queen* v. *Ingall.*[2] U. A. C. Act, 1862, ss. 20, 21, 14 Halsbury's Statutes, 536, 537 and *Lipton* v. *Shoreditch Assessment Committee*[1]—that the absence of authentication on the list would make the levy of the tax under the Act illegal. Accordingly we disagree, with great respect, with Mr. Justice Shah's view, expressed in *Ambalal Sarabhai* v. *Ahmedabad Municipality,*[3] regarding the effect of non-authentication of the assessment-list.

The next case to which Mr. Kotwal has drawn our attention is *Subbappa Mallappa* v. *Booni.*[4] There the Hubli Municipality published a new revised assessment-list under ss. 80 and 81 (*1*) of the Bombay Municipal Boroughs Act, 1925, on March 31, 1939. The plaintiff raised objections to the increased assessment and they were not considered until August 1939. On October 18, 1939, the plaintiff was informed of the result of the hearing of his objections, which was that he had to pay the increased assessment. The question that was agitated was whether the plaintiff's liability arose on April 1, 1939, or only when his objections were considered and disposed of and after a new assessment-list was made. It is true that in the course of his judgment Mr. Justice Dixit observed (p. 705):

"It is contended that the assessment-list does not become effective until it is made final, that is to say, until after the objections are considered and amendments made as contemplated by s. 81 (*3*) (*c*) and

[1] [1934] 2 K. B. 470.
[2] (1876) 2 Q. B. D. 199, 207.
[3] (1920) 23 Bom. L. R. 48.
[4] (1947) 50 Bom. L. R. 701.

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after the result of an appeal or a revision, if any, under section 110. We are unable to accept this contention : "

and ultimately concluded (p. 708):

"In our opinion, the liability to pay the tax arises independently of the objections or of the disposal of the objections..."

With great respect, we consider these observations *obiter*. The point that arose for decision in that case was whether the assessment-list which was revised in the middle of a year should be given a retrospective effect from the beginning of the year, i.e. from April 1, of that year. A question did not arise for decision as to what would be the effect of an assessment-list which is made under s. 78 and which is not subjected to the procedure of ss. 80 and 81. In any case, however, Mr. Justice Dixit's view that the liability to pay the tax arises independently of the objections or of the disposal of the objections is contrary to the judgment of Mr. Justice Mellor, whose view was shared by Mr. Justice Lush in *The Queen* v. *Ingall* that the valuation list was a valid instrument after its final approval. It is also contrary to the decision in *Lipton Ltd.* v. *Shoreditch Assessment Committee,* which went so far as holding that the assessment-list could not even be said to be "made" or to be effective until the stage of its final approval was reached after the hearing and determination of all objections to it. With respect, the above mentioned view of the English cases is consistent, in our opinion, with the principles of natural justice that no legal liability to pay a tax will be imposed on a property owner without giving him an opportunity to urge his objections to it, and, if he urges the objections, without considering those objections. Liberty to make an objection to an assessment-list is a statutory right of a tax-payer, and that right cannot be denied. If therefore a liability to pay tax were to arise as soon as an assessment-list is made under s. 78 and were to be enforced immediately thereafter—a result which would follow from Mr. Justice Dixit's view—the position would be that each time a tax-payer successfully objects against a list, he would be entitled to a refund of the amount paid in excess. In that case, no finality could be said to attach to the assessment-list which it would always be open and possible to tax-payers to challenge successfully. In our opinion, the Legislature could not have intended such a position. Therefore, with respect, we disagree with the above referred to view of Mr. Justice Dixit in *Subbappa Mallappa* v. *Bonni* and hold, in agreement

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with the submissions of Mr. A. G. Desai for the respondent, that the scheme of the Act, as would be only too apparent from the contextual sequence of ss. 78, 79, 80 and 81, is that the assessment-list made under s. 78 is only a draft list or provisional list, which becomes conclusive or effective, so as to create a legal liability on a tax-payer to pay, only after the hearing and determination of the objections urged against it by the tax-payers. To take a contrary view, i.e. to hold that the list made under s. 78 is itself a final or valid list, independently or irrespective of the objections to it or disposal of objections would, in effect, render the provisions of ss. 80 and 81 nugatory. Such a position is not countenanced by the English cases and, with respect, we think quite rightly.

Sholapur Municipality v. *Governor-General*[1] is relied upon for the Municipality, and our attention is drawn to Mr. Justice Lokur's observations (p. 754):

"But it clearly appears from s. 78 that the preparation of the assessment-list is essential to the arising of the debt..."

It would not follow, however, from these observations that the assessment-list made under s. 78 is by itself sufficient to create a liability and that the provisions of ss. 80 and 81 are of little or no substantial consequence. It is of course the basis of the liability but only the provisional basis and the liability finally arises when the procedure of ss. 80 and 81 is gone through. Indeed Mr. Justice Lokur himself in the above mentioned case says (p. 753):

"......s. 78 requires the Chief Officer to cause an assessment-list of lands and buildings in the Municipal Borough to be prepared with the details set out in sub-sfl (*1*). The preparation of such an assessment-list is incumbent on the Chief Officer, and after objections are heard, the list is to be finally settled and authenticated as required by s. 81, sub-s. (*4*). The assessment list thus prepared will continue for four years......"

Thus this authority also supports the respondent mills in their contention that the list made under s. 78 is only a provisional one which becomes conclusive only after objections are heard and decided and authentication is made.

In *Surat Municipality* v. *Chabildas*[2] the Municipality served upon the plaintiff a bill to recover the arrears of house-tax, which did not specify the time within which an appeal might be preferred, as required by s. 82, sub-s. (*2*), cl. (*b*), sub-cl. (*ii*), of the District Municipalities Act, 1901. On failure

[1] (1946) 49 Bom. L. R. 752. [2] (1914) 16 Bom. L. R. 749.

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to pay the arrears, the Municipality issued a notice of demand, and followed it up by the issue of a distress warrant. When the warrant was executed, the plaintiff paid up the amount of the arrears. He next filed a suit to recover it back from the Municipality. It was held, awarding the claim, that the procedure followed by the Municipality in recovering the amount of arrears was not a legal procedure inasmuch as the bill did not fulfill the statutory requirements of s. 82 (*2*) (*b*) (*ii*) of the Act; and the right of distress depended upon the observance of the statutory formalities, it being a right conferred only by the statute upon those conditions. In the course of his judgment Scott C. J. said (p. 754):

> "The whole right of distress depends upon the observance of the statutory formalities, it being a right conferred by the statute only upon those conditions."

In the case under appeal also, the right of the Municipality to levy a tax on property depends upon the observance of the various consecutive steps provided by the statute, the said steps being laid down in ss. 80 and 81, sub-ss. (*1*), (*2*), (*3*), (*4*) and (5). The right to levy a tax is conferred by the statute only when the list becomes conclusive after compliance with the provisions of ss. 80 and 81. In *Surat Municipality* v. *Chabildas* the only defect in the bill was that it did not specify the time within which an appeal might be preferred. Here, in the assessment-list exh. 68, the column of valuation of property was blank, a much more vital and serious defect than the non-specification of the period within which an appeal may be made. Mr. Kotwal has argued that since it was stated in the assessment-list that the tax was 20 per cent of the valuation, a tax-payer could, by rule of three, calculate for himself the valuation of the property. The argument must fail, for if it were a good one, it could have been contended for the Municipality in *Surat Municipality* v. *Chabildas* that the tax-payer concerned could have ascertained from other persons or from his legal adviser what the period for the appeal was. The point is that where a liability to pay tax is created by the observance of statutory formalities, those formalities must be fulfilled, and it is a statutory formality that the assessment-list made under s. 78 must mention the valuation of the property. In our opinion, therefore, on the authority of *Surat Municipality* v. *Chabildas*, the non-mention of the valuation of the property, by itself alone, would invalidate the list. Added to that circumstance, we have others

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here of far deeper significance, namely, the non-observance of the procedure of s. 80 and the various sub-sections of s. 81, which must doubtless vitiate the assessment-list and make it a nullity in law.

In *Shantaram Balaji* v. *Vengurla Municipality*[1] which was a case under the Bombay District Municipal Act, 1901, Chagla C. J. said in the course of his judgment (p. 413):

"Once the list is authenticated and becomes conclusive, it is that list alone which is determinative of the tax that the Municipality can impose on buildings or lands throughout the official year to which such list relates. The amount of the tax which the Municipality can levy can only be determined by looking at the list which has been authenticated and which has become conclusive under s. 65, and there is no dispute in this case that the revised list published by the Municipality was authenticated and became conclusive and did refer to the tax which was payable by the assessee for the official year 1944-45."

There is thus no doubt on this authority also that the assessment-list does not become determinative of the tax leviable on buildings or lands until it is authenticated and has become conclusive.

It is true that it has been laid down in many cases that rules and by-laws made by corporations of a public character should be benevolently interpreted. Where, however, a question arises of construction of fiscal provisions of a statute regarding the levy of a duty or tax, the language of the statute must be construed in its strict and literal signification. An authority on this point, if necessary, is the decision of this Court in *The Municipality of Bandra* v. *J. D. Dastur,*[2] in which the pertinent observations of Mr. Justice Wadia are:

"If the express words of the Act imposing the tax do not justify the demand which has been made upon the subject, a Court of law cannot in construing the enactment extend the words used in the enactment or give to them a meaning beyond their strict and literal signification so as to include within the meaning of the enactment cases which may come within its spirit."

There is no doubt that the provisions of ss. 78 to 81 are all fiscal in character since they are concerned with the levy of a tax and are required to be strictly followed. It is against

[1] (1950) 52 Bom. L. R. 411.

[2] (1942) Second Appeal No. 760 of 1938 (with Second Appeals Nos. 756 and 759 of 1938), decided by N. J. Wadia and Wassodew JJ., on February 25, 1942 (Unrep.).

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all principles of justice, equity and fairness that the tax-payers should not have any knowledge at all about an assessment-list and the first intimation to be sprung upon them should be the notice of demand of the tax. The scheme of the statute is not to take the subjects by surprise. The scheme is to give a notice to them, telling them what the valuation of the property is proposed to be put at and what tax is proposed to be levied from them on the basis of that valuation. The scheme is to invite their objections to the above proposals, consider those objections and then finalize the proposals. All this was not done by the Municipality, and it cannot get away with the deliberate breaches of statutory fiscal provisions under a cover of an argument that benevolent construction should be put upon the provisions and their breaches should be condoned. We must hold, for all the above stated reasons and on the above mentioned authorities, that the assessment-list exhibit 68 is a nullity and incapable in law of creating any liability on a tax-payer to pay a tax.

The next question argued before us is whether r. 3 (2) of the Amalner Municipal Borough General ' Property Tax (Consolidated Tax) Rules, 1947, is *intra vires* or *ultra vires* of the powers of the Municipality, and in that respect I am in agreement with the conclusion of my learned brother that it is *intra vires* of the powers of the Municipality.

The result is that the decree of the trial Court declaring that the claim made by the Borough Municipality of Amalner against the plaintiff mill under its bill No. 3 was illegal is confirmed and the Municipality is directed to pay a sum of Rs. 18,934-11-0 to the plaintiff. However, the rate of interest is reduced from 6 per cent., to 4 per cent. The remaining part of the decree of the trial Court declaring that r. 3 (2) of the Amalner Municipal Borough General Property Tax (Consolidated Tax) Rules is illegal and issuing an injunction to restrain the Municipality from making a demand on the strength of the said rule in subsequent years is set aside. As to the order of costs also, I agree with my learned brother.

Decree confirmed.

K. B. S.