

(1954) 09 BOM CK 0024

Bombay High Court

Case No: Civil Revision Application No. 331 of 1953

The Ahmedabad Municipal
Corporation

APPELLANT

Vs

Kulinsinh Manibhai Seth

RESPONDENT

Date of Decision: Sept. 30, 1954

Acts Referred:

- Bombay Municipal Boroughs Act, 1925 - Section 82

Citation: (1955) 57 BOMLR 259

Hon'ble Judges: Rajadhyaksha, J

Bench: Single Bench

Judgement

Rajadhyaksha, J.

This application raises the question of the interpretation of Sub-section (3) of Section 82 of the Bombay Municipal Boroughs Act, 1925. The Ahmedabad Municipal Corporation, which is the applicant in the case before me, prepared an assessment list for the imposition of a special water rate for the year 1946-47, after following the regular procedure. After the assessment year commenced on April 1, 1946, Rule 336 of the Rules of the Ahmedabad Municipality was amended, and the amended rule came into force on July 1, 1946. Under the amended rule, the property of Mr. Seth (the opponent) became liable to the levy of special water rate. But no such special water rate could be imposed upon the property of Mr. Seth until the assessment list was amended. For this purpose a notice for the amendment of the assessment list was given as required by Section 82 of the Bombay Municipal Boroughs Act, 1925. It is not dear as to what was the precise period which was mentioned in the notice before which Mr. Seth had to file his objections to the alterations proposed to be made in the assessment list. The notice for amendment of the assessment list was issued on March 24, 1947. But it does not appear to have been served upon Mr. Seth till April 2, 1947. Mr. Seth apparently did make objections to the alteration, and presumably they were made within the time fixed in the notice. But these objections

were not adjudicated upon by the Standing Committee or other authorities mentioned in Section 81 till January 19, 1948, when, it appears, the objections were rejected. It is presumably on that date that the amendment was authenticated. Thereafter the Municipality presented a bill for the payment of the special water rate from July 1, 1946, when the amended rule came into force, till March 31, 1947. When the bill was not paid, a notice of demand was issued on the March 19, 1948, as provided in Sub-section (3) of Section 104. Thereupon Mr. Seth appealed, against the claim included in the bill, to the Stipendiary Magistrate, Ahmedabad, in accordance with the provisions of Section 110 of the Bombay Municipal Boroughs Act. The appeal was allowed on March 18, 1950 and the learned Additional Stipendiary First Class Magistrate, Ahmedabad, ordered that the Municipality should not recover the special water rate for the period from July 1, 1946, to March 31, 1947. Against that decision an application in revision was filed before the learned Sessions Judge, as provided for in Sub-section (3) of Section 110. The learned Sessions Judge confirmed the decision of the learned Magistrate and dismissed the revision application. Against that order the Municipality has come in revision.

2. I have no doubt that the view taken by both the Stipendiary Magistrate and the learned Sessions Judge is correct. Section 82 of the Bombay Municipal Boroughs Act provides for the amendment of the assessment list. This list can be altered at any time, but before the list can be altered, the Municipality has to give a notice to the persons interested in the alteration of the list of a date not less than one month from the date of the service of such notice, before which any objection to the alteration can be made. Under Sub-section (2), the objections made by any person before the time fixed in the notice has to be disposed of in the manner provided by Sub-section (2) of Section 81 which deals with the hearing of objections to the original assessment list. Then comes Sub-section (3) of Section 82 on which Mr. Shah for the Municipality has relied. It is in the following terms :◆

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

It is the contention of Mr. Shah that once the alteration is made it takes effect from the earliest day in the official year in which the circumstances justifying the entry or alteration exist. Mr. Shah argues that the circumstances justifying the alteration came into existence on July 1, 1946, when Rule 336 of the Ahmedabad Municipal

Rules was amended, and it is therefore argued that it is within the power of the Municipality, after the list is amended, to levy the tax from July 1, 1946. If this submission is correct, then the presentation of the bill for special water rate for the period from July 1, 1946 to March 31, 1947 would be in order. But in my view this argument overlooks the importance of the word "current" in Sub-section (3) of Section 82. The liability to the payment of the tax is contingent upon the authentication of the list or amendment thereof, for under Sub-section (6) of Section 81 the entries in the assessment list are to be accepted as conclusive evidence of the valuation and the basis prescribed in the Rules. The alteration could be made at any time during the current official year and under Sub-section (3) of Section 82 the amendment takes effect from the earliest day in that official year. If in the present case the amendment had been made before March 31, 1947, then it would have taken effect from July 1, 1946 which is the earliest day in the current year 1946-47 when the liability for the imposition of special water rate arose by the amendment of Rule 336. This is clear from the decision of Mr. Justice Dixit in *Subbappa Mallappa v. Bonni* (1947) 50 Bom. L.R. 701, the learned Judge observes:

...Section 82(3) shows that although amendments are made in the course of the year they become effective from the commencement of the year.

In the present case even if the amendment had been made before March 31, 1947, it could not become effective from April 1, 1946, because the amendment of Rule 336 came into force on July 1, 1946. But what has happened in this case is that the amendment was authenticated after hearing objections on January 19, 1948, i.e. in the official year 1947-48 which was then current. Therefore it would come into effect only from April 1, 1947. The opponent would, therefore, be liable to the payment of the special water rate for the period commencing from April 1, 1947, but not for any period prior to that date. The crucial point of time is the date when the entry is authenticated in any particular official year, after hearing objections of the parties. This view gains support from the judgment of Mr. Justice Lokur in *Bholapnr Municipality v. Governor General* (1946) 49 Bom. L.R. 752. In that case the Sholapur Municipality when preparing the assessment list for the year commencing from April 1, 1937, by a mistake omitted certain buildings situated within its limits. The mistake was discovered in May 1939 and after giving proper notice to the plaintiff, the assessment list was corrected u/s 82 of the Act. The precise date when it was corrected does not appear from the Report. But it was obviously in the official year 1939-40. Thereafter a bill was sent to the plaintiff for the recovery of the arrears of tax for the two previous years, 1937-38 and 1938-39. It was held by Mr. Justice Lokur that

...under Section 82(3) of the Bombay Municipal Boroughs Act, the corrected list must be deemed to have come into force from April 1, 1939 (i.e., for the assessment official year 1939-40 during which the amended list came into force), and, therefore, the Municipality could not recover the arrears for the years 1937-38 and 1938-39

according to the corrected list.

There is no warrant for the submission of Mr. Shah that whatever be the year in which the assessment list is corrected, the assessment list must be deemed to come into force from the date when the liability for the payment of the tax arose, although the assessment list may have been corrected several years thereafter. The liability can only arise after the assessment list is corrected, after hearing objections of the taxpayer, and the amended list can be deemed to come into force only from the first day of the official year current when the amendment comes into force. As in the case before me the amendment came into force on January 19, 1948, it must be deemed to come into effect from the earliest day in the official year 1947-48, i.e. from April 1, 1947. The opponent, Mr. Seth is therefore liable to pay the tax for the year 1947-48, but not for the year 1946-47 or to be more precise, from July 1, 1946, to March 31, 1947, for which the bill has been presented.

3. It seems to me that the view taken by both the learned Magistrate and the Sessions Judge is correct, and the rule must therefore be discharged with costs.