Shyam Kishore And Others vs Municipal Corporation Of Delhi And ... on 3 September, 1992

Equivalent citations: AIR1992SC2279, JT1992(5)SC335, 1992(2)SCALE403, (1993)1SCC22, [1992]SUPP1SCR349, AIR 1992 SUPREME COURT 2279, 1993 (1) SCC 22, 1992 AIR SCW 2764, (1992) 5 JT 335 (SC), 1993 ALL CJ 1 546.2, 1993 (1) ALL CJ 546, (1992) 4 SCR 349 (SC), 1992 (5) JT 335, (1993) 25 DRJ 426, (1992) 2 RRR 566, (1992) 3 SCJ 166, (1992) 110 TAXATION 394, (1992) 48 DLT 277

Author: Yogeshwar Dayal

Bench: S. Ranganathan, Yogeshwar Dayal

ORDER

Yogeshwar Dayal, J.

1. This appeal has been preferred against the Full Bench decision of the Delhi High Court dated 1st February, 1991. Leila Seth and V.B. Bansal, JJ. agreed with Nag, J. that the condition of deposit of tax amount under Section 170(b) of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as 'the Act') is a condition precedent for hearing or determination of the appeal and the District Judge had no discretion to grant stay of the disputed amount or dispense with the requirement of pre-deposit of the amount in appeal, with or without conditions, in the office of the Corporation. They also agreed as to the amount which was to be so deposited. The difference of opinion was only restricted to the vires of Section 170(b) of the Act. The majority of learned Judges took the view that Section 170(b) of the Act is not ultra vires the Constitution but Nag. J. took the view that Sub-section (b) of Section 170 is violative of Article 14 of the Constitution of India and he accordingly struck it down and directed the appellate authority to entertain the appeal of the appellant without deposit of the amount and decide it on merits. The majority of the learned Judges, on the other hand, dismissed the writ petition affirming the order of the District Judge who had dismissed the appeal filed by the appellant under Section 169 of the Act challenging the enhancement of the rateable value of the property in dispute for non-deposit of the disputed tax.

2. The majority of the learned Judges took the view that the right of appeal is a creature of statute and there is nothing wrong in the statute making a provision for conditional appeal requiring that a person desirous of filing an appeal is to comply with the conditions.

3. Before examining the constitutional validity and meaning of Section 170(b) of the Act it will be useful to examine the provisions of the Act in relation to the levy of property taxes, particularly the general taxes, and the provisions for "payment and recovery" thereof as well as the provisions of the Delhi Municipal Corporation (Assessment List) Bye Laws 1959 (hereinafter referred to as the Assessment Bye-Laws). The relevant provisions are:

> 121. (1) Save as otherwise provided in this Act, the corporation shall cause an assessment list of all lands and buildings in Delhi to be prepared in such form and manner and containing such particulars with respect to each land and building as may be prescribed by the bye-laws.

(2) When the assessment list has been prepared the Commissioner shall give public notice thereof 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 land or building included in the list and any authorised agent of such person, shall be at liberty to inspect the list and to take extracts therefrom free of charge.

(3) The Commissioner shall, at the same time, give public notice of a date, not less than one month thereafter, when he will proceed to consider the rateable values of lands and buildings entered in the assessment list, and in all cases in which any land or building is for the first time assessed, or the rateable value of any land or building, is increased, he shall also give written notice thereof to the owner or to any lessee or occupier of the land or building.

(4) Any objection to a retable value or any other matter as entered in the assessment list shall be made in writing to the Commissioner before the date fixed in the notice and shall state in what respect the rateable value, or other matter is in dispute, and all objections so made shall be recorded in the register to be kept for the purpose.

(5) The objections shall be inquired into and investigated, and the persons making them shall be allowed an opportunity of being heard either in person or by authorised agent, by the Commissioner or by any officer of the Corporation authorised in this behalf by the Commissioner.

(6) When all objections have been disposed of, and the revision of the rateable value has been completed, the assessment list shall be authenticated by the signature of the Commissioner or, as the case may be, the officer authorised by him in this behalf, who shall certify that except in the cases, if any, in which amendments have been made as shown therein no valid objection has been made to the rateable values or any other matters entered in the said list.

(7) The assessment list so authenticated shall be deposited in the office of the Corporation and shall be open, free of charge during office hours to all owners, lessees and occupiers of lands and buildings comprised therein or the authorised agents of such persons, and a public notice that it is so open shall forthwith be published.

125. Subject to such alterations as may thereafter be made in the assessment list under Section 126 and to the result of any appeal made under the provisions of this Act, the entries in the assessment

list authenticated and deposited as provided in Section 124 shall be accepted as conclusive evidence:

(a) for the purpose of assessing any tax levied under this Act, of the rateable value of all lands and buildings to which such entries respectively relate.

126.(1) The Commissioner may, at any time, amend the assessment list:

(a) (b) (c)....

(d) by increasing or reducing for adequate reasons the amount of any rateable value and of the assessment thereupon; or

(e) (f) (g)....

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 notice under Sub-section (2) is given.

(2) Before making any amendment under Sub-section (1) the Commissioner shall give to any person affected by the amendment, notice of not less than one month that he proposes to make the amendment and consider any objections which may be made by such persons.

127. It shall be in the discretion of the Commissioner to prepare for the whole or any part of Delhi a new assessment list every year or to adopt the rateable value contained in the list for any year, with such alterations as may in particular cases be deemed necessary, as the rateable values for the year following, giving the same public notice as well as individual notices, to persons affected by such alterations, of the rateable values as if a new assessment list had been prepared.

Bye-Laws.

(8) (1) The Commissioner shall keep a register in which all objections received under the provisions of Sub-section (4) of Section 124 as well as Sub-section (2) of Section 126 shall be entered. This register will show:

(a) the name or number of the land or building in respect of which objection is received;

(b) name of the person primarily liable for the payment of property taxes;

(c) name of the objector;

(d) the rateable value finally fixed after enquiry and investigation of the objection;

(e) the date from which the rateable value finally fixed is to come into force; and;

(f) such other details as the Commissioner may from time to time think fit.

(2)....

9. (1) When any amendment is proposed to be made under the provisions of Section 126, such amendment will provisionally be made in the assessment list when the notice as required under the provisions of Sub-section (2) of Section 126 is given to the person affected by the amendment.

(2) Objections shall be inquired into and investigated by the Commissioner or any other officer authorised by him.

(3) The assessment list shall be finally amended in accordance with the decisions given by the Commissioner or by an officer referred to in Clause (2) on the investigation and disposal of the objections, if any.

(4) If no objection is received or if objection is not received within the time limit, specified in this behalf in the notice, the assessment list shall be finally amended by confirming the provisional amendment made in the assessment list.

(5) Property taxes on the basis of the amended Assessment List shall be due on the day on which the Amendment is formally made in the Assessment List.

Provided that payment of taxes on the basis of the Assessment List, existing before such amendment cannot be withheld on the ground that some amendment is to be made in the List under this bye-Law.

4. It will be noticed that proviso to Section 126(1) before its amendment read as under:

> 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 amendment is made.

5. The proviso before its amendment suggested as if the person could become liable by reason of amendment of the assessment list only in the year during which the amendment was made. The amendment of the proviso to Section 126(1) shows that the liability to pay any tax or increase of tax can go beyond the currency of the year in which a notice is given under Sub-section (2) of Section 126 of he Act. Therefore, even if the notice is given during the currency of a financial year but the amendment in fact after investigation is completed later on after, the expiry of the financial year, the amended list would still have the effect retrospectively for the financial years during which the notice of increase was given. This can be the only reasonable view of the proviso to Section 126(1) if one takes into account the legislative history of the amendment and it is the duty of the court to take notice of the legislative changes and give effect to the intention exhibited by the changes.

6. It will be noticed from the opening words of Section 125 of the Act that the assessment list prepared under Section 124 of the Act is subject to any alteration that may be made under Section 126 of the Act and is also subject to the result of any appeal made under the provisions of the Act. It cannot be the scheme of the Act that though the assessment list prepared under Section 124 is subject to any appeal, the appeal must itself be decided within the year for which the amendment relates to.

7. Before the Amending Act 42 of 1961, in so far as it amended the proviso to Section 126(1) of the Act, became law, the notes on Clause 12 of the Delhi Municipal Corporation (Amendment) Bill, 1961 (No. 49 of 1961) as introduced in the Lok Sabha on 23rd Aug. 1961 provided as under:

> NOTES OF CLAUSE;
>
> Clause 12 At present, if an amendment of the assessment list is not completed in the year in which the notice of the proposal to make the amendment has been issued by the Commissioner, the liability for the property taxes according to the amended list accrues only after the commencement of the year in which the amendment is made. There does not appear any reasonable justification as to why the liability to pay the property tax in such a case should not accrue in the year in which the notice of the proposal is issued by the Commissioner. This is sought to be done by the amendment proposed in the proviso to Section 126(1). The amendment proposed will not take the assessee by surprise or in genuine cases cause any hardship to him as he has already been served with the notice of the proposal.

8. We are, therefore, of the considered view that it is not necessary that the proceedings in pursuance of a notice for increasing the rateable value and of the assessment thereupon must be completed within the year in which the notice is given to become effective from the year in which notice is given.

9. Section 124(1) casts a duty on the Corporation to prepare an assessment list of all lands and buildings in Delhi. Such assessment list has to be in such from and manner as prescribed by the Bye-laws. When the assessment list has been prepared under Sub-section (1) of Section 124, Sub-section (2) thereof requires that a public notice about its preparation and of the place where the list may be inspected shall be given and the owner, occupier or lessee shall be at liberty to inspect the list and to take extracts thereof.

10. Under Sub-section (3) of Section 124, the Commissioner has, also at the same time, to give a public notice of the date when he will proceed to consider retable values entered in the assessment list, and in all cases in which the rateable value for any land or building is being assessed for the first time of rateable value is sought to be increased, the Commissioner is required to give a written notice thereof to the owner or to the lessee or the occupier of such land of building. After such public notice or individual notice, as the case may be, has been given, under Sub-section (4) the objection to rateable values can be filed in writing to the Commissioner before the date fixed in the notice and the objections have to state in what respects the rateable value is disputed.

11. Under Sub-section (5), the objections so filed are required to be investigated and the person making, the objections is allowed an opportunity of being heard either in person or by authorised agent, by the Commissioner or by any officer of the Corporation authorised by the Commissioner in this behalf.

12. When all the objections have been disposed of and the revision of the rateable value is completed, the assessment list is required to be authenticated by the Commissioner or by an Officer authorised by him. By this Authentication the Commissioner or the officer authorised by him in this behalf has to certify that "except in the cases, if any, in which amendments has been made as show therein no valid objection has been made to the rateable values or any other matter entered in the said list.

13. Before adverting to Section 125, the relevant provisions of Section 126 along with its proviso and the Bye-laws may be noticed.

14. It is dear from the provisions of Section 126(1) read with its proviso and Sub-section (2) thereof that its proviso and Sub-section (2) thereof that a notice of not less than one month is required to be given before the Commissioner may propose to make amendment. It is also clear from bye-law No. 9 (1) that when an amendment is proposed to be made in the assessment list under the provisions of Section 126, such amendment will be provisionally made in the assessment list when the notice as required under Sub-section (2) of Section 126 is given to the person affected by the amendment. Therefore, as soon as a notice is given proposing enhancement, the assessment list, if one may say so, stands "provisonally amended" and rateable value is as stated therein with effect from the date proposed in the notice.

15. It is also clear from Clause (5) of bye-law No. 9 that the property taxes on the basis of amended list become due only when the amendment is formally made in the assessment list as a result of investigation of the notice issued under Section 126(2) of the Act and so long as the assessment list is not formally amended, the person liable to pay property taxes has to continue to pay the said taxes on the basis of the unamended assessment list.

16. Now the provisions of Section 125 of the Act may be examined for their effect.

17. The effect of Section 125 is that the assessment list finalised and authenticated and deposited under Sub-sections (6) and (7) of Section 124 of the Act is subject to such alterations as may be made under the provisions of Section 126 and/or the the result of any appeal under the provisions of this Act.

18. Once the list so authenticated under Section 124(6) is, by virtue of Section 125, made subject to the provisions of Section 126, the assessment list for any year where it is subject to a notice under Section 126 is really finalised only after the investigation to the proposed enhancement has been completed and finalised; authentication and deposit of the list under Section 124(6) and (7) is subject to such finalisation.

19. The scheme of Sections 124, 125 and 126 read with the bye-laws is that the assessment has to be duly authenticated by the Commissioner or an officer on his behalf but this list is subject to the other provisions of the Act including Section 126 and the bye-laws and once a notice has been issued under Section 126(2) of the Act, the assessment list though authenticated under Section 124(6) is subject to the result of the notice and the assessment list as a result to the investigation under Section 126 automatically gets amended from the date of the order of assessment passed as a result of notice under Section 126(2) with effect from the date as found in the order of assessment and for the amount the rateable value is finally arrived at.

20. Coming to Section 127 of the Act, it gives a discretion to the Commissioner to prepare for the whole or any part of Delhi a new assessment list. If a new assessment list is to be prepared, the procedure for it is in relation to lands and buildings which are being assessed for the first time or where the rateable value of any land or building is sought to be increased; apart from public notice, an individual written notice thereof to the owner, lessee or the occupier is required to be given. This is so if the provisions of Section 127 are read with Section 124(3) of the Act. Similarly, if instead of preparing a new assessment list, the Commissioner seeks to adopt the rateable values stated in the assessment list of any year for the following year by increasing the rateable value given thereof, the Commissioner is required to give a public notice and an individual notice but if the old rateable value of the previous year is being adopted for any following year, no individual notice need be given for the simple reason that there has to be no change but at the same time only public notice must be given as the owner, lessee or the occupier may show that old rateable value need not be adopted due to change of circumstances for the year.

21. What do we understand when it is said that the Commissioner may adopt the rateable values contained in the list for any year for the year following? This really refers to adopting the rateable values given in the previous year in respect of land or building. Once a notice under Section 126 proposing an increase has already been given in respect of the land or building by virtue of bye-law No. 9, the assessment list in the year in which notice is given automatically gets amended and under Section 127 it is that rateable value which is adopted for the following year. When the proceedings under Section 126(2) get finally determined, the assessment list gets amended with effect from the date as found in the assessment order and since the adoption of rateable value for any year was of the previous year in which the notice was given, as soon as, the assessment order for the previous year gets finalised, the demand is raised for the year in which the rateable value of the previous year was adopted for any year, on the basis of the finalisation of the assessment of the previous year.

22. While adopting the assessment list of any previous year for any year, it was not necessary that the assessment list for the previous year must have become final in the sense that the proceedings for increasing the rateable value in the previous year must also come to an end and failing which the rateable value for the previous year cannot be adopted for the following year. All that Section 127 contemplates is that for any year the rateable value contained in the list for the previous year may be adopted.

To summarise -

(a) An assessment list has to be prepared in respect of each land and building which is liable to tax which list contains all the particulars including the rateable value of the property. The procedure for preparing such an assessment list is contained in Sub-sections (3) to (7) of Section 124;

(b) Section 127 provides that every year the Commissioner should either prepare for the whole or any part of Delhi a new assessment list or"...adopt rateable values contained in the list for and year with such alterations as may in particular cases be deemed necessary....

The procedure for exercise of either of these two options is by "giving the same public notice as well as individual notices to persons affected by such alterations to the rateable values as if a new list had been prepared...;

(c) Section 126 confers power to "...amend the assessment list..." in respect of any property or person after the issuance of a prior notice therefor. After the amendment of the laws by Act 42 of 1961, the only limitation on the retroactivity of such an amendment is that it cannot relate to a period prior to the commencement of the year in which the notice to amend is given;

(d) The legal consequences of an assessment list, as per Section 125, is that it is conclusive evidence of the rateable value of lands and buildings for the purpose of assessing any tax. However, this is subject to "any alteration that may be made thereafter in the assessment list under Section 126 and to the result of any appeal made under the provisions of this Act...;

(e)That once the Commissioner exercises the option to "adopt" the assessment list of a particular year for subsequent years then any amendment of the original assessment list (either by virtue of powers exercised by the Commissioner under Section 126 or as a consequence of any appeal) constitutes ipso jure an amendment of the assessment list for the subsequent years also for which the original assessment list had been adopted and it is not necessary to once again follow the procedure of Section 126 for a consequential modification of the assessment lists for the subsequent years to bring them in accord with the amended/modified initial assessment list.

23. The recovery of tax is the subject matter of the same Chapter, namely Chapter VIII of the Act relating to 'Levy of Taxes', the scheme of which is as hereinafter:

> (a) Section 152 provides that any tax levied under the Act shall be on such dates, in such number of instalments and in such manner as may be determined by the Bye-laws in this behalf.
>
> (b) There are two sets of Bye-laws which relate to levy and collection of property taxes, namely the Property Tax Bye-Law, 1953 (hereinafter referred to as the Property Tax Bye-Laws) and the Assessment List Bye-Laws, referred to above. The latter set of Bye-laws deal with the procedure to be followed in amendment of the assessment lists. The former set of Bye-laws provides for the procedure and recovery of taxes.

(c) Sections 154 to 158 deal with coercive process of recovery of tax. Section 155 deals with levy of penalty against a person in default. The scheme of these provisions has to be understood in the backdrop of the scheme of the Act in regard to the assessment of tax. The scheme of these provisions proceeds on the footing that the amendment or modification of the assessment list for one particular year may have ramifications for subsequent years.

24. Section 156(1) of the Act provides as under:

Recovery of tax.

(1) If the person liable for the payment of the tax does not, within thirty days from the service of the notice of demand, pay the amount due, such such together with all costs and the penalty provided for in Section 155, may be recovered under a warrant, issued in the from set forth in the Eighth Schedule, by distress and sale of the movable property or the attachment and sale of the immovable property, of the defaulter;

Provided that the Commissioner shall not recover any sum the liability for which has been remitted on appeal under the provisions of this Act.

(2)....

The proviso to Section 155(1) contemplates that even at the stage of recovery by distress/attachment any remission of the liability in appeal should be given effect to automatically. Thus, if the assessment list is adopted in subsequent years, and there is modification in appeal of such an assessment list, the relief automatically has to be given even in proceedings for recovery by distress/attachment in respect of tax liability of the later years as well. As we have noticed earlier, after the assessment list is amended finally in view of notice under Section 126 the rateable value is automatically determined for the year in which the notice was given and since the provisional amendment in the assessment list has been adopted for the later years till the assessment is finalised, on the finalisation of the list of the assessment lists which were adopted for the subsequent years would also get amended. Thus where the provisional assessment is finalised it will be legitimate for the authorities to make the demand on the basis of the list so finalised. It would also be legitimate for the authorities to raise demand for a subsequent year where the provisional list had been adopted for the later years. The purpose of the proviso to Section 156(1) is that where liability in respect of an assessment order has been finalised and it is disputed in appeal only for the year in which it was finalised the benefit as a result of appeal, if any, is given not merely for the year in question but also for the years in which the assessment list was adopted. The proviso contemplates that without any appeal for the later years the Commissioner will be bound to give the remission granted in appeal for the year for which the assessment list was amended and adopted for the later years.

25. Mr. Yogesh K. Jain, learned Counsel for the appellant, tried to submit that this proviso to Sub-section (1) of Section 156 indicates that the appellate court has the power to grant stay during the hearing of the appeal and that when the relief is finally granted, this proviso comes to the rescue. We do not agree With this view. The proviso deal with a case where assessments for one or more future years are made adopting the assessment or revision made for one year (which may be called the base year) which is under appeal. It ensures that demands for successive years cannot be enforced or recovered to the extent the appeal for the base year succeeds, even without the necessity for an appeal by the assessee for each of the successive years.

26. Having surveyed the provisions of the Act relating to the assessment of the property tax, we shall turn the crucial provision of the statute the validity of which has been canvassed before us. An appeal against levy of assessment of tax is provided for under Section 169. Section 170 qualifies this right of appeal. The relevant provisions of Sections 169 and 170 themselves may be noticed:

> 169. Appeal against assessment, etc. (1) An appeal against the levy of assessment of any tax under this Act shall lie to the court of the district judge of Delhi.

(2)....

(3)....

(4)....

(5)....

(6)....

170 Conditions of right to appeal.

No appeal shall be heard or determined under Section 169 unless

(a) the appeal is, in the case of a property tax, brought within thirty days next after the date of authentication of the assessment list under Section 124 (exclusive of the time requisite for obtaining a copy of the relevant entries therein) or, as the case may be, within thirty days of the date on which an amendment is finally made under Section 126, and, in the case of any other tax, within thirty days next after the date of the receipt of the notice of assessment or of alteration of assessment or, if no notice has been given, within thirty days after the date of the presentation of the first bill or, as the case may be the first notice of demand in respect thereof:

> Provided that an appeal may be admitted after the expiration of the period prescribed therefor by this section if the appellant satisfies the court that he had sufficient cause for not preferring the appeal within that period:

(b) the amount, if any, in dispute in the appeal has been deposited by the appellant in the office of the Corporation.

27. The provisions of the Section 457 may also be noticed at this stage:

Proceedings before the court of the district judge.

457 General powers and procedure of the court of the district judge.

The procedure provided in the CPC, 1908, in regard to suits shall be followed, as as far as it can be made applicable, in the disposal of applications, appeals or references that may be made to the court of the district judge of Delhi under this Act or any bye-law made thereunder.

28. As noticed by us earlier, the majority of Judges took the view that the conditions to the hearing or determination of the appeal under Sections 169 are tow-fold as prescribed by Clauses (a) and (b) of Section 170. The third learned Judge (a) and (b) of Section 170. The third learned Judge also agreed with this view but took the view that Clause (b), namely the second condition to the hearing and determination of the appeal, is ultra vires Article 14 of the Constitution of India.

29. The same argument has been advanced before us by Mr. Yogesh K. Jain on behalf of the appellant. He further submitted that curbing of the right of unlimited appeal given by Section 169(1) of the Act is arbitrary and unreasonable and is hit by Article 14 of the Constitution.

30. Before dealing with this contention, it may be useful to refer to certain judicial decisions relevant to this issue.

31. In Ganga Bai v. Vijay Kumar and Ors. Chandrachud, J. (as His Lordship then was) held that "there is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of a civil nature, but the right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law."

32. In Anant Mills Co. Ltd. v. State of Gujarat and Ors. which is an appeal from the decision of the Gujarat High Court in the Anant Mills Co. Ltd. and Ors. v. State of Gujarat and Ors. XIV : 1973 GLR 826 the Supreme Court had occasion to consider vires of Section 406(2)(e) of the Bombay Provincial Muncipal Corporations Act (Bombay Act 59 of 1949) as amended by Gujarat Acts No. 8 of 1968 and No. 5 of 1970 to the entertainment of the appeal by a person who had not deposited the amount of tax due from him and who had not been able to show to the appellate judge that the deposit of the amount would cause him undue hardship arising out of his own omission and deafult. A disability or disadvantage arising out of a party's own default or omission cannot be taken to be tantamount to the creation of two classes offensive to Article 14 of the Constitution, especially when that disability or disadvantage operates upon all persons who make the default or omission. The High Court had taken the view that there was a discrimination between an appellant who deposited the tax and an appellant who did not, which is the necessary consequence of the condition requiring deposit of the amount of tax, which was unreasonable and hit by Article 14 of the Constitution. Setting aside the

view of the Gujarat High Court Khanna, J. speaking for the Supreme Court at pages 246 to 248 observed as under:

> After hearing the learned Counsel for the parties, we are unable to subscribe to the view taken by the High Court. Section 406(2)(e) as amended states that no appeal against a rateable value or tax fixed or charged under the Act shall be entertained by the Judge in the case of an appeal against a tax or in the case of an appeal made against a rateable value after a bill for any property tax assessed upon such value has been presented to the appellant unless the amount claimed from the appellant has been deposited by him with the Commissioner. According to the proviso to the above clause, where in any particular case the Judge is of opinion that the deposit of the amount by the appellant will cause undue hardship to him, the Judge may in his discretion dispense with such deposit or part thereof, either unconditionally or subject to such conditions as he may deem fit. The object of the above provision apparently is to ensure the deposit of the amount claimed from an appellant in case he seeks to file an appeal against a tax or against a rateable value after a bill for any property tax assessed upon such value has been presented to him. Power at the same time is given to the appellate judge to relieve the appellant from the rigour of the above provision in case the judge is of the opinion that it would cause undue hardship to the appellant. The requirement about the deposit of the amount claimed as a condition precedent to the entertainment of an appeal which seeks to challenge the imposition or the quantum of that tax, in our opinion, has not the effect of nullifying the right of appeal, especially when we keep in view the fact that discretion is vested in the appellate judge to dispense with the compliance of the above requirement. All that the statutory provision seeks to do is to regulate the exercise of the right of appeal. The object of the above provision is to keep in balance the right of appeal, which is conferred upon a person who is aggrieved with the demand of tax made from him, and the right of the Corporation to speedy recovery of the tax. The impugned provision accordingly confers a right of appeal and at the same time prevents the delay in the payment of the tax. We find ourselves unable to accede to the argument that the impugned provision has the effect of creating a discrimination as is offensive to the principle of equality enshrined in Article 14 of the Constitution. It is significant that the right of appeal is conferred upon all persons who are aggrieved against the determination of tax or rateable value. The bar created by Section 406(2)(e) to the entertainment of the appeal by a person who has not deposited the amount of tax due from him and who is not able to show to the appellate judge that the deposit of the amount would cause him undue hardship arises out of his own omission and default. The above provision, in our opinion, has not the effect of making invidious distinction or creating two classes with the object of meting out differential treatment to them; it only spells out the consequences flowing from the omission and default of a person who despite the fact that the deposit of the amount found due from him would cause him no hardship, declines of his own volition to deposit that amount. The right of appeal is the creature of a statute. Without a statutory provision creating such a right the person aggrieved is not entitled to file an appeal. We fail to

> understand as to why the legislature while granting the right of appeal cannot impose conditions for the exercise of such right. In the absence of any special reasons there appears to be no legal or constitutional impediment to the imposition of such conditions. It is permissible, for example, to prescribe a condition in criminal cases that unless a convicted person is released on bail, he must surrender to custody before his appeal against the sentence of imprisonment would be entertained. Likewise, it is permissible to enact a law that no appeal shall lie against an order relating to an assessment of tax unless the tax had been paid. Such a provision was on the statute book in Section 30 of the Indian Income-tax Act, 1922. The proviso to that section provided that "...no appeal shall lie against an order under Sub-section (1) of Section 46 unless the tax had been paid". Such conditions merely regulate the exercise of the right of appeal so that the same is not abused by a recalcitrant party and there is no difficulty in the enforcement of the order appealed against in case the appeal is ultimately dismissed. It is open to the legislature to impose an accompanying liability upon a party upon whom a legal right is conferred or to prescribe conditions for the exercise of the right. Any requirement for the discharge of that liability or the fulfilment of that condition in case the party concerned seeks to avail of the said right is a valid piece of legislation, and we can discern no contravention of Article 14 in it. A disability or disadvantage arising out of a party's own default or omission cannot be taken to be tantamount to the creation of two classes offensive to Article 14 of the Constitution, especially when that disability or disadvantage operates upon all persons who make the default or omission.

33. Similarly in Vijay Prakash D. Mehtal/Sh. Jawahar O. Mehta v. Collector of Customs (Preventive) Bombay the Supreme Court had occasion to deal with the right of appeal created under Sections 129A and 129B of the Customs Act, 1962. The appeal provided was against the duty demanded or penalty levied under the Customs Act. The provision for appeal contemplated a condition for deposit of the duty or the penalty pending the appeal. Same plea was taken that the provision for deposit of duty or penalty pending appeal whittled down the appellant's right of appeal and is ultra vires. The Supreme Court speaking through Sabyasachi Mukharji, J. held as under:

> (ii) Right to appeal is neither an absolute nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant.

34. Reference may also be made to the decision of this Court in Collector of Customs and Excise, Cochin and Ors. v. A.S. Bava . In this case Section 35 of the Central Excise & Salt Act, 1944 conferred a right of appeal which was sought to be whittled down by applying the provisions of Section 129 of the Sea Customs Act, 1878, containing a requirement of pre-deposit but with a power in the appellate authority to dispense with it in appropriate cases. This Court held that the attempt of the Central Excise Act went beyond the powers conferred on the Central Government in this behalf.

35. Similar view was taken by Bharucha, J. (as His Lordship then was) in Ellora Construction Co. v. The Municipal Corporation of Greater Bombay and Ors. while dealing with the validity of Section 217 (as amended) of the Bombay Municipal Corporation Act (3 of 1988) wherein the right to appeal was similarly restricted, that too retrospectively. The restriction so imposed was challenged on the ground that it violated Article 19(1)(f) of the Constitution which argument was repelled by the learned Judge. The same view was taken by Calcutta High Court in Chatter Singh Baid and Ors. v. corporation of Calcutta and Ors. where the Calcutta Highcourt was concerned with the validity of Section 183 (3-A) of the Calcutta Municipal Act (33 of 1951) and Chittatosh Mookerjee, J. observed as under:

> Merely because Section 183 (3-A) impairs the right of appeal by imposing the right of appeal by imposing an onerous condition of deposit of consolidated rate payable up to the date of presentation of appeal on the valuation determined, it cannot be said that Section 183 (3-A) is unfair, fanciful, oppressive and arbitrary. The said provision is also not repugnant to or inconsistent with other provisions for payment and recovery of consolidated rates contained in the Calcutta Municipal Act. The Sub-section (3-A) of Section 183 does not make right of appeal under Section 183(1) of the Act nugatory or illusory.

36. The contention before us on behalf of the assessee, however, is that the answer to the issue of constitutional validity of Section 170(b) will considerably depend upon the interpretation that is placed on the scope of the powers of the appellate authority. It is argued that if Section 170(b) is interpreted as mandating that an appeal cannot be entertained but will have to be dismissed in limine if the tax in dispute is not paid along with the memorandum of appeal, that would place a very onerous condition on the right of appeal particularly in cases where there is a substantial amount involved in the appeal and the points raised in the appeal are really contentious and debatable. It should not also be forgotten that, once the assessment list is amended after hearing the assessee, it may stand adopted for several subsequent years and demands for all these years will have to be met until the assessment for the first year is altered in appeal. It is argued that the right of appeal itself becomes illusory, if subjected to such a rigid and absolute condition. The provision will, therefore, be invalid, it is said, as imposing an unreasonable restriction on the fundamental rights of the appellant assessee.

37. As against this, it is contended for the Corporation that the validity of similar provisions have been upheld in the cases discussed earlier. It is submitted that even though an appeal, in such cases, may have to be thrown out, the assessee is not without redress. He will always have the alternative remedy of taking recourse to proceedings under Article 226 of the Constitution of India before the High Court and in appropriate cases, where a case of hardship is made out, the High Court has the undisputed powers to grant relief. It is true that the High Court would not ordinarily entertain the petition under Article 226 of the Constitution when the alternative remedy of appeal is available to the party but it must be said that the High Court has the jurisdiction to grant such a relief it thinks proper to do so in the circumstances of any case. Reference in this behalf is invited to the decision of this Court in Municipal Council, Khurai and Anr. v. Kamal Kumar and Anr. the relevant portion of which reads as under:

Before us it is contended by Mr. Setalvad on behalf of the Council that an appeal had already been preferred by the respondents against the assessment list and, therefore, they were not entitled to any relief under Article 226 of the Constitution. It is true that the High Court would not ordinarily entertain a petition under Article 226 of the Constitution where an alternative remedy is open to the aggrieved party. Though that is so the High Court has jurisdiction to grant relief to such a party if it thinks proper to do so in the circumstances of the case. In the present case the High Court has chosen to exercise discretion in favour of the respondents and it would not be right for us to interference with the exercise of that discretion unless we are satisfied that the action of the High Court was arbitrary or unreasonable. Nothing has been brought to our notice from which it could be inferred that the High Court acted arbitrarily in granting the writ prayed for to the respondents.

The learned Counsel for the Corporation has also brought to our notice the guidelines issued by the Assessment and Collection Department of the Municipal Corporation of Delhi contained in a book-let entitled "Property Taxes and Education Ceses, 1985", para 18(B) whereof reads as follows:

18. (B) Revisions:

On an application made by the tax payer and on payment of admitted taxes, the assessment can be reviewed or re-opened by the Assessor and Collector/ High Power Committee in the following cases:

(i) If an objection had been filed in time, but the same was not considered by the department:

(ii) If no notice or revision came to the notice of the tax-payer and the assessment was completed unobjected:

(iii) If the notice was received by the tax-payer but he could not file objection on account of reasons beyond his control.

It is said that the above decision and guidelines provide adequate safeguards to prevent any real hardship or harassment to the assessee and that Section 170(b) is not ultra vires for the reasons adduced on behalf of the assessee.

38. The decisions of the Bombay and Calcutta High Courts earlier referred to (Ellora & Chatter Singh) have upheld the validity of a rigid provision banning the entertainment of an appeal altogether where the taxes are not paid. However, the Supreme Court decisions in Anant Mills, Vijay Prakash Mehta and Batra had occasion to consider only the vires of a milder provision which permitted the appellate authority to waive or relax the condition of deposit. As explained in Nandlal v. State of Haryana these decisions settle the principle "that the right of appeal is a creature of statute and there is no reason why the legislature while granting the right cannot impose conditions

for the exercise of such right so long as the conditions are not sc onerous as to amount to unreasonable restrictions rendering the right almost illusory" (emphasis added). The Court in those cases had no occasion to consider what the position would be if the conditions placed on the right of appeal were unduly onerous or such as to render the right of appeal totally illusory.

39. The question whether the imposition of a condition which makes a right of appeal is illusory can be valid may need careful consideration in an appropriate case. In Wire Netting Stores v. Regional Provident Fund Commissioner 1987 Lab. I.C 1015 a decision of the Delhi High Court (to which one of us was a party), the lack of a provision conferring an effective right of appeal against determination of damages under the Employees' Provident Fund Act was held violative of the provisions of the Constitution. That decision is the subject matter of an appeal which is still pending in this Court. It is fortunately not necessary, for the purposes of the present case, to enter into that area in view of the construction which we propose to place on Section 170(b). We shall now turn to that question.

40. We have set out the terms of Section 170(b) earlier. This has been interpreted by the Corporation to mean that an appeal preferred by an assessee has to be dismissed in limine unless the tax in dispute has been paid and that there is no scope for the appellate authority exercising any powers of stay pending disposal of the appeal. Prima facie, the contention of the Corporation that to read a power in the District Judge to grant stay of collection of the disputed tax pending disposal of the appeal will run counter to Section 170(b) appears to be well founded. Though the normal rule is that the incidental and ancillary powers of an. appellate authority will include a power to grant stay of the order under appeal -vide, Income Tax Officer, Cannanore v. M.K. Mohammed Kunhi AIR 1969 S.C. 430 that power cannot be read into Section 170(b) for such an interpretation would render Section 170(b) totally unworkable. An argument was addressed before us that such a power can be ascribed to the District Judge in view of the provisions of Section 457 of the Act reproduced earlier. Reliance was placed on the Single Bench's decision of the Delhi High Court in Punj Sons (P) Ltd. v. Municipal Corporation of Delhi 1982 R.L.R. 247 where a learned Single Judge of the Delhi High Court took the view that the District Judge, in view of Section 457 of the Act, has powers to take recourse to Order 41 Rule 5 of the CPC in the appeal under Section 169 of the Act. With all due respect we do not agree with the reasoning of the learned Single Judge in the said case. In fact in the judgment under appeal all the three Judges have also dissented from this view of the learned Single Judge in the matter of Punj Sons. The reason is simple as Section 457 itself states that the procedure provided in the CPC in regard to suits are to be followed "as far as it can be made applicable". The other provisions of the statute totally bars the grant of such relief. The other provisions have to be harmoniously read with it and not in derogation thereto. Section 457 itself, therefore, does not help the assessee whose case depends entirely on the construction to be placed on Section 170(b). But still one has to examine Section 170(b) carefully to see whether, short of dismissing an appeal for default of payment of tax, the District Judge has any latitude in the matter.

41. On behalf of the Corporation, it is contended that the words "heard and determined" used in Section 170(b) are comprehensive enough to cover not merely the final hearing of an appeal on merits but also its preliminary hearings to find out whether the appeal is in time [Section 170(a)], whether the disputed tax has been paid along with the appeal [Section 170(b)], whether the appeal is

otherwise defective or to dismiss the appeal straightaway if it is found defective in any of those respects. It is, however, contended by the learned Counsel for the appellant that the opening part of Section 170 that 'no appeal shall be heard or determined under Section 169 unless' bars merely the final determination or hearing of the appeal and not any other stage of the hearing of appeal including the preliminary/admission stage of the appeal. It will be noticed that so far as Section 169(1) is concerned, it provides only for the forum i.e. the court where the appeal to be filed and the procedure is provided in Section 457 of the Act, namely the procedure of suit as far as it can be made applicable. Once there is a provision like Section 170(b) of the Act, a question arises, could any interim reliefs be granted at the admission stage or at any point of time before the final determination of or decision on the appeal.

42. In Lakshmiratan Engineering Works Ltd. v. Assistant Commissioner (Judicial) I, Sales Tax, Kanpur Range, Kanpur and Anr. A.I.R. 1960 S.C. 488 the Supreme Court had occasion to construe the meaning of the word 'entertained' in proviso to Section 9 of the U.P. Sales Tax Act 1948 and the Court took the view that the word 'entertain' means 'admit to consideration'. The Supreme Court while interpreting the word 'entertained' contained in Section 9 of the U.P. Sales Tax Act, 1948 and the proviso thereto made a distinction between the expressions 'appeal' and 'memorandum of appeal'. Section 9 contemplated that the appeal could not be entertained without the proof being given along with memorandum of appeal that the tax had been paid. While dealing with the meaning of the word 'entertained' Hidayatullah, J. in paragraphs 7 and 10 of the judgment at pages 491 and 493 observed as under:

> (7) To begin with it must be noticed that the proviso merely requires that the appeal shall not be entertained unless it is accompanied by satisfactory proof of the payment of the amount of tax admitted by the appellant to be due. A question thus arises what is the meaning of the word 'entertained' in this context? Does it mean that no appeal shall be received or filed or does it mean that no appeal shall be admitted or heard and disposed of unless satisfactory proof is available? The dictionary meaning of the word 'entertain' was brought to our notice by the parties, and both sides agreed that it means either 'to deal with or admit to consideration'. We are also of the same opinion. The question, therefore, is at what stage can the appeal be said to be entertained for the purpose of the application of the proviso? Is it 'entertained' when it is filed or is it 'entertained' when it is admitted and the date is fixed for hearing or is it finally 'entertained' when it is heard and disposed of? Numerous cases exist in the law reports in which the word 'entertained' or similar cognate expressions have been interpreted by the courts. Some of them from the Allahabad High Court itself have been brought to our notice and we shall deal with them in due course. For the present, we must say that if the legislature intended that the word 'file or receive' was to be used, there Was no difficulty in using those words. In some of the statutes which were brought to our notice such expressions have in fact been used....
>
> (10)...When the proviso speaks of the entertainment of the appeal, it means that the appeal such as was filed will not be admitted to consideration unless there is satisfactory proof available of the making of the deposit of admitted tax

43. This was the meaning which the Supreme Court has given to the word 'entertained' in the aforesaid decision. This was also the word used in the Ellora Construction Co. case and Chatter Singh Baid case referred to earlier. However, the expression used in the opening part of Section 170 of the statute before us is that 'no appeal shall be heard or determined under Section 169 unless. The question is: what the interpretation to be placed on these words?

44. It seems to us the words of Section 170(b) are capable of a broader interpretation. A perusal of Section 170 shows that the section uses three different expressions "heard or determined", "brought" and "admitted" in relation to an appeal and some significance is to be attached to the use of the expression "heard and determined". In like situations, other statutes such as the one considered by this Court in Lakshmi Rattan Engineering Works Ltd. v. Assistant Commissioner of Sales Tax and those contained in certain other enactments like the Bombay and Calcuta Municipal Acts specifically prohibit the very entertainment of the appeal if the tax is not paid. When the DMC Act has carefully avoided the use of that word, we must give full effect to the differential wording. Also, the absence of a language in Clause (b) of the proviso similar to that hi Clause (a) - which indicates that an appeal filed beyond the period of limitation will not stand, admitted unless the delay is condoned - also warrants an inference that the payment of disputed tax is not a condition precedent to the entertainment or admission of the appeal. In the present statutory context, it sounds plausible to say that such an appeal can be admitted or entertained but only cannot be heard or disposed of without pre-deposit of the disputed tax. Such an interpretation will provide some much needed relief from the harshness of the provision. These are not days in which the calculation of the property tax is simple and uncomplicated; the determination of the annual value of the property, except when based on the actual rent received from the property, involves various subjective factors and, not unoften, there is a wide gulf between the tax admitted to be due and the tax demanded. Sometimes, to compel the assessee to pay up the demanded tax for several years in succession might very well cripple him altogether. This apart, an assessee may not be able to deposit the tax while filing the appeal but may be able to pay it up within a short time, or at any rate, before the appeal comes on for hearing in the normal course. There is no reason to construe the provision so rigidly as to disable him from doing this. Again, when an appeal comes on for hearing, the appellate judge, in appropriate cases, where he feels there is some great hardship or injustice involved, may be inclined to adjourn the appeal for some time to enable the assessee to pay up the tax. Though it will not be expedient or proper to encourage adjournment of an appeal, where it is ripe for hearing otherwise, only on this ground and as a matter of course, an interpretation which leaves some room for the exercise of a judicial discretion in this regard, where the equities of the case deserve it, may not be inappropriate. The appellate judge's incidental and ancillary powers should not be curtailed except to the extent specifically precluded by the statute. We see nothing wrong in interpreting the provision as permitting the appellate authority to adjourn the hearing of the appeal thus giving time to the assessee to pay the tax or even specifically granting time or instalments to enable the assessee to deposit the disputed tax where the case merits it, so long as it does not unduly interfere with the appellate court's calendar of hearings. His powers, however, should stop short of staying the recovery of the tax till the disposal of the appeal. We say this because it is one thing for the judge to adjourn the hearing leaving it to the assessee to pay up the tax before the adjourned date or permitting the assessee to pay up the tax, if he can, in accordance with his directions before the appeal is heard. In doing so, he does not and cannot injunct the department from recovering the tax,

if they wish to do so. He is only giving a chance to the assessee to pay up the tax if he wants the appeal to be heard. It is, however, a totally different thing for the judge to stay the recovery till the disposal of the appeal; that would result in modifying the language of the proviso to read: "no appeal shall be disposed of until the tax is paid". Short of this, however, there is no reason to restrict the powers unduly; all he has to do is to ensure that the entire tax in dispute is paid up by the time the appeal is actually heard on its merits. We would, therefore, read Clause (b) of Section 170 only as a bar to the hearing of the appeal and its disposal on merits and not as a bar to the entertainment of the appeal itself.

45. If the provision is interpreted in the manner above suggested, one can steer clear of all problems of constitutional validity. The contention on behalf of the Corporation to read (he provision rigidly and seek to soften the rigour by reference to the availability of a recourse to the High Courts by way of a petition under Articles 226 and 227 in certain situations and the departmental instructions referred to earlier does not appear to be a satisfactory solution. The departmental instructions may not always be followed and the resort to Articles 226 and 227 should be discouraged when there is an alternative remedy. A more satisfactory solution is available on the terms of the statute itself. The construction of the section approved by us above vests in the appellate authority a power to deal with the appeal otherwise than by way of final disposal even if the disputed tax is not paid. It enables the authority to exercise a judicial discretion to allow the payment of the disputed tax even after the appeal is filed but, no doubt, before the appeal is taken up for actual hearing. The interpretation will greatly ameliorate the genuine grievances of, and hardships faced by, the assessee in the payment of the tax as determined. Though an assessee may not be able to acquire an absolute stay of the recovery of the tax until the dispute is resolved, he will certainly be able to get breathing time to pay up the same where his case deserves it. If this interpretation is placed on the provision, no question of unconstitutionality can at all arise.

46. We only wish that the statute itself is soon amended to make this position clear. After all, under the DMC Act, the appellate authority is a high judicial officer, being the District Judge, and there is no reason why the Legislature should not trust such a high judicial officer to exercise his discretion in such a way as to safeguard the interests of both the revenue and the assessees. We think that, until this is done, the provision requires a liberal interpretation so as to preserve such interests and should not be so rigidly construed as to warrant the throwing out of an appeal in limine merely because the tax is not paid before the appeal is filed.

47. We, therefore, agree with the majority of the Division Bench of the High Court that Section 170(b) of the DMC Act is intra vires. The District Judge has no jurisdiction to waive the condition of deposit or stay the collection of the tax pending disposal of the appeal before him. We, however, hold that he has the power to adjourn the hearing of the appeal or pass interim orders enabling the assessee to pay up the taxes before the appeal is actually heard and determined. But this is a power which he shall have to exercise judicially on the basis of the requirements of each case, the interests of revenue and the position of the cases on the hearing List before him.

48. The appeal is disposed of accordingly. There will be no order as to costs.