

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3143 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and Sd/-  
MR.JUSTICE R.P.DHOLAKIA Sd/-

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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?

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AHMEDABAD ELECTRICITY COMPANY LTD.

Versus

MUNICIPAL CORPORATION OF CITY OF AHMEDABAD.  
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Appearance:

MR HB SHAH for Petitioner  
MR KS JHAVERI for Respondent No. 1  
RULE SERVED for Respondent No. 2, 3, 4

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CORAM : MR.JUSTICE M.R.CALLA and  
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 30/04/99

C.A.V. JUDGEMENT (Per: R.P.Dholakia,J.)

This Special Civil Application is directed against the judgment and order dated 30-3-1998 passed by the Appellate Officer of the respondent-Ahmedabad Municipal Corporation against the petitioner-Ahmedabad Electricity Company Ltd.

2. The short facts of this Special Civil Application

is that the petitioner-Company is engaged in the business of generation and distribution of electricity and it is a licensee for the supply of electricity in the city of Ahmedabad and its surrounding Villages and towns and also in the city of Gandhinagar and it owns several properties in Ahmedabad. The petitioner has got constructed a building, namely A.E.C. Tower bearing Municipal Census Nos.757 and 758 opposite to Jubilee House in Shahpur Ward No.1 of the city of Ahmedabad and plans for the same were approved by the Ahmedabad Municipal Corporation under its building regulations. A Building Use Permission has been issued in respect of the said building on 6-6-1991 by the Town Development Officer after the building was completed. The said building consists of basement(parking) and ground floor. The details regarding the cost of construction and carpet area has been submitted to the respondent-Corporation and they are on the record of the Corporation. Now the petitioner-company got constructed three more floors on the said building and details, as required under the provisions of Chapter VIII of the Bombay Provincial Municipal Corporations Act, 1949, to be referred hereinafter as 'the Act', thereof have also been submitted to the respondent-Corporation and same are also on record of the Corporation. A notice under Rules 15(2) and 20(2) of Chapter VIII of the Schedule to the Act was issued by the respondent No.4-Deputy Assessor and Collector for the first time on 11-3-1998 in respect of years 1991-92 to 1996-97 calling upon the petitioner to give in writing if it has got any objections against the assessment of the said property consisting of basement(parking) and ground floor admeasuring 1838.80 sq.mts. within 15 days from the date of receipt of said notice. Accordingly, the petitioner gave written objections on 24-3-1998 stating that said property was not included in the assessment book for the said years and the Corporation had no authority to recover any amount of property tax on that basis. On the date of hearing, i.e. on 27-3-1998 before the Appellate Officer, the petitioner-Company filed a purshis requesting that the written objections filed by the petitioner-Company to be taken into account at the time of passing the final order. Thereafter, a common order dated 30-4-1998 was passed by the Appellate Officer rejecting the objection filed by the petitioner and confirming the assessment of the property made for the years 1991-92 to 1996-97 for an amount of Rs.4,85,443/- by the Deputy Assessor and Collector. It was also stated in the said order that the assessment made from 1-7-1991 is as per Rule 21 of the Rules in Chapter VIII of the Schedule to the Act.

3. The petitioner contended that the assessment would have been made only for the year 1997-98 because the said property consisting of lower level (basement) and ground floor was not included in the assessment book for 1991-92 to 1996-97 and details regarding the construction were submitted to the Corporation and even Building Use Permission has also been granted by the Corporation. It was also contended that assessment cannot be made for earlier years but for the particular year in account. By citing Rule 21B of the Rules in Chapter VIII of the Schedule to the Act, the petitioner submitted that it is only in the event of any order of a competent Court or any other competent authority in that behalf that the respondent Corporation is authorised to assess a property and levy tax in respect of a property after the expiry of the year of account and not in any other case. Since there was no such order of the competent Court or competent authority in that behalf, the respondent-Corporation is not empowered to assess or levy tax in respect of the property in question after the expiry of the year on account, i.e. 1991-92. Therefore, the petitioner prayed for quashing and setting aside the impugned order dated 30-3-1998 passed by the Appellate Officer of the respondent-Corporation.

4. Similar question has come up before this High Court in the case of Anand Mills Co. Ltd. Vs. Municipal Corporation for the City of Ahmedabad and a Division Bench of this Court has dealt with the same which is reported in 1993(2) GLH page 897 wherein at head note (D), it was held as under:

"Constitution of India - Art.226 - Ambit - Bombay Provincial Municipal Corporations Act, 1949 - Schedule A, Chapter VIII, Taxation Rules - Rr.20, 21B - Rules providing that assessment of property tax for any particular official year must be completed before the expiry of the official year - On finding that the assessment made by the Commissioner requires to be quashed, High Court in exercise of writ jurisdiction whether can give direction to the Commissioner to re-assess and levy property taxes even after expiry of the official year - Held in the negative - Court cannot give direction to do something which is not permissible to the authority under the statute."

In the present case, the notice has been issued on 11-3-1998 in respect of assessment of tax for the periods from 1991-92 to 1996-97. Based on the above decision, official years were over at the time when the notice was

issued, i.e. on 11-3-1998, in respect of the years 1991-92 to 1996-97 and, therefore, the respondent-Corporation is not within its powers to levy tax for the said periods. In the present case, the Corporation is entitled to assess and levy tax only for the year 1997-98. Therefore, in our opinion, the demand by the respondent-Corporation for the tax for the periods from 1991-92 to 1996-97 is illegal and unauthorised. The impugned order dated 30-3-1998 passed by the Appellate Officer, respondent No.3 herein, and the bills vide Annexures A to E are hereby quashed and set aside. Rule is made absolute accordingly. No order as to costs.

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