

(1966) 02 BOM CK 0016

Bombay High Court

Case No: Civil Revision Application No's. 1051 to 1055 of 1964

Miraj City Municipality

APPELLANT

Vs

American Board of Foreign
Mission

RESPONDENT

Date of Decision: Feb. 7, 1966

Acts Referred:

- Bombay District Municipal Act, 1901 - Section 46, 65, 65(3), 86(1)
- Bombay District Municipal Rules, 1901 - Rule 15

Citation: AIR 1967 Bom 276 : (1966) 68 BOMLR 519 : (1967) MhLj 12

Hon'ble Judges: Tarkunde, J; Gokhale, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

1. These revision application raise a common question of law relating to the scope of an appeal under S. 86(1) of the Bombay District Municipal Act. 1901. In all the revision applications the petitioner is the Miraj City Municipality and the respondent is the Secretary of a Mission which runs an institution called the Miraj Medical Centre at Miraj. The Medical Centre owns several buildings in Miraj, including a hospital, residential quarters for the staff. a primary school building and hostels for male and female students of the school. In or about 1952 the Miraj City Municipality assessed for the first time the buildings of the Medical Centre to its Consolidated Tax on Buildings and Lands. The Municipality is governed by the Bombay District Municipal Act . 1991. The Medical Centre submitted objections to the assessment on the ground that the buildings were exempted from the tax under Rule 15 of the rules framed by the Municipality under S. 46 of the Act. and also on the ground that the quantum of the assessment was excessive. The objections having been overruled., the Medical Centre filed an appeal before the Judicial Magistrate of Miraj as provided in S. 86 (1) of the Act. While this appeal was pending, the Municipality

claimed the amounts of the tax from the Medical Centre for some of the subsequent years, and these claims led to the successive appeals by the Medical Centre to the Judicial Magistrate. It was urged by the Municipality before the learned Magistrate that he had no jurisdiction to entertain the contention of the Medical Centre that the buildings were exempted from the tax. The Municipality also claimed that the quantum of assessment on the buildings was correct. By a common judgment the learned Magistrate held firstly, that he had no jurisdiction to consider whether the buildings were exempted from the tax and, secondly that the quantum of assessment made by the Municipality required to be reduced to some extent. The appeals were thus partly allowed. The Medical Centre went in revision to the Sessions Court at Sangli from the orders of the learned Magistrate as provided in S. 86(2) of the Act. The learned Sessions Judge allowed the revision applications., held that the learned Magistrate had jurisdiction to decide whether the buildings were exempted from the tax and remanded the cases to the learned Magistrate for deciding the claim for exemption after recording such evidence as may be led by the parties. The orders of the learned Sessions Judge have been challenged by the Municipality before us in these revision applications.

(2) Rule 15 of the rules framed by the Municipality under 46 of the Act provides inter alia that "buildings or portions thereof exclusively occupied for - charitable or educational purposes without any profit" shall be exempt from the levy of the Consolidated Tax on Buildings and Lands. There is an explanation appended to that rule which excludes certain buildings or portions thereof from the benefit of exemption.

(3) The scope of an appeal under S. 86(1) of the Bombay Municipal Act. 1901, was exhaustively considered in a judgment of the Division Bench of this Court in [The Municipality of Ankleshwar Vs. Chhotalal Ghelabhai Gandhi](#). In delivering the judgment of the Division Bench Mr. Justice Rajadhyaksha pointed out that in the case of a tax on buildings or lands, one of the pre-conditions of an appeal laid down in S. 86(1) was that the appellant should have made an application in writing to the Municipality, within the time fixed in the notice given under S 65 or 66 "stating the ground on which the claim of the Municipality is disputed". Section 65 provides that the Municipality shall give public notice at the time of the publication of the assessment list of the time when the Municipality will proceed to revise the valuation and assessment, and that the Municipality shall also give an individual notice to the owner or occupier of the property where the property is being assessed for the first time or where the assessment is being increased. Sub-section (2) of S. 65 provides that all objections to "The valuation and assessment" shall be made to the Municipality in writing, "stating the grounds on which the valuation and assessment are disputed" Sub-section (3) of S. 65 lays down the mode or modes of hearing those objections. The preparation of the assessment list itself is provided by S. 63, and amongst the items which are to be included in the assessment list are "appeal letting value or other valuation on which the property is assessed" and "the

amount of the tax assessed thereon." Reading Ss. 63 and 65 together, it is clear that the objections which the Municipality is bound to entertain in regard to the assessment list are objections about the valuation on the basis of which the property is to be assessed and the amount of the tax assessed thereon. Section 66 provides for a similar notice being given when an entry in the assessment list is amended. Now, the decision of the Division Bench referred to above is that in view of the pre-condition mentioned in S. 86 that the appellant must have filed an application in writing to the Municipality within the time fixed in the notice given under S. 65 or 66 stating the grounds on which the claim of the Municipality is disputed, the grounds on which an appeal can be entertained under S. 86 (1) are confined to the valuation and assessment in respect of which objections can be heard and disposed of under Ss. 65 and 66. Mr. Justice Rajadhyaksha observed:

"It seems to us that this clause (i.e. the aforesaid clause in section 86) makes it clear that the appeal can only be with respect "to the matters with regard to which an objection could be taken in the inquiry made by the Municipality under S. 65 of the Act, and the scope of the appeal is confined only to the grounds stated in the objections made to the Municipality under that section."

A reference was also made in the judgment to S. 86A(1) of the Act which runs as follows:

"86A(1). Every entry in the assessment list made under the provisions of this Act against which no objection is made as hereinbefore provided, and the amount of every sum claimed from any person under this Act on account of any tax, if no appeal therefrom is made as hereinbefore provided, and subject to the provisions of sub-section (2) of S. 86, the decision of the Magistrate or Bench of Magistrates in any appeal shall be final."

In view of the wording of S. 86A the Division Bench held that in addition to his right to challenge the correctness of the valuation and assessment entered in the assessment list an appellant can also contest the amount of the tax claimed from him, if the amount claimed is not justified by the entries made in the assessment list. The learned Judge observed:

"It is quite clear to us that the correctness of the valuation and the assessment and also the quantum of the tax claimed are matters which could properly be adjudged in an appeal before Magistrate under S. 86 of the Bombay District Municipal Act."

The Court observed, on the other hand, that questions with regard to the validity of the tax on lands and buildings are outside the scope of an appeal under S. 86.

(4) In the present case the objection of the Miraj Medical Centre was that its buildings are exempted from the Consolidated tax on Buildings and Lands by virtue of R. 15 of the rules framed by the Miraj City Municipality under S. 46 of the Act. It seems obvious to us that the Miraj Medical Centre was entitled in response to the

notice received by it u/s 65 of the Act, to submit to the Municipality an objection to the effect that its buildings were exempted from the tax under the rules framed by the Municipality. Such an objection relates to assessment of the buildings to the Consolidated Tax, and it was the duty of the Municipality under sub-section (3) of S. 65 to hear the objection and dispose it of. If that is so, it must follow from the aforesaid decision, in [The Municipality of Ankleshwar Vs. Chhotalal Ghelabhai Gandhi](#), that the objection came within the scope of the appeal provided in S. 86 (1) of the Act. It was urged by Mr. Abhyankar for the Miraj City Municipality that an objection claiming an exemption from the Consolidated Tax amounted to an objection to the validity of the tax itself. In our view, there is little merit in this contention. It appears to us that such an objection relates to the assessment of the Tax. The meaning of the word "assessment" as used in the Bombay District Municipal Act was thus explained by Mr. Justice Rajadhyaksha in the above judgment;

"In our opinion, the word "assessment" as used in the various sections of the Bombay District Municipal Act means the actual sum for which the tax-payer is liable and for which the bill is presented under S. 82 of the Act."

(5) Our view that a claim to an exemption from the Consolidated Tax on Buildings and Lands is within the scope of an appeal under S. 86 of the Act finds support in another decision of a Division Bench of this Court in [Gopal Mills Co. Ltd. Vs. The Broach Borough Municipality](#). Several appeals were disposed of by the judgment in that case and what is relevant for our purpose is the decision of the Court in Cross-Appeal No. 136 of 1953. The appeals arose under the Bombay Municipal Boroughs Act, 1925, and in appreciating the decision of the division Bench a reference must be made to S. 111(1) of that Act, which corresponds to S. 86A(1) of the Bombay District Municipal Act, 1901. S. 111(1) of the Bombay Municipal Boroughs Act confers finality on every entry in the assessment list against which no objection is made. the amount of every sum claimed from any person on account of any tax if not appeal therefrom is made, and the decision of the Magistrate or Bench Magistrates u/s 110 of the Act. These provisions in Section 111 were interpreted by the Division Bench to mean that no suit can be filed in a civil Court to agitate the questions to which finality is given by these provisions. Now, the question which arose in Cross-Appeal No, 136 of 1953 was whether the civil Court had jurisdiction to decide the claim made by an assessee for exemption of a certain land from the rate on lands or buildings on the ground that the land was used for agricultural purposes. The Division Bench held that the civil Court had no jurisdiction to decide this question, because it was a question on which an appeal could have been entertained by the Magistrate under S. 110 of the Bombay Municipal Boroughs Act Chagla C. J. delivering the judgment of the Division Bench observed:

"The learned Judge has held that three acres and 18 gunthas of the land belonging to the assessee was used for agricultural purposes and therefore was not liable to

tax.....We must hold that the learned Judge had no jurisdiction to go into and decide the question of three acres and 18 gunthas. Whether this land should be assessed on the basis of agricultural land used for agricultural purposes or on a different basis was a question of valuation with regard to which the assessee could have objected to the standing committee, ultimately could have appealed to the Magistrate, and finally gone in revision to the Appellate Court, and it is not a matter which was competent to a civil Court to decide."

This therefore is a direct authority in support of our view that in the cases before us the Judicial Magistrate had jurisdiction to decide the claim of the Miraj Medical Centre to exemption from the Consolidated Tax on Buildings and Lands.

(6) Mr. Abhyankar for the Miraj City Municipality relied, however, on a later decision of a Division Bench in [Balkrishna Dharamdas Vora Vs. The Poona Municipal Corporation](#), where a different view appears to have been accepted by the court. That case was decided with reference to the provisions of the Bombay Provincial Municipal Corporations Act, 1949. It was held in that case that the civil Court was competent to give a declaration that the property belonging to a trust was solely used and occupied for a public charitable purpose and was therefore exempt from the payment of the general tax imposed by the Municipality. Section 406 (1) of the Bombay Provincial Municipal Corporations Act provides that appeals against "any rateable value or tax fixed or charged under this Act" shall be heard and determined by the Judge. Some of the observations in the judgment of the Division Bench in this case suggest that, according to the learned Judges, an objection that a certain property is exempted from the general tax amounted to an objection to the legality of the tax and that such an objection could not be entertained in an appeal filed under S. 406 (1) of the Act. With great respect, we do not find ourselves in agreement with that view. That view, moreover, is at variance with the decision in [Gopal Mills Co. Ltd. Vs. The Broach Borough Municipality](#), referred to above. We find, however, that the decision of the Division Bench in the later case [Balkrishna Dharamdas Vora Vs. The Poona Municipal Corporation](#), is mainly based on another ground which has been stressed in the judgment in that case. Section 413(1) of the Bombay Provincial Municipal Corporations Act confers finality on certain matters and corresponds with S. 86 (1) of the Bombay District Municipal Act and S. 111 (1) of the Bombay Municipal Boroughs Act. The terms of S. 413(1) of the Bombay Provincial Municipal Corporations Act are, however materially different from the terms of the corresponding sections of the earlier Acts. Under S., 413(1) finality has been conferred upon "every rateable value fixed under this Act against which no complaint is made as hereinbefore provided," the amount of every sum claimed from any person on account of any tax if no appeal therefrom is made, and the decision of "the Judge" upon any appeal filed under S. 406 of the Act against any such value or tax. It will be noticed that whereas the two corresponding sections of the earlier Acts confer finality on "every entry in the assessment list against which no objection is made," finality has been conferred by S. 413 (1) on "every

rateable value" against which no complaint is made. Now, R. 9 in Chapter VIII of Schedule A of the Bombay Provincial Municipal Corporations Act specifies the entries to be made in the "assessment book" for the purpose of the general tax. These entries include the rateable value of each building and land "if any such building or land is not liable to be assessed to a general tax, the reason of such non-liability". the assessment on each building or land and certain other details. It is thus clear that although R. 9 of Chapter VIII of Schedule A provides for an entry to be made in the assessment book with regard to whether any building or land is exempt from the general tax, no finality to such an entry has been conferred by the provisions obtained in S. 413 (1) of the Act. This aspect of the case was emphasised in the judgment of the Division Bench in [Balkrishna Dharamdas Vora Vs. The Poona Municipal Corporation](#), . Mr. Justice Patel, delivering the judgment of the Division Bench, observed:

"This view is further strengthened by section 413 which gives finality to the rateable value fixed under the Act and the amount or the sum claimed and nothing else. Exclusion of the jurisdiction of the Civil Court is not to be lightly inferred. There is no express provision by which the jurisdiction of the civil Court is excluded in all matters that the Commissioner may be able to decide. Moreover, finality is given only to decisions regarding the rateable value and the amount of tax and not to any other matter that the Commissioner may incidentally decide..... It seems to us, therefore, that it is always open for the civil Court to entertain a suit where the question is one of legality of the taxation or the liability of the assessee to pay the tax."

Thus, the ratio of this case is not at variance with the view which we are inclined to take with regard to the scope of an appeal under S. 86 (1) of the Bombay District Municipal Act.

(7) In the result, we are of the view that the learned Sessions Judge of Sangli was right in holding that the Judicial Magistrate had the jurisdiction to decide the question of exemption raised by the Miraj Medical Centre and in remanding the case to the learned Magistrate for disposal in accordance with law. The rules issued in these Civil Revision Applications are accordingly discharged with costs.

(8) Petition dismissed.