(1980) 04 BOM CK 0042

Bombay High Court

Case No: First Appeal No. 875 of 1979

Municipal Council		APPELLANT
	Vs	
Shivaji Sindhi Co-op. Hsg. Society Ltd.		RESPONDENT

Date of Decision: April 15, 1980

Acts Referred:

- Maharashtra Municipalities Act, 1965 - Section 113, 115, 119, 121, 123

Hon'ble Judges: V.S. Deshpande, J; Sharad Manohar, J

Bench: Division Bench

Advocate: R.G. Deo, for the Appellant; R.M. Agrawal, for the Respondent

Final Decision: Dismissed

Judgement

V.S. Deshpande, J.

Defendant Municipal Council of Aurangabad is the appellant in this first appeal. The plaintiff-respondent instituted a civil suit, giving rise to this appeal, and challenged the validity of the bill dated 25-6-1972 and the notice dated 18-7-1972 under which the plaintiff was called upon to pay various tax amounts to the tune of Rs. 62,187.75 for the period from 1965-66 to 1971-72, i.e. for seven years. Validity of the bill and the notice was challenged on various grounds. It was, firstly, urged that no assessment list was prepared as required under the provisions of the Maharashtra Municipalities Act, 1965, and the rules made there under nor the same was published and made available for inspection. It was, secondly, pleaded that for the first time a notice was served on the plaintiff on 23-10-1967 valuing the property at Rs. 66,703/- and assessing the property tax thereon to the tune of Rs. 8,337.92, and claiming the tax there under retrospectively from 1-4-1965 was without any authority and without jurisdiction. It was, thirdly pleaded that an objection to the said valuation and the tax was raised in writing by a petition dated 24-11-1967. No date for hearing of the said objections was ever fixed. Nor an opportunity given to the plaintiff to show cause against the said proposed valuation and the amount of

tax. It was, fourthly, pleaded that the tax was imposed by reference to the capital value of the land and not by reference to the rateable value of the property as required u/s 114 of the Act. It was, fifthly, pleaded that separate taxes such as light, drainage tax and education cess were not competent. It was, sixthly, pleaded that the Authorised Valuation Officer alone was competent to assess the rateable value and hear objections thereto. Administrator had no jurisdiction either to fix the rateable value or dispose of the objections.

2. It appears that after the objections of the plaintiff dated 24-11-1967 the Administrator had reduced the amount of tax from Rs. 8,337/- to Rs. 5,550/- without giving any hearing to the plaintiff. A bill demanding the taxes due in terms of the said order dated 16-2-1968 was served on the plaintiff on 18-10-1968. Validity of this bill was challenged by the plaintiff by filing a Special Civil Application in this Court being Special Civil Application No. 244 of 1969. The same was dismissed on 14th February, 1972. It is thereafter that the defendant served the bill on the plaintiff on 25-6-1972 claiming seven years taxes from 1965 to 1972 to the tune of Rs. 62,187/-. The plaintiff then instituted a suit being Suit No. 62 of 1972. It appears that the said suit was instituted without serving a notice on the defendant apprehending the distress process. The said suit was subsequently withdrawn with the leave of the Court and the present suit was instituted again on 29-1-1973 for a declaration that the bill was void and was not based on any legally effective assessment.

3. The defendant denied that due procedure required for claiming the tax was not followed. The jurisdiction of the Civil Court to entertain this suit challenging the validity of the bill was also challenged contending that the valuation, assessment and the levy can be challenged by only filing an appeal u/s 169 of the Act and revision to the Court to which the Appellate Authority i.e. the Judicial Magistrate, is sub-ordinate and not by filing a civil suit. The suit was claimed also to have been time-barred, having been allegedly filed seven months after the accrual of the cause of action, when the notice was served on 30th June, 1972.

4. On these pleadings, the necessary issues were farmed. The trial Judge decreed the plaintiff''s suit. He held that the defendant failed to prove that any assessment list, as required under the provisions of the Maharashtra" Municipalities Act was prepared. He further held that no hearing was given to the plaintiff to agitate his objections to the valuation of the property. He also held that the fixation of the rateable value by reference to the value of the property, and not by reference to the rental value thereof was not justified. He overruled the plea of limitation and Jurisdiction raised by the defendant. Validity of this Judgment of the Civil Judge, Senior Division, Aurangabad, dated 20th March, 1978 is challenged in this first appeal.

5. At the very outset, we enquired from Mr. Deo, the learned Advocate appearing for the appellant, as to what he has to say about the finding of the learned Judge that no assessment list was prepared as required u/s 119 of the Maharashtra

Municipalities Act, 1965, and no public notice thereof was given as required u/s 119 of the Act. We also asked him how the requirements of section 121 of the Act can be said to have been complied with if, in fact, no such assessment list was ever prepared. Mr. Deo could not satisfy us from the records of this case that, in fact, any assessment list was ever prepared and the same was ever published. He, however, drew our attention to the notice issued by the defendant-appellant on 23-7-1967 and served on the plaintiff indicating that the property concerned was valued at Rs. 66,703/- and the tax was assessed at Rs. 8,337/-. This notice merely refers to the provisions of sections 114, 115,119 and 123 of the Act. It also doss not appear from the text of the notice that any assessment list as such was prepared as required under the Act. Chapter IX of the Act deals with the Municipal taxation. Sub-chapter (1) covering sections 105 to 112 provides for the imposition of compulsory and voluntary taxes. Sub-chapter (2) covering sections 113 to 135 provides for assessment and liability to tax on buildings and lands. Section 113 authorises the State Government to appoint an Authorised Valuation Officer for the purposes of the assessment of the rateable values of the property, while section 114 indicates how rateable value of any land is to be determined. Section 115 reads as follows :
"Preparation of assessment list :

115.(1) When a tax on building or land or both is imposed, the Chief Officer shall cause an assessment list of all buildings or land or lands and buildings in the municipal area to be prepared in the prescribed form.

(2) For the purpose of preparing such assessment list, the Chief Officer or any person acting under this authority may inspect any building or land in the municipal area and on the requisition of the Chief Officer, the owner or occupier of any such building or land shall, within such reasonable period as shall be specified in the requisition, be bound to furnish a true return to the best of his knowledge or belief and subscribe with his signature the name and place of abode of the owner or occupier or of both and the annual rent, if any, obtained and his estimate of the value of such building or land."

6. It is clear that section 115 does require the Chief Officer to cause an assessment list of ail the buildings and lands in the Municipal area to be prepared in the prescribed form. Section 117 indicates how the Authorised Valuation Officer has to check the correctness of the entries made in the said assessment list. Section 118 requires the Chief Officer to give a public notice of the preparation of such assessment list enabling the owners and occupants of the land and the buildings to inspect the same and even take extracts therefrom without any charge. Section 119 requires the Chief Officer to give a public notice thereafter and invite objections fixing a date of not less than 30 days and in the event of the property being taxed, for the first time, even individual notice is required to be served on the holder of the property. Sub-section (2) of section 119 enables the aggrieved holder to make objections in writing.

7. Section 120 then requires the Valuation Officer to dispose of such objections after "allowing the objector an opportunity of being heard in person or by agent". Section 121 then requires the list of assessment to be authenticated and on such authentication the list is to be treated as conclusive evidence with regard to entries made therein as indicated in section 122 of the Act subject only to the results of appeal and revision under sections 169 and 171 as also the amendment made therein u/s 123 of the Act.

8. This makes it clear that the Act does not contemplate any valuation or assessment of any building for the liability to tax unless entry with regard to the same is made in the assessment list and the assessment list is prepared after following the prescribed procedure in sections 114 to 1 22 of the Act, issuance of the notice such as the one dated 23-10-1967 without being backed by the list of assessment required to be prepared cannot, in our opinion, create any legal liability to pay the tax. Imposition, levy and collection of taxes are three different stages. The power to collect tax does not come into existence merely by imposing the same. Liability to pay the tax can only arise, as is held in several cases of the highest Court, when the assessment list is prepared after giving the assesses enough opportunity to inspect the same and have their say in the matter. The procedure contemplated under the provisions of sections 114 to 122 furnishes some guarantee to the citizens against the excesses or arbitrariness of the officer to the assessee before the liability is imposed on them.

9. Mr. Deo is right in contending that the correctness of the bill is liable challenged in an appeal to the Magistrate and correctness of the order of the Magistrate is liable to be challenged in revision to the Court to whom ordinarily appeals against the orders of such Magistrates are liable to be filed. It is possible to say that the plaintiff In this case could have availed of the said remedy. The plaintiff, however, has not availed of the said remedy. He challenged the validity of the bill on the earlier stage by filing a Special Civil Application in this Court. We ere informed that the same has been dismissed. Unfortunately none of the parties chose to file a copy of the said judgment in the present proceedings. Mr. Deo may be right in contending that the plaintiff also could have filed a copy of the said judgment, if at all it wanted to rely on the same. However, in our opinion, it was obligatory, on the part of the defendant to produce a copy thereof before the Court when the same was sought to be relied on in support of its contention as to the maintainability of the suit itself. Mr. Deo, however, contends that without regard to what this Court decided in the said Special Civil Application, the legality of the said bill cannot be challenged by a suit in the Civil Court. Mr. Deo relied on section 172 of the Act to support his contention that jurisdiction of the Civil Court is excluded and the suit is barred.

10. Section 172 reads as follow :

"No objection shall be taken to any valuation, assessment or levy nor shall the liability of any person to be assessed or taxed be questioned, in any other manner or by any other authority than is provided in this Act."

In the first place, section 172 does not expressly bar a suit in the Civil Court. Assuming, however, that word "proceedings'' also include "suit proceedings", the question of attracting the bar u/s 172 cannot arise, unless the plaintiffs objections in the suit can be said to any (1) valuation, (2) assessment, or (3) levy, or the plaintiff can be said to be questioning its liability to be taxed or to be assessed. This assumes that valuation, assessment and levy is, in fact, made under the provisions of this Act and liability to assessment or tax, is created under the provisions of this Act. The only remedy to object to such valuation, assessment, levy and question such liability to assessment and the tax can be said to have been provided by section 169. The said section enables the assessee to appeal against any bill presented by any person u/s 150 or the "other provisions of this Act. Sections 150, 169 and 172 can have no application whatsoever whom no assessment list is ever prepared, and entered therein are authenticated after hearing the objections to the valuation entered therein. Mr. Agarwal, the learned Advocate appearing for the plaintiff-respondent, is right in contending that there being no assessment list in the present case, nor the authentication thereof with regard to the buildings and the land owned by the plaintiff-respondent, the bill presented by the appellant Corporation cannot be said have been presented by reference to any provision of the Act. The contention, to our mind, is simply unanswerable. Figures of dues worked out by the Administrator or highest officer of the Municipality assuming the same to have been done honestly and correctly still cannot be said to be creating any liability to tax under the provisions of this Act, as the debt and the liability to tax is contemplated to arise under the provisions of the Act only alter the procedure under sections 114 to 122 is followed and the assessment list is prepared, finalised and authenticated in terms of the provisions of the Act.

11. It is also difficult for us to attach any importance to the order dated 16-2-1968 on which reliance was placed by Mr. Deo because the same has not shown to have been passed after giving an opportunity to the plaintiff, respondent and secondly, because the same does not appear to have been based on any assessment list as such prepared after following the procedure prescribed under the Act. As indicated earlier, the plaintiff specifically pleaded in the plaint that assessment list was not prepared and not published and that his objections to the notice dated 23-10-1967 were not investigated in his presence, after giving an opportunity to him of hearing. The defendant could hot produce any record at the trial to prove that, in fact any such hearing was given to the plaintiff. It is true that the witness examined by the plaintiff at the trial was the Chairman of the society from 1972 to 1975. Impliedly he could not be said to have been the President or the Chairman of the society on 24-11-1967 or on 16-2-1968 on which date the Administrator proceeded to dispose of the objections and corrected the entry as to the valuation of the property. We,

however, think that it was obligatory on the respondent to produce the record with regard to the notice of hearing on the plaintiff''s officers and his appearing in response to any such notice, when specifically the plaintiff founded his case on this point of not being heard with regard to his objections. This obligation arose because of the circumstance that the impugned order dated 16-2-1960 does not give any indication that any notice was served before the said date on the plaintiff, or its representative or any hearing was given to the plaintiff. Absence of any opportunity of being heard and more importantly the absence of the proof of the existence of any assessment list goes, in our opinion, to the root of the matter and is sufficient to make the demand, made under the bill and the notice invalid. The plaintiff''s suit appears to us to have been rightly decreed. We do not think it necessary to go into the other questions raised by the plaintiff in the plaint, when these basic requirements of the assessment themselves appear to have been absent in the present ease.

12. Mr. Deo, however, strongly relied on the judgment of the Supreme Court in the case of Bata Shoe Co. Ltd. Vs. City of Jabalpur Corporation, The Supreme Court did hold in the context of the controversy arising in the said case that no such challenge to valuation, assessment or levy of octroi could be maintainable in He Civil Court when other proceedings tor objections to the valuation, assessment or levy were expressly barred under the provisions of the corresponding section 84(3) of the C.P. & Berar Municipalities Act. Close examination of the facts of the case and the precise point arising therein makes it clear how the ratio of the said judgment is not applicable to the point that arises in the present case. Plaintiffs in the said case were importing articles for sale from their factories outside the city of Jabalpore. Such import of goods for sale was liable to octroi under the provisions of the C.P. and Berar Municipalities Act. In the year 1946-47 the municipality'' discovered that the octroi was short levied on the goods imported by the plaintiffs during the period from 1-4-1943 to 31-3-1946. The municipality, therefore, levied the octroi escaped from assessment at the earlier occasions and also imposed double the amount of duty by way of penalty on the plaintiffs. Some relief was given to the plaintiffs in appeal. The plaintiffs were driven to pay the amounts so, demanded and then instituted a suit for recovery of the same on the ground that the re-assessment of the octroi and imposing of the penalty for the supposed escaping thereof was ultra vires of the powers conferred on the Municipality under the Act. The trial Court decreed the suit, while the High Court dismissed the suit partly and decreed the same partly. Both the plaintiffs and the defendants appealed to the Supreme; Court. The plaintiff''s suit was found liable to be dismissed by the Supreme Court. In the opinion of the Supreme Court relevant Rule 14(b) did authorise the Municipality to recover the duty, not paid, and also to impose penalty for non-payment of such duty at the relevant time. According to the Supreme Court, the power so conferred on the Municipality was found to have been irregularly exercised and the same was not a case of lack of total jurisdiction in the municipality. In this view of the matter the

bar of questioning the debt liability u/s 84(3) of the C.P. & Berar Municipalities Act was found to have been attracted.

13. On our finding it is difficult for us to hold that defendant''s case is merely of an irregular exercising the power to tax preparation of the valid assessment list being the foundation of the debt of tax by the citizens to the Municipality. It is not enough that the Municipality possesses the power to impose the tax, but it must also legally levy tax and collect the same. Any lack of jurisdiction on the part of the Municipality in the matter of levy and collection is liable to be questioned in the Civil Court. As discussed earlier, it is difficult for us to hold that the calculation made in the bill amounted to valuation, assessment or levy under the provisions of the Act. No liability having arisen in the present case, the defendant was not legally entitled to recover any money from the plaintiff. The Civil Suit, therefore, in our opinion is perfectly maintainable and the bar of section 172 cannot arise in the present case. The learned Judges of the Supreme Court themselves have indicated how the ratio of several other cases was distinguishable on account of the points differently arising therein.

14. Mr. Deo then contends that in either case the suit instituted on 29th January, 1973 was barred beyond the period of six months of the accrual of cause of action and the suit instituted after the expiry of six months for the acts done or purported to have been done under the provisions of the Act must be dismissed as being time-barred u/s 304 of the Act. Suffice it to observe that once we find that the bill is not relatable to any provision of the Act, the question of attracting the limitation u/s 304 of the Act cannot arise.

15. The result is that the appeal fails and is dismissed with costs.

16. Mr. Deo makes an oral application for leave to appeal to the Supreme Court. Leave refused.