

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 647 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.B.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAMNAGAR MUNICIPAL CORPORATION

Versus

SHASTRUSHALYASINHJI D. JADEJA

Appearance:

MR JR NANAVATI for Petitioner

MR RAJNI H MEHTA for Respondent No. 1

CORAM : MR.JUSTICE M.B.SHAH

Date of decision: 19/03/94

ORAL JUDGEMENT

"These revision applications are filed against the common orders dated 19th February 1990 passed by the Assistant Judge, Jamnagar in appeals filed by the petitioner Jamnagar Municipal Corporation. By the impugned orders the learned Judge arrived at the conclusion that against the order passed by the Judicial Magistrate under section 138(1) appeal/revision was not maintainable under the provisions of section 138(3) of

the Gujarat Municipalities Act, 1963 before the Sessions Court. He arrived at the conclusion that revision application was maintainable in the High Court under Section 115 of the Civil Procedure Code.

At the time of hearing of these revision applications it is not disputed that appeals filed by the opponents before the Judicial Magistrate under section 138(1) were properly filed and were maintainable. All appeals were filed against the levy of property tax by the Municipality by contending that it was excessive and heavy. As per the demand bill the Jamnagar Municipality has demanded the payment of property tax and education case. The opponents filed objections against that demand and those objections were rejected. Therefore, the opponents preferred appeals before the Judicial Magistrate, First Class, under section 138(1) which are numbered as Municipal Tax Appeals. The learned Magistrate partly allowed the said appeals and reduced the tax. Against those orders the petitioner Jamnagar Municipality preferred revision applications/appeals before the District and Sessions Court. At the time of hearing of the appeals it was contended that neither appeals nor revision applications were maintainable before the Sessions Court. The learned Extra Assistant Judge upheld the said contention. Hence these revision applications are filed by the Jamnagar Municipal Corporation.

At the time of hearing of these revision applications, Mr. Nanavaty, learned advocate appearing for the petitioner, vehemently submitted that the orders passed by the learned Judge are on the face of them illegal and erroneous and without considering the provisions of section 138(3). As against this, Mr. Mehta, learned advocate appearing for the opponents, submitted that against the order passed by the Judicial Magistrate under section 138(1) revision application would not lie before the District Court or Sessions Court and the learned Judge was justified in rejecting the appeals/revision applications. For this purpose he relied upon the Full Bench decision of the Bombay High Court in the case of V.B.D'monte V. Bandra Borough Municipality, A.I.R. 1950 Bombay 397.

For appreciating the contention raised by the parties, it would be necessary to refer to the relevant part of section 138 of the Gujarat Municipalities Act which is as under :-

"138.(1) Appeals against any claim included in a

bill presented under sub-section (1) of section 132 may be made to any Judicial Magistrate or Bench of such Magistrates by whom under the direction of the Session Judge such class of cases is to be tried.

(2) xx xx xx

(3) The decision of the Magistrate or Bench of Magistrates in any appeal made under sub-section (1) shall, at the instance of either party, be subject to revision by the Court to which appeals against the decision of such Magistrate or Bench ordinarily lie."

(Emphasis added)

Reading sub-section (1) of section 138 it is apparent that appeals against any claim included in a bill presented under sub-section (1) of section 132 can be filed before any Judicial Magistrate or Bench of such Magistrates by whom under the direction of the Sessions Judge such class of cases is to be tried. With regard to the appeal filed by the respondent before the Judicial Magistrate, it is not contended that it was without jurisdiction.

The next question would be, where a revision application against the decision of the Magistrate would lie? Sub-section (3) provides that at the instance of either party the order passed by the Magistrate would be subject to revision by the Court to which the appeals against the decision of the Magistrate ordinarily lie. Against the decision of the Magistrate, ordinarily under section 374 sub-section (3)3 of the Criminal Procedure Code appeal would lie to the Sessions Court. Therefore, under section 138(3) revision application would lie to the Sessions Court.

However, the learned advocate Mr. Mehta submitted that when the Magistrate was deciding the appeal, he was exercising the civil jurisdiction and, therefore, against the orders which are passed by exercising civil jurisdiction, revision applications would not lie to the Sessions Court. In my view, this submission is without any substance. For deciding whether revision application would lie before the Sessions Court or not, what is required to be decided is, where ordinarily appeal would lie against the decision of the Magistrate? As such, under the Civil Procedure Code the Court is not designated as a Magistrate. Only under the Criminal Procedure Code the Court is designated as Judicial Magistrate. Section 11 of the Criminal

Procedure Code provides that in every district there shall be established as many Courts of Judicial Magistrates of the first class and of the second class, and at such places, as the State Government may, after consultation with the High Court, by notification, specify. Therefore, ordinarily the Magistrate would be trying the criminal cases as per the Criminal Procedure Code. Against the decision of the Judicial Magistrate appeal would lie to the Sessions Court under section 374 sub-section (3). Section 374(3) inter alia provides that any person provides that any person convicted on a trial by a Magistrate of first class may appeal to the Court of Session.

In the case of Lokmanya Mills, Barsi V. Barsi Municipality, A.I.R. 1939 Bombay 477, the Division Bench of the Bombay High Court considered whether the revision application under section 115 of the Civil Procedure Code would lie to the High Court against the order in a revision application passed by the Sessions Judge under section 111 of the Bombay Municipal Boroughs Act. It is not disputed that sections 110 and 111 of the Bombay Municipal Boroughs Act, 1925 are respectively similar to section 138(1) & 138(3) of the Gujarat Municipalities Act. Under section 110 appeals against demand notices under the Act may be made to any Magistrate or Bench of Magistrates by whom, under the directions of District Magistrates, such class of cases is to be tried. Section 111 provides for a revision application against any such decision on appeal by the Magistrate or Bench of Magistrates being made to the Court to which appeals against his or their decisions ordinarily lie. In that set of circumstances, the Court observed that the position is somewhat anomalous, because the question of liability to tax is a purely civil matter, and the Magistrate hearing an appeal against a demand notice is a criminal Court, so that an appeal lies from him to the Sessions Court, and not to the District Court. The Court further observed as under :-

"It was held by this Court in 30 Bom L R 1084

that the Sessions Judge in a case of this sort was exercising powers of a Civil Court and not of a Criminal Court, and therefore no revision lay under the Criminal Procedure Code; and I think that the learned Judges in that case rather indicated the view that no revision application lay to this Court in any capacity. Under the Civil P.C., S. 115, the High Court may call for the record of any case which has been decided by any Court subordinate to such High Court, and in

S.3 it is provided that for the purposes of the Code the District Court is subordinate to the High Court. Of course, the Sessions Court is not subordinate to the High Court for the purpose of the Civil Procedure Code, but it has been held that S.3, Civil P.C., is not exhaustive, and this Court on many occasions has entertained revision applications against orders of the Collector passed in revision under the Mamlatdars' Courts Act, though the Collector is not a Subordinate Court under S.3. Those cases also show that the fact that revision is allowed to one Court by a statute does not necessarily exclude a further application in revision to the High Court. It certainly would seem anomalous that this Court should have jurisdiction to revise a civil order made by a District Judge and a criminal order made by a Sessions Judge, who, of course, is the same individual, but should not have power to revise a civil order made by a Sessions Judge sitting under a statute temporarily as a Civil Court. I am disposed to agree with the decision of Normal J. in 40 Bom L R 387 that this Court has jurisdiction under the Civil Procedure Code in a proper case to entertain an application in revision against an order in revision passed under S. 111, Bombay Municipal Boroughs Act, but that such applications should be very sparingly entertained."

To some extent similar question was considered by the Bombay High Court in the case of Municipal Borough of Ahmedabad V. Aryodaya Ginning and Manufacturing Co. ltd. I.R. 1941 Bombay 361, and the Court inter alia held as under :-

"Section 111, Bombay Municipal Boroughs Act, provides that the decision of the Magistrate or Bench of Magistrates upon any appeal shall be subject to revision by the Court to which appeals against his or their decisions ordinarily lie. There was at one time a considerable difference of opinion between the different High Courts whether the words "case decided" in S. 115 of the Code included part of a case, and whether the High Court should interfere in revision with interlocutory orders, and that the High Court would in the exercise of its discretion interfere with an interlocutory order if it came to the conclusion that the order was wrong, even though the order was one which could be challenged in an

appeal from the final decree : vide 48 Bom 43. There is no reason why the words " decision upon any appeal" in s. 111, Bombay Municipal Boroughs Act, should be interpreted differently from the words "case decided" in s. 115, Civil P.C. There is nothing in the language of the former section which necessarily implies that the decision of the appeal referred to in that section means the final decision. The learned Sessions Judge was wrong in our opinion in the view which he took that he was not entitled to interfere in revision with the order made by the learned Magistrate. The revision application made to this Court is against the order of the Sessions Judge as well as against the order of the Magistrate which the Sessions Judge refused to interfere with and it is therefore necessary to go into the merits of the question."

(Emphasis added)

However, in spite of this clear position, learned advocate Mr. Mehta submitted that in view of the decision of the Full Bench of the Bombay High Court in the case of V.B.D'monte (A.I.R. 1950 Bombay 397) no revision application would lie before the Sessions Court. In my view, this contention is absolutely misconceived. The Full Bench in that case was required to consider the question whether an application in revision made against an order of a Magistrate under section 110 of the Bombay Municipal Boroughs Act lies on civil or criminal side of the Court. The Court arrived at the conclusion after referring to the decision in the case of Lokmanya Mills Ltd. (supra) that it is a purely civil liability or civil jurisdiction. The Court observed that the better view seems to be that a criminal Court may be constituted as a Court designate and civil jurisdiction may be conferred upon that Court. If a criminal Court exercises that jurisdiction, then it is not necessarily an inferior criminal Court within the meaning of the Criminal Procedure Code; and if a right of revision is given from a decision of such a Court then that revisional application is civil in its character and not criminal. The court further clarified as under :-

"As I stated before, we are not considering whether a revisional application lies under S. 435, Criminal P.C., or under S. 115, Civil P.C. All that we are considering is whether a special jurisdiction conferred upon us is of a civil or of a criminal character; and on that question there can be no dispute that it is of a civil

nature."

In my view, the aforesaid decision of the Full Bench does not deal with the question whether the revision application under section 111 of the Municipal Boroughs Act would lie to the Sessions Court or to the High Court. On the contrary, it was an accepted position in that case that revision application would lie to the Sessions Court but against the order of the Sessions Court whether revision application would lie to the High Court as it were an order passed on civil side or on criminal side. Therefore, the aforesaid judgment would not in any way advance the contention raised by the learned advocate Mr. Mehta.

In my opinion section 138(3) of the Gujarat Municipalities Act is explicit and it provides that a revision application against the order passed by the Judicial Magistrate would lie before the Court where appeal ordinarily would lie against his order as a Judicial Magistrate and under section 374(3) of the Criminal Procedure Code appeal against his order would ordinarily lie before a Sessions Court.

In this view of the matter, these revision applications are allowed. The impugned orders passed by the Extra Assistant Judge, Jamnagar, are quashed and set aside. The Sessions Court is directed to decide the appeals filed by the petitioner by treating them as revision applications on merits in accordance with law. Rule made absolute to the aforesaid extent with no order as to costs."