

1955

DANAPPA
SATVEERAPPA
v.
MALGONDA
ANANDA
Gajendra-
gadkar J.

In the result, the revisional application would be allowed on the technical ground that accounts do not appear to have been properly taken. The order passed by the District Court would be set aside and the matter sent back to the learned District Judge with a direction that the accounts between the parties should be taken in the light of this judgment.

The costs incurred by the parties so far would be costs in the appeal before the learned District Judge.

Case remanded
K. B. S.

APPELLATE CIVIL

Before Mr. Justice Shah and Mr. Justice Vyas.

THE CHALISGAON BOROUGH MUNICIPALITY, APPLICANT
(ORIGINAL RESPONDENT) v. MULTANCHAND FULCHAND
SANCHETTI, OPPONENT (ORIGINAL APPELLANT)*

1955
Nov. 24

Bombay Municipal Boroughs Act, (XVIII of 1925), ss. 3 (13) 78, 80, 81, 82—Amendment of Assessment List—Scheme of the Act—Whether Assessment List of a previous year can be amended.

Section 82 of the Bombay Municipal Boroughs Act does not empower a Municipal Borough to amend the assessment list of the previous year so as to impose a fresh liability after the close of the official year.

Municipal Borough of Sholapur v. The Governor-General of India in Council,⁽¹⁾ *Borough Municipality of Amalner v. The Pratap Spinning, Weaving and Manufacturing Co., Ltd.,*⁽²⁾ *The Ahmedabad Municipal Corporation v. Kulinsingh Manibhai Seth,*⁽³⁾ relied on.

Lokmanya Mills Ltd., v. Barsi Municipality,⁽⁴⁾ referred to.

Subbappa Mallapa Hubballi v. P. L. Benni,⁽⁵⁾ distinguished.

CIVIL Revision Application against the order passed by R. M. Mehta, Esquire, Additional Sessions Judge of East Khandesh, at Jalgaon, setting aside the decision of S. V. Tambe, Esquire, Resident Magistrate, First Class at Chalisgaon.

The facts are fully stated in the Judgment.

V. V. Divekar and G. R. Samant, for the Applicant.

R. B. Kotwal, for the Opponent.

Shah J.—Multanchand Fulchand Sancheti, whom I will hereafter refer to as 'the respondent' constructed a building within the limits of the Borough Municipality of Chalisgaon. The completion certificate in respect of the building was issued by

* Civil Revision Application No. 89 of 1954.

1. (1947) 49 Bom. L. R. 752.

2. (1952) 54 Bom. L. R. 451.

3. (1955) 57 Bom. L. R. 259.

4. (1939) 41 Bom. L. R. 937.

5. (1948) 50 Bom. L. R. 701.

the Municipality on October 18, 1951. The building bears Municipal Census No. 331. The Borough Municipality of Chalisgaon is governed by the provisions of the Bombay Municipal Boroughs Act XVIII of 1925. On March 31, 1952, the Chief Officer of the Municipality inspected the site and amended the assessment list and incorporated therein an entry relating to the house showing that the respondent was liable to pay general house tax in respect of that house. The Chief Officer also issued a notice to the respondent inviting objections against the valuation of house No. 331. The notice was received by the respondent on April 2, 1952, and he submitted his objection to the valuation. On June 30, 1952, the Standing Committee resolved that the valuation made by the Chief Officer was proper and on July 9, 1952, the Standing Committee rejected the objections raised by the respondent. On July 10, 1952, a bill was sent to the respondent calling upon him to pay house tax due for the year 1951-52. The respondent paid the tax demanded under protest, and appealed against the bill to the Resident Magistrate, First Class, Chalisgaon, under s. 110 (1) of the Bombay Municipal Boroughs Act. The respondent contended in appeal that the Municipality had no right by assessing the building in the official year 1952-53 to levy house tax for the year 1951-52 which ended on March 31, 1952. He also contended that the Standing Committee had not lawfully decided the objections raised by him. The learned Magistrate rejected the contentions raised by the respondent and dismissed his appeal.

Against the order passed by the Resident Magistrate a revision application was filed in the Court of Session at East Khandesh. The learned Additional Sessions Judge who heard the revision application set aside the order passed by the Resident Magistrate. The learned Judge held that the levy of the house tax upon the respondent's house No. 331 for the year 1951-52 was not valid. In the view of the learned Sessions Judge the Standing Committee could under s. 82 (3) of the Bombay Municipal Boroughs Act amend the assessment list current at the date of amendment, and the amendment made by the Standing Committee 'can take effect from a date in the current official year only' and that the Municipality could not amend the assessment list of the previous year. In coming to that conclusion the learned Sessions Judge relied upon a judgment of this Court, *Municipal Borough of Sholapur v. The Governor-General of India in Council*.⁽⁶⁾ Against the order allowing the appeal and annulling the assessment of the respondent's property for the year 1951-52 the Chalisgaon Municipality has invoked the revisional jurisdiction of this Court on its civil side.

1955

CHALISGAON
BOROUGH
MUNICIPALITY
v.
MULTAN-
CHAND
FULCHAND

Shah J.

1955
 CHALISGAON
 BOROUGH
 MUNICIPALITY
 v.
 MULTAN-
 CHAND
 FULCHAND
 Shah J.

It has been held by this Court in *Lokmanya Mills Ltd. v. Barsi Municipality*,⁽⁷⁾ that even though appeals lie under s. 110 of the Act against entries in assessment lists and against claims made by a Borough Municipality to a Magistrate, the disputes raised thereby relate to civil liability, and, therefore, from the order of the Court of Session exercising revisional jurisdiction under s. 111 of the Act against the order of the Magistrate a revision application lies to this Court under s. 115 of the Civil Procedure Code.

Counsel for the Municipality contends that the Chief Officer was entitled to alter *ex parte* the assessment list, current on March 31, 1952, and thereafter to issue a notice requiring the rate payer to submit his objections thereto. He further contends that under the Municipal Boroughs Act the Municipality has the right to amend an assessment list even after the year for which the list is current has expired, and the liability to pay the rate arising on amendment of the assessment list relates back to the date on which the notice was issued, and may be enforced even if the official year for which the list was current has come to an end and there is on the day on which the amendment is made a fresh assessment list in operation. In other words, it is contended that even after the official year is over and a fresh assessment list has come into force, the assessment list of the previous year may be amended, and tax may be levied accordingly provided the notice inviting objections has been issued during the currency of the list to be amended.

Before we consider the contentions raised on behalf of the Municipality, we may refer to the relevant provisions of the Bombay Municipal Boroughs Act, 1925. By s. 78 of the Act the Chief Officer is required to cause an assessment list of all buildings or lands or lands and buildings in the Municipal Borough to be prepared where the Municipality has imposed a rate on buildings or lands or on both. After the assessment list is completed the Chief Officer has to give public notice thereof and of the place where the list or a copy thereof may be inspected. The Chief Officer, at the time of the publication of the assessment list, has also to give public notice of a date, not less than one month after the publication, before which objections to the valuation or assessment in such list shall be made, and where property is for the first time assessed or the assessment is increased, the Chief Officer has to give individual notice thereof to the owner or occupier of the property (see ss. 80 and 81 (1)). Sub-section (2) of s. 81 prescribes the procedure for submitting objections to the valuation and assessment of property. By sub-s. (3) of s. 81 provision is made for hearing

and disposal of objections by the Standing Committee. Sub-section (4) of s. 81 provides that when all objections made under s. 81 have been disposed of and all amendments required by sub-s. (3) have been made in the assessment list, the list shall be authenticated. Sub-section (6) of s. 81 makes the entries in the assessment list so authenticated subject to any alterations that may be made under s. 82 and to the result of any appeal or revision made under s. 110 conclusive evidence for the purposes of all Municipal taxes, of the valuation, or annual letting value on the basis prescribed in the rules regulating the rate of buildings and for the purposes of the rate for which such assessment list has been prepared and of the amount of the rate leviable on such buildings or lands or both buildings and lands in any official year in which such list is in force. By s. 82 (1) the Standing Committee is given the power to alter the assessment list by inserting or altering an entry in respect of any property, when such entry has been omitted from or erroneously made in the assessment list through fraud, accident or mistake or in respect of any building constructed, altered, added to or reconstructed in whole or in part, where such construction, alteration, addition or reconstruction has been completed after the preparation of the assessment list. But before such alteration or insertion of any entry can be made, the Standing Committee must give notice to any person interested in the alteration of the list of a date not less than one month from the date of service of such notice inviting objections to the alteration sought to be made. The objection raised pursuant to a notice served under s. 82 (1) must be heard and disposed of in the manner prescribed by sub-s. (2) of s. 81. Then follows sub-s. (3) on the true effect of which the ultimate decision of this application depends. It provides:

"An entry or alteration made under this section shall, subject to the provisions of s. 110, have the same effect as if it had been made in the case of a building constructed, altered, added to or reconstructed on the day on which such construction, alteration, addition or reconstruction was completed or on the day on which the new construction, alteration, addition or reconstruction was first occupied, whichever first occurs, or in other cases, on the earliest day in the current official year on which the circumstances justifying the entry or alteration existed; and the tax or the enhanced tax as the case may be shall be levied in such year in the proportion which the remainder of the year after such day bears to the whole year."

Section 84 by sub-s. (1) provides that it shall not be necessary to prepare a new assessment list every year and the Chief Officer may adopt the valuation and assessment contained in the list for any year, with such alterations as may be deemed necessary, for the year immediately following. It is then provided by sub-s. (2) that the provisions of ss. 80, 81 and 82 shall be applicable, every year as if a new assessment list had been completed

1955

CHALISGAON
BOROUGH
MUNICIPALITY
v.
MULTAN-
CHAND
FULCHAND

Shah J.

1955

CHALISGAON
BOROUGH
MUNICIPALITY
v.
MULTAN-
CHAND
FULCHAND
Shah J.

at the commencement of the official year. The expression 'official year' is defined by s. 3 (13) of the Bombay Municipal Boroughs Act as meaning 'the year commencing on the first day of April'. The scheme of the Act, therefore, appears to be that when the Municipality levies a rate on buildings or on lands or on buildings and lands, the Municipality must prepare an assessment list, give notice of the preparation of the assessment list, invite objections to the entries contained therein and consider the objections. After the objections are heard and adjudicated upon, the assessment list should be finalised and authenticated in the manner provided by the Act. The liability to pay the rate arises from the assessment list and the entries made in the assessment list are conclusive as to the valuation or the annual letting value of the lands or buildings, to which the entries relate, and as to the amount of rate leviable on such buildings in any official year in which the list is in force. Machinery is provided for amendment of the assessment list where error has crept in and where liability has been incurred for the first time in respect of buildings constructed, altered, added to or reconstructed during the course of the year. Every assessment list is operative for one year only, the year being one commencing on April 1, and ending on March 31, of the next year. On April 1, of each year notionally a fresh assessment list comes into existence, even if the objections which have been raised are not disposed of before the commencement but are disposed of during the course of the official year. When the list is authenticated, it is deemed to come into existence as on April 1, of the official year. This scheme of the Act necessarily postulates that if any alteration is to be made in the assessment list, it must be carried out during the course of the official year. If the list is altered during the course of the year, the liability arising by reason of alterations made rectifying omissions or erroneous entries becomes enforceable as from the date on which the assessment list comes into operation and in other cases where a fresh entry is made on account of new constructions from the first day on which building becomes liable to pay the rate or tax.

It is evident in this case that on March 31, 1952, notice was issued by the Chief Officer inviting objections to the proposed alteration in the assessment list for the official year 1951-52. The Chief Officer purported to amend the assessment list on March 31, 1952, by incorporating therein an entry relating to house No. 331 and showing the tax payable in respect thereof. We may observe that under the rules framed by the Chalisgaon Municipality under s. 58 of the Bombay Municipal Boroughs Act the powers of the Standing Committee under s. 82 have been delegated to the Chief Officer and the Chief Officer was, therefore, competent to issue the notice. But in our view

the Chief Officer had no authority to make an *ex parte* amendment or alteration of the assessment list. That appears to be clear from the provision of sub-s. (1) of s. 82 which makes it obligatory on the Standing Committee to give notice to persons interested in the alteration of the list of a date not less than one month from the date of service of the notice. By sub-s.(2) of s. 82 the procedure for hearing of objections to notices issued under s. 82 (1) is the same as is provided under sub-ss. (2) and (3) of s. 81. It follows, therefore, that the amendment to an assessment list can only be made after due notice is served upon the persons interested and after giving them an opportunity of raising objections, and if objections are raised after disposing of the objections in the manner prescribed. It is only after the objections are heard and disposed of that the entry which creates liability to pay the tax mentioned therein can be posted in the assessment list. As we observed earlier the liability to pay a rate arises under the assessment list, and so long as the entry is not finalised no liability to pay a rate or a tax leviable as a rate arises. It is true that once the entry is made in the assessment list either under s. 81 or by alteration under s. 82, the entry shall have the same effect as if it had been made, in the case of a building constructed, altered, added to or reconstructed, on the day on which such alteration, addition or reconstruction is completed, and in other cases on the earliest day in the current official year on which the circumstances justifying the entry or alteration existed. In the present case, the Standing Committee of the Municipality having rejected the objections on July 9, 1952, the earliest day on which the entry must be deemed to have been made in the assessment list is April 1, 1952, and the liability of the respondent to pay the rate which is leviable as house tax arose from that date. The official year 1951-52 having expired on April 1, 1952, and before that date no alteration having been effected in the assessment list in the manner prescribed by sub-s. (2) of s. 82, it was not open to the Municipality to re-open the assessment list for the expired year and to seek to levy house tax for that year.

Mr. Divekar, who appears on behalf of the Municipality, contends that the view we are taking would enable rate payers to escape liability to pay tax where the completion, alteration or reconstruction of the building has taken place late in the official year. He contends that where a building is completed in the month of January or February, the Municipality would not be able to levy a rate in respect of that building for the period between the date of the completion, alteration or reconstruction and the date of expiry of the official year, because the Municipality by sub-s. (1) of s. 82 is required to give one

1955
 CHALISGAON
 BOROUGH
 MUNICIPALITY
 v.
 MULTAN-
 CHAND
 FULCHAND
 Shah J.

1955

CHALISGAON
BOROUGH
MUNICIPALITY
v.
MULTAN-
CHAND
FULCHAND
Shah J.

month's notice to the rate payer and to invite objections. Mr. Divekar points out that in the hearing and disposal of the objections some appreciable time must elapse, and if by that time the official year expires, the Municipality would be disentitled to levy the tax to which it is legitimately entitled. We are conscious of this difficulty arising in the levy of taxes by Municipalities, but we do not think that it is possible for us, on the language used by the Legislature, to take the view that it is open to a Municipality after the official year has expired to alter and amend the assessment list of that year. The view we are taking is supported by the view expressed in several decisions of this Court to which we will make a brief reference.

In *Municipal Borough of Sholapur v. The Governor-General of India in Council*,⁽⁸⁾ the question arose whether it was open to a Municipality to levy a tax in respect of a previous year when the Municipality through mistake had omitted to levy the tax. It was held that the Municipality had no such right. In that case the Municipality of Sholapur prepared an assessment list under s. 78 of the Bombay Municipal Boroughs Act for the year commencing April 1, 1937, and through mistake it omitted to levy a tax on certain buildings of the G. I. P. Railway which were within the limits of the Sholapur Municipality. The mistake was discovered in May 1939. Thereafter the Municipality gave notice to the Railway Company and corrected the assessment list under s. 82 of the Act and sent a bill to the plaintiff demanding payment of the arrears of tax for the two previous years 1937-1938 and 1938-39. The Railway Company resisted the claim and ultimately filed a suit to recover the tax which it had to pay under protest. It was held by Mr. Justice Lokur that under s. 82 (3) of the Bombay Municipal Boroughs Act the corrected list must be deemed to have come into force from April 1, 1939, and, therefore, the Municipality was not competent to recover the arrears for the years 1937-38 and 1938-39 according to the corrected list.

In *Borough Municipality of Amalner v. The Pratap Spinning, Weaving and Manufacturing Co. Ltd.*,⁽⁹⁾ it was held that an assessment list which was prepared *ex parte* and after omitting the procedure contemplated by ss. 80 and 81 of the Bombay Municipal Boroughs Act, viz. the issue of public notice and authentication of the list, was illegal and the Municipality was not entitled to levy the tax mentioned in the assessment list. It was held that the Municipality having failed to carry out the mandatory provisions relating to the framing of the assessment list, the list must be regarded as invalid and no liability could be deemed to have arisen thereunder and the Municipality was not entitled to recover the tax relying upon the assessment list.

8. (1945) 49 Bom. L. R. 752.

9. (1952) 54 Bom. L. R. 451.

In *The Ahmedabad Municipal Corporation v. Kulinsinh Manibhai Seth*,⁽¹⁰⁾ a question arose whether it was open to a Municipality to levy tax in respect of a building which became liable to pay the tax, the assessment list not having been altered in the course of that official year. The head note in that case sets out the decision of the Court as follows:—

“A Borough Municipality prepared an assessment list for the imposition of a special water rate for the year 1946-47. After the commencement of the assessment year on April 1, 1946, it amended one of its rules which came into force on July 1, 1946, under which the assessee's property became liable to the levy of special water rate. On March 24, 1947, the Municipality issued a notice, under s. 32 of the Bombay Municipal Boroughs Act, 1925, to the assessee for amendment of the assessment list. The notice was served on the assessee on April 2, 1947. The assessee made objections, which were rejected by the Municipality on January 12, 1948. The municipality then called upon the assessee to pay the special water rate from July 1, 1946, to March 31, 1947:—

Held that the assessee was not liable to pay the special water rate for the period from July 1, 1946, to March 31, 1947, because if the assessment was made before March 31, 1947, it would have taken effect from July 1, 1946, which was the earliest day in the current official year 1946-47, under s. 82 of the Bombay Municipal Boroughs Act, 1925.”

It was argued in that case that the circumstances justifying amendment of the assessment list came into existence on July 1, 1946, when the Rules of the Ahmedabad Municipality were amended and it was within the power of the Municipality after the list was amended to levy the tax from July 1, 1946. The argument was rejected on the ground that it overlooked the importance of the word ‘current’ in sub-s. (3) of s. 82. Mr. Justice Rajadhyaksha who decided that case observed (p. 260):

“The liability to the payment of the tax is contingent upon the authentication of the list or amendment thereof, for under sub-s. (6) of s. 81, the entries in the assessment list are to be accepted as conclusive evidence of the valuation and the basis prescribed in the Rules. The alteration could be made at any time during the current official year, and under sub-s. (3) of s. 82 the amendment takes effect from the earliest day in that official year. If in the present case the amendment had been made before March 31, 1947, then it would have taken effect from July 1, 1946, which is the earliest day in the current year 1946-47 when the liability for the imposition of special water rate arose by the amendment of r. 336.”

The only difference between the facts of the case reported in *Ahmedabad Mun. Corp. v. Kulinsinh*⁽¹¹⁾ and the facts in the present case is that in the former case the liability had arisen by reason of amendment of a rule in a previous year, whereas in the present case the liability arose by reason of construction of a new house. But we see no reason for holding that the distinction makes any difference in principle. Even though provision was made for raising liability under a statutory rule

1955

CHALISGAON
BOROUGH
MUNICIPALITY
v.
MULTAN-
CHAND
FULCHAND
Shah J.

10. (1955) 57 Bom. L. R. 259.

11. (1954) 57 Bom. L. R. 259.

1955

CHALISGAON
BOROUGH
MUNICIPALITY
v.
MULTAN-
CHAND
FULCHAND
Shah J.

if the liability could not be enforced because the amendment of the assessment list was not carried out during the course of the official year in which the amendment was made. On the same principle it must be held that where by the rules in force a liability would have arisen if the assessment list was altered in the official year then current, the liability could not be regarded or deemed to be imposed. The authorities which we have referred to amply support the view that we have expressed on a consideration of the statutory provisions.

Mr. Divekar sought to rely upon *Subbappa Mallappa Huballi v. P. L. Benni*,⁽¹²⁾ in support of the contention that it was open under the Bombay Municipal Boroughs Act to a Municipality to make retrospective alteration in an assessment list. In Subbappa's case a borough Municipality published a revised assessment list under ss. 80 and 81 (1) of the Bombay Municipal Boroughs Act, 1925, on March 31, 1939. Objections were thereafter raised to the enhanced assessment and those objections were not considered until August 1939. In October 1939 the tax payer was informed of the result of the hearing on the objections and he was called upon to pay the tax on the enhanced assessment. The tax payer declined to pay the enhanced tax. It was held by this Court that the liability of the tax-payer arose on April 1, 1939, and not on the date on which objections were finally considered and disposed of and an entry was made in the assessment list. Subbappa's case, appears to be an authority for the proposition that alterations made in an assessment list under s. 81 (3) have a limited retrospective operation, i.e. the liability for a rate under an assessment list which is finalised and authenticated during the course of an official year arises in case of inadvertent omissions as from the date on which the assessment list is brought into operation and in cases where there has been new construction or alteration of a building during the course of the year from the date on which the building became liable to tax. But Subbappa's case, in our judgment, is no authority for the proposition that a more extensive retrospective operation to an assessment list is intended to be given so as to enable a Municipality to alter the assessment list of previous years. In other words, the assessment list for each year comes to an end on the expiry of the official year and a fresh assessment list comes into existence as from the first date of the official year, and the assessment list of the previous year cannot be amended so as to impose fresh liability after the close of the official year.

We, therefore, hold that the learned Sessions Judge was right in the view expressed by him. The rule is, therefore, discharged with costs.

Rule discharged.

G. N. V.