IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.186 OF 2004

1. Municipal Corporation of the City of Pimpri]
Chinchwad Bombay- Pune Road, Pimpri,]
Pune-411 018]

2. Municipal Commissioner,]
Pimpri Chinchwad Municipal Corporation,]
Bombay Pune Road, Pimpri Pune-411 018]

3. Asstt. Commissioner, (Property Taxes)]
Pimpri Chinchwad Municipal Corporation,]
Bombay Pune Road, Pimpri Pune-411 018]

4. Zonal Officer]
Pimpri Chinchwad Municipal Corporation,]
Akurdi, Akurdi Division Pune-411 035] ..Appellants

Vs.

Bajaj Auto Limited]
having its Registered Office at]
Bombay-Pune Road, Akurdi,]
Pune-411 035] ..Respondent

Mr. R. S. Apte, senior advocate i/b Mr. D.R. More for the Petitioners.
Mr. P. B. Kulkarni for the Respondent.

CORAM: B. R. GAVAI AND
M.S. KARNIK, JJ.

DATE: 31st AUGUST 2017

JUDGMENT: (PER B. R. GAVAI, J)

. The First Appeal is arising out of the judgment and decree passed by the learned 5th Joint Civil Judge, Senior Division, Pune dated 23/7/2003 thereby decreeing the suit of the Respondent.

2. The facts in nutshell giving rise to the Appeal are as under.

The Respondent is a registered company engaged in the business of manufacture of two and three wheelers at their factory situated within the jurisdiction of the Appellants. The Appellants had issued notice to the Respondent seeking information regarding various constructions made by him. The notices were issued for the period of 1986-1989. In response to the notices, the Respondent was given an opportunity of being heard. His objections were considered and order was passed on 15/2/1993. On the basis of rateable value so fixed, notices for recovery of taxes for the period from 1986 onwards were issued to the Respondent. It appears that initially the Respondents also preferred an appeal as provided under section 406 of the Bombay Provincial Municipal Corporation Act (hereinafter referred to as the "said Act"). However, it further appears that thereafter the present suit came to be filed challenging the issuance of notices for payment of taxes. During the pendency of the suit, the Appeal was withdrawn. In nutshell, it was the case of the parties before the Court, that the notices issued on the basis of rateable value fixed in the year 1993, the recovery of taxes at an increased rate for the period prior to current official year was not permissible in law.

3. In the suit filed by the Appellants, an objection was taken regarding the maintainability of the suit on the ground of alternate remedy available to the plaintiff under the provisions of section 406 of the said Act. It was contended that the plaintiff after taking recourse to the alternate remedy available under section 406 of the said Act, the suit could not have been entertained. On merits also it was submitted that the demand for recovery was in accordance with law.

4. The learned Trial Judge on the basis of rival pleadings framed various issues. The learned Trial Judge held that the Appellant did not have

jurisdiction to fix rateable value with retrospective effect. As such the decree came to be passed declaring that the said notices referred in clause A are illegal, null and void *ab initio*. Being aggrieved thereby the present appeal.

5. Learned senior counsel appearing on behalf of the Municipal Corporation vehemently submitted that the suit was liable to be dismissed on the short ground of availability of alternate remedy. He submits that when the Statute specifically provides for an alternate remedy under section 406 of the said Act, the suit was untenable. Learned counsel therefore submits that the Appeal deserves to be allowed and the decree passed by the learned Trial Judge be set aside.

6. Learned counsel appearing on behalf of the Respondent on the contrary submits that the learned Trial Judge rightly relied on the judgment of full Bench of this Court reported in ***Sholapur Municipal Corporation vs. Ramchandra Ramappa, 1973)[1] and in the case of Satish Dattatray Shivalkar vs. Pimpri Chinchwad Municipal Corporation and Another[2]*** and held that the notices were bad in law.

7. Learned Senior counsel for the Appellant has placed on record compilation of various judgments in support of his submission that in view of provision of section 406, the suit would not be tenable. We find that reference to various judgments placed on record by the Municipal Corporation would not be necessary. Firstly because the appeal preferred under section 406 of the said Act is only against the rateable value. Section 433 A of the said Act provides that any notice issued, order passed or direction issued by the Designated Officer, under sections 260, 261, 264,

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267 or 478 shall not be questioned in any suit or other legal proceedings. Admittedly, the notices which were subject matter of the suit were issued under the provisions of Chapter VIII, Rule 15 (2) of the said Act. As such the suit was not hit by section 433(A) of the said Act.

8. It is presumed that the Civil Court will have jurisdiction to entertain all the disputes of a civil nature unless by express provision or necessary implication the suit is barred in law. We do not find anything under the Act which can be said to expressly or by necessary implication prohibit the suit. Apart from that it would be further appropriate to refer to sub- section (3) of Section 127 of the said Act which reads thus:

> "127(3) The municipal taxes shall be assessed and levied in accordance with the provisions of this Act and the rules."

It is the mandate of the statute that the property tax shall be assessed and levied in accordance with the provisions of the said Act and Rule. However, when the Plaintiff comes to the Court with a case that levy and assessment of taxes was not in accordance with the provisions of the said Act or Rule made thereunder, the suit would not be barred.

9. In the present case, the Plaintiff had come to the Court with a grievance that notice issued to them were in contravention of the rules framed under the said Act. A reliance was placed by the Plaintiff on the judgment of the larger Bench of this Court in the case of ***Sholapur Municipal Corporation vs. Ramchandra Ramappa,***[3]**.**

10. In the present case it would be suffice to refer to the judgment of the Division Bench of this Court consisting of Justice R. M. Lodha and Justice S. A. Bobde (As their Lordship then were) in the case of ***Satish Dattatray***

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Shivalkar (Dr.) vs. Pimpri Chinchwad Municipal Corporation & Another[4], wherein the provisions which are subject matter of the present appeal have been interpreted by their Lordship. In the present case rather than giving our own reasoning, it would be appropriate to refer to the discussions as made by their Lordship in paragraph Nos.3 to 8 as under:

> "3. Rule 20 reads thus:
>
> "20. (1) Subject to the provisions of Sub-rule (2) the Commissioner may upon representation of any person concerned or upon any other information at any time during the official year to which the assessment-book relates amend the same --
>
> (a) by inserting therein the name of any person whose name ought to be so inserted or any premises previously omitted;
> (b) by striking out the name of any person not liable to the property tax;
>
> (c) by increasing or reducing the amount of any rateable value and of the assessment based thereupon;
>
> (d) by altering the assessment on any land or building which has been erroneously valued or assessed through fraud, accident or mistake;
> (e) by inserting or altering an entry in respect of any building erected, re-erected, altered, added to or reconstructed, in whole or in part after the preparation of the assessment-book;
>
> (f) by making or cancelling any entry exempting any premises from liability to any property tax.
>
> (2) Where any amendment is made under Sub-rule (1) which has the effect of imposing on any person any liability for the payment of property taxes which would not be incurred but for such amendment or which has the effect of increasing the rateable value of premises as stated in the assessment-book, a special written notice as provided in Sub-rule (2) of rule 15 shall be given by the Commissioner and, as far as may be, the procedure laid down in rules 16, 17 and 18 shall be followed.
>
> (3) Every such amendment shall be deemed to have been made, for the purpose of determining the liability or exemption of the person concerned in accordance with the altered entry, from the

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earliest day in the current official year when the circumstances justifying the amendment existed."

4. The similar provision occurring in Bombay Municipal Boroughs Act, 1925 (for short, "Act of 1925"), came up for consideration before the Full Bench of this Court in Solapur Municipal Corporation v. Ramchandra Ramappa Madgundi, 1973 Mh.L.J. 128 = 1972 (Vol. 74) BLR 469. The expression "current official year" occurring in Section 82(3) of the Act of 1925 was construed to mean the earliest day in the official year which is current when the amendment of the assessment list takes place. In other words, the expression "current official year", as per the Full Bench, refers to only that official year which is running at the time when the amendment is made by insertion or alteration of an entry.

5. The aforesaid view of the Full Bench was approved by the Apex Court in Municipal Corporation of City of Hubli v. Subha Rao Hanumatharao Prayad and Ors., . The Apex Court in paragraph 9 observed thus :

"9. Then again considerable light on this question is thrown by the provision enacted, in Section 82. It is a well settled rule of interpretation that the court is entitled and indeed bound, when construing the terms of any provision found in a statute, to consider any other parts of the Act which throw light on the intention of the legislature, and which may serve to show that the particular provision ought not to be construed as it would be alone and apart from the rest of the Act.

The statute must be read as a whole and every provision in the statute must be construed with reference to the context and other clauses in the statute so as, as far as possible, to make a consistent enactment of the whole statute. Obviously, therefore, Sections 78 to 81 must be so construed as to harmonise with Section 82. They must be read together so as to form part of a connected whole. Section 82, Sub-section (1) provides for making of an amendment in the assessment list by insertion, or alteration of an entry in certain events after hearing objections which may be made by any person interested in opposing the amendment. Subsection (3) of Section 82 makes the amendment effective from "the earliest day in the current official year on which the circumstances justifying the entry or alteration existed". 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. It would, therefore, seem clear, on a combined reading of Sub-sections (1) and (3) of Section 82, that an amendment, in order to be effective in levying tax for an official year, must be made during the currency of the official year. That is now well settled as a result of several decisions of the Bombay High Court culminating in the Full Bench decision in Sholapur Municipal Corporation v. Ramchandra (supra) and we do not see any reason to take a different view. Now the scheme of Sections 78 to 81 is identical with that of Section 82 and in both cases what is contemplated first is a proposal to which objections are invited and after the objections are investigated and disposed of the assessment list in the one case and the altered entry in the other are authenticated giving rise to liability in the ratepayer. It must follow a fortiori that if an alteration in the assessment list, in order to fasten liability on the ratepayer, is required to be made during the currency of the official year, equally, on a parity of reasoning, the assessment list, in order to give rise to liability in the ratepayer, must also be authenticated before the expiry of the official year. Moreover, it is difficult to believe that the legislature did not intend that there should be any time limit in regard to the levy of tax for an official year and that the tax should be legally leviable at any time after the close of the official year. There is, in our opinion, sufficient indication in the various provisions of the Act to show that the authentication of the assessment list, in order to be valid and effective, must be made within the official year, though the tax so levied may be collected and recovered even after the expiry of the official year."

6. Subsequently in Kalyan Municipal Council and Ors. v. Usha Paper Products (P) Ltd. and Anr., , the Apex Court while dealing with the identical provisions contained in Maharashtra Municipalities Act, 1965 followed its earlier judgment given in Municipal Corporation of City of Hubli (supra) and in paragraph 5 of the report held thus :

"5. The aforesaid statement in the judgment of this Court clearly shows that the decision of the Full Bench of the Bombay High Court in Sholapur Municipal Corporation v. Ramchandra was approved by this Court. The decision of the aforesaid Bench of this Court is binding on us and is clearly applicable to the case before us. In that judgment this Court pointed out that once it was accepted that the process of levying the tax is complete only when the assessment list is authenticated and it is only then that the tax is levied on the rate payers, it is difficult to resist the conclusion that the authentication must be made within the official year. The tax being a tax for the official year, must obviously be levied during the official year and since the levy of the tax is complete only when the assessment list is authenticated it must follow that the authentication must take place in the official year."

7. Section 2(44) of the Act of 1949 defines "official year" thus : "2(44) "official year or year" means the year commencing on the first day of April."

8. The law laid down by the Full Bench of this Court in Solapur Municipal Corporation and approved by the Apex Court in Municipal Corporation of City of Hubli and further re-iterated in Kalyan Municipal Council is applicable on all fours in the light of the statutory provision contained in Rule 20(1)(e) and definition of the expression "official year" occurring in Section 2(44). Any amendment in the assessment book by inserting or altering an entry in respect of any building erected, re-erected, altered, added to or reconstructed in whole or in part of the assessment book shall be and can only be effective during the currency of official year. The expression "official year" defined under Section 2(44) of the Act of 1949 read with Rule 20(1)(e) indicates without doubt the legal position that the property tax being tax for the official year must be levied only during the official year. In view thereof, it was not open for the Commissioner to amend or alter assessment entry of petitioner's property with retrospective effect. In other words, the demand of property tax raised for the period from 1-4-1985 to 31-3-1990 vide demand notices dated 8-1-1991 cannot be justified and to that extent the notices as well as the demand bills have to be modified.

Their Lordships have held that property tax being tax for the official year must be levied during the official year. It has been clearly held that it was not open for the Commissioner to alter the assessment entry with respect to the Petitioner's property with retrospective effect. In the present case since the order altering the assessment is dated 15/2/1993, the Appellant could have made it applicable from 1/4/1992 as it was the first date of the current official year for that period.

11. In that view of the matter, we find that alteration of the entry with regard to the rateable value could have been given effect only from 1/4/1992 and not prior to that period.

12. In that view of the matter, we find that no error can be found with the view taken by the learned Trial Judge insofar as the period prior to 1/4/1992 is concerned. However, we find that part of the decree which also declared the notices to be null and void for a period commencing from 1/4/1992 would not be sustainable in law. For the said period the Corporation would be very much entitled to levy taxes on the basis of alterations made in the rateable value on 15/2/1993.

13. In the result, Appeal is party allowed. Part of the decree which pertains to the notices pertaining to the period from 1/4/1992 is quashed and set aside. It is held that the notices on the basis of rateable value as per entry in the assessment register as per order dated 15/2/1993 shall be valid for the period beginning from 1/4/1992.

14. Consequently, injunction as granted by the learned Trial Court for recovery of the amount for the period from 1/4/1992 onwards shall also be quashed and set aside.

15. The appeal for the period prior to 1/4/1992 stands dismissed.

16. Decree is modified accordingly. No order as to costs.

(M.S. KARNIK, J.) **(B. R. GAVAI, J.)**