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Taherali Mulla Ibrahim Bohri Vs Municipal Council, Akola

Civil Revision Apple. No. 213 of 1974 with Civil Revision Application No. 535 of 1976

Court: Bombay High Court (Nagpur Bench)

Date of Decision: March 4, 1978

Acts Referred:

Bombay Sales Tax Act, 1959 â€" Section 20, 21, 22, 23, 3#Civil Procedure Code, 1908 (CPC) â€" Section 115, 9#Constitution of India, 1950 â€" Article 226#Government of India Act, 1935 â€" Section 226

Citation: (1978) MhLi 359

Hon'ble Judges: R.D. Tulpule, J

Bench: Single Bench

Advocate: A.B. Oka, for the Appellant; J.N. Chandurkar, for the Respondent

Final Decision: Dismissed

Judgement

R.D. Tulpule, J.

In these two revision applications a question has been raised with regard to their maintainability.

2. Both these revision applications arise from the proceedings taken out by the petitioner before the Judicial Magistrate, First Class, Akola

challenging the assessment in respect of the property bearing House No. 142, Ward No. 25, Malipura, Akola which was a theatre known as

"Manek Talkies". Revision application No. 213 of 1974 arises out of the said appeal preferred against the decision of the Municipal Committee,

Akola raising the rateable value of the property from Rs. 4,800 which it was formerly, to Rs. 7,665 payable from first of April 1968. The petitioner

contended before the authority for the purposes of heating objection that this revision was unjustified, arbitrary and causing harassment, and having

failed in getting relief from the authority, preferred this appeal to the Judicial Magistrate, First Class, Akola. The Judicial Magistrate, First Class,

Akola allowing the appeal against the assessment directed the Akola Municipal Council to recover taxes at the former rate and cancel demand.

3. Against that order of the Judicial Magistrate, First Class, Akola a revision was preferred by the Akola Municipal Council to the Additional

Sessions Judge, Akola which was numbered as Criminal Revision Application No. 9 of 1973. The Additional Sessions Judge, Akola allowed the

revision, set aside the order passed by the Judicial Magistrate, First Class, Akola and restored the order passed by the Municipal Council, Akola

demanding increase of Rs. 489.82. It is against this order that the present Civil Revision Application No. 213 of 1974 came to be filed

4. Civil Revision Application No. 535 of 1976 is similarly riled by the said Proprietor of Manek Talkies situate in the town of Akola to challenge

the further increase sought to be made by the Akola Municipality from the rateable value of Rs. 7,665 which was fixed to Rs. 10,230 for the

period of four years from 1973-74 to 1976-77. He similarly challenged the increase in the assessment and raising of the value on the grounds set

out in that appeal. This appeal also came to be allowed by the Judicial Magistrate, First Class, Akola who set aside the demand and directed that

the demand should be made as before. Criminal Revision against that decision was filed by the Akola Municipality before the Additional Sessions

Judge, Akola who allowed the revision application, set aside the order of the Judicial Magistrate, First Class, Akola and restored the order of the

Municipal Council and the demand made by it. Civil Revision Application No. 335 of 1976 is directed against that order.

5. At the hearing of these revision applications, a contention was raised that these revision applications are not maintainable. A question arose for

determination as to whether these matters which were entertained as criminal revision applications by the Additional Sessions Judge can be revised

and a revision application against them would lie. It is settled law now that though the appeal lies to the Magistrate from the order rejecting the

objection taken by rate payers to the proposed assessment and further revision application to the Sessions Court, the dispute between the parties

is not criminal in nature but is a quasi civil matter. In that view of the matter revision application u/s 115 of the Code of Civil Procedure, it was

contended, could be ultimately filed. In the view which I am taking about the maintainability of these revision applications, it is unnecessary to

consider this aspect of the matter.

6. The question as to the maintainability of the revision applications arises in the following manner. These applications arise out of proceedings as

pointed out challenging the assessment and valuation made for the proposed tax to be made by the Akola Municipal Council. They are

proceedings taken out under Chapter IX of the Maharashtra Municipalities Act, 1965. Section 105 of the Maharashtra Municipalities Act, 1965

enables and obliges a Council, amongst other taxes, to impose a consolidated tax on property in regard to tax on lands and buildings. A Valuation

Officer is to be appointed as contemplated u/s 113 and such Valuation Officer has to proceed with the fixation of valuation of lands and buildings

situate within the jurisdiction of the Municipal Council. u/s 115, the Chief Officer has to cause assessment list of lands and buildings within the

Municipal area to be prepared in the prescribed form. When such a list is prepared u/s 117, the Chief Officer has to submit the same to the

authorised Valuation Officer who has then to scrutinise that list and then return to the Chief Officer who has then to give a public notice of the list

so finalised. This notice of the Chief Officer is for the purpose of inviting objections to the valuation or assessment of the property in such lands.

The Chief Officer has also invariably to give individual notice inviting objections where the property is being assessed for the first time or the

assessment is being increased. Objections thereafter when received within the prescribed time against the valuation or assessment of any property

are then to be decided as per section 120 by the authorised Valuation Officer, The authorised Valuation Officer after hearing the objections has to

fix the valuation and assessment and if such valuation or assessment necessitates any amendment then he has to cause the said amendments to be

made in accordance with his findings in the list. It is this finalised list which is to become the basis of a demand and preparations of bills against the

owner or occupier as the case may be. A list so finalised is conclusive subject, of course, to the appeal or revision as provided for in section 169

or section 171. That is the import of section 122.

7. For our purposes and for the purposes of the question which is raised in the present revisions, it is unnecessary to refer to the following sections

in Chapter IX. Chapter X then deals with the recovery of the Municipal claims and as stated above, the Chief Officer has a liability to present the

bill to the person liable for payment thereof u/s 150. That person to whom the bill is presented may within 15 days pay the same, or show cause,

or prefer an appeal in accordance with section 169 against the claim. It will thus be seen that the person to whom the bill is preferred can make an

appeal u/s 169, which contemplates such an appeal to be made to the Judicial Magistrate or Bench of such Magistrate by whom under the

direction of the Sessions Judge such class of cases is to be tried. Thus it will be seen that such an appeal u/s 169 is against the bill which is arrived

at on the basis of valuation fixed and calculated in accordance with the rate of taxes imposed by the Council.

8. Sections 169 to 172 are material for our purposes. Section 170 prescribes the procedure in regard to the appeals and the manner of their

entertainment under certain circumstances. A revision application is provided u/s 171 against the decision in appeal u/s 169 of a Magistrate and

such revision application will lie to the Court to which appeals against the decision of such Magistrate ordinarily lie, which would under the

circumstances, be a Court of Session.

9. Section 172 then which is material, and on which the present objection to the maintainability of the application is based, is in these terms:

172. 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.

10. Mr. Chandurkar who appeared for the respondent Akola Municipal Council contended that these revision applications are not maintainable as

they are not provided for in the Maharashtra Municipalities Act. He contended that an objection to the valuation or assessment or its levy cannot

be raised ""in any other manner"" or ""by any other authority than is provided in this Act"". He, therefore, urged that the revision applications against

the order passed by the Sessions Judge, not being provided for in the Maharashtra Municipalities Act would be a challenge to such assessment or

valuation ""in any other manner"". It was also his submission that the High Court is not any authority for a further challenge as contemplated by the

Maharashtra Municipalities Act to resolve the dispute in regard to assessment. Therefore, section 172 of the Act operates as a complete bar after

the revision is decided by the Court of Session u/s 171. Mr. Chandurkar contended, that normally a proceeding which could be taken up by way

of challenge to an order passed by the Sessions Court either, u/s 115 of the CPC or under the provisions of the Code of Criminal Procedure is not

only not contemplated but impermissible and would mean a challenge ""in any other manner"". According to Mr. Chandurkar the phrase ""in any

other manner"" used in section 172 is wide in its amplitude and takes in its sweep all such manner of challenge to an order passed by the Sessions

Court including a revision application like the one which has been preferred. Mr. Chandur-kar, however, did not go further to contend that this

expression also embraced a constitutional remedy under Article 226 of the Constitution of India. His contention for the purposes of this revision

application was limited to contending that the revision application against the order of the Sessions Judge as preferred which is permitted u/s 115 of

the CPC cannot be allowed and is not permitted. Mr. Chandurkar relied upon a judgment of the Supreme Court reported in Bata Shoe Co. Ltd.

Vs. City of Jabalpur Corporation, .

11. Mr. Oka who appeared for the petitioner stoutly defended that the revision application is maintainable. Mr. Oka"s contention was firstly, that

the revision applications have been maintained and entertained by this Court since a long time, both prior to the 1965 Act under the C. P. and

Berar Municipalities Act, 1922 and also later that is, after the passing of the Maharashtra Municipalities Act. It appears that this is the first revision

of assessment subsequent to the coming into operation of the Maharashtra Municipalities Act, 1965 made by the Akola Municipal Council. The

second contention of Mr. Oka was that the High Court is not an authority which is contemplated by section 172. The High Court, he urged, has

the power of superintendence conferred upon it by other enactments to examine the decisions given by the Courts subordinate to it. That power

which the High Court has u/s 115 of the Code of Civil Procedure, he urged, could not be taken away. Lastly, it was his submission that the words

in any other manner" speak of proceedings de hors the Act such as a suit. According to him, a proceeding which is a continuation, or arises out of

a proceeding permissible under sections 169 and 171 is not a challenge to the valuation or assessment ""in any other manner"" but is a challenge in

the manner of the Act itself. In other words, according to Mr. Oka, a challenge to be covered by the expression ""in any other manner"" had to be

one not arising out of a manner of challenge contemplated by the Act but extraneous to the Act.

12. This submission that revision applications have been entertained under the C. P. and Berar Municipalities Act, 1922 in similar circumstances

and have also been entertained subsequent to the passing of the Maharashtra Municipalities Act, 1965 has not been seriously disputed before me.

It would, however, be necessary to examine the relevant provisions in the C. P. and Berar Municipalities Act, 1922 and the present provisions. It

was pointed out that the present section 172 is copied from section 84, sub-section (3) of the C. P. and Berar Municipalities Act, 1922 and is

reproduced here word for word. It is true that section 84, sub-section (3) of the C. P. and Berar Municipalities Act, 1922 is word for word

reproduced in section 172. No authority deciding the case is pointed out to me by Mr. Oka wherein the expression ""in any other manner"" or ""by

any other authority"" had been construed. But Mr. Oka"s contention was that the circumstance that it was not in any case construed and was not

decided goes to indicate that it was not considered as material or presenting a bar to a further revision application against the order passed in

appeal. u/s 83, however, or the C. P. and Berar Municipalities Act an appeal lay first to the Deputy Commissioner and then from the order of the

Deputy Commissioner a revision to the Commissioner. Both the Deputy Commissioner and the Commissioner were authorities empowered under

the Act to hear appeals against the decision of the valuation or assessment and revision thereafter. It is also true that subsequent to 1965, similar

revision applications have been entertained by this Court, and one such instance was pointed out to me by Mr. Oka in the case of Municipal

Council, Morshi v. Tulshiram 1977 Mh. L J 735. I shall refer to that decision later but as I pointed out neither in that decision nor in any other

decisions which can be pointed out or in any other case, had the question been decided. In view of the entertaining of the revision application and

in particular, the decision of the Division Bench of this Court in Municipal Council, Morshi v. Tulsiram (supra) a question arose since I am inclined

to take a contrary view, whether the matter should be referred to a Larger Bench. However, on a consideration of the authorities and in particular,

the decision of the Supreme Court in Bata Shoe Company"s case (supra) which was not available and was not before the Division Bench of this

Court which decided the Morshi Municipal Council"s case and since in view of the Supreme Court decision, I am of the opinion that the Division

Bench decision must be considered as no more good law, I do not think it necessary to refer this matter to a Larger Bench.

13. Mr Oka relied upon section 9 of the CPC and contended that this being a matter of civil nature, this Court has jurisdiction and unless expressly

or impliedly ousted, must be deemed to be continued. The words in section 172 in his opinion neither expressly or impliedly take away the

jurisdiction of this Court.

14. Mr. Oka further submitted that all those cases in which such a question has arisen or has been considered, have arisen out of suits filed against

the Municipalities to recover amounts alleged as excessive, improper or illegal recoveries. That such an expression may oust impliedly the

jurisdiction of the civil Court but it does not, according to him, oust a jurisdiction which no doubt is conferred by another enactment, but arises

from out of the permitted proceedings under the Act.

15. Mr. Oka also referred to a decision reported in Niranjan Lal Bhargawa Trust v. Nagar Mahapalika, Allahabad 1970 All. L J 332 wherein the

proceeding was also entertained as revision application. In the absence, however, of the relevant provisions of the U. P. Nagar Mahapalika

Adhiniyam, 1959, it would not be possible to express any opinion in regard to that decision.

16. It would, therefore, be necessary to go to the Bata Shoe Company"s case (supra). That case also arose upon a suit filed by the Bata Shoe

Company against the Jabalpur Municipality for refund of certain octroi duty collected from the Company, according to it, in excess. Section 84,

sub-section (3) of the C. P. Municipalities Act to which I have adverted and which is bodily reproduced in section 172 of the

Municipalities Act fell directly for consideration before the Supreme Court. The Supreme Court held in that case that the challenge to the recovery

and/or assessment of octroi duty apart from the manner which is provided in the Act is impermissible. It observed, referring to section 84, sub-

section (3) that ""any valuation, assessment or levy and the liability of any person to be assessed or taxed can be questioned only in the manner

prescribed by, the authority mentioned, in the Act and in no other manner or any other authority"". (Bata Shoe Company"s case (supra) page 958

Col. 2). The Court construed that this part of the provision is in the nature of an ouster of the jurisdiction of civil Court, at least by necessary

implication.

17. There is no doubt that in all those cases in which this question has been construed either by the Supreme Court or by the Privy Council or

other High Courts has arisen out of suits filed to obtain relief of repayment on the ground either that the levy or assessment was illegal or

unauthorised. The contention that the jurisdiction of the Civil Courts is not ousted has in all such cases been raised on the basis of argument that the

levy itself is outside the Act or is opposed to law. In the Bata Shoe Company"s case also reference was made to the decision of Bharat Kala

Bhandar Ltd. Vs. Municipal Committee, Dhamangaon, and other cases. The Supreme Court emphasised the circumstance in Bharat Kala Bhandar

Ltd."s case that ""the tax recovered in that case was unconstitutional and no provision of a statute could be construed as laying down that no Court

shall have jurisdiction to order a refund or a tax collected in violation of a constitutional provision", which according to the Court, was a weightier

reason.

18. It is true that what the Supreme Court was required to decide in Bata Shoe Company's case was the question whether the civil Court had

jurisdiction to challenge a valuation or assessment or levy of tax which was imposed by the Municipality. A question similar to one which has been

raised before me did not directly arise there. It was not a case where the proceeding was by way of challenge to the decision of the authority

named under the Act and which challenge though not permitted or specified under the Act was permitted under other enactments. In other words,

a fine distinction was sought to be drawn between the jurisdiction of a civil Court which was clearly ousted within the purview of the Act as

contemplated and a jurisdiction of a supervisory nature conferred upon the superior Court against the decisions of inferior Courts contemplated as

a manner of challenge under the Act. It was urged that the manner of challenge permitted or forum mentioned in the Act where other enactments

give the hierarchy of authorities and permits and clothes that Court being the superior Court with revisional and supervisory jurisdiction, that

jurisdiction continues and is neither inconsistent with the Act nor is it exercised ""in any other manner". Though the distinction is subtle and fine. I am

of the opinion that it is without substance.

19 Before proceeding further, it would be advantageous to refer to some of the cases which stand out as land-marks in this controversy. The

question whether the jurisdiction of a civil Court is other than the one mentioned in an enactment for decision on objections or disputes between the

authority and citizen or subject has come to the attention of the Court since a long time and has been raised under different enactments in a number

of ways. They have arisen mostly under the taxation statutes where a liability is sought to be resisted either after exhausting the forums permitted

under the Act or without reference to them. I propose to refer to only some of the decisions in this behalf.

20. The first decision in which this question was to some extent considered is that reported in Raleigh Investment Co. Ltd. v. Governor General in

Council 1947 P C 78. The case arose out of a suit for recovery of a sum paid by the Investment Company upon the assessment to income tax

which according to the Company was ultra vires the Legislature. One of the defences which was raised on behalf of the Governor General was that

section 67 of the Indian Income Tax Act was a bar to a suit. The taxing provision by which the assessment was made was contended to be ultra

vires. The High Court held that the provision was ultra vires and also held that neither section 226 of the Government of India Act, 1935 nor

section 67 of the Indian income tax Act barred the jurisdiction of the civil Court. The Federal Court reversed the finding holding that section 226 of

the Government of India Act, 1935 barred the jurisdiction and that the provision impugned was not ultra vires. The bar of section 67 of the income

tax Act was not pressed before the Federal Court.

Section 67 of the income tax Act was in these terms :

No suit shall be brought in any civil Court to set aside or modify any assessment made under the Act.....

It has to be seen that there the jurisdiction of Civil Court was specifically sought to be ousted either to set aside or modify any assessment made

under the provision of the income tax Act. But the contention was that the assessment under the provision of the Income tax Act was ultra vires the

provision itself being" ultra vires. The Judicial Committee held that the assessment made under the ultra vires statute was not a nullity and the

assessment ought to be taken to proceed on a mistake of law in the course of assessment. The Judicial Committee held on examination of the

relevant provisions of the Income tax Act that it gave the assessee an opportunity to raise the question under the income tax Act.

21. Referring to the provisions, it held that there was adequate machinery in the income tax Act. In its opinion, there was no difference between an

incorrect apprehension of the provisions of the income tax and the invalidity of a provision. The Judicial Committee explained that if this were not

so, all questions of the correctness of the assessment under the income tax Act could be brought before the Court and the section rendered otiose.

Finally, it held that the income tax Act having suitable and adequate machinery, jurisdiction to question the assessment otherwise than by that

machinery was, therefore, barred.

22. Turning, however, to the point in dispute both in this case Raleigh Investment Co. (supra) and in the earlier case of AIR 1940 105 (Privy

Council), a case under the Land Customs Act, 1924, there were express words barring the jurisdiction of the Civil Court and as observed by the

Supreme Court in Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, the presence of the section barring the jurisdiction was

the main reason, and the existence of an adequate machinery for the same relief was the supplementary reason for the Privy Council to come to the

conclusion to which it did.

23. I would now refer to a case reported in Kamala Mills Ltd. Vs. State of Bombay, , This was a case which arose under the Bombay Sales Tax

Act, 1946, the provisions of section 20 whereof came in for consideration. Section 20 of the Bombay Sales Tax Act provided that $\tilde{A}^-\hat{A}_{\dot{c}}\hat{A}^{\dot{c}}_{\dot{c}}$

20. Save as is provided in section 23, no assessment made and HO order passed under this Ad or the rules made thereunder by

Commissioner or any person appointed u/s 3 to assist him shall be called into question in any Civil Court, and save as is provided in sections 21

and 32, no appeal or application for revision shall lie against any such assessment or order.

It may be mentioned that sections 21 and 22 of the Bombay Sales Tax Act confer a right upon an assessee to prefer an appeal and revision

respectively. The case arose out of a suit filed by Kamala Mills in the High Court of Bombay in the original side alleging that the levy of tax by the

Commissioner and its recovery on certain transactions of sales which were described and contended as outside sales, was erroneous; that the

Company discovered that this recovery was erroneous after the decision of the Supreme Court in The Bengal Immunity Company Limited Vs. The

State of Bihar and Others, and it, therefore, sought to recover that tax inasmuch as DO machinery for the refund is provided. The contention that

the recovery was illegal was the main foundation of the suit. Considering the impact of section 20, the Supreme Court cited an analogous provision

appearing in section 81 of the Madras General Sales Tax Act, 1939 which fell for consideration in the case of Firm and Illuri Subbayya Chetty and

Sons Vs. The State of Andhra Pradesh, , wherein it was urged that the expression ""any assessment made under this Act"" was capable of bringing

under its umbrella all assessments made by the appropriate authorities under the Act, whether the said assessments were correct or not.

Considering section 20 itself, the Court observed ""it seems to us plain that the words used in this section are so wide that even erroneous orders of

assessment made would be entitled to claim its protection against the institution of a civil suit."" The Court then concluded ""in every case, the

question about the exclusion of the jurisdiction of Civil Courts either expressly or by necessary implication must be considered in the light of the

words used in the statutory provision on which the plea in rested, the scheme of the relevant provisions, their object and their purpose.

24. Following the decision of the Privy Council and the force of enactments excluding the jurisdiction of the civil Courts by implication, the

Supreme Court pointed out, that in such cases considerations as to the machinery provided by the Act before holding that the jurisdiction is

impliedly ousted are material. It observed ""If it appears that statute creates a special right or a liability and provides for the determination of the

right and liability to be dealt with by tribunals specially constituted in that behalf, and if further lays down that all questions about the said right and

liability shall be determined by the tribunals so constituted, it becomes pertinent to enquire whether remedies normally associated with actions in

civil Courts are prescribed by the said statute or not.

25. In Dhulabhai's case (supra) propositions were laid down as determining the question whether the jurisdiction of civil Court is ousted or

otherwise. That was also a case which arose under the Madhya Bharat Sales Tax Act, 1950.

Section 17 of that Act rs worded similarly to section 20 of the Bombay Sales Tax Act. The principles which were laid down in paragraphs 1, 2

and 6 in my opinion, are attracted to the circumstances of this ease. Those principles are:

(1) Where the statute gives a finality to the orders of the special tribunals the civil Courts" jurisdiction must be held to be excluded if there is

adequate remedy to do what the civil Court would normally do in a suit. Such provision, however, does not exclude those cases where the

provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of

judicial procedure.

(2) Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the

sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil Court. Where there is no express

exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the

inquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination

of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted.

and whether remedies normally associated with actions in civil Courts are prescribed by the said statute or not.

* * * *

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if

the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the

particular Act must be examined because it is a relevant inquiry.

* * * *

During the course of its judgment, the Constitution Bench consisting of 5 judges in Dhulabhai"s case (supra) referred to the decision in Firm of Illuri

Subbayya Chetty's case (supra) wherein it was pointed out that any challenge to the correctness of the assessment must be made before the

appellate or revisional forums under the same Act since the character of the transaction was a matter into which the appellate and revisional

authorities could go."

26. It seems to me that the liability for payment of tax and the corresponding right to impose a tax are created and conferred by the Statute. It is a

statutory right and statutory obligation. To decide the disputes arising out of this statutory right and statutory obligation, the law has provided a

procedure and the authorities or forums which are created for the resolution of those disputed are under the Act. The circumstance that existing

authorities under any other enactment have been referred or invested with he jurisdiction to decide the dispute under the Act, does not by itself

cease to make them creatures or authorities under the Act. They are, therefore, creations of the enactment which created both the right and the

obligation. Entrustment of the function to such authorities in such cases is under that enactment. In my opinion, it would be erroneous to import the

entire machinery under that enactment or hierarchy of authorities under that Act into this Act as if they are a part of it. That would amount to writing

those provisions relating to such a machinery in the charging Act. It cannot be said that apart from those authorities or forums named in the Act,

there are other forums or Authorities expressly named under the Act. It would be difficult in such cases to do indirectly what cannot be done

directly namely, by implication or recourse to other enactments importing further authorities or forums not contemplated or permitted by the Act.

Therefore, if a further revision application from the decision of Sessions Court is not expressly referred to or contemplated by the Maharashtra

Municipalities Act, it would not be possible in my opinion, to bring any right to file a revision application against the decision of the Sessions Court

to the High Court in it by implication.

27. The statute creating the liability as well as the right, has also created a procedure for adjudication of disputes arising therefrom. The manner of

referring to this adjudicatory processes for the solution of the disputes is also prescribed. It would, therefore, follow that, that is the manner which

is provided in the Act. I do not think that any other manner could be imported by implication to be also the process of adjudication provided in the

Act by recourse to another extraneous enactment. Where an attempt is made to have the same challenge brought up and raised in any manner

other than the one provided in the Act for adjudication, is an objection taken to the assessment ""in any other manner"" than the provided under the

Act and, therefore, outside the pale of the Act.

28. I am also inclined to think that the sweep of the expression ""in any other manner"" is so wide and sweeping, that it would sweep away all other

manners of challenge which can be contemplated by implication. The intendment seems to be clear that barring the express manner of raising an

objection, any other manner for the solution of disputes in regard to rights and obligations is excluded.

29. I am inclined to think that the expression ""in any other manner"" being so wide is thus capable of excluding all other forums and manner of

adjudication or challenge other than that prescribed by the Act, as held by the Supreme Court in Bata Shoe Company"s case (supra). After

referring to Dhulabhai"s case and other cases to which I had made a reference and referring specifically to section 84 (3) of the C. P. and Berar

Municipalities Act equivalent to section 172 of the Maharashtra Municipalities Act the Supreme Court observed ""if a provision merely giving

finality to an order could be construed as ousting the Civil Court's jurisdiction, section 84 (3) of the Act, which is far more expressive can

legitimately be construed to have the same effect. It excludes in terms a challenge to the various things therein mentioned, in any other manner or by

any other authority than is provided in the Act."" This expression in my opinion by the Supreme Court on the effect of section 84 and its wide

amplitude sweeps away a further challenge by way of revision application. In my opinion, by a revision application to this Court the challenge is ""in

any other manner"" not contemplated or permitted by the Act. There also the scheme of the Act was considered to see whether as suggested in

Dhulabhai"s case (supra) it provided an adequate opportunity to the persons nominated under the Act ""to do what the Civil Courts would normally

do." As I pointed out, that was a case where the suit was brought in the Civil Court. The question before us here is of a challenge

manner"" and not of a different jurisdiction.

30. It seems to me however, that the answer to that contention is also to be found in Dhulabhai's case. Referring to the powers of the Tribunal and

authorities and even the High Court in an income tax reference it was pointed out as held in K.S. Venkataraman and Co. Vs. State of Madras, that

the Tribunals or forums created under the statute cannot question the validity of the enactment and have to take the provision as valid and legal. A

challenge to the provision on the basis that the provision is ultra vires is outside its scope and jurisdiction. Such a challenge could be contemplated

by an extra statutory jurisdiction like the Civil Court.

31. In our case the challenge is not to the provision, but to the correctness of assessment and its validity. Such a challenge by implication must go

before the forums or the Tribunals only as contemplated by the Act. By taking a further revision application against the decision of Sessions Court

it would be nothing but adding the forums and reading into the Act something which is not there. I do not think that this can be permitted.

32. I will now briefly refer to the Morshi Municipalities case. In that case both the Courts below held that the assessment was illegal for want of

individual notice to the assessee. In a revision application filed to this Court the question which was dealt with was the scope of powers u/s 169 of

the Act. No arguments were advanced and the question was not decided as to the maintainability of a revision application. The Division Bench

proceeded on the footing that a revision application lay to it. I do not think that such an implied assumption can be held to mean that this Court held

the revision application to be maintainable.

33. On a consideration of the question and various decisions, I am inclined to think that the concept of the expression ""in any other manner"" takes

into its ambit and purview other manners of challenge and objection to the correctness and validity of assessment of levy, other than the ones

specified under the Act. Further revision application, therefore, from the decision of the Sessions Judge to whom appeals lie from the decision of a

Magistrate, as contemplated in sections 159 and 171 of the Maharashtra Municipalities Act is not permissible. Consequently, these revisions must

be held to be not maintainable and are dismissed. Hence the order.

34. Revision applications are dismissed. There will be no order as to costs under the circumstances.