

**(1980) 07 AHC CK 0035**

**Allahabad High Court**

**Case No:** Writ Petition No. 457 (Tax) of 1977

Har Gopal Jaiswal and Another

APPELLANT

Vs

The Cantonment Board, Kanpur  
and Another

RESPONDENT

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**Date of Decision:** July 28, 1980

**Acts Referred:**

- Cantonments Act, 1924 - Section 69, 71, 71(1), 88

**Citation:** AIR 1981 All 29

**Hon'ble Judges:** R.M. Sahai, J; H.N. Seth, J

**Bench:** Division Bench

**Advocate:** R.C. Shukla, for the Appellant;

**Final Decision:** Allowed

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### **Judgement**

H.N. Seth, J.

By this petition under Article 226 of the Constitution the petitioners pray for a writ, order or direction in the nature of certiorari quashing the order dated 20th October, 1976 passed by the Cantonment Board, Kanpur, and for a direction in the nature of mandamus directing the respondent not to realise the excess house and water tax for the period 1974-75 and 1975-76 on the annual value of Rs. 52,000/-.

2. Briefly stated, the facts giving rise to this petition are that the petitioners own bungalow No. 23, situated within the limits of Cantonment Board, Kanpur. From time to time, the Cantonment Board, Kanpur, assessed the said bungalow to house tax and water tax on the annual value of Rs. 9,000/- (for the years 1965-66 to 1967-68), Rs. 10,000/- (for the years 1968-69 to 1970-71), Ru-13,000/- (for the years 1971-72 to 1973-74) and Rs. 52,000/- (for the years 1974-75 to 1976-77).

3. Being aggrieved by the increase in the valuation of the said bungalow from Rs. 13,000/- (for the years 1971-72 to 1973-74) to Rs. 52,000/-; (for the years 1974-75 to 77), the petitioners filed an appeal in the court of Additional District Magistrate

(City), Kanpur, who dismissed the same vide his order dated 24th August, 1976, holding that the appeal was not maintainable as the same had been filed beyond the period of limitation and without depositing the disputed amount of tax. The petitioners also moved an application u/s 71 of the Cantonments Act, 1924 (hereinafter referred to as the Act) claiming amendment of the assessment list prepared by the Board, whereunder they had been assessed to house tax and water tax for the years 1974-75 to 1976-77 treating the annual value of the house as Rs. 52,000/-, On 20th October, 1976 the Finance Committee of the Board passed the following resolution:--

"All the relevant papers/documents seen and scrutinised. Considered in detail. The Committee, after considering the merits of the case, recommends to fix the assessment at Rs. 28,000/- with effect from 1-4-1976 under the provisions of Section 71 of the Cantonments Act, 1924 without prejudice to the rights of the Cantonment Board to revise the assessment during the ensuing triennial assessment."

The counter-affidavit filed in the case indicates that in the view of the Cantonment Board, after the appeal filed by the petitioners u/s 84 of the Act had been dismissed by the Additional District Magistrate, on 24th August, 1976 the Finance Committee of the Board had no jurisdiction to amend the assessment list in exercise of the power u/s 71 of the Act. However, the Board accepted the recommendation made by the Finance Committee and the assessment of the house (annual value) stood reduced from Rs. 52,000/- to Rs. 28,000/- for the year 1976-77 only. As the petitioners failed to obtain relief in respect of the years 1974-75 and 1975-76 from the Cantonment Board, they filed the present writ petition and approached this Court for relief under Article 226 of the Constitution,

4. Learned counsel for the petitioners contended that u/s 71 of the Act any alteration made in the assessment list ensures for each and every year during which the assessment list prepared by the Board remains in force. As in the instant case the assessment list, in which the alterations were made, was to remain effective for the years 1974-75 to 1976-77, the respondents were not justified in confining the alteration made in the annual value of the house (Rs. 28,000/- in place of Rs. 52,000/-) only to the assessment year 1976-77. The resolution dated 20th October, 1976 accordingly deserved to be quashed.

5. Sri K.P. Srivastava, learned counsel appearing on behalf of the Cantonment Board, however, contended that in view of the proviso to Section 71(1) of the Act, any amendment made in the assessment list is operative only for the year in which the amendment is made and for the years thereafter. It does not affect operation of the assessment list for the year prior to that in which such amendment is made, Moreover, Section 71 of the Act does not authorise the Board to make any amendment in an assessment list, authenticated and published under Sub-section (2) of Section 69. He went on to contend that in any case after the petitioner's appeal was dismissed by the Additional District Magistrate, both the Cantonment

Board and the Finance Committee had, in view of Section 88 of the Act which lays down that the order passed by the Appellate Authority shall be final, lost jurisdiction to amend the assessment list in exercise of their powers u/s 71 of the Act. The impugned order thus gave a benefit to the petitioners to which they are not entitled. They are, therefore, not entitled to the relief claimed in this petition.

6. In order to deal with various submissions made by the learned counsel, it will be convenient to notice the provisions relating to assessment of house tax and water tax, which are taxes imposed by the Cantonment Board Kanpur on the annual value of building and lands; contained in the Act.

7. Section 66 of the Cantonment Act lays down that when a tax on an annual value of buildings or lands is imposed, the Board shall cause an assessment list of all buildings or lands in the Cantonment, or of both, as the case may be to be prepared in such form as the Central Government may, by rule prescribe. This assessment list has to be, as provided by Section 67 of the Act, published by the Board and every person claiming to be the owner, lessee or occupier of any property included in the list, gets a right to inspect the same. Sections 68 and 69 of the Act then enable the interested persons to file objections with regard to valuations and assessment as entered in the assessment list and enjoin upon the Board to consider and decide those objections and thereafter to make corrections in the assessment list accordingly. The assessment list so revised (if necessary) is then authenticated and a public notice thereof is also required to be given. Section 70 then provides that subject to such alterations, as may be made in the assessment list under the provisions of Chapter V of the Act and to the result of any appeal made thereunder, the entries in the assessment list authenticated and deposited as provided in Section 69 shall be accepted as conclusive evidence for the purpose enumerated therein. Section 71 of the Act, which provides for amendment of assessment list, runs thus:--

71. Amendment of assessment list--(1) The Board may amend the assessment list at any time--

(a) by inserting or omitting the name of any person whose name ought to have been or ought to be inserted or omitted, or

(b) by inserting or omitting any property which ought to have been or ought to be inserted or omitted, or

(c) by altering the assessment on any property which has been erroneously valued or assessed through fraud, accident or mistake, whether on the part of the Board or of the Assessment Committee or of the assessee, or

(d) by revaluing or reassessing any property the value of which has been increased, or

(e) in the case of a tax payable by an occupier, by changing the name of the occupier:

Provided that no person shall, by reason of any such amendment, become liable to pay any tax or increase of tax in respect of any period prior to the commencement of the year in which the assessment is made.

(1a) to (2) ...."

Section 72 of the Act obliges the Board to prepare a new assessment list at least once in every three years and lays down that, for this purpose the provisions of Section 66 to Section 71 shall apply in like manner as they apply for the purpose of the preparation of an assessment list for the first time. It, therefore, follows that the assessment list authenticated and published u/s 69, as amended u/s 71, continues to be operative till such time as a new assessment list is not prepared in accordance with Section 72 of the Act and that the Cantonment Board is, for the years during which the assessment list remains in force, entitled to realise the tax in accordance therewith. In this case, it is not disputed that the Board has throughout been preparing new assessment lists at an interval of three years.

8. A perusal of the aforementioned provisions indicates that house and water tax under the Act is assessed by preparing an authenticated assessment list deposited and notified to the public in the manner provided by Section 69 of the Act. This assessment is made in the year in which such authentication and notification takes place and remains operative for subsequent years as well till a new assessment list, as provided by Section 72 of the Act, is prepared. In the context of Section 70 of the Act which clearly postulates amendment of list deposited and authenticated u/s 69 of the Act under the provision of Chapter V of the Act, it is obvious that Section 71 of the Act, which falls in Chapter V of the Act and which provides for amendment of the assessment list, applies to cases where the amendment in the assessment list authenticated and notified u/s 69 becomes necessary in circumstances mentioned therein. It has no application to any alteration made in the assessment list prepared u/s 66 of the Act inasmuch as that list is revised and corrected after hearing objections u/s 68 of the Act. The submission of Sri Srivastava that the Board had, in exercise of its power u/s 71, no-jurisdiction to amend the assessment list deposited and authenticated and published u/s 69 of the Act. is clearly not tenable.

9. Sub-clause (c) of Section 71(1) enables the Cantonment Board to alter the assessment on any property which has been erroneously valued or assessed through fraud, accident or mistake whether on the part of the Board or of the Assessment Committee or of the assessee. Clause (d) enables the Board to revalue or reassess any property, the value of which has been increased. (The present case admittedly is not one governed by this clause). In our opinion any alteration in the assessment of tax because of correction made in its value as mentioned in an assessment list authenticated and notified u/s 69 for the reason contained in Clause

(c) of Section 71(1), does not amount to a fresh assessment of house tax and water tax. It merely results in a change being made in the assessment list authenticated and notified u/s 69 of the Act. The list so altered continues to be operative during the entire period, during which, the assessment list originally prepared u/s 69 of the Act remains operative. It is significant to note that clause (c) enables the Board to correct an assessment list in a case where the property has been wrongly valued or assessed through fraud, accident or mistake. The legislature could never have intended therein a case where disposal of objections to the valuation of the property in the assessment list on the ground that it has been wrongly valued by reason of fraud, accident or mistake, takes time and the Board after time consuming enquires comes to the conclusion that the valuation and the assessment should be corrected accordingly, such wrong valuation of the property should be, for the purposes of taxation, effective for the period prior to the date of disposal of the objections. We accordingly find merit in the submission raised by the learned counsel for the petitioners that while disposing of petitioners' application u/s 71 of the Act it was not open to the Cantonment Board to confine the correction in the valuation of the property, u/s 71(1)(c) of the Act, to a particular period only.

10. We are unable to accept the submission of Sri K.P. Srivastava, learned counsel appearing for the Board, that proviso to Section 71(1) which lays down that no person shall, by reason of any such amendment, become liable to pay any tax or increase of tax in respect of any period prior to the commencement of the year in which the assessment is made, has the effect of keeping the erroneously prepared assessment list, which is subsequently corrected u/s 71(1)(c) of the Act, operative for the years prior to the year in which the correction is made. All that this proviso lays down, is that any amendment made u/s 71(1), shall not render a person liable to pay any tax or increase of tax in respect of period prior to the commencement of the year in which the assessment is made. As already explained, in relation to correction of valuation of property made u/s 71(1)(c) the assessment is made when the assessment list is deposited, authenticated and notified to public as provided in Section 69 of the Act. All that the proviso does, is to lay down that any amendment made in the assessment list shall not affect the liability of an assessee in respect of the period prior to the year in which the assessment list, so amended, became operative. It, nowhere, lays down that such amendment would not be operative for the period prior to the date on which the amendment was made in the assessment list. Inasmuch as it is nobody's case that the petitioners are, by virtue of amendment to the assessment list made u/s 71(1)(c) liable to pay tax for any period prior to the date on which the assessment list for the years 1974-75 to 1976-77 was authenticated and notified, reliance placed by Sri Srivastava on Section 71(1) appears to be misconceived.

11. So far as the submission of the learned counsel for the respondent that as in this case, after the appeal filed by the petitioner was dismissed by the Additional District Magistrate, the assessment list prepared u/s 69 of Act had become final, the

Cantonment Board had no jurisdiction to amend the same in exercise of power u/s 71 of the Act, is concerned, we find absolutely no merit in this submission. What Section 88 provides is that the order of an Appellate Authority confirming, setting aside or modifying an order in respect of any valuation or assessment or liability to assessment or taxation shall be final. The finality, by the section, is given to such orders of the Appellate Authority in which the order under appeal can be said to merge and which falls in following three categories:--

- (1) Order confirming the order passed by the Cantonment Board relating to valuation of assessment or liability to assessment or taxation.
- (2) Order setting aside an order passed by the Cantonment Board in respect of valuation or assessment or liability to assessment or taxation, and
- (3) Order modifying an order relating to valuation or assessment or liability to assessment or taxation.

It does not give finality to any order passed by the Appellate Authority which does not amount to either confirming or setting aside or modifying an order passed by the Cantonment Board. In the case before us, we find that the Appellate Authority had dismissed the appeal on the ground that it was not maintainable as it had become time barred and because the disputed amount of tax had not been deposited. In such circumstances the order dismissing the appeal cannot amount to an order confirming, modifying or setting aside the order passed by the Cantonment Board. What Section 88 contemplates is that, where the Appellate Authority after going into the merits of the case either confirms or modifies or sets aside the order of the original authority, the order so passed by the Appellate Authority shall be final. As in this case there is no order passed by the Appellate Authority of the nature contemplated by Section 88 of the Act, no question of its becoming final under that section arises. It is not necessary for us to go into the question whether, in a case where the Appellate Authority has decided the appeal on merits, it will, still, be open to the Cantonment Board to exercise the power of amendment of the assessment list u/s 71 of the Act. Suffice it to say, that where there has been no order passed by the Appellate Authority of the nature contemplated by Section 88 of the Act, there is nothing either in Section 88 or any other provision which inhibits the Cantonment Board from exercising its power to amend the assessment list at any time in circumstances mentioned in Section 71 of the Act.

12. In view of the aforesaid discussion, we are clearly of opinion that the resolution dated 20th Oct., 1976, passed by the Finance Committee of the Cantonment Board, as approved by the Board, cannot be sustained. The petitioners in this case had claimed amendment in the assessment list u/s 71(1)(c) of the Act. As there is nothing on the record to indicate that the Finance Committee of the Board had applied its mind on the facts bearing on the question of exercise of power u/s 71(1)(c), the

resolution dated 20th October, 1976 passed by the Finance Committee has to be quashed as a whole and not merely that part of it which restricts applicability of the amendment in the valuation of the property to the year 1976-77 only.

13. In the result the petition succeeds and is allowed. We quash the resolution dated 20th October, 1976 passed by the Finance Committee as confirmed by the Board and the Cantonment Board is directed to deal with the petitioners' application dated 22nd August, 1976 for correcting the valuation contained in the assessment list prepared for the years 1974-75 to 1976-77 u/s 71 of the Act afresh and in accordance with law. In the circumstances we direct the parties to bear their own costs.