Chhotelal Verma Vs The Corporation of The City of Nagpur

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Sept. 4, 1963

Acts Referred: Constitution of India, 1950 â€" Article 226

Citation: (1964) 66 BOMLR 502

Hon'ble Judges: Paranjpe, J; Chitale, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

Chitale, J.
The petitioners in this case are residents of Nagpur. They have been paying municipal taxes viz. the property tax, water rate,

conservancy tax and public latrines cess. Prior to March 2, 1951, Nagpur City had a municipality, whose affairs were managed by a Committee

consisting of elected and other members. The said Committee was empowered by statute to levy some taxes on the residents of Nagpur in order

to provide them with certain amenities. The Municipal Act that was applicable before the City of Nagpur Corporation Act, 1948, came into force

was the C.P. and Berar Municipalities Act, 1922 (Act II of 1922). Section 66 of that Act empowered the Municipal Committee to impose various

taxes including (1) property tax, (2) latrine or conservancy tax, (3) tax for the construction and maintenance of public latrines and (4) water rate for

water supplied by the Committee. The Nagpur Municipal Committee had imposed these taxes in the city. The City of Nagpur Corporation Act,

1948, hereinafter called "the Corporation Act", received the assent of the Governor General on January 22, 1950, and was brought into force on

March 2, 1951. The provisions of Section 114 of the Corporation Act are similar to those of Section 66 of the C.P. and Berar Municipalities Act,

hereinafter referred to as "the Municipal Act"; Sub-section (3) of Section 114 of the Corporation Act corresponds to Section 71 of the Municipal

Act. It is common ground that the above-said taxes are to be assessed on the gross annual letting value of buildings and lands. Section 119 of the

Corporation Act defines the expressions "the annual value of land" and "the annual value of buildings"; it also prescribes the mode of ascertaining

the annual value of lands and buildings. It is not disputed before us that in the Corporation Act the expressions "the annual value" and "the annual

letting value" are used in the same sense; they are synonymous. The petitioners allege that the imposition of taxes, their reduction, alteration or

enhancement is exclusively within the authority of the Corporation, it is not merely an executive act, and it has to be done by the Corporation itself.

The petitioners further allege that an exception seems to have been made in the Corporation Act in the case of property tax; but so far as the other

taxes are concerned, the authority to impose, reduce or enhance them still remains with the Corporation and is regulated by rules made u/s 71 of

the Municipal Act, as no fresh rules have been made u/s 114(3) of the Corporation Act. These rules, according to the petitioners, provide for

valuation, assessment and the revision thereof by the Corporation itself. The petitioners further allege that in about 1958 revision of assessment was

undertaken by the Corporation Authorities and the Chief Executive Officer began to act u/s 124 of the Corporation Act. The function of finding out

of the annual letting value was entrusted to an officer, called "Assessor". He increased the assessment and issued notices u/s 127 of the

Corporation Act, the ground of increase given in the notices being "the general rise in rate". (See para. 7 of the petition). On receipt of these

notices, tax-payers filed their objections u/s 128 of the Corporation Act. These objections, according to the petitioners, should have been heard by

the Chief Executive Officer himself. He, however, did not hear them himself. Temporary officers were appointed to hear and decide these

objections. According to the petitioners, these officers were not delegated the powers vested in the Chief Executive Officer u/s 129 of the

Corporation Act or under the rules. The petitioners, therefore, contend that the determination of the objections by the said officers was ultra vires

and of no effect.

2. The petitioners further mention that some tax-payers appealed to the Additional District Judge, Nagpur. Against his decisions, the Corporation

preferred revision applications. These revision applications were heard by Mr. Justice Abhyankar, who held that the necessary powers were not

delegated to the assessor and the procedure adopted for the reassessment was not sanctioned by the statutory provisions and was, therefore,

illegal. In view of these findings, Mr. Justice Abhyankar held that the Corporation was not entitled to recover the increased taxes from the tax-

payers in those cases.

3. The petitioners allege that in spite of Mr. Justice Abhyankar"s decision, the Corporation issued bills for taxes, u/s 154 of the Corporation Act,

based on the revolution which, according to them, was made without jurisdiction and illegally. Thereafter notices of demand were issued u/s 155 of

the Corporation Act and tax-payers were threatened with coercive process. In some cases warrants were actually issued and taxes were realised.

The petitioners further allege that objections to the notices of demand stating that the revaluation was without jurisdiction and hence the assessment

was illegal were submitted u/s 156(1)(b) of the Corporation Act, but instead of investigating and deciding those objections demands are made by

the Corporation. The petitioners further allege that even in the cases in which objections were decided, the tax-payers were not heard and,

therefore, that determination of the objections is illegal, being opposed to principles of natural justice.

4. With regard to water rate, conservancy tax and public latrines cess, the petitioners allege that according to the rules in force, the power to make

a revaluation and re-assessment of these taxes lay solely with the Corporation and the Corporation alone could exercise that power. In fact,

however, the Corporation did not exercise that power by passing any resolution directing revaluation and re-assessment of the said taxes. The

petitioners allege that the Chief Executive Officer did it on his own authority. According to the petitioners, the assessment made in 1958-60 for the

purpose of increasing water rate, conservancy tax and public latrines cess is, therefore, illegal.

5. According to the petitioners, in following the procedure for the re-assessment, the following illegalities are committed:

(i) The Corporation has not framed bye-laws u/s 415(14)(b)(a) of the Act, and in the absence of such bye-laws, the annual values found out by the

Assessor were arbitrary.

(ii) That there is no authority either in the Act or in the Rules to fix the letting value on the floor area of the buildings classified according to various

categories as the Assessor has done.

(iii) That there was no delegation of authority by the Chief Executive Officer of the Corporation to the Objection Officers who had, therefore, no

jurisdiction to hear and decide the objections.

(iv) That there was no delegation by the Chief Executive Officer to the Assessor to act u/s 124 of the Corporation Act.

(v) That the basis laid down for dealing with re-assessment of property tax is wrongly taken as the basis also for the re-assessment of water,

latrine, and public latrines taxes.

6. On these allegations, the petitioners pray for a writ of prohibition against the Corporation of the City of Nagpur and the Chief Executive Officer,

now the Municipal Commissioner of Nagpur Corporation, prohibiting them from recovering the increased taxes from the year 1958-59 onwards.

7. The opponents, i.e. the Corporation of the City of Nagpur and the Municipal Commissioner in their reply contend that the objections raised by

this petition could have been agitated in appeals provided by the Corporation Act, hence the present petition should not be entertained. They

further contend that under the C.P. and Berar Municipalities Act, 1922, rules were framed for the imposition, assessment and collection of taxes.

Under Rule 3 of the said rules, powers of re-valuation, assessment etc. were delegated to assessment officers appointed by the Nagpur Municipal

Committee and the Civil Station Sub-Committee. These powers conferred on the assessment officers continued even after the Corporation Act

came into force, as they were saved by Section 3(2) of that Act. The opponents further contend that the power which the Chief Executive Officer

had u/s 124 could be delegated by an order passed u/s 123, Orders u/s 123 were passed authorizing the assessing officer, now called assessor, to

revalue lands and buildings. The opponents further allege that the assessor before revaluing the lands and buildings in any ward in the city of

Nagpur submitted the programme chalked out for the purpose of revaluation to the Chief Executive Officer, who sanctioned that programme.

According to the opponents, such sanction read with Section 123 of the Corporation Act amounted to delegation of the necessary authority in

favour of the assessor. The opponents further allege that the powers under Sections 124 and 127 of the Corporation Act were delegated by the

Chief Executive Officer on February 5, 1959, and notices were subsequently i.e. after April 1, 1959, issued u/s 127 by the assessor. The

opponents alternatively contend that even assuming that the assessor was not duly authorized to issue notices u/s 127, the petitioners and other tax-

payers submitted their objections and those objections were heard u/s 129 of the Corporation Act by an officer duly authorized in that behalf. The

objections having thus been decided by a duly authorized person, such decision and the consequent assessment of the taxes would be legal and

valid. The opponents have in their return stated that the then Municipal Committee created a post of an objection officer in the year 1936. The

duties and functions of this officer were clearly stated in the resolution passed by that Committee. The power to hear objections to revaluation and

consequent assessment was delegated to this officer and, according to the opponents, this delegation of authority still holds good u/s 3(2) of the

Corporation Act. The opponents further point out that after the Corporation Act came into force, the Administrator in his capacity as the Chief

Executive Officer confirmed the appointment of the objection officer and also delegated to that officer his powers u/s 129 of the Corporation Act.

The opponents further allege that the assessment of the property tax is an executive act and was properly entrusted under the Corporation Act to

the Chief Executive Officer-now the Municipal Commissioner. They further contend that the rules, which are still in force in view of Section 3(2) of

the Corporation Act, provide for the appointment of an officer for the exercise of the powers in respect of revaluation, assessment and collection

of water rate, conservancy tax and public latrines cess, hence the valuation and the assessment of these taxes made by the assessor is legal and

valid. The opponents admit that the annual letting value is determined by the officer called assessor. They also admit that notices u/s 127 were

issued by the assessor. It is also admitted that the objections were heard by officers other than the Chief Executive Officer. The opponents,

however, contend that these officers were duly authorized, hence the action taken by them is not illegal. The opponents contend that Rule 3 of the

Assessment Rules empowers the Corporation to delegate the function of re-valuation and assessment to an officer of the Corporation, formerly

called "assessment officer" and now called "assessor". In view of the rules framed under the C.P. and Berar Municipalities Act, 1922, which are

still in force because of Section 3(2) of the Corporation Act, revaluation and assessment of water rate, conservancy tax, and public latrines cess is

also legal and valid. The opponents deny that the re-valuation is arbitrary and based only on floor area basis. They allege that the assessor has

taken all the relevant circumstances into account, he has considered each case separately and has made the revaluation and consequent assessment

of the taxes in question.

8. In order to consider the contentions advanced by Mr. Mangalmurti for the petitioners, it would be necessary to refer to certain provisions of the

Corporation Act before discussing the said contentions.

9. Section 114 of the Corporation Act corresponds to Section 66 of the C.P. and Berar Municipalities Act, 1922. Section 114, Sub-sections (1)

(a) to (d) refer to the taxes in question. The relevant portion of Section 114 reads thus:

114. (1) For the purposes of this Act, the Corporation shall impose-

(a) a tax payable by the owners of buildings or lands situated within the city with reference to the gross annual letting value of the building or land,

called property tax;

(b) a latrine or conservancy tax payable by the occupier or owner upon private latrines, privies or cesspools or upon premises or compounds

cleansed by Corporation agency;

(c) a tax for the construction and maintenance of public latrines;

(d) a water-rate, where water is supplied by the Corporation;...

From the wording of this section, it is clear that it is obligatory on the Corporation to impose these taxes. This is clear in view of Sub-section (2) of

Section 114 which also empowers the Corporation to impose some more taxes. But the wording of Sub-section (2) indicates that it is only an

enabling provision and the Corporation may or may not impose the taxes mentioned in Sub-section (2). Sub-section (3) of Section 114 provides

that the State Government may frame rules to regulate the imposition, assessment and collection of taxes mentioned in Section 114.

10. Section 115 deals with the procedure for imposing taxes. This section provides that the Corporation may, at a special meeting, pass a

resolution proposing the imposition of any tax mentioned in Section 114. After passing such resolution, the same shall be published by the

Corporation, so that the residents of the City can submit their objections to the proposals contained in the resolution. The Corporation may, after

considering such objections, amend the resolution and the proposals as contained in the amended resolution shall be forwarded to the State

Government for sanction. After receipt of the sanction by the State Government, it (sanction) shall be published in the Gazette and on such

publication it can be said that the tax is duly imposed and shall come into force from the date mentioned in the notification.

11. Section 116 lays down on what properties the property tax would be imposed and what properties would be exempt from that tax. Section

116 also prescribes the minimum rate of property tax.

12. Section 119 lays down the mode of ascertaining the annual value of land and buildings. The expression ''annual letting value'' used in Section

114 and the expression ''annual value'' used in Section 119 seem to be synonymous. Section 120 authorizes the Chief Executive officer to require,

by a written notice, the occupier of any land or building to furnish the name and address of the owner. Section 122 lays down that the liability to

pay the property tax is on the owner of the property. Section 123 provides that the Corporation may employ a person to determine the annual

value of lands and buildings in accordance with the principles laid down in Section 119. Any person so employed shall have power after giving due

notice to enter on, survey and value any land or building in the city, as per directions of the Chief Executive Officer. Section 124 lays down that the

valuation of any land or building situated in the city, which had been made before the commencement of the Corporation Act and was in force at

the commencement of the said Act, shall remain in force and shall be deemed to be the valuation for the assessment of the property tax on such

land or building, until the Chief Executive Officer makes a fresh valuation under the Corporation Act. Such valuation made by the Chief Executive

Officer shall remain unchanged for one year and may thereafter be revised by the Chief Executive Officer at the termination of successive periods

of one year. Sub-section (2) of Section 124 provides that the Chief Executive Officer may, instead of making a new assessment every year, adopt

the existing assessment, with such alterations as he thinks fit, giving to the persons affected by such alterations same notice as would be required

while making a new assessment. Sub-section (3) lays down that at least once in five years the Chief Executive Officer shall arrange for a survey for

the purposes of assessment of each part of the city.

13. Section 125 enables the Chief Executive Officer to get the necessary information from the owners or occupiers of lands and buildings for the

purpose of preparing the assessment list. Section 126 provides that after the valuation u/s 124 of the lands and buildings is completed, the Chief

Executive Officer shall get that valuation entered in a list and shall then give public notice of the place where such list may be available for

inspection. The notice shall also invite objections to the valuation, if any, within the period mentioned in Sub-section (2) of Section 126. Section

127 provides that the Chief Executive Officer shall, in all cases in which any land or building is valued for the first time and in the cases where the

valuation previously made is increased u/s 124, give special notice thereof to the owner or occupier concerned, and that notice shall contain a

statement giving the grounds of the increase. Section 128 enables the citizens to submit objections to the valuation made under the abovesaid

provisions. Section 129 provides that the Chief Executive Officer shall decide the objections submitted u/s 128 after hearing the persons submitting

the objections. Sub-section (3) of Section 129 provides that if necessary the assessment list would be amended according to the decision on the

abovesaid objections. Section 130 provides an appeal to the District Court, Nagpur, against the decision of the Chief Executive Officer with

regard to the said objections. Subject to the decisions under Sections 129 and 130, the valuation made by the Chief Executive Officer u/s 124 is

final u/s 131 of the Corporation Act.

14. Section 154 provides for the presentation of a bill in respect of any tax that has become payable. Section 155 provides that if the bill presented

u/s 154 is not paid within 15 days, a notice of demand shall issue. Section 156 provides that the person, on whom a notice of demand is served,

shall within 21 days either pay the sum demanded in the notice or show cause to the satisfaction of the Chief Executive Officer as to why the

amount demanded should not be paid or prefer an appeal as provided by Section 164 to the Judicial Magistrate authorized to hear such cases.

15. Reference may also be made to Section 59 of the Corporation Act. Sub-sections (3)(a) and (4) of that section read thus:

(3) Subject, whenever it is in this Act expressly so directed, to the approval or sanction of the Corporation or of the Standing Committee, and

subject also to all other restrictions, limitations and conditions imposed by this Act, the entire executive power for the purpose of carrying out the

provisions of this Act, vests in the Chief Executive Officer, who shall also-

(a) perform all the duties and exercise all the powers specifically imposed or conferred upon him by this Act;

(b) ....

(c) ....

(4) Any of the powers, duties or functions conferred or imposed upon or vested in the Chief Executive Officer by this Act may be exercised,

performed or discharged under the Chief Executive Officer''s control and subject to his superintendence and to such conditions and limitations, if

any, as he may think fit to prescribe, by any municipal officer, whom the Chief Executive Officer may generally or specially empower in writing in

this behalf.

16. It is important to note that Sub-section (3) of Section 59 lays down that the entire executive authority for the purpose of carrying out the

provisions of the Corporation Act vests in the Chief Executive Officer. It is also material to note that Sub-section (3)(a) further lays down that the

Chief Executive Officer shall perform all the duties imposed on him by the Corporation Act and shall also exercise all powers conferred on him by

that Act. Sub-section (4) of Section 59 authorizes the Chief Executive Officer to delegate any of his powers to any municipal officer whom he

thinks fit, subject to his control and superintendence. This delegation may be general or specific, but it has to be in writing. So also Section 3(2) of

the Corporation Act is material. It reads thus:

Every appointment, rule, byelaw, form, notification, notice, tax, scheme, order, licence or permission made, issued, imposed, sanctioned or given

under the Central Provinces and Berar Municipalities Act, 1922, shall, so far as it relates to the Municipality of Nagpur and so far as it is in force at

the commencement of, and is not inconsistent with, this Act, be deemed to have been made, issued, imposed, sanctioned or given under the

provisions of this Act, and shall unless previously altered, modified, cancelled, suspended, surrendered or withdrawn, as the case may be, under

this Act remain in force for the period, if any, for which it was so made, issued, imposed, sanctioned or given.

It is important to note that all appointments, rules and taxes under the prior Municipal Act are continued as if made under the Corporation Act,

unless they are inconsistent with the provisions of the Corporation Act or they are changed under the provisions of that Act. These are the material

provisions which we will have to bear in mind while considering the contentions raised in this petition.

17. Before dealing with Mr. Mangalmurti''s contentions we would like to mention the preliminary objections, which are raised in the return

submitted by the opponents. The opponents contend that the petitioners had a right to appeal provided by the Corporation Act. They have not

exercised that right, hence they are not entitled to get relief under Article 226 of the Constitution. They also contend that there has been

considerable delay in approaching this Court under Article 226, hence the discretionary relief sought for should not be granted by this Court.

18. Mr. Mangalmurti on behalf of the petitioners relies on a decision of the Supreme Court, viz. Calcutta Discount Company Limited Vs. Income

Tax Officer, Companies District, I and Another, . Reliance is placed on the observations in para. 28 of the judgment. The relevant observation is:

...The existence of such alternative remedy is not however always a sufficient reason for refusing a party quick relief by a writ or order prohibiting

an authority acting without jurisdiction from continuing such action.

Reliance is also placed on another decision of the Supreme Court, viz. A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand

Sobhraj Wadhwani and Another, . The observations in paras. 8 and 10 of the judgment in that very case clearly indicate that although existence of

another remedy may not be an absolute bar, the discretion always lies with the High Court to consider whether the discretionary relief under Article

226 of the Constitution should be granted or not in cases where an alternative remedy exists. The ground of delay also is always taken into account

by the High Court in granting discretionary relief under Article 226 of the Constitution. In this case, however, we do not propose to dispose of the

application on these grounds. We may also mention that Mr. Phadke, who appears for the Corporation, has not pressed these objections and has

fairly stated that in view of the fact that the Corporation seeks guidance from the decisions of this Court, the application should be disposed of on

merits, and not on the preliminary points.

19. We may also mention here another objection raised in the return submitted by the opponents, viz. this is a joint petition by several petitioners

making vague and general allegations without giving the necessary facts of each case. There is some force in this contention raised by the

opponents. As we will presently point out, while dealing with some questions raised in the petition, difficulty arises because the necessary facts are

not available from the petition and this difficulty arises because several tax-payers have submitted a joint petition.

20. The first contention raised by Mr. Mangalmurti is that the revaluation, i.e. fresh assessment of the annual value of the property tax,

contemplated by Section 124, is in fact made by the assessor employed by the Corporation and not by the Chief Executive Officer, as should have

been done u/s 124 of the Corporation Act. It is urged that u/s 124 it is the Chief Executive Officer alone who can make such revaluation, hence the

revaluation admittedly made by the assessor is without jurisdiction and, therefore, illegal. It is common ground that the revaluation is, in fact, made

by the assessor. The Corporation, however, contends that the work of revaluation done by the assessor was duly authorized and ultimately

sanctioned by the Chief Executive Officer, hence the revaluation and the consequent assessment of the property tax is legal and valid. The

Corporation also contends that the assessor, who has made the revaluation, is appointed u/s 123 of the Corporation Act, and in view of the

provisions of Section 123 the assessor is duly authorized to make the necessary revaluation for the purpose of assessing the property tax.

21. We shall first deal with the argument based on Section 123 of the Corporation Act. Sub-section (1) of Section 123 reads thus:

123. (1) The Corporation may, if it thinks fit, employ a person to determine the annual value of lands and buildings in accordance with the

principles laid down in section 119.

It is important to note that the appointment of an assessor u/s 123 is for determining the annual value of the lands and buildings in accordance with

the principles laid down in Section 119. Section 119 makes it quite clear that the determination of the annual value is for the purpose of assessing

lands and buildings to the property tax. In the present case, it is not disputed before us that the assessor, who has made the revaluation and has

determined the annual value of the lands and buildings, was duly appointed. In fact, the Corporation has produced a copy of the order, dated

March 12, 1951, appointing Mr. D.S. Dixit, who was ''Assessment Officer'' under C.P. and Berar Municipalities Act, 1922, as ''Assessor'' under

the Corporation Act (annexure A-2). The Corporation Act came into force on March 2, 1951. After that Act came into force, until the

Corporation could start functioning, all the powers under that Act vested in and were exercised by an Administrator. That Administrator issued the

said order, annexure A-2, which states, that the old ''Assessment Officer'' Shri D.S. Dixit will be styled as ''Assessor'' and that he and his assistants

called "Assistant Assessors" will be in charge of revaluation in the respective areas mentioned in that order. u/s 124 of the Corporation Act the

Chief Executive Officer has to make a fresh valuation, i.e., determine afresh the annual value of the lands and buildings in the Corporation area, at

least once in five years. Once he determines such value, that will remain unchanged for one year. The Chief Executive Officer may revise that

valuation at the termination of successive periods of one year. It is obvious that such valuation for the property tax has to be made according to the

principles laid down by Section 119 of the Corporation Act. It is urged on behalf of the Corporation that the Corporation Act by Section 123

provides that the Corporation may appoint an assessor for determining the annual value of lands and buildings according to the principles laid down

in Section 119. This appointment u/s 123 itself amounts to delegation by the Corporation of the power to value lands and buildings to the assessor.

In our opinion, there is considerable force in this contention. It is true that u/s 124 read with Section 119 the Chief Executive Officer has to make a

fresh valuation according to the principles laid down in Section 119. From that, however, it does not necessarily follow that the valuation made by

the assessor is without authority and hence illegal. The Corporation Act itself by Section 123 confers on the Corporation the power to appoint an

officer to determine the annual value of lands and buildings as provided by Section 119. If the Corporation appoints such an officer, chooses to call

him "Assessor", and if such officer makes the valuation u/s 119, it cannot be said to be without jurisdiction. Mr. Mangalmurti on behalf of the

petitioners urged that u/s 123 the assessors could only make valuation on the principles laid down in Section 119, but he could not make

assessment of the annual value of lands and buildings for the property tax u/s 124 of the Corporation Act. We are unable to accept this contention.

In this connection, it is important to note that Section 119 itself lays down that the valuation to be made according to the principles mentioned in

that section is for the purpose of assessing lands and buildings to the property tax. The opening words of Section 119 make this quite clear. Thus it

is clear that the valuation as per Section 119 is made for the purpose of assessment of property tax. If that is so, the assessment of property tax

based on such valuation would be only a matter of calculation, only an administrative act, inasmuch as the rate at which the property tax is to be

assessed on the basis of the said valuation is decided by the Corporation itself, the minimum rate having been fixed by the Corporation Act. Hence,

in our opinion, it cannot be said that the valuation made by the assessor for the purpose of assessing the property tax was without jurisdiction.

22. We may mention here one argument advanced by Mr. Mangalmurti on behalf of the petitioners. He relies on a decision of the Nagpur High

Court, viz. Nagpur Kshatriya Khatik Samaj v. Corporation of City of Nagpur [1956] Nag. 102 and contends that imposition, assessment and

collection of taxes is a legislative function and it cannot be delegated by the Corporation to anyone else. Reliance is placed on the following

observations (pp. 105-106):

The main question in the present case is whether the Corporation in levying this so called fee has exceeded the taxing power delegated to it. It may

be pointed out that the power to tax belongs to the legislature. The State Legislature has delegated the power in respect of municipal administration

to the Corporation, but the taxing power of the Corporation depends upon the grant to it in the Act. The Corporation cannot either change or

exceed the delegated powers. The power of the municipal corporations to impose taxes, licence fees, or other imposts is not an absolute power.

In our opinion, only the imposition of a tax and the determination of the rate thereof along with its basis are legislative functions, while the rest are

administrative functions. Whether to impose a particular tax or not, and the determination of the rate including the basis for that rate, at which the

tax would be imposed, are the only legislative functions. The imposition of the taxes we are concerned with is obligatory as can be seen from

Section 114 of the Corporation Act. The Corporation has to determine, with the sanction of the State Government, the rate of these taxes. Basis

for the rate of property tax is also provided by Sections 114(1)(a), 116(1) and 119 of the Corporation Act. Basis for the rate of the other taxes is

provided by rules. But to make a valuation for the purpose of these taxes as provided by the Act or prescribed by the rules thereunder, to assess

the amount of the tax payable and the recovery of the tax are all executive or administrative functions. We are unable to agree with Mr.

Mangalmurti that these also are legislative functions.

23. On behalf of the Corporation, reliance is also placed on the fact that the proposals regarding re-valuation were submitted by the assessor to

the Chief Executive Officer. (See Annexures D and D-1). Annexure D shows that the proposals regarding revaluation were submitted by the

assessor to the Chief Executive Officer and he sanctioned these proposals. It may also be noted that a reference was made to the Standing

Committee for sanction. The Standing Committee, however, directed that action should be taken as provided under the law, thereby indicating that

action u/s 124(3) of the Corporation Act should be taken by the Chief Executive Officer. Ultimately, the Chief Executive Officer sanctioned the

proposed programme of re-valuation on May 29, 1955. Thus, it will be clear that the re-valuation was, in fact, sanctioned by the Chief Executive

Officer. A similar sanction was further accorded on February 19, 1957. It is, however, urged by Mr. Mangalmurti on behalf of the petitioners that

this would at the most be a sanction to the proposed re-valuation, but not a sanction to the actual valuation arrived at. That seems to be so. On

behalf of the Corporation, however, reliance is placed on the fact that after this revaluation, the valuation which was arrived at was entered in a list

and a public notice was issued as required by Section 126, Sub-section (1), and objections were invited. Thereafter u/s 127 notices were issued to

those individuals whose lands or buildings were valued for the first time, and also in those cases where valuation was increased u/s 124 read with

Section 119. Thereafter, according to the Corporation, objections submitted by the tax-payers were heard and determined by officers duly

authorised in that behalf. Relying on these facts, it is urged that after all due opportunity was given to the tax-payers to raise objections to the

valuation arrived at and those objections were determined by officers duly authorized and thus the valuation, which was finally arrived at, was by

an officer duly authorized in that behalf. In support of this contention, reliance is placed on certain orders, by which some persons were authorized

to hear objections. Reliance is placed on annexure C to the return. It indicates that by a resolution dated April 20, 1936, the Municipal Committee

sanctioned the creation of a post of an officer for the disposal of objections to re-valuation and assessment. Reliance is further placed on annexure

C-1. This is an order dated June 28, 1952. This is an order issued by the Administrator after the Corporation Act came into force. By this order,

Mr. D.Y. Mardikar was appointed as Objection Officer with effect from July 1, 1952. Reliance is also placed on annexure C-2, by which the

Administrator, who was the then Chief Executive Officer, delegated powers vested in him u/s 129 to the Assistant Secretary of the Corporation.

There was similar delegation of authority in favour of Mr. S.V. Dahat, Assistant Objection Officer, by an order, dated July 1, 1952 (Annexure C-

3). Some more documents indicating such delegation of authority are produced. These documents are relied upon to show that persons were duly

authorized to hear the tax-payers" objections. Reliance is also placed on Section 59(4) of the Corporation Act, which provides that the Chief

Executive Officer can delegate any of the powers conferred on him by the Corporation Act to any other municipal officer. In view of Section 59(4)

and the various documents referred to above, there can be no doubt that persons were duly appointed and authorized to hear the objections

submitted to the valuation made by the assessor. These persons seem to be duly authorized and it cannot be said that the objections that were

heard, were heard by persons not duly authorized in that behalf. In para. 8 of the petition, the petitioners generally allege that the Chief Executive

Officer should have heard the objections u/s 128; he did not hear them, but they were heard by officers who had no authority to hear them. For

reasons indicated above, we are unable to accept this contention. We may mention here that it is in the case of such points that a difficulty arises

because of a joint application submitted by several tax-payers. In para. 8 of the petition there is a vague and general allegation that the objections

were ordered to be decided by persons not duly authorized. The petition itself states that some of the objections were heard and decided. The

petition, however, does not give the necessary details of each individual case. In view of this and in view of the facts alleged and proved by the

Corporation by producing the abovesaid papers, we must hold that the petitioners have failed to prove that the objections were ordered to be

decided by persons not duly authorized, or that some objections were decided by persons not duly authorized.

24. The next question for consideration is whether the petitioners'' contention that the fresh assessment of annual letting value and the consequent

assessment of the property tax by the Corporation is illegal and invalid is correct in view of the facts stated above. u/s 124 of the Corporation Act,

what the Chief Executive Officer is required to do is to make valuation for the purpose of the assessment of the taxes. It is important to note that

Section 124 does not deal with the assessment of the property tax itself. It merely deals with the assessment of the annual value and duration of

such assessment for the purpose of property tax. On behalf of the petitioners, reliance is placed on the expression ""after such assessment has been

made by the Chief Executive Officer"" used in Section 124(1). Read in its context, however, it is clear that the assessment referred to in that

expression is the assessment of the annual value for the purpose of assessing the property tax, and not the assessment of the tax itself. This will also

be clear from the other provisions of the Act that follow. After the valuation is made, Section 126 provides that the valuation shall be entered in a

list, that list shall be published and objections will be invited; Section 127 provides that in cases where valuation is first made and in cases where

the valuation is increased, not merely a general notice, but a special notice will be given to the individuals concerned. Section 129 provides

investigation into the objections to the valuation submitted u/s 128. Section 130 provides an appeal against the decision of the municipal officer

deciding the said objections. After the objections are thus finally decided, u/s 132 a final assessment list, showing-among other items-the amount of

the property tax payable, is to be prepared and thereafter such assessment list duly authenticated by the Chief Executive Officer will be conclusive

evidence of the amount of the property tax leviable on each land or building u/s 133 of the said Act. Thus, in view of these provisions it is clear that

the final assessment of the leviable tax is made u/s 132, after the objections are decided. As already stated, the objections seem to have been

decided by persons duly authorized and after these objections were decided, the assessment list u/s 132 was prepared. We may mention here that

the conclusive nature of the assessment list, as provided by Section 133(2) of the Corporation Act, was not challenged except on the ground that

objections u/s 128 were heard by persons not duly authorized. We are, therefore, unable to hold that so far as the property tax is concerned, the

valuation made by the assessor u/s 119 and the consequent assessment of the property tax was without jurisdiction and, therefore, illegal, as

contended by the petitioners. We may incidentally mention here that although the petitioners had taken additional grounds, which they were

allowed to do, challenging the vires of Sections 59 and 124 of the Corporation Act, these grounds were not pressed at the hearing before us.

25. One more contention urged by the petitioners is that there is no authority, either in the Act or in the rules, to fix the annual letting value on the

basis of the floor area of the buildings classified into various categories, as the assessor has done. This allegation is denied by the opponents in

para. 16(b) of their return. They allege that although certain general tests were formulated, these tests were applied to each individual case, taking

into account the variations depending upon the circumstances in each case. Here again difficulty arises because of a joint application submitted by

several tax-payers. The petition does not give the necessary details, hence it is not possible for us to decide whether the abovesaid contention

raised by the petitioners is correct or not. Mr. Phadke, who appears for the Corporation, stated before us that the assessor while making the

valuation has considered each case separately and has not taken the floor area as the only basis for valuation. As already stated, in the absence of

necessary facts and details, it is not possible for us to determine whether the petitioners'' abovesaid contention is correct or not. We may, however,

invite the attention of the Corporation to a decision of the Supreme Court viz. The Lokmanya Mills Vs. The Barsi Borough Municipality, . The

relevant observations are in paras. 5 and 6 of the judgment. The pertinent observations are:

...The Municipality ignored both the methods of valuation and adopted a method not sanctioned by the Act. By prescribing valuation computed on

the area of the factory building, the Municipality not only fixed arbitrarily the annual letting value which bore no relation to the rental which a tenant

may reasonably pay, but rendered the statutory right of the tax-payer to challenge the valuation illusory.

26. Mr. Phadke invites our attention to the following observations in the same decision (p. 1361):

If the Municipality of Barsi had adopted any of the recognised methods of valuation for assessing the annual letting value, the tax would not be

open to challenge, but the method adopted was not a recognised method of levying the rate.

What we wish to emphasize is that as laid down by their Lordships of the Supreme Court, the method of valuation should not be arbitrary and if

the valuation is arrived at only on the basis of floor area, that would be arbitrary valuation.

27. Mr. Phadke also referred to a recent decision of this Court, viz. Mahad Municipality v. Bombay S.R.T. Corporation (1960) 63 Bom. L.R.

174. As stated already, we are not, in the absence of necessary facts, in a position to decide whether the petitioners'' contention, viz. the valuation

is made only on floor area basis and is, therefore, arbitrary, is correct or not. We have invited the attention of the Corporation to the abovesaid

decision, so that if there are any defects in the valuation, they may be removed.

28. The next contention of Mr. Mangalmurti is that the water rate, conservancy tax and tax for the construction and maintenance of public latrines,

that is now imposed, is also illegal inasmuch as it is levied by persons not duly authorized. In para. 11 of the petition, the petitioners allege that

under the rules in force, the power to levy the said taxes remains solely with the Corporation, which alone can exercise that right. The Corporation

has not in fact done it. The Corporation never met and passed a resolution directing re-valuation and consequent re-assessment for the purpose of

increasing water rate and latrine taxes. The Chief Executive Officer has done it on his own authority. The assessment made in 1958-60 for the

purpose of increasing water and latrine taxes is, therefore, illegal. The opponents in their return admit that the Corporation has not passed any

resolution with regard to re-valuation for the purpose of water rate, conservancy tax and tax regarding public latrines. The opponents, however,

contend that Rule 3 of the Assessment Rules (published in Notification No. 6973-3707-M-XIII dated September 17, 1941) in respect of latrine

or conservancy-tax empowers the Corporation to delegate the function of valuation to an officer of the Corporation specially appointed for that

purpose. There is a similar rule in respect of water rate. Such delegation was made in favour of the assessor, who has done the work of valuation.

Reliance is placed on annexure A to the return. This is an extract from the proceedings of a meeting of the General Committee, dated June 22,

1939. This, however, merely authorizes the assessment officer to sign the notices in respect of assessment. What is, however, more important is

annexure A-2 to the return. This is an order passed by the Administrator on March 12, 1951, i.e. after the Corporation Act came into force, and

by this order the ''Assessment Officer'' appointed under the old Act was styled as ''Assessor''. In other words, he was invested with the powers of

an assessor u/s 123 of the Corporation Act. (See marginal note to Section 123). Now, it is important to note that although Section 123 read with

Section 119 authorizes the assessor to determine the annual value of lands and buildings for the purpose of property tax only, the water rate,

conservancy tax and tax for the construction and maintenance of public latrines-these taxes also are assessed on the same annual value, which is

admittedly the same as annual letting value, arrived at according to the principles laid down in Section 119 of the Corporation Act. Reliance is also

placed on the rules made in respect of the above-said taxes. Rules published on August 19, 1941, relate to the imposition of a tax on private

latrines and for the construction and maintenance of public latrines. Rule 2 reads thus:

2. There shall be imposed-

On every building or land without a private latrine, a tax payable by the owner Wider Section 66(1)(j) for the construction and maintenance of

public latrines according to the following scale on its gross annual letting value:

Rate of the tax per annum...

This rule will indicate that it was obligatory on the municipality to impose this tax. There is a similar rule in respect of water rate in the rules

published on September 28, 1949. (See page 27 of the rules). Similarly there are rules with regard to assessment of the said taxes, which are

called ''Assessment Rules''. (See pages 41 and 47 of the rules). Now, Sub-rule (1) of Rule 1 lays down how the gross annual letting value of a

building is to be arrived at. Sub-rule (2) of Rule 1 lays down that the valuation arrived at under Sub-rule (1) shall ordinarily remain in force for a

period of five years. Rule 3 provides that the valuation shall be made by an officer specially appointed for the purpose by the Municipal

Committee. Rule 7 provides that the Municipal Committee may delegate to a Sub-Committee or to one of its officers the power to hear and finally

dispose of the objections under Rule 6. (See pages 41 to 43 of the rules). Now it is clear from these rules that for determining the annual letting

value for the purpose of latrine and conservancy tax, mode of valuation is prescribed by the rules. The rules also provide that the valuation shall be

made by officers specially appointed in that behalf and that objections to valuation and assessment could be heard and determined by an officer

appointed to hear such objections. There are similar rules with regard to water-rate. (See pages 47 to 49 of the rules).

29. On behalf of the petitioners Mr. Mangalmurti relies on Rule 4 which lays down:

The committee shall on or before the 31st January of every third year cause to be prepared an assessment register containing....

Then the details to be entered in that register are set out. Mr. Mangalmurti points out that the last item to be entered in that register is the amount of

tax. It is urged on behalf of the petitioners that this rule makes it clear that it is the Committee, i.e. the Municipal Committee, which has to do all

this. Mr. Mangalmurti relies on the admission in the opponents'' return that the Corporation itself never met to pass a resolution regarding the

valuation and preparation of the assessment register. It is, however, important to note that Rule 4 itself lays down that the Committee shall cause

the assessment register to be prepared, i.e. the rule does not contemplate that the assessment register will be prepared by the Committee itself.

What is urged on behalf of the petitioners is that the Committee must direct a re-valuation and preparation of assessment register by passing a

resolution at a duly convened meeting, and in the absence of such direction by the Committee, re-valuation made by other officer would be without

jurisdiction. We are unable to accept this contention. As pointed out above, the imposition of these taxes, viz. water rate, conservancy tax and tax

for the construction and maintenance of public latrines, is obligatory under the rules, which are admittedly in force because of Section 3(2) of the

Corporation Act. It may be pointed out that under the Corporation Act also u/s 114 Sub-section (1)(b), (c) and (d), imposition of these taxes is

obligatory. It is not open to the Corporation to decide whether it shall levy these taxes or not. If it is obligatory on the Corporation to levy these

taxes, it follows that making the valuation for the purpose of these taxes is also obligatory. The rules with regard to these taxes, referred to above,

must be deemed to be in force in view of Section 3, Sub-section (2) of the Corporation Act. This is not disputed before us. Rule 4 relied upon by

Mr. Mangalmurti provides for the preparation of the assessment register on or before January 31 of every third year. Now, reading the rules as a

whole it is clear that the preparation of this assessment register is necessary because this assessment register furnishes evidence with regard to the

amount of tax that is to be recovered, while the valuation provides the basis for determining the amount of these taxes. As already stated, it is

obligatory on the Corporation to levy these taxes. The Corporation has no discretion to decide whether to levy these taxes or not; it, therefore,

follows that the preparation of the assessment register also is obligatory on the Corporation. There is no discretion to be exercised in this respect,

hence the mere fact that a resolution directing revaluation and preparation of an assessment register was not passed by the Corporation would not

make the levy of the said taxes illegal. Since the valuation arrived at for the purpose of these taxes is made by an officer duly authorized in that

behalf it must be held that the assessment and levy of these taxes also is not illegal, as alleged by the petitioners. It is also urged by Mr.

Mangalmurti on behalf of the petitioners that the rules do not provide for an assessor, hence the valuation made by an assessor in the present case

is illegal. There is no substance in this contention. As pointed out above, Rule 3 provides that the valuation shall be made by an officer specially

appointed for the purpose by the Municipal Committee. As already pointed out, these rules are still in force by virtue of Section 3, Sub-section (2),

of the Corporation Act. The valuation is thus made by a duly authorized person and whether he is called assessor or by any other name would be

immaterial.

30. In para. 9 of the petition, the petitioners referred to the decision of Mr. Justice Abhyankar in Civil Revision Application No. 193 of 1960 and

other companion revision applications. That decision is : The City of Nagpur Corporation Vs. Bhalchandra Ramrao Sonone, . From the

observations of Mr. Justice Abhyankar at page. 772 it is clear that the decision, so far as the points involved in this petition are concerned, was

based on a concession made at the Bar. The opponents in their return have frankly stated that when the revision applications were heard by Mr.

Justice Abhyankar, they could not produce the necessary documents, and the decision should be confined to the cases that were decided. As

already pointed out, Mr. Justice Abhyankar''s decision proceeds mainly on the concession made at the Bar and it is obvious that the decision must

be confined to the cases decided by Mr. Justice Abhyankar. We are also told that the Corporation filed a review application, but it was rejected.

Even so, the effect would be that Mr. Justice Abhyankar''s decision would conclude the particular cases decided by him. It is not even suggested

before us that that decision would operate as a bar on the principles of res judicata. Hence, we have decided the points raised before us on the

material placed before us.

31. For reasons indicated above, the petition fails and is dismissed. It appears that the Corporation''s failure to produce the necessary material

before Mr. Justice Abhyankar has given rise to this petition. We, therefore, think that there should be no order as to costs.