APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Dixit.

THE GOPAL MILLS CO., LTD., (ORIGINAL PLAINTIFF) APPELLANTS *v.* THE BROACH BOROUGH MUNICIPALITY (ORIGINAL DEFENDANTS) RESPONDENTS.*

1955 Nov. 16

Bombay Municipal Boroughs Act, (Bom. XVIII) of 1925, ss. 75, 112 . 3 (2), 3 (8), 75, 76, 78, 80, 81, 111—Constitution of India, art. 14—Whether tax assessed on capital value within competence of Municipality—Whether taxation at higher rate on business and industrial premises offends against art. 14 of Constitution of India—Whether imposition of general sanitary cess, lighting tax and special educational cess as rate on land or building unlawful—Whether linking these taxes to property unlawful—Whether imposition of general sanitary cess on lands built upon ultra vires*—Whether imposition of taxes bad on the ground that resolutions of Municipality do not provide for mode of levying the taxes—Whether quantum of taxes can be challenged in Civil Court—Whether increase in taxes without following procedure laid down in ss. 75 and 76 valid—Whether Chief Officer has authority to amend list prepared under s. 78.*

The plaintiffs filed the suit against the defendant Municipality for a declaration that certain taxes levied by it were illegal, for injunction and refund of taxes recovered from the plaintiffs on the following grounds, viz.:—(i) that tax on property assessed on capital value was not within the competence of the State Legislature and, therefore, of the Municipality; (*ii*) that taxation to the extent that it imposed a higher rate on business and industrial premises offended against art. 14 of the Constitution of India; (*iii*) that it was in effect a tax on business which was not within the competence of the State Legislature and, therefore, of the Municipality; (*iv*) that the method of taxation adopted was unlawful inasmuch as the Municipality had imposed the general sanitary cess, lighting tax and special educational cess as a rate on land or building; (*v*) that the general sanitary cess, lighting tax and special educational cess were not related to the purpose for which they were collected inasmuch as they were linked with property; (*vi*) that the imposition of general sanitary cess on lands built upon was *ultra vires* in view of the definition of 'building' in s. 3 (*2*) and of 'land' in s. 3 (*8*); (*vii*) that the imposition of general sanitary cess, lighting tax and special educational cess was bad inasmuch as the Resolutions of the Municipality in that behalf did not provide for the selection of the tax and the mode of levying the tax as set out in the four sub-cls. of s. 75 (*a*); (*viii*) that some of the items of properties were wrongly assessed as business premises although they should have been assessed as residential premises and some items were assessed as property although they should have been assessed as separate tenements; (*ix*) that the general sanitary tax, lighting tax and the special educational cess were increased from time to time without following the procedure laid down under ss. 75 and 76; and (*x*) that the Chief Officer of the Municipality had no authority to amend the list once it was completed under s. 78:—

Held, (*i*) that the tax on capital value levied by the Municipality was only a mode of imposing it, it was not a tax on capital assets and was not *ultra vires;*

* First Appeal No. 28 of 1933 with First Appeals Nos. 123, 134, 136, 381 and 418 of 1953.

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Ahmedabad Municipality v. *Gordhandas*,[1] relied upon.

(*ii*) that there was a rational basis for the classification of business and industrial premises and residential premises and the resulting difference or discrimination did not, therefore, offend against art. 14 of the Constitution of India;

(*iii*) that the tax was independent of any profits made in the business carried on in the particular premises; in reality the tax was in its nature a property tax and not a tax on business;

(*iv*) that having regard to the scheme of the Bombay Municipal Boroughs Act, 1925, and particularly the language of ss. 75 and 112, the Municipality had the power to impose a tax in the form of rate on land or buildings; and there was nothing in s. 73 which limited the power with regard to any of the taxes mentioned in that section;

Bandra Municipality v. *Vanechand Punamchand*,[2] dissented from.

Municipality of Ahmedabad v. *Ahmedabad Mfg. and Calico Printing Co.*,[3] *and Shidrao Narayanrao* v. *The Municipality of Athani*,[4] referred to.

(*v*) that if the amount of tax was utilised for the purpose mentioned in the Act it was immaterial how the tax was collected; and linking the tax to property may be the most convenient mode of collecting it;

(*vi*) that when power is conferred upon the Municipality to assess the general sanitary cess on a building it is open to the Municipality for the purpose of valuation to value the land on which the building stands;

(*vii*) that the Resolutions of the Municipality referred to the rules with regard to the imposition of general sanitary cess, lighting tax and special educational cess and the method by which they were to be levied, the principle of incorporation by reference applied and the rules must be deemed to be a part of the Resolutions;

(*viii*) that the Bombay Municipal Boroughs Act, 1925, having set up a special machinery for deciding questions as to the quantum of tax, the jurisdiction of the Civil Court was excluded;

M. S. Bhopshetti v. *B. V. Bhat*,[5] distinguished.

Secretary of State v. *Mask & Co.*,[6] and *Raleigh Investment Co., Ltd.*, v. *Governor General*,[7] referred to.

(*ix*) that as the Legislature regarded an increase in the tax as an imposition of a tax the procedure laid down under Ch. VII of the Bombay Municipal Boroughs Act, 1925, had to be followed; the Municipality not having followed it, the imposition of the increase in the tax was illegal;

Cantonment Board, Poona v. *Western India Theatres*,[8] referred to.

(*x*) that there was no provision in the Bombay Municipal Boroughs Act, 1925, enabling the Chief Officer to amend the assessment list prepared under s. 78 and in respect of which notice was given; the assessee was, therefore, not liable to pay the tax on the basis of an assessment list which was unauthorisedly altered and amended by the Chief Officer.

FIRST Appeal against the decision of R. K. Saklikar, Esquire, Civil Judge, Senior Division, Broach.

The facts are sufficiently set out in the Judgment.

Rajni Patel, with *Vithalbhai B. Patel*, *R. H. Thakore* and *B. G. Thakore* for the Appellants.

D. V. Patel, and *I. C. Bhatt*, for the Respondent.

1. (1953) 55 Bom. L. R. 1028.
2. (1933) 35 Bom. L. R. 599.
3. (1939) 41 Bom. L. R. 1015.
4. (1942) 44 Bom. L. R. 849.
5. (1939) 42 Bom. L. R. 223.
6. (1940) L. R. 67 I. A. 222.
7. (1947) 49 Bom. L. R. 530, P. C.
8. (1953) 56 Bom. L. R. 45.

Chagla C. J.—These six First Appeals raise common questions of municipal taxation, under the Bombay Municipal Boroughs Act, 1925. We will first deal with First Appeal No. 28 of 1953 which arises out of a Special Civil Suit No. 4 of 1951 which was filed by the plaintiffs on April 7, 1951. In that suit the plaintiffs prayed for a declaration that certain taxes imposed by the Broach Municipality were illegal. They asked for an injunction restraining the Municipality from recovering these taxes and they also asked for a refund of taxes for the year 1950-51 which they had paid under protest and also refund of part of the amount of taxes paid for the year 1949-50. Bills were submitted by the Broach Municipality to the plaintiffs on July 20, 1950, and these bills were for taxes for 1950-51 and for arrears of part of the taxes for the year 1949-50 in respect of properties used for industrial purposes. The plaintiffs paid the amounts claimed under the bills under protest between October 23, 1950, and December 19, 1950. The amounts paid were approximately Rs. 41,000 including distress warrant fee of about Rs. 1,856. They served upon the municipality a statutory notice under s. 206-A of the Municipal Boroughs Act on December 21, 1950, and filed the suit out of which this appeal arises. The learned trial Judge gave relief to the plaintiffs in respect of the general sanitary cess which had been imposed on the land belonging to the plaintiffs on the ground that no sanction had been obtained for sanitary cess on the land from Government. He also gave relief to the plaintiffs in respect of arrears for 1949-50 relating to a tax on industrial premises, and the reason why this relief was given was stated by the learned Judge to be that the demand made was illegal because in that year the Municipality's machinery to levy this tax was not ready. He, therefore, gave a declaration with regard to these two taxes and also decreed a refund to the extent of Rs. 7,287-15-0. He dismissed the plaintiffs' suit with regard to the other contentions and with regard to the claim for refund to the extent of Rs. 33,436-14-0. The plaintiffs failed in substantiating their claim that the house tax levied by the Municipality was illegal, that the general sanitary cess on buildings and on land under buildings was illegal, that the lighting tax imposed by the Municipality was illegal, and the special educational cess was illegal. The plaintiffs have now come in appeal in respect of the reliefs which were refused to them by the trial Court.

A certain background to this controversy has got to be stated in order to appreciate what the contentions of the appellants are. On October 30, 1912, Government by a resolution gave sanction to the Municipality to levy house tax on the market value on buildings and the assessment was to be according to the schedule to this resolution. On December 23, 1931, the Government passed another resolution giving sanction to the

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Municipality to substitute the word "capital" for the word "market". Therefore, the tax was to be on the capital value and not on the market value of the buildings. On April 29, 1944, Government by a resolution sanctioned the levy of a general sanitary cess on buildings and the rate was to be 8 annas on every rupee of the house tax. On February 20, 1947, Government by a resolution sanctioned house tax on capital value of lands and buildings and by this resolution they also increased the rate of house tax. They also sanctioned the imposition of a lighting tax which was to be 25 per cent of the house tax, and they also sanctioned the imposition of a special education cess which was to be 50 per cent of the house tax. On December 5, 1949, Government by a resolution sanctioned a house tax on business premises and industrial premises and the tax was to be assessed at a special rate of one and a half times the house tax on non-industrial and business premises. On February 20, 1950, Government by a resolution sanctioned an increase in the rate of house tax. These taxes have been challenged before us by Mr. Rajani Patel on behalf of the appellants on various grounds, and we now proceed to consider the grounds urged by Mr. Rajani Patel before us.

The first ground is that the tax on property being assessed on capital value was not within the competence of the State Legislature and, therefore, not within the competence of the Municipality to impose. The contention is that this is not a tax on property but on capital assets. This very contention was urged before a Division Bench of this Court in *Ahmedabad Municipality* v. *Gordhandas*,[9] and that contention was rejected. That Division Bench pointed out, and with respect rightly, that the tax on capital value was a mode of imposing the tax and not the nature of the tax itself, and for that purpose they relied on the explanation to s. 75 of the Municipal Boroughs Act, which explanation provides :

> "In the case of lands the basis of valuation may be either capital or annual letting value."

This decision is binding on us and apart from its being binding on us we, with respect, agree with the view taken by the learned Judges.

The next contention which has not been very seriously pressed is that the taxation to the extent that it imposed a higher rate on business and industrial premises offends against art. 14 of the Constitution. It is suggested that if a discrimination is made between residential premises and business and industrial premises, the assessee owning industrial or business premises is denied equality before the law. It is clear

9. (1953) 55 Bom. L. R. 1028.

that there is a rational basis for the classification between business and industrial premises and residential premises, and if a higher rate of tax is imposed upon business and industrial premises it is pursuant to a classification which is clearly rational, and if the classification is made on a rational basis then the resulting difference or discrimination cannot be said to offend against art. 14 of the Constitution. In this connection Mr. Thakore, who appears in two other appeals where similar questions arise, has also attempted to argue that this was a tax on business which was not within the competence of the State Legislature and, therefore, of the Municipality. It is difficult to understand how this tax can be considered to be a tax on business. The tax is independent of any profits made in the business carried on in the particular premises. The tax would be imposed even if the business made a loss. Therefore, it is clear that the real nature of the tax is property tax and not tax on business.

The next contention of Mr. Rajani Patel is that the method of taxation adopted by the Municipality is unlawful, and briefly the argument put forward by Mr. Rajani Patel is that it is not open to the Municipality in respect of general sanitary cess, lighting tax and special educational cess to impose it as a rate on land or building. In order to understand this contention we must look at the scheme of the Municipal Boroughs Act. Section 73 gives a list of taxes which can be imposed by the Municipality, and as has been pointed out, appropriate expression seems to have been used with regard to the different taxes which the Municipality can impose. They are either described as a rate, a tax, a toll, an octroi, a cess, depending upon the nature of the tax, and in all 13 taxes are enumerated under this section. Under sub-cl. (*i*) the tax which is commonly known as property tax is described as a rate on buildings or lands or both situate within the municipal borough. Sub-clause (*viii*) refers to a general sanitary cess for the construction and maintenance of public latrines, and for the removal and disposal of refuse. Sub-clause (*xi*) is a lighting tax, and sub-cl. (*xiii*) is a special educational tax. Sub-clause (*x*) refers to a general water rate or a special water rate or both for water supplied by the municipality, which may be imposed in the form of a rate assessed on buildings and lands or in any other form, including that of charges for such supply, fixed in such mode or modes as shall be best adapted to the varying circumstances of any class of cases or of any individual case. What is urged is that whenever the Legislature intended to confer upon the Municipality the power to levy a tax by means of a rate on buildings or lands, the Legislature has clearly indicated that power in s. 73. Sub-clause (*i*) itself deals with the rate

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on buildings and there could be no doubt or difficulty about the power of the Municipality to impose a rate on buildings or lands. Then in the case of the general water rate, again the Legislature has clearly indicated that that rate may be imposed in the form of a rate assessed on buildings or lands or in any other form. But barring this, with regard to other taxes no power has been conferred upon the Municipality to impose other taxes in the form of a rate assessed on buildings or lands, and, therefore, it is urged that a general sanitary cess or a lighting tax or a special educational cess cannot be imposed in the form of a rate on lands or buildings. Attention is then drawn to sub-cl. (*c*) of the proviso which says :

"(c) the municipality in lieu of imposing separately any two or more of the taxes described in cls. (*i*), (*viii*), (*x*) and (*xi*), may impose a consolidated tax assessed as a rate on buildings or lands or both situated within the municipal borough."

It is, therefore, pointed out that apart from the taxes mentioned in sub-cls. (*i*) and (*x*), viz. rate on buildings or lands and general water rate, it is only when the Municipality consolidates any two or more of the taxes described in sub-cls. (*i*), (*viii*), (*x*) and (*xi*) that it has the power to impose a consolidated tax in the form of a rate on buildings or lands. But apart from the taxes mentioned in sub-cls. (*i*) and (*x*) and apart from the case of consolidation which can only arise in the case of taxes mentioned in cl. (*c*) of the proviso, the Municipality has no power to impose a tax in the form of a rate on lands or buildings.

In advancing this argument the distinction between the imposition of a tax and the mode of imposition is overlooked. Section 73 primarily deals with the power of the Municipality to impose tax and it may be that in the case of some taxes it has also indicated the mode in which the tax may be levied. But we do not find any prohibition in s. 73 preventing the Municipality from imposing a general sanitary cess or a lighting tax or a special educational tax in the form of a rate assessed on buildings or lands. Mr. Thakore is right when he contends that when you are dealing with a local authority, any power to tax must be expressly conferred upon it and if any power is not conferred, by implication the Court must come to the conclusion that the local authority is prevented and precluded from exercising that power. That principle would apply to the taxes enumerated in s. 73. The power of the Municipality to impose taxes is limited to the taxes mentioned in s. 73, and it would not be proper by implication to extend the power conferred upon the Municipality under s. 73. But as we said before, it is one thing to say that the Municipality has the power to impose certain taxes and has no power to impose other taxes; it is entirely a different thing to say that

the Municipality cannot impose the tax in a particular manner because the Legislature in the section dealing with imposition of taxes has not indicated that mode.

Turning to the scheme of the Act with regard to the mode of levying taxes, cl. (c) of the proviso to s. 73 to which reference has been made, in our opinion, merely deals with consolidation of two or more taxes and it provides that the consolidated tax may be assessed as a rate on buildings or lands or both situate within the municipal borough. It is impossible to read in this clause a prohibition against the Municipality assessing any other tax mentioned in s. 73 as a rate on buildings or lands. Section 85 may also be looked at in this connection. That section provides :

> "A tax imposed in the form of a rate on buildings or land or both shall be leviable primarily from the actual occupier of the property upon which the tax is assessed if he is the owner of the property, or holds it on a building or other lease from the Government or from the municipality, or on a building lease from any person."

It also provides how the tax shall be otherwise primarily levied. Then s. 112 makes all sums due on account of any tax imposed in the form of a rate on lands or buildings or both as a first charge upon the building or land. But the section which is most relevant in this connection is s. 75 which lays down the procedure which the Municipality has to follow preliminary to imposing tax, and that section applies to imposition of every tax mentioned in s. 73 and the procedure provided is that the Municipality has to pass a resolution at a general meeting to select for the purpose one or other of the taxes mentioned in s. 73 and approve rules prepared for the purposes of cl. (*j*) of s. 58, prescribing the tax selected, and in such resolution and in such rules specify.....Then follow four sub-clauses :

> (*i*) The classes of persons or of property or of both, which the Municipality proposes to make liable, and any exemptions which it proposes to make ;
>
> (*ii*) the amount or rate at which the Municipality proposes to assess each such class ;
>
> (*iii*) 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
>
> (*iv*) all other matters which the State Government may require to be specified therein.

Therefore, with regard to any tax it is open to the Municipality to specify either the class of persons or of property or of both, which the Municipality proposes to make liable, and also the amount or rate at which the property, if the Municipality proposes to make property liable, should be assessed, and further if the Municipality decides on levying the tax in the form of a rate then the basis for valuation of the property. This section makes no distinction between one type of tax and

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another. The procedure must be followed with regard to all taxes and it is open to the Municipality to decide by resolution and rules how the taxes should be levied. In our opinion, s. 75 clearly indicates that wide power is conferred upon the Municipality to determine upon the mode of collecting a particular tax, and there is nothing in s. 73 which limits the power conferred upon the Municipality under s. 75 with regard to any of the taxes mentioned in s. 73.

A question as to the construction of s. 112 came up before Mr. Justice Rangnekar in *Bandra Municipality* v. *Vanechand Punamchand*,[10] and that learned Judge took the view that s. 112 only applied to a house tax. With respect to the learned Judge, he overlooks the clear language of s. 112, viz. all sums due on account of any tax imposed in the form of a rate on lands or bulidings. It did not refer to taxes which were imposed as a rate on buildings or lands used in the language of s. 73 (*i*). It should also be noted that ss. 78 to 89 are under a Chapter headed "Assessment of and liability to rates on buildings or lands", and although the heading refers merely to rate on buildings or lands, the view has been taken by Sir John Beaumont in *Municipality of Ahmedabad* v. *Ahmedabad Manufacturing, and Calico Printing Co.*,[11] that the whole of the Chapter and ss. 78 to 89 not only apply to assessment of and liability to rates on buildings or lands, but also to taxes in the form of rates on buildings or lands. The view taken by Mr. Justice Ranganekar in *Bandra Municipality* v. *Vanechand Punamchand*,[12] was dissented from by Mr. Justice Wassoodew in *Shidrao Narayanrao* v. *The Municipality of Athni*.[13] In our opinion, looking to the scheme of the Act and particularly the language of s. 75 and the language of s. 112, it is clear that the Municipality has the power to impose any tax in the form of a rate on lands or buildings, and if such a tax is imposed then the provisions of the Act in ss. 78 to 89 would apply and such a tax could be recovered as a first charge under s. 112.

It was also urged by Mr. Rajani Patel that a tax must be related to the purpose for which it is collected. It is said that the purpose of a general sanitary cess is the construction and maintenance of public latrines and for the removal and disposal of refuse as provided in the Act. A lighting tax is for the purpose of affording lighting facilities to the persons resident within the borough, and a special educational tax is for the advancement of education of the citizens of that borough, and it is, therefore, pointed out that if the tax is linked with property the purpose of the tax would not be served. It is rather difficult to understand this argument. If the amount of

10. (1933) 35 Bom. L. R. 599.
11. (1939) 41 Bom. L. R. 1015.
12. (1933) 35 Bom. L. R. 599.
13. (1942) 44 Bom. L. R. 849.

the tax collected is utilised for the purpose mentioned in the Act, it is entirely a matter of indifference as to how that tax is collected. Linking the tax to property may be the most convenient mode of collecting it. There is no suggestion in the matter before us that the Municipality in fact did not utilise the tax for the purpose for which it was levied.

The next contention is that the general sanitary cess is illegal in respect of land which is built upon, or, to use different language, it is illegal in respect of land which is under the buildings constructed thereon. The only authority that this Municipality has is to impose a general sanitary cess on buildings, and attention is drawn to the definition of "building" and of "land" in the Act. "Building" is defined in s. 3 (*2*) as including any hut, shed or other enclosure, whether used as a human dwelling or for any other purpose, and also including walls, compound walls and fencing, varandahs, etc. It will be noticed that this is an inclusive and not an exhaustive definition. "Land" is defined in s. 3 (*8*) as including land which is built upon or covered with water. From these two definitions the contention is put forward that if you have a land which is built upon, then it falls within the definition of "land" and not within the definition of "building", and if the only power that the Municipality has is to impose general sanitary cess on buildings and not on lands, to the extent that the Municipality has imposed tax on lands built upon, the exercise of that power is *ultra vires*. What the Municipality has done is that in valuing buildings it has valued the land on which the building stands. It is difficult to understand how a building can be valued divorced from the land on which it stands, and the objection really is to the valuation of the land along with the building. In the context "land" may include land which is built upon, but from that it does not follow that land which is built upon would not also fall within the definition of "building". The two definitions "building" and "land" are not necessarily mutually exclusive. Both are inclusive; neither is exhaustive; and when power is conferred upon the Municipality to assess general sanitary cess on building, it is difficult to accept the contention that for the purpose of valuation the building should be looked upon as detached from or divorced from the land on which it stands. In our opinion, there is no substance in this contention.

The contention is then put forward that the imposition of general sanitary cess, lighting tax and special educational cess was bad in its inception because the preliminary procedure laid down in s. 75 was not followed. We have already drawn attention to what is the procedure to be followed by the Municipality before imposing a tax under s. 75. With regard to the general sanitary cess, a resolution was passed by the Municipality on August 6, 1943, and the resolution provided that the rules

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suggested by Government with regard to the imposition of general sanitary cess should be approved, and the rules provided for the method of imposition of this tax and one of the important rules was that the general sanitary cess will be levied on all houses which are subject to a house tax at the rate of 8 annas per rupee imposed by the Municipality. What is urged is that the resolution itself does not provide for the selection of the tax and the mode of levying the tax as set out in the four sub-clauses of s. 75 (*a*). It is urged that the Municipality must solemnly go through the procedure of setting out in the resolution what already appears in the rules. We have had occasion recently to decide that s. 75 requires a substantial compliance with the procedure laid down in s. 75. Failure to observe literally and technically what s. 75 requires would not be a breach of the important requirements necessary under s. 75 before a tax can be imposed. The principle of incorporation by reference is a well accepted principle in statutes or documents, and if the resolution refers to the rules, then the rules must be deemed to have been incorporated in the resolution. Therefore, instead of solemnly setting out the rules over again in the resolution, the resolution refers to the rules and makes the rules a part of the resolution.

It is then said that even the rules do not set out the provisions with regard to the levying of the house tax. At this date the rates in force with regard to the levying of the house tax was the same as sanctioned by Government in 1912 and which formed part of the Schedule to the House Tax Rules, and the rules framed by the Municipality with regard to the general sanitary cess expressly mentioned that the general sanitary cess will be levied on all houses which are subject to the house tax at the rate of 8 annas per rupee imposed by the Municipality. Therefore, here again, we have incorporation of the Schedule dealing with the house tax in these rules, and there is equally no force in the contention that these rules should have contained an identical schedule setting out the rates of house tax. It is said that by not incorporating this schedule when the rules were forwarded to Government for sanction under s. 76 the schedule was not forwarded to Government, and, therefore, Government could not apply its mind to what was the quantum of tax which was being collected under the heading "general sanitary cess". It is indeed taking a very poor view of the responsibilities of Government that when these rules were forwarded and when these rules expressly referred to the house tax and the rates at which it was being imposed by the Municipality, the Government did not apply its mind to the schedule which they themselves had sanctioned.

The position is identical with regard to the lighting tax and the special educational cess. The same objection is raised that

the procedure laid down in s. 75 was not followed, and the answer to that objection is the same we have given with regard to the general sanitary cess. In passing both the resolutions which were passed on October 8, 1946, the Municipality has substantially complied with the requirements of s. 75, and although the resolutions may not have specifically mentioned all that is required by s. 75, there was a clear reference to these topics by incorporation of rules.

The next contention urged by Mr. Rajani Patel is much more substantial. What is urged is that with regard to the general sanitary cess, the lighting tax and the special educational cess, they were increased from time to time without following the procedure required to be followed under s. 75 and s. 76. The Municipality has taken the view that because these three taxes were linked to the house tax and they were to be levied at a certain percentage of the house tax, whenever the house tax was increased, automatically there could be an increase in these three taxes. This view of the Municipality is obviously erroneous. When a tax is imposed, apart from the resolution that the Municipality has to pass, the rules have to be published, an opportunity has to be given to the inhabitants to object to the imposition, Government have to consider the rules, and after considering the rules they have to be sanctioned, and finally under s. 77 after the Government has sanctioned the rules the sanctioned rules have to be published with a notice as to when the tax will come into force. Admittedly, in the case of these three taxes, although there was an increase as a result of the house tax being increased, the procedure under ss. 75, 76 and 77 was not followed. There was no resolution, no rules were framed, there was no publication, no opportunity to the residents to object, no sanction obtained from Government, and no final publication of the sanctioned rules with the notice required under s. 77. Section 60 of the Act provides:

"(1) Subject to the requirements of cl. (*a*) of the proviso to s. 58 a municipality may, except as otherwise provided in cl. (*b*) of the proviso to s. 103 at any time for any sufficient reason, suspend, modify or abolish any existing tax by suspending, altering or rescinding any rule prescribing such tax."

Our High Court in *Cantonment Board, Poona* v. *Western India Theatres,*[14] has held that the expression "modify" includes "to increase". And sub-s. (*2*) of s. 60 provides :

"(2) The provisions of Chapter VII relating to the imposition of taxes shall apply so far as may be to the suspension, modification or abolition of any tax and to the suspension, alteration, or rescission of any rule prescribing a tax".

Therefore, the Legislature really looks upon an increase in the tax as an imposition of a tax and it expressly provides that the

14. (1953) 56 Bom. L. R. 45.

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procedure laid down under Chapter VII, which is the Chapter dealing with Municipal taxation, should be followed not only in the case of the imposition of a new tax but also when a tax already imposed has been increased.

When we look at some of the other sections of the Act, it will become clear that the Legislature was at pains to emphasise that whenever there was an increase under any of the provisions of the Act, a proper notice should be given to those who would be affected by the increase and a certain procedure has to be followed. For instance, under s. 77-A (*1*) the State Government may by notification empower any municipality to levy any tax imposed by such municipality under s. 73 within such maximum and minimum limits either as to the amount or the rate as may be specified in such notification. Sub-section (*3*) provides :

"(3) When a municipality has by a resolution passed under sub-s. (2) decided to increase or reduce the amount or rate at which any tax is leviable, the municipality shall publish in the municipal borough the resolution together with notice specifying a date, which shall not be less than one month from the date of publication of such notice, from which the amount or rate at which any tax is leviable shall be increased or reduced."

Under s. 103, which confers upon the State Government the power to require the municipality to impose taxes, the procedure is laid down for the State Government to take into consideration any objection which the municipality or any inhabitant of the municipal borough may make against the imposition or enhancement of such tax. We are surprised that the Broach Municipal Borough should have taken the view that when these three taxes were being enhanced it was open to the Municipality to do so without complying with any procedure which would give notice to the inhabitants or which would give them an opportunity to raise objection to the enhancement. The rather half-hearted contention of Mr. D. V. Patel on behalf of the Municipality that by reason of the sanction already given by Government to the levying of these taxes at a particular percentage of the house tax, it justified the Municipality in not obtaining the further sanction of Government, is entirely untenable. What the Government sanctioned was the levying of these three taxes on the basis of the house tax as it then stood. These taxes were linked to the house tax, but not indefinitely and not for all time to come. There was nothing in the resolution to suggest that Government had sanctioned that if the house tax was increased, necessarily the quantum of these three taxes would also increase. It was incumbent upon the Municipality to forward the proper resolution and rules under s. 75 to Government for consideration, and the Government may well have taken the view that although a case had been made out for the increase of the house tax, no case was

made out for the increase of these three taxes. Therefore, in our opinion, the imposition of increase in these three taxes after these three taxes were originally sanctioned by Government is illegal and not justified by the provisions of the Municipal Boroughs Act. Therefore, the appellants are entitled to succeed to the extent that in 1950-51 they have been compelled to pay an increase in these three taxes over and above the rate originally fixed with regard to the imposition of these taxes.

With regard to the increase in the house tax itself, no objection can be taken on the ground that the procedure laid down in ss. 75, 76 and 77 was not followed. But the objection to the increase of this tax is based on different considerations and the attack is made from a different angle. What is urged by Mr. Rajani Patel is that the provisions laid down in the Chapter dealing with assessment of and liability to rates on buildings or lands were not complied with when the house tax was increased and the appellants were compelled to pay this increased tax. The main and substantial non-compliance which is relied upon is that there was no standing committee constituted at the relevant date and in the absence of the standing committee the provisions of these sections could not be complied with. A few dates may be mentioned in connection with this argument. The rules with regard to the constitution of a standing committee under s. 58 were framed on February 22, 1950, and the standing committee was appointed for the first time on April 22, 1950. The assessment list for the year 1950-51 was completed on February 20, 1950, and a public notice was given under s. 80 on the same day. The Government gave sanction to the increase in the house tax on February 20, 1950, and the evidence shows that the Chief Officer amended the assessment list which was completed under s. 78 so as to bring the assessment in conformity with the increased rate sanctioned by Government. The assessment list was authenticated by the Standing Committee on August 5, 1950, after the bills against the appellants were issued on July 20, 1950, and the payment of the taxes claimed under these bills was made under protest between October 23, and December 19, 1950. What is pointed out is that under s. 81 objections to the assessment had to be made to the standing committee and the standing committee has got to consider the objections and decide them. It is, therefore, said that if there was no standing committee at all till April 20, 1950, the public notice being given on February 20, 1950, the proper authority to which objection could have been made by the assessee was not constituted. It is also pointed out that the authentication by the standing committee was after the bills were issued and, therefore, the demand for tax contained in the bills was not a legal demand. It is pointed out that our Court has held that "assessment" means the actual

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sum for which the tax-payer is liable and in respect of which a bill is issued. See *Ankleshwar Municipality* v. *Chhotalal*.[15] It has also been pointed out by our Court in *Amalner Municipality* v. *Pratap Mill*,[16] that non-compliance with the provisions of ss. 78 to 81 is fatal. Therefore, it is urged that the failure to constitute a standing committee as required by the Act clearly resulted in a non-compliance with s. 81 and, therefore, the demand for taxes under the bills was illegal.

As against this Mr. D. V. Patel has drawn attention to the fact that a bill could only be submitted for the sum claimed as due, and assuming that the tax was not due when the bills were issued, the only consequence would be that the Municipality would not be entitled to avail itself of the special mode of recovery of municipal claims provided by Chapter VIII of the Act. But it is urged that even so there would be nothing to prevent the Municipality from filing a suit to recover its claims under s. 203 of the Act, and, therefore, Mr. D. V. Patel argues that the material date which we must consider in order to decide whether the appellants are entitled to claim refund is the date when the payment was made and if the payment was made in October 1950 after the assessment list had been properly authenticated the appellants could not possibly urge that at that date the imposition of the tax was illegal. Mr. D. V. Patel has, therefore, to concede that to the extent that the Municipality claimed Rs. 1,856-2-0 as the cost of coercive measures adopted by it under Chapter VIII, to recover these taxes from the appellants, the appellants would be entitled to a refund. With regard to the failure to constitute a standing committee, Mr. D. V. Patel has pointed out that the Broach Municipal Borough had a managing committee under the District Municipal Act and the powers and functions of the managing committee under that Act were almost identical with the powers and functions of the standing committee under the Municipal Boroughs Act, and under s. 5 of the Act appointments made under the District Municipal Act were to continue unless their continuance was in any way inconsistent with the provisions of the Municipal Boroughs Act. Therefore, Mr. D. V. Patel argues that the managing committee continued under s. 5 of the Municipal Boroughs Act, that it could perform all the functions of the standing committee, that the record shows that in fact it did perform those functions, and there was nothing illegal in its doing so. It was only when rules were framed under s. 58 and the new standing committee was appointed that that standing committee took the place of the managing committee under the District Municipal Act. Mr. D. V. Patel has drawn our attention to the minute book of the

15. (1954) 57 Bom. L. R. 547. 16. (1951) 54 Bom. L. R. 421.

managing committee where the words "managing committee" are scored off and the words "standing committee" are substituted, and the resolution of February 20, 1950, sanctioning the valuation and the assessment has been passed by this standing committee. If the objection to the assessment only consisted in the failure of the Broach Municipality to appoint a standing committee as required by the Act, we would seriously have considered whether the contention of Mr. D. V. Patel should not prevail and whether we should not take the view that after due authentication in August 1950 the tax was due and the appellants could not resist the payment of the tax in October 1950.

But there is a more serious objection to the imposition of the increased house tax and we will now turn to consider that objection. Section 78 deals with the preparation of the assessment list and it provides what that list should contain, and one of the items is the amount of tax assessed on buildings or lands. Section 80 provides for the Chief Officer giving a public notice when the assessment list has been completed. Section 81 imposes a duty upon the Chief Officer that at the time of the publication of the assessment list under s. 80 he shall give public notice 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, and it further provides that in all cases in which any property is for the first time assessed or the assessment is increased, he shall also give notice thereof to the owner or occupier of the property, if known, and if the owner or occupier of the property is not known, he shall affix the notice in a conspicuous position on the property. Then sub-s. (2) of s. 81 provides how objections have to be made, sub-s. (3) provides for the hearing of objections by the standing committee, sub-s. (4) provides, after the objections have been disposed of, for the authentication of the list, and sub-s. (6) provides for the authenticated list being conclusive under the circumstances mentioned in that sub-section. In this case, as we have pointed out, the assessment list was completed on February 20, 1950, but it was completed on the basis of the old rates for house tax and not on the basis of the increased rates sanctioned by Government on that date. The Chief Officer gave a public notice as required by ss. 80 and 81, and that was also on the basis of the assessment list completed as pointed out. After the sanction was received, which was a few days after February 20, 1950, the Chief Officer took it upon himself to alter and amend the assessment list and it was on the basis of this amended assessment list that increased house tax was demanded from the appellants under the bills to which reference has been made.

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The question that has been agitated before us is whether the Chief Officer had any authority to amend the assessment list once it was completed under s. 78 and in respect of which notice was given under ss. 80 and 81. Mr. D. V. Patel has relied on s. 77 and has informed us that the increase sanctioned by Government was published under this section. But the mere fact of publication of the sanctioned increase under s. 77 does not get the Municipality out of the serious difficulty which it finds itself in. We have to be satisfied that there is any provision in law by which the Chief Officer could amend the assessment list already completed under s. 78. There are only two provisions in the Act for amendment of an assessment list. One is under s. 81 (*3*) where the amendment is the result of the standing committee considering objections made by the inhabitants to the imposition of any tax, and the other is under s. 82 (*1*) where the amendment may take place after authentication but on the limited grounds mentioned in s. 82, and it is conceded by Mr. D. V. Patel that the present case of amendment falls neither under s. 81 (*3*) or under s. 82 (*1*). Apart from these two sections there is no provision in the Act for amendment of the assessment list, and certainly there is no provision in the Act for the Chief Officer amending the list. It was rather ingeniously argued by Mr. D. V. Patel that the amendment was merely a clerical or an arithmetical matter and that the assessment having been completed and the properties having been valued, all that the Chief Officer did was to amend the quantum of tax on the basis of the increased rate. In putting forward this contention Mr. D. V. Patel overlooks the mandatory provisions of s. 78. One of the constituent elements of an assessment list is the amount of the tax and it is that assessment list which includes the amount of tax that has to be prepared, published, and in respect of which notice has to be given. Therefore, what the Chief Officer was doing pursuant to the sanction received from Government was to alter and amend the assessment list in respect of one of its most important constituent elements, and we see no authority in the Act conferred upon the Chief Officer to do so. It may be that there is a lacuna in the Act in that no provision is made for an automatic amendment of the assessment list by the sanction being published of increased taxation under s. 77. But the assessee is entitled to contend that he is liable to pay tax only on the basis of the assessment list prepared under s. 78 and in respect of which notice has been given. Therefore, when the appellants paid the tax between October and December 1950, the assessment list properly published under the Act did not and could not include the increased amount of tax. The only legal and valid assessment list was as originally prepared by the Chief Officer and in respect of which public notice was given

by him. The Municipality could not demand and the assessee was not liable to pay tax on the basis of an assessment list which was unauthorisedly altered and amended by the Chief Officer.

An interesting argument was advanced before us whether in this case an individual notice was necessary on the part of the Chief Officer because the tax was increased and, therefore, every owner of the property who was liable to pay the increased tax was entitled to the notice referred to in the second part of s. 81 (*1*). It was urged on the one hand by Mr. Rajani Patel that this was a case of an increased assessment because the quantum of tax was increased and, therefore, every owner or occupier of property who was affected by this increase was entitled to individual notice and admittedly no individual notice was given in this case, and, therefore, it was urged that on this ground also the imposition of increased tax was invalid. As against this Mr. D. V. Patel argued that looking to the language used in s. 81 (*1*) and looking to the principle underlying this sub-section, an individual notice is only necessary when the valuation of the property is altered, because if the valuation is altered necessarily the assessment would also be altered. But when a rate is increased it does not affect any individual owner of a property, but it affects all owners equally and no question of valuation or assessment arises. It is also pointed out that under sub-s. (*2*) of s. 81 a right is given to the assessee to object to the valuation or assessment referred to in sub-s. (*1*), and it is urged that it is impossible to take the view that the assessee would be entitled to object before the standing committee with regard to the rate which was sanctioned by Government. Therefore, it is said that the whole scheme makes it clear that it is only when an owner of a property is affected *quae* his own property that an individual notice is necessary. It is also urged with some force that any other view would result in this anomalous situation that in every case where a rate is increased individual notice would have to be given to every owner of the property. In our opinion, it is unnecessary to decide this question in this appeal as we have already pointed out that the imposition of this tax suffers from the more important infirmity to which we have already drawn attention.

A further contention put forward by Mr. Rajani Patel may be noticed in passing, but in our opinion there is not much substance in it. It is urged that when the general sanitary cess, lighting tax and educational cess were imposed, rules under s. 58 (*j*) were not framed with regard to the mode of collecting these taxes, and reliance was also placed on cl. (*b*) of the proviso to s. 77 which provides :

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"(b) on or before the day on which a notice is issued under this section, the municipality shall publish such further detailed rules as may be required, and as may have been approved by the State Government under cl. (*a*) of the proviso to s. 58, prescribing the mode of levying, and recovering the tax therein specified and the dates on which it or the instalments, if any, thereof shall be payable."

The Broach Municipality has published rules with regard to the levying of taxes which apply to all taxes, and these rules which were framed under the District Municipal Act continue in force under s. 5, and we see no reason why if these rules deal with matters referred to in s. 58, it was necessary to have detailed rules published under s. 77 (*b*). The necessity of publishing further detailed rules under cl. (*b*) of the proviso to s. 77 would only arise when there were not proper rules framed by the Broach Municipality, and Mr. Rajani Patel has failed to point out to us any lacuna in the rules which would offend against either cl. (*b*) of the proviso to s. 77 or s. 58.

Mr. Thakore, while supporting Mr. Rajani Patel in the contentions put forward, has argued one point which arises in First Appeal No. 381 of 1953 which is distinct from the points urged by Mr. Rajani Patel. In First Appeal No. 381 of 1953 the assessee is the Broach Fine Counts Spinning & Weaving Co. Ltd. The properties assessed as shown in the schedule to the plaint are 63 items mentioned in Schedule A. In Schedule B 15 items are mentioned. With regard to these 63 items in Schedule A, they were assessed as one property, and the contention of the appellant was that they should have been assessed as 63 properties or tenements and not as one property. With regard to the 15 items in Schedule B, they were assessed as business premises, and the contention of the appellant was that they should have been assessed as residential premises. There was also a chawl and that was also assessed as business premises, and the contention of the assessee was that should have been also assessed as residental premises. The learned Judge has refused to decide these questions taking the view that the Court had no jurisdiction to inquire into these disputes as the Municipal Boroughs Act ousted the jurisdiction of the Civil Court to go into this matter. Mr. Thakore contends that what he was objecting to was not the quantum of assessment, but the basis of assessment, and it was further his contention that in any view of the case the jurisdiction of the Civil Court was not excluded by the Municipal Boroughs Act, even assuming that he could have raised this contention before the Magistrate in appeal, he was thereby not debarred from litigating this question in the Civil Court. When we come to the Municipal Boroughs Act there can be no doubt that a special machinery has been set up for deciding questions as to the quantum of tax. Objections are to be made, they are to be considered by the standing committee, if the assessee is dissatisfied he has

a right to appeal to the Magistrate, and the Magistrate decides the questions, and revision is provided against the decision of the Magistrate. It is well settled that when an Act sets up a special machinery and provides for a special tribunal, then the party affected by any action taken under the special Act must seek redress according to the special machinery and before the special tribunal, and by reason of setting up of a special tribunal the jurisdiction of the Civil Court will be excluded. Mr. Thakore relied on a series of decisions of this Court where the view was taken that the provisions of s. 110, which gave a right to the assessee to go before a Magistrate, did not exclude the jurisdiction of the Civil Court, and reliance was placed on the most recent of these decisions which is the judgment of Mr. Justice Divatia in *M. S. Bhopshetti* v. *B. V. Bhatt.*[17]. The learned Judge held that a Civil Court has jurisdiction to entertain a suit in respect of any liability to municipal taxation. Such a suit is an independent suit and need not be filed after exhausting the other remedies provided in ss. 110 and 111 of the Bombay Municipal Boroughs Act, 1925. And the learned Judge refers to several earlier decisions of this Court which have consistently taken the same view. These decisions were given on s. 111 before it was amended by Act XXXVI of 1949 and before the section was amended it did not provide that the decision of the Magistrate shall be final subject to the right of revision, and Mr. Justice Divatia came to the conclusion that he did on the ground that s. 111 did not say that the decision of the Magistrate or any other order passed in revision on that decision which is final could be set aside in a regular suit. Therefore, the very basis of Mr. Justice Divatia's judgment was that s. 110 or 111 did not make the decision of the Magistrate final. The Legislature now, by enacting XXXVI of 1949, has made the decision of the Magistrate final. The question is whether in view of this amendment the decisions of this Court based upon the section before its amendment are still good law. In our opinion, the amendment making the decision of the Magistrate final clearly excludes the jurisdiction of the Civil Court to decide questions which are to be decided by the Magistrate and ultimately in revision by the appellate Court. This Court has now held that the jurisdiction of the Magistrate is limited to considering the question with regard to the quantum of taxation. It is not open to him to consider whether the tax that was imposed was valid or *ultra vires* the Municipality. Therefore, to that limited extent the jurisdiction of the Civil Court is excluded. It is always open to an assessee to challenge the order itself of the Magistrate, but so long as that order stands it would not be open to an assessee to have

17. (1939) 42 Bom. L. R. 223. 18. (1940) L. R. 67 I. A. 222.

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the quantum of tax reviewed by a tribunal other than the tribunal set up under the Municipal Boroughs Act.

The Privy Council had to consider similar language used in the Sea Customs Act in *Secretary of State* v. *Mask & Co.*,[18] and on consideration of s. 188 of the Sea Customs Act, where the order passed subject to the power of revision was made final, Their Lordships were of the opinion that in that case the jurisdiction of the Civil Courts was excluded by the order of the Collector of Customs on appeal under s. 188, and they came to this conclusion after making it clear that it was settled law that the exclusion of the jurisdiction of the Civil Court is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied, and they were of the opinion that in this particular case in view of the language of s. 188 the exclusion of the jurisdiction of the Civil Court had to be clearly implied. In our opinion, the position is identical under s. 111 where the Legislature has made the decisions of the Magistrate final subject to the power of revision.

Mr. D. V. Patel also relied on *Raleigh Investment Co. Ltd.* v. *Governor-General.*[19] In that case the Privy Council was considering the phrase "assessment made under the Act" occurring in s. 67 of the Indian Income Tax Act, and they held that although the asessing officer had taken into account an *ultra vires* provision of the Act, it was immaterial to determine whether the assessment was made under the Act. At p. 533 the Privy Council in its judgment observes :

> "In their Lordships' view the construction of the section is clear. Under the Act the Income-tax Officer is charged with the duty of assessing the total income of the assessee. The obvious meaning, and in their Lordships' opinion the correct meaning, of the phrase 'assessment made under the Act' is an assessment finding its origin in an activity of the assessing officer acting as such. The circumstance that the assessing officer has taken into account an *ultra vires* provision of the Act is in this view immaterial in determining whether the assessment is 'made under the Act'. The phrase describes the provenance of the assessment it does not relate to its accuracy in point of law. The use of the machinery provided by the Act, not the result of that use, is the test."

Therefore, they held that any mistake of law would only be corrected by the machinery set up under the Indian Income-tax Act and not by a separate suit, and in coming to that conclusion the Privy Council considered whether a proper machinery was provided by the Act or not. Similarly, here, if the Municipal Boroughs Act provides a proper machinery which would enable the assessee to object to the quantum of taxation, then it would not be open to him to litigate that question by a separate suit. Mr. Thakore has countered this argument by urging that his objection to the assessment of 63 properties as one unit and the assessment of 15 properties and chawl as residential premises

19. (1947) 49 Bom. L. R. 530.

was not with regard to the quantum of assessment but the basis of assessment, and, therefore, even on the strength of the authorities relied upon by Mr. D. V. Patel he was entitled to litigate this matter in a suit. Mr. Thakore's client is not challenging the assessment with regard to these properties on the ground that the Municipality has no power to assess or that the assessment is illegal or invalid. What is really challenged is the liability of the assessee to pay tax on the valuation made by the Municipality. The standing committee would undoubtedly have the jurisdiction under s. 81 (*3*) to give relief to the assessee if it was satisfied that these 63 items in Schedule A constituted 63 properties and then the valuation would be on that basis. Similarly, if it came to the conclusion that these 15 properties and chawl were residential premises and not business premises, relief could be given to the assessee, and, therefore, what the Magistrate would be called upon to decide with regard to this assessment was not whether the assessment was illegal or *ultra vires* but whether the valuation was properly made. It is really largely a question of fact as to whether these 63 items constitute one property and whether the other 15 properties and chawl constitute residential or business premises. Therefore, it is not correct that the Magistrate would have no jurisdiction to decide this question. Indeed, he is the only authority who could decide these questions under the provisions of the Act. Therefore, in our opinion, the learned Judge was right in coming to the conclusion that he had no jurisdiction to decide these questions raised by the assessee.

A similar question arises which might be dealt with and disposed of here, in cross appeal No. 136 of 1953 preferred by the Municipality against the decision of the learned Civil Judge which is the subject matter of Appeal No. 381 of 1953. The learned Judge has held that three acres and 18 gunthas of the land belonging to the assessee was used for agricultural purposes and, therefore, was not liable to tax. For the same reason which has induced us to uphold the decision of the learned Judge with regard to the 63 properties and the 15 properties and the chawl, we must hold that the learned Judge had no jurisdiction to go into and decide the question of three acres and 18 gunths. Whether this land should be assessed on the basis of agricultural land used for agricultural purposes or on a different basis was a question of valuation with regard to which the assessee could have objected to the standing committee, ultimately could have appealed to the Magistrate, and finally gone in revision to the appellate Court, and it is not a matter which was competent to a civil Court to decide.

There is one further contention which has been urged by Mr. D. V. Patel to which reference may be made, and that is

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with regard to the true interpretation of ss. 206 and 206-A of the Municipal Boroughs Act. It was first urged by Mr. D. V. Patel that by reason of s. 206 a suit was not competent to challenge the imposition of tax by the Municipality, and in support of that contention reliance was placed on *Raleigh's* case to which reference has already been made. Now, *Raleigh's* case is of no assistance to Mr. D. V. Patel as far as s. 206 is concerned and the scheme of the Bombay Municipal Boroughs Act is concerned. As we have already pointed out, in coming to the conclusion that the Privy Council did in *Raleigh's* case what greatly weighed with them was that a special machinery was provided under the Income-tax Act to the assessee to raise the very questions which had been raised by him in the suit. There is no machinery set up under the Bombay Municipal Boroughs Act which would enable the assessee to challenge the imposition of a tax as illegal or *ultra vires*. As we have already pointed out, the jurisdiction of the Magistrate is limited to considering questions with regard to the quantum of taxation. But in the suits filed from which these appeals arise, the challenge is not to the quantum but to the legality of the taxes imposed and the power of the Municipality to impose these taxes. Further, s. 206 protects the Muncipality and its officers for acts done in good faith. There is no question of good faith arising in these suits. The section which really applies is s. 206-A which contemplates the filing of a suit against a municipality or against any officer or servant of a municipality in respect of any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act, and what the Municipality has done is in pursuance or execution or intended execution of the Act, and the challenge is that what it has purported to have done is not really in pursuance of the Act.

It is then urged by Mr. D. V. Patel that s. 206-A (*1*) requires that a statutory notice should be given and one of the requirements of the notice is that it shall state with reasonable particularity the cause of action, and sub-s. (2) provides that at the trial of any such suit, the plaintiff shall not be permitted to adduce evidence relating to any cause of action save such as is set forth in the notice delivered or left by him as aforesaid. What is urged by Mr. D. V. Patel is that many of the contentions raised by Mr. Rajani Patel were not incorporated in the statutory notice and, therefore, the appellants are prevented from relying on those contentions. A cause of action is not the same as the legal arguments which a party may rely upon in substantiating his cause of action. The cause of action of the plaintiff in the suit is the imposition of illegal taxes and the reasonable particularity with which the cause of action must

be pleaded surely does not require the plaintiff to set out in his plaint the legal arguments for the benefit and edification of the Municipality. It is open to a party to support his case by any arguments, and there is no rule of pleadings which requires that the law should be set out in the pleadings with reasonable particularity. Therefore, if Mr. Rajani Patel before us has supported his client's case by arguments which may not have been advanced in the trial Court or which may not have found a place in the notice, that does not bring him within the mischief of s. 206-A. We have looked at the notice given by the assessee and we are satisfied that the cause of action is stated with reasonable particularity. It may be that Mr. D. V. Patel or rather his client might not have been aware of the legal flaws in the imposition of the taxes, but we must assume that the Broach Municipality above everybody else would know the provisions of the Municipal Boroughs Act and what are its powers with regard to the imposition of taxes.

Mr. D. V. Patel does not press the cross-appeals filed by him except to the extent of the three acres and 18 gunthas in cross-appeal No. 136 of 1953.

The result will be that in First Appeals Nos. 28, 123 and 381 of 1953, there will be a declaration that besides the taxes declared illegal by the trial Court the increase in the house tax, the general sanitary cess, the lighting tax and the special educational cess for the year 1950-51 are illegal, and there will also be over and above the decree passed by the trial Court a decree for the plaintiffs in the three suits from which these appeals arise for refund in respect of the increased house tax, general sanitary cess, lighting tax and special educational tax paid by the plaintiffs, and also in appeal No. 28 of 1953 there will be a decree for the plaintiff for a further sum of Rs. 1,856-2-0 for the reasons stated in the judgment.

Mr. Rajani Patel has pointed out that inasmuch as the learned Judge refused to grant an injunction against the Municipality notwithstanding the declaration by the learned Judge that the general sanitary cess on lands was illegal, the Municipality has gone on collecting the tax without any sanction from Government, and, therefore, Mr. Rajani Patel has asked us to pass a decree for refund in respect of the subsequent years also. In our opinion, we have no jurisdiction to pass any decree ordering a refund for the years subsequent to 1950-51. The suit was for claiming refund of taxes paid for the years 1949-50 and 1950-51. The declaration that was given could only be with regard to taxes imposed in those years. The

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learned Judge could not have given any declaration with regard to future years and the injunction also could only have been with regard to those particular years. Even assuming that the plaintiff had asked for an injunction restraining the Municipality from imposing a tax which was illegal, the injunction was refused by the trial Court and no interim injunction was obtained by the plaintiff when he filed his First Appeal. In the absence of any such injunction the Municipality has recovered tax which has been held to be illegal. All that we can do for the appellants is to ask the Municipality to refund the amounts recovered by the Municipality which the Court has now held to be illegal. The Municipality is a local authority and as we have often pointed out it is the duty of a local authority as much as it is the duty of the state to act as an honest person and as honest person the Municipality cannot retain moneys which it has illegally collected. We must leave the matter at that hoping that the Municipality will carry out our recommendation.

The result, therefore, will be that in First Appeal No. 381 of 1953 the appeal will be partly allowed and the decree passed by the learned Judge is modified by there being a decree for the plaintiff for an additional amount of Rs. 15,931. There will be interest at 4 per cent on the total amount from the date of the suit till payment. With regard to the cross-appeal No. 418 of 1953, the appeal will be partly allowed. The amount due to the Municipality in respect of general sanitary cess on lands under the buildings which must be allowed amounts to Rs. 516-12-0. Credit has been given for this amount in the decree passed in favour of the plaintiff. There will, therefore, be no order in First Appeal No. 418 of 1953. The costs of the suit and of the appeal will be in proportion to the success or failure of the parties with regard to the claim made.

First Appeal No. 123 will be partly allowed and there will be a decree for the plaintiff for a sum of Rs. 1,395-2-0 in addition to the decree passed by the trial Court. With regard to cross-appeal No. 136 of 1953 the claim of the Municipality with regard to three acres and 18 gunthas as mentioned in the judgment must be allowed and that comes to Rs. 1,758-3-0. This amount is taken into consideration in the decree passed in favour of the plaintiff. There will, therefore, be no order in this appeal. There will be interest on the full amount of the decree at the rate of 4 per cent from the date of the filing of the suit till payment. Costs of the suit and the appeal will be in proportion to the success or failure of the parties with regard to the claim made.

With regard to First Appeal No. 28 of 1953, there will be a decree for the plaintiff in the sum of Rs. 23,256 over and above the decree passed by the trial Court. There will be interest

on judgment at 4 per cent on the total amount of the decree from the date of the filing of the suit till payment. The decree passed in Appeal No. 28 will be further modified with regard to the order for costs. The order for costs both of the suit and the appeal will be that both the parties must get costs in proportion to their success or failure with regard to the claim made. The cross-appeal No. 134 of 1953 filed by the Municipality will be dismissed with costs.

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Decrees varied.
K. B. S.

APPELLATE CRIMINAL

Before Mr. Justice Shah and Mr. Justice Vyas.

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Nov. 18

Prevention of Corruption Act (II of 1947) ss. 5 (1) (2) and (3), 6 (1) (c)—Sanction for prosecution under s. 5 (2) read with s. 5 (1) (a)—Whether s. 5 (3) creates an offence independent of the offence under s. 5 (1) and (2).

Section 5 (3) of the Prevention of Corruption Act does not create an offence independent of the offence under s. 5 (1) and (2) but lays down a rule of evidence viz., that if the pecuniary resources of a person reach a point which was disproportionate to his known or legitimate sources of income it shall be presumed, unless he satisfactorily accounts for it, that he had acquired them by the commission of an act or series of acts under s. 5 (1) and (2).

Held, therefore it was not necessary for the sanctioning authority to refer to s. 5 (3) when sanctioning a prosecution under s. 5 (1) and (2).

Bishwabhusan v. *The State*[1] dissented from.

Bishwabhusan v. *The State,*[2] referred to.

APPEAL against the conviction and sentence passed by M. S. Hegde, Esquire, Additional Special Judge, Kanara.

Charge under s. 5 (2) of the Prevention of Corruption Act.

Holding that the prosecution had proved that the accused, a Sub-Inspector of Police, at Honavar, from October 1952 to March 1954, was in possession of pecuniary resources disproportionate to his known sources of income, that the accused had failed to give a satisfactory account therefor, that the

* Criminal Appeal No. 740 of 1955 with Criminal Revision Application No. 1105 of 1955.

1. [1952] A. I. R. Orissa 259.
2. [1954] A. I. R. S. C. 359.