

## **Kalyan Municipal Council & Ors vs Usha Paper Products (P) Ltd. & Anr on 3 May, 1988**

**Equivalent citations: 1988 SCR (3) 832, 1988 SCC (3) 306, AIRONLINE 1988 SC 280**

**Author: M.H. Kania**

**Bench: M.H. Kania, R.S. Pathak**

PETITIONER:

KALYAN MUNICIPAL COUNCIL & ORS.

Vs.

RESPONDENT:

USHA PAPER PRODUCTS (P) LTD. & ANR.

DATE OF JUDGMENT 03/05/1988

BENCH:

KANIA, M.H.

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KANIA, M.H.

PATHAK, R.S. (CJ)

CITATION:

1988 SCR (3) 832

1988 SCC (3) 306

JT 1988 (2) 260

1988 SCALE (1) 849

ACT:

Maharashtra Municipalities Act-S. 123(1) of-Whether alteration in assessment list becomes effective for any period prior to commencement of official year in which alteration in assessment list is made and Municipality is entitled to levy tax for any official year or any part thereof already expired under provisions of.

HEADNOTE:

After levy of the property tax by the Kalyan Municipal Council ('the Municipal Council') on the immovable properties of the Respondent No. 1 ('the company') in respect of certain years, the Municipal Council detected certain new construction and alterations in the existing properties of the Company, and on October 3, 1973 a resolution was passed by the Standing Committee increasing

the rateable value of the said immovable property from 1.4.70 to 31.3.74. A demand notice, demanding additional property tax, Educational cess and Health Tax, was issued thereafter to the Company. The Company challenged the notice of demand before the High Court. The High Court decided in favour of the Company, holding that alteration made in the assessment list after following the procedure under section 123(1) of the Maharashtra Municipalities Act (the 'said Act') did not become effective for any period prior to the commencement of the official year in which the alteration in the assessment list was made and the Municipality was not entitled to levy tax for an official year or any part thereof which was already expired. This appeal was filed in this Court against that decision of the High Court.

Dismissing the appeal, the Court,

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HELD: The ratio of the decision of the Full Bench of the Bombay High Court in Sholapur Municipal Corporation v. Ram Chandra Ramappa Madgundi, [1972] 74 Bombay Law Reporter 469, upon which the judgment of the High Court impugned in this case was based, applied to this case. The appellants contended that the said case before the Full Bench had been wrongly decided and the judgment under appeal based on that decision was also erroneous. This contention must be negatived in view of the decision of this Court in Municipal Corpora-

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tion of City of Hubli v. Subba Rao Hanumatharao Prayag & Ors., [1976] 3 S.C.R. p. 883, which approved the said decision of the Full Bench of the High Court, and which is binding on the Court and clearly applicable to this case. In that judgment, this Court had pointed out that once it was accepted that the process of levying the tax was complete only when the assessment list was authenticated and it was only then that the tax was levied on the rate-payers, the authentication must be made within the official year. The tax, being a tax for the official year, must 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. The official year is the unit of taxation as far as Municipal property taxes are concerned. [836D,G,837A-B]

If an assessment list could be altered at any time if the conditions set out in Section 123 of the said Act are satisfied, the result would be that there would be complete uncertainty in the field of taxation of property and unwary purchasers of immovable property might be put to the difficulty of having to discharge the liabilities for property taxes for years long prior to the time when they had purchased the immovable property in order to save the property from being sold in recovery proceedings. [837B-C]

Sholapur Municipal Corporation v. Ramchandra Ramappa

Madgundi, [1972] 74 Bombay Law Reporter 469 and Municipal Corporation of City of Hubli v. Subha Rao Hanumatharao Prayag & Ors., [1976] 3 S.C.R. 883, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 317 of 1984.

From the Judgment and Order dated 10.1.80 of the Bombay High Court in Special Civil Application No. 1471/75.

P.H. Parekh for the appellants.

U.R. Lalit, B.P. Maheshwari and R.S. Rana for the respondents.

The Judgment of the Court was delivered by KANIA, J. This is an appeal against the judgment of a Division Bench of the Bombay High Court delivered on January 10, 1980. The appellants before us are the Kalyan Municipal Council (referred to hereinafter as 'the Municipal Council'), its Chief officer and the State of Maharashtra respectively. Respondent No. 1 is a Private Limited Company and is the owner of an industrial undertaking within the limits of the Municipal Council. We propose to refer to respondent No. 1 as 'the Company'.

The relevant facts lie within a narrow compass and there is no dispute regarding the same. Property Tax was levied by the Municipal Council on the immovable properties of the Company within the territorial limits of the Municipal Council in respect of the years 1970-71, 1971-72 and 1972-73. In September, 1973, the Municipal Council claimed that it had detected certain new construction and alterations in the existing construction belonging to the Company and a report to that effect was made to the Standing Committee. A proposal was submitted to the Standing Committee to increase the property tax in respect of the said immovable property from 1.4.70 to 31.3.74. On October 3, 1973, the Standing Committee passed a resolution increasing the rateable value of the said immovable property of the Company from 1.4.70 to 31.3.74. After serving a notice on the Company as required under the provisions of Section 123(1) of the Maharashtra Municipalities Act (referred to hereinafter as the 'said Act'), and hearing the objections filed by the Company against the proposed increase, a demand notice was issued on the Company on January 9, 1975 demanding an amount of Rs.51,626.69 and an appropriate amount of Educational Cess and additional Health Tax. This notice of demand was challenged by the Company by way of Special Civil Application No. 147 of 1975 before the High Court of Judicature at Bombay. The Division Bench of the Bombay High Court which decided the said Special Civil Application held that the case was covered by the decision of a Full Bench of the Bombay High Court in Sholapur Municipal Corporation v. Ramchandra Ramappa Madgundi, [1972] 74 Bombay Law Reporter, p. 469. The Division Bench of the Bombay High Court in the impugned judgment has pointed out that there was no dispute that a notice dated November 17, 1973, being the notice as contemplated by Section 123(1) of the said Act was issued to the Company for amending the assessment list. This notice was served after 17th November, 1973. After

analysing the provisions of Section 123 of the said Act and following the aforesaid decision of the Full Bench, the Division Bench took the view that alteration made in the assessment list after following the procedure under Section 123(1) 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 the Municipality is not entitled to levy tax for an official year or any part thereof which is already expired. The Division Bench pointed out in the present case the alteration in the assessment list was made after 31st March, 1974 and before 31st March, 1975. In view of this the said alteration could not have the effect of increasing the assessment for any year prior to the year commencing from 1st April, 1974. It is the correctness of this decision, which is sought to be assailed before us in this appeal.

Since the decision under appeal is based mainly on the said decision of a Full Bench in the case of Sholapur Municipal Corporation v. Ramchandra Ramappa Madgundi (supra), we may briefly refer to the said decision. That decision was based on the provisions of the Bombay Municipal Boroughs Act, 1925, but the ratio of the decision applies to the case before us, because the relevant provisions of the Bombay Municipal Borough Act and the said Act are in pari materia. As far as the question raised before us is concerned, the provisions of Section 82, Sub-section (3) of the Bombay Municipal Boroughs Act are in pari materia with the provisions of Section 123(3) of the said Act. The Full Bench of the Bombay High Court in that case came to conclusion that the alteration made, under Section 82(3) of the Bombay Municipal Boroughs Act, in the assessment list prepared under Section 73 of that 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 also held that the expression "current official year" in Section 82(3) of that Act means 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 that official year which is running at the time when the amendment is made by insertion or alteration of an entry under Section 82(1) of the Act.

The submission of Mr. Parekh, learned counsel for the appellants, is that the aforesaid case before the Full Bench was wrongly decided and, as the judgment under appeal follows the said decision of the Full Bench, that judgment is also erroneous and liable to be set aside. In our view, this contention must be negatived in view of the decision of this Court rendered by a Bench of three learned Judges in Municipal Corporation of City of Hubli v. Subha Rao Hanumatharao Prayag & Ors., [1976] 3 S.C.R. p. 883. A perusal of the said decision makes it clear that this Court took the view that the scheme of relevant provisions of the Bombay Municipal Boroughs Act, 1925 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. Thereafter this Court goes on to point out as follows:

"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. This is now well settled as a result of several decisions of 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."

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 (supra) 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 ratepayers, 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.

Mr. Parekh urged, although not with much conviction, that the decision of this Court in the case of Municipal Corporation of City of Hubli v. Subha Rao Hanumatharao Prayag & Ors. (supra) can be distinguished because in that case there was no question of any additional construction or new construction being detected. In our view it is not possible to make any such distinction. The question which arose before the Court was whether an assessment list which was finalised and authenticated on July 24, 1952, after the expiry of the official year 1951-52 on 31.3.1952, could be regarded as a good or valid assessment list for the official year 1951-52. The entire scheme of the provisions pertaining to the preparation of the assessment list and the levy of property tax under the Bombay Municipal Boroughs Act, which is materially similar to the scheme under the said Act, was considered and the aforesaid conclusion were arrived at. There is no substance in the contention that the said decision can be distinguished. Moreover, with respect, we see no reason to take a different view from the one taken in the aforesaid case. The official year is the unit of taxation as far as Municipal Property taxes are concerned and, if the contention of Mr. Parekh is accepted, the result would be that an assessment list could be altered at any time if the conditions set out in Section 123 of the said Act are satisfied, with the result that there would be complete uncertainty in the field of taxation of property and the unwary purchasers of immovable property might be put to the difficulty of having to discharge the liabilities for property taxes for years long prior to the time when they purchased the immovable property in order to save the property from being sold in recovery proceedings.

In the result, the appeal fails and is dismissed with costs.

S.L.

Appeal dismissed.