

(1997) 06 BOM CK 0054

Bombay High Court

Case No: Writ Petition No. 5467 of 1986

Pune Cantonment Board and
another

APPELLANT

Vs

Bharat Forge Co. Ltd.

RESPONDENT

Date of Decision: June 17, 1997

Acts Referred:

- Bombay Municipal Boroughs Act, 1925 - Section 123(1), 78, 82(3), 83(3)
- Cantonments Act, 1924 - Section 60, 65, 66, 67, 68
- Constitution of India, 1950 - Article 226, 227

Citation: AIR 1998 Bom 53 : (1998) 1 BomCR 692 : (1998) 1 BOMLR 812 : (1998) 2 MhLj 445

Hon'ble Judges: B.B. Vagyani, J; A.P. Shah, J

Bench: Division Bench

Advocate: Presswalla, instructed by Mulla and Mulla, for the Appellant; D.B. Shroff, instructed by y Bhaishankar Kanga and Co., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

A.P. Shah, J.

This petition under Articles 226 and 227 of the Constitution of India by the Pune Cantonment Board and its Executive Officer is directed against the judgment and order dated 21st October 1986 passed by the District Judge, Pune in Civil Appeal No. 400 of 1984. Briefly the facts are that the respondents are a company incorporated under the Companies Act, 1956. The respondents are having business premises within the cantonment area of Pune. The buildings of the respondents are assessed and taxed on their annual value in accordance with the provisions contained in Chapter V of the Cantonment Act, 1924 ("Act" for short). It appears that after 1st April, 1980 the respondents constructed certain additional buildings. By their letters dated 5th September, 1981 and 11th December, 1981, the respondents informed the Cantonment Board of the dates when construction of various buildings were

completed. The Cantonment Board by its letter dated 22nd January, 1982 demanded information about the cost of construction of the new buildings. However, as there was no reply from the respondents to the said letter, the Cantonment Executive Officer sent to the respondents a notice dated 1st March 1983 u/s 71 of the Act for amendment of the assessment list whereby the respondents were informed that the Cantonment Board proposed to amend the assessment list in respect of the respondents' property in view of the additional new constructions so as to assess the value of the property at Rs. 21,89,061/- with effect from 1st April, 1982. However it seems that necessary information regarding the cost of the construction was furnished by the respondents to the Board under their letters dated 29th March, 1983, 18th April, 1983 and 27th April, 1983. Even thereafter some correspondence ensued between the parties as the Cantonment Board felt that the respondents had not furnished the exact dates of completion of construction. It is not necessary to dilate any more on this controversy since it is an admitted position that the dates of completion of construction were duly supplied to the Board. The Cantonment Executive Officer thereafter sent a fresh notice dated 3rd June, 1983 to the respondents u/s 71 of the Cantonment Act for amendment of the assessment list stating that the Cantonment Board had proposed to increase the annual letting value of the property due to addition of new constructions from Rs. 21,03,121/- to Rs. 22,78,771/- on 1st February 1981 to Rs. 22,95,253/- on 1st April, 1981, to Rs. 23,50,791/- on 15th May, 1981 and to Rs. 25,32,900/- on 1st December, 1981. By the said notice the Cantonment Executive Officer called upon the respondents to submit their objections, if any, to the proposed amendments within one month from the date of the notice and informed the respondents that they would be allowed an opportunity of being heard in support of their objections. The respondents by their letter dated 27th June, 1983 objected to the proposed amendments. The respondents were given personal hearing by the Assessment Committee on 6th February, 1984. After the hearing was given by the Assessment Committee and the assessment was approved, the Cantonment Board raised a bill on the respondents under Bill No. 3870 dated 3rd April, 1984 for Rs. 1,74,400.85 for the years 1980 to 1984.

2. The validity of the aforesaid bill was challenged by the respondents by filing an appeal u/s 84 of the Act before the District Judge, Pune being Civil Appeal No. 400 of 1984. By the impugned judgment and order dated 21st October, 1986, the learned Judge allowed the appeal and quashed the demand of the respondent for the sum of Rs. 1,74,400.85/- dated 3rd July, 1984. The learned Judge held inter alia that on correct interpretation of section 71 of the Act the Cantonment Board had no right to recover any tax payable due to the amendment of the assessment list for the period prior to the year in which the amendment was made. The correctness of this view is impugned by the Cantonment Board in this petition under Articles 226 and 227.

3. We are concerned in this case with levy of a tax on buildings and lands and the power to impose that tax is granted to the Cantonment Board u/s 60 of the Act

which provides that the Board may, with the previous sanction of the Central Government, impose in any cantonment any tax which under any enactment for the time being in force, may be imposed in any municipality in the State wherein such cantonment is situated. Section 65 says that save as otherwise expressly provided in the notification imposing the tax, every tax assessed on the annual value of buildings or lands or of both shall be leviable primarily upon the actual occupier of the property upon which the said tax is assessed, if he is the owner of the buildings or lands or holds them on a building or other lease granted by or on behalf of the Government or the Board or on a building lease from any person. While section 65 provides for assessment of the land or buildings on the annual value, the term annual value is defined by section 64 as follows:

"64. Definition of "annual value"- For the purposes of this Chapter "annual value means -

(a) in the case of railway stations, hotels, colleges, schools, hospitals, factories and any other buildings which a Board decides to assess under this clause, one-twentieth of the sum obtained by adding the estimated present cost of erecting the building to the estimated value of the land appertaining thereto, and (b) in the case of a building or land not assessed under Clause (a), the gross annual rent for which such building exclusive of furniture or machinery therein or such land is actually let or where the buildings or land is not let or in the opinion of the Board is let for a sum less than its fair letting value might reasonably be expected to let from year to year.

Provided that.. ...

4. So far as assessment of tax on buildings and lands is concerned, section 66 provides that the Executive Officer shall cause an assessment list of all buildings or lands in the cantonment or of both as the case may be, to be prepared in such form and in such manner as the Central Government may by rule prescribe. Once a list is prepared u/s 66, it has to be published. Section 67 provides for the publication of a public notice of the assessment list and of the place where the list or a copy thereof may be inspected and every person claiming to be the owner, lessee or occupier of any property included in the list and any authorised agent of such person, shall be at liberty to inspect the list and to make extracts therefrom free of charge. After the publication of the notice of the preparation of the assessment list, a further public notice has to be issued u/s 68 inviting objections to the valuation for assessment in such list. In all cases in which any property is for the first time assessed or the assessment is increased, a written notice has also to be given to the owner and to any lessee or occupier of that property. Sub-section (2) of section 68 prescribes how objections are to be made by the owner, lessee or occupier. Subsection (3) provides for the hearing of objections and disposal thereof by an Assessment Committee appointed by the Board. Sub-section (4) provides that the Assessment Committee shall consist of not less than three persons and it shall not be necessary to appoint

to the Assessment Committee any member of the Board. Section 69 then provides that when all objections made u/s 68 have been disposed of and revision of the valuation and assessment has been completed, the assessment list shall be authenticated by the signature of the members of the Assessment Committee, who shall at the same time, certify that they have considered all objections duly made and have amended the list so far as is required by their decisions on such objections. Under sub-section (2) of section 69, the list so authenticated has to be deposited in the office of the Board and shall there be open, free of charge, during office hours to all owners, lessees and occupiers of property comprised therein or the authorised agents of such persons and a public notice that it is so open has to be forthwith published. Then section 70 provides as follows :---

"70. Evidential value of assessment list- Subject to such alterations as may thereafter be made in the assessment list under the provisions of this Chapter and to the result of any appeal made thereunder, the entries in the assessment list authenticated and deposited as provided in section 69 shall be accepted as conclusive evidence

(i) for the purposes of assessing any tax imposed under this Act, of the annual value or other valuation of all buildings and lands to which such entries respectively refer, and

(ii) for the purpose of any tax imposed on buildings or lands, of the amount of each such tax leviable thereon during the year to which such list relates."

Section 72 says that it is not necessary to prepare a list every year, however it casts an obligation on the Executive Officer to prepare a new assessment list at least once in every three years and for this purpose the provisions of sections 66 to 71 shall apply in the like manner as they apply for the purpose of the preparation of an assessment list for the first time.

5. The provisions with which we have so far dealt concern the preparation of the assessment list, hearing and disposal of objections against it, the authentication of that list and its evidentiary value. But values are liable to change in the course of each year, of the property to be taxed and therefore, it was necessary to provide for such changes as may come about in the assessment list. It is with that end in view that the provisions of section 71 have been enacted. Section 71 runs as follows :---

"71. Amendment of assessment list.---(1) The Board may amend the assessment list at any time -

(a) by inserting or omitting the name of any person whose name ought to have been or ought to be inserted or omitted, or

(b) by inserting or omitting any property which ought to have been or ought to be inserted or omitted, or

(c) by altering the assessment on any property which has been erroneously valued or assessed through fraud, accident or mistake, whether on the part of the Board or of the Assessment Committee or of the assessee, or

(d) by revaluing or re-assessing any property the value of which has been increased, or

(e) in the case of a tax payable by an occupier by changing the name of the occupier;

Provided that no person shall by reason of any such amendment, become liable to pay any tax or increase of tax in respect of any period prior to the commencement of the year in which the assessment is made;

...

6. What is contended by Mr. Presswalla on behalf of the Cantonment Board is that even though in this case the respondent's objections were disposed of sometime in April, 1984, the amended entry will be effective even for the preceding years 1981-82, 1982-83 and 1983-84 because by reason of additions and alterations the Cantonment Board is expressly empowered to levy the taxes from the date when such additions and alterations were made subject to the condition that such levy cannot be effected in respect of any period prior to commencement of the year in which the original assessment was made in view of the proviso to sub-section (1) of section 71 of the Act. Reference was made to section 72 of the Act which prescribes that the assessment list is required to be revised every three years. It was urged that the assessment list remains valid till it is revised in accordance with the provisions of the Act. Therefore amendment made in accordance with section 71 is not restricted to the official year in which such amendment is made.

7. On behalf of the respondents, this interpretation is contested. According to the respondents' Counsel Mr. Shroff the assessment list can never be corrected unless and until the objections of the owner or occupier are first heard and disposed of u/s 68 and the assessment list authenticated u/s 69 because it is the assessment list so authenticated that is endowed with conclusive evidentiary value by section 69 and it is only when this conclusive evidentiary value is imparted to the assessment list that the liability to tax arises. Therefore it is urged that in the present case no liability could possibly arise until April, 1984 when the respondent's objections were disposed of. The Counsel urged that Clause (ii) of section 70 makes it clear that conclusiveness imparted to entries is only limited during the year to which such entries relate. In other words, according to Mr. Shroff the ambit of conclusiveness is limited to the relevant year during which the entry has been effected and not at any rate to past years prior to the current assessment list in which the amendment was effected. Mr. Shroff also urged that this controversy has arisen in the context of tax the whole basis of which is an annual basis namely the annual letting value and considering the overall scheme of the Act such is an irresistible conclusion that any amendment caused to the assessment list is applicable only from the year in which

such amendment is made.

8. Both the learned Counsel tried to buttress their arguments by seeking to rely upon the decisions of the Supreme Court and High Courts under various Municipal statutes. We shall shortly refer to those judgments bearing in mind the observations of Chandrachud, J., as he then was in [New Delhi Municipal Committee Vs. The Life Insurance Corporation of India](#), that in order to determine the scope and extent of the Assessment Committee's power to amend an assessment list and the effect of an amendment made in a list, regard must necessarily be had to the language of the statute under consideration and its overall scheme governing the preparation and amendment of assessment lists. Decisions on other Municipal Acts containing similar provisions may with profit be perused but they cannot be considered as binding pronouncements on the Act which the Court has to construe while construing the provisions of the relevant Act. The first judgment relied upon by Mr. Shroff is in *The Sholapur Municipal Corporation v. Ramchandra Ramappa Madgundi*, 1972 (75) Bom.L.R. 469. This judgment was delivered by the Full Bench of this Court on controversy which had arisen on interpretation of provisions of the Bombay Municipal Boroughs Act, 1925. On construction of relevant provisions of the said Act, the Full Bench held that an alteration made u/s 83(3) of the Bombay Municipal Boroughs Act in the assessment list prepared u/s 78 of the said Act does not become effective for any period prior to the commencement of the official year in which the alteration in the assessment list is made and, therefore the Municipality is not entitled to levy tax for an official year or any part thereof which has already expired. It was observed that the alteration becomes effective from the commencement of the official year in which it is made so as to entitle the Municipality to levy tax with effect from the commencement of that year only. On a close scrutiny of the judgment of the Full Bench, it is seen that the judgment is mainly based upon interpretation of the expression "current official year" in section 82(3) of that Act, It was interpreted to mean the earliest day in the official year which is current when the amendment of the assessment list takes place, that is to say, the expression refers to only that official year which is running at the time when the amendment is made by insertion or alteration of an entry u/s 82(3) of the Act.

9. The next decision cited by Mr. Shroff is [Municipal Corporation of City of Hubli Vs. Subha Rao Hanumatharao Prayag and Others](#), is also arising under the Bombay Municipal Boroughs Act. A perusal of the said decision shows that the Supreme Court took the view that the scheme of relevant provisions of the Bombay Municipal Boroughs Act shows that the official year is the unit of time for the levy of property tax under that Act. It was further held that the expression "current official year" in the context in which it occurs in section 82, sub-section (3) clearly signifies the earliest day in the official year which is current when the amendment in the assessment list takes place and that expression refers only to the official year which is running at the time when the amendment is made by insertion or alteration of an entry under sub-section (1) of section 82. The Supreme Court approved the decision

of this Court in Sholapur Municipal Corporation v. Ramchandra (supra).

10. Mr. Shroff brought to our notice another decision of the Supreme Court in [Kalyan Municipal Council and Others Vs. Usha Paper Products \(P\) Ltd. and Another](#), . There the question which fell for interpretation of the Supreme Court was whether alteration made in the assessment list after following the procedure u/s 123(1) of the Maharashtra Municipalities Act would become effective for any period prior to the commencement of the official year in which the alteration in the assessment list is made. Kania, J., as he then was speaking for the Bench noted that the Full Bench decision of this Court in Sholapur Municipal Corporation v. Ramchandra (supra) was approved by the Supreme Court in Municipal Corporation of City of Hubli v. Subha Rao Hanumanthrao Prayag (supra). It was noted that the relevant provisions of the Bombay Municipal Boroughs Act and Maharashtra Municipalities Act are in para materia and in that view of the matter, the Supreme Court held that alteration made in the assessment list after following the procedure u/s 123(1) of the Maharashtra Municipalities Act does not become effective for any period prior to the commencement of the official year in which the alteration in the assessment list is made and the Municipality is not entitled to levy tax for an official year or any part thereof which is already expired.

11. Reliance was also placed by Mr. Shroff on a decision of learned Single Judge of this Court (I.G. Shah, J.) in Pimpri Chinchwad Municipal Corporation, Pimpri v. Shiva Dular Misra, Pune, 1991 M.L.J. 150 holding that the expression "current official year" appearing in Taxing Rules under the Bombay Provincial Municipal Corporations Act refers to only that official year which is running at the time when the amendment of assessment list takes place and, therefore, assessment could not be given retrospective effect. It may not be out of place to mention that the provisions of the Bombay Provincial Municipal Corporations Act are almost identical to the provisions of the Bombay Municipal Boroughs Act and the Maharashtra Municipalities Act. Naturally, therefore, the learned Judge felt that the interpretation of these provisions made by the Full Bench which has been approved by the Supreme Court in Municipal Corporation of City of Hubli's case (supra) is binding on him.

12. On the other hand, Mr. Press Walla brought to our notice a decision in New Delhi Municipality v. L.I.C. of India (supra) where the Supreme Court held that under the Punjab Municipal Act, the Municipal Committee has power u/s 67 to amend an assessment list at any time. The expression "at any time" must be given its full force and effect which requires the recognition of the Committee's power to amend an assessment list even after the expiry of the year following the one in which the list was finalised by due authentication. It was observed by the Supreme Court that section 67 itself shows the object and purpose of conferring on the Municipal Committee the power to amend an assessment list. The reason why the legislature by section 67 has conferred on the Municipal Committee, the power to amend an assessment list at any time is that the omission by reason of which a property has

escaped assessment, may be discovered a long time after the list has ceased to be operative. The larger interest of the general public requires in such cases that the Municipal Committee which is under a statutory obligation to provide civic amenities to the people, must have the power to do what ought to have been done but which for some reason or the other, had remained to be done.

13. Mr. Presswalla next relied upon a decision of the Allahabad High Court in [Har Gopal Jaiswal and Another Vs. The Cantonment Board, Kanpur and Another](#), . The facts in the matter before the Allahabad High Court were rather peculiar. There the Cantonment Board contended that the amendment to the assessment list would be effective only from the year in which the amendment was made. It seems that by reason of certain Board resolutions the assessment was reduced and as a result the citizen was entitled to refund of the amount but the Cantonment Board took up a defence that the amendment would apply only during the year in which it was made and not to the preceding years. The Division Bench of Allahabad High Court held that where on the basis of annual value of the property the Cantonment Board assessed the house tax for the combined period of three years, but while giving relief to the tax payee (by reducing the valuation) on his application for amendment of assessment list, the Board restricted the amendment only to the latest year out of the three years, the order of the Board was not justified. It was held that the list so altered continues to be operative during the entire period, during which, the assessment list originally prepared u/s 69 of the Act remains operative. Therefore, while disposing of the application u/s 71 of the Act it was not open to the cantonment Board to confine the correction in the valuation of the property u/s 71(1)(c) of the Act to a particular period only.

14. We have carefully considered the rival arguments advanced at the Bar and the decisions cited. The short question which falls for determination is whether the amendment made in the assessment list u/s 71 of the Act on account of additions and alterations to the property is confined to the official year during which such amendment has been effected. A perusal of the relevant provisions contained in Chapter V of the Act indicates that the property tax under the Act is assessed by preparing an authenticated assessment list deposited and notified to the public in the manner prescribed by section 69 of the Act. The assessment is made in the year in which such authentication and notification takes place and remains operative for subsequent years as well till a new assessment list as provided by section 72 of the Act is prepared. u/s 70 it is provided that subject to alterations that may be made in the assessment list under the provisions of Chapter V the entries in the assessment list authenticated and deposited as per section 60 shall be accepted as conclusive evidence for the purpose of any tax imposed on buildings or lands during the year to which such assessment list relates. In the context of section 70 which clearly postulates amendment of list deposited and authenticated u/s 69 of the Act under the provisions of Chapter V of the Act, it is obvious that section 71 of the Act, which falls in Chapter V of the Act and which provides for amendment of the assessment

list, applies to cases where the amendment in the assessment list becomes necessary in circumstances mentioned therein.

15. A careful analysis of section 71 shows that the said section confers power on the Cantonment Board to amend an assessment list at any time under various circumstances mentioned therein e.g. for inserting or omitting any names or property, or for altering the assessment valued erroneously or assessed through fraud, accident or mistake, or for re-assessing any property the value of which has been increased. The expression "at any time" clearly implies the Board's power to amend an assessment list even after the expiry of the year in which the list is finalised by due authentication. Any alteration in an assessment list authenticated and notified u/s 69 on account of additions or alterations in the properly does not amount to a fresh assessment. It merely results in a change being made in the assessment list authenticated and notified u/s 69 of the Act. The list so altered would become operative from the date when such additions and alterations were made subject to the bar contained in the proviso to section 71 that no person shall by reason of any such amendment shall become liable to pay any tax or increase of tax in respect of any period prior to the commencement of the year in which the assessment is made. In other words, any amendment made in the assessment list shall not affect the liability of an assessee in respect of the period prior to the year in which the assessment list, as amended became operative. There is nothing in section 71 to suggest that such amendment would not be operative for the period prior to the year during which the amendment was made in the assessment list. It is required to be noted that while enacting the proviso, the Legislature has consciously used the words "any period prior to the commencement of the year in which the assessment list is made" which clearly indicate that the Cantonment Board has got power to recover the tax even prior to the year in which amendment has been effected subject to condition that such recovery cannot be made for the period prior to the period in which the assessment is made. We have, therefore, no hesitation in holding that the demand made by the Cantonment Board for taxes from the date when additions and alterations were carried is perfectly legal and valid.

16. It is seen from the perusal of the judgment of the District Court that it has mainly relied upon the judgments under the Bombay Municipal Boroughs Act and Maharashtra Municipalities Act. The same judgments have been relied upon by Mr. Shroff. In our view those judgments have no application to the present case arising under the Cantonment Act. The scheme under the Cantonment Act materially differs from that of the Bombay Municipal Boroughs Act and Maharashtra Municipalities Act particularly in the context of the power to cause amendment to the assessment list. Under the Cantonment Act the power of amending the list is not confined to the official year in which the assessment is effected. As indicated earlier, the Cantonment Board has got the power to recover the tax even for the years prior to the year in which such amendment is effected subject to the limitations contained in the proviso to section 71 that such recovery cannot be made for the period prior to

the year in which the assessment is made. The District Court was thus clearly in error in setting aside the demand notices issued by the Cantonment Board.

17. In the result, the petition succeeds. The judgment and order dated 21st October 1986 passed by the learned District Judge, Pune is hereby quashed and set aside. Rule is made absolute accordingly. No order as to costs.

18. Petition succeed.