

CHHAGAN LAL

v.

MUNICIPAL CORPORATION, INDORE

January 28, 1977

[A. N. RAY, C.J., M. H. BEG AND P. S. KAILASAM, JJ.]

M.P. Municipal Corporation Act, 1956—House Tax levied under the Madhya Bharat Municipalities Act, 1954—On appeal corporation directed to decide the assessment afresh—Whether tax is payable from the date of original assessment or after remand.

Under the Madhya Bharat Municipalities Act, 1954, the Municipal Corporation determined the house tax payable by the appellant in respect of his house with effect from April 1, 1954. On appeal by the appellant regarding assessment, the Additional District Judge remanded the case to the Corporation for a fresh decision after due enquiry. Ultimately, by a notice dated October 12, 1965 issued under s. 146 of the Madhya Pradesh Municipal Corporation Act, 1956 (as amended in 1961) the Corporation revised the amount of tax payable but maintained the date of liability for payment of tax as April 1, 1954. On appeal by the appellant, the additional District Judge held that the tax was payable with effect from April 1, 1965 and not April 1, 1954 for the reason that the tax was finally fixed after the notice dated October 12, 1965. The Revision Petition of the Corporation was allowed by the High Court holding that tax was payable from April 1, 1954 because the proceedings were started even before the 1956-Act came into force.

In appeal to this Court the appellant contended that (1) as the fresh notice was issued under s. 146 of the 1956-Act on October 12, 1965 after remand of the case by the District Judge, house tax could be imposed only with effect from April 1, 1965 and not retrospectively and (2) the order of the District Judge being final under s. 149(1) of the 1956-Act the High Court had no jurisdiction to interfere with that order and in any event the High Court exceeded its power under s. 115, C.P.C.

Dismissing the appeal.

HELD : The proceeding relating to the house tax was a continuous proceeding relating to the tax payable from April 1, 1954 and the notice issued by the Corporation after remand by the District Judge did not amount to notice of fresh assessment or re-assessment. [874 E-F]

1. There is no force in the contention that under the 1956-Act the municipality had no power to pursue the proceedings regarding the levy of tax for an earlier period. The notice issued by the Corporation to the appellant made it clear that the Commissioner was proceeding to fix the value in pursuance of the remand. The appellant's plea that the Commissioner was not authorised to determine the value and impose the tax for any period before the date of issue of the notice ignores the fact that the valuation and determination of tax from 1954 was pending and the proceedings related to that period. Section 3(3) of the 1956-Act provides that all rates, taxes and sums of money due to the Municipalities when this Act was made applicable shall be deemed to be due to the Corporation and sub-s. (4) states that all suits and other legal proceedings instituted by or against a Municipality may be continued by or against the Corporation. The proceedings in the instant case were originally taken under the Madhya Bharat Municipalities Act, 1954 and the proceedings regarding the levy of the house tax were not concluded when under the new Act the Corporation became entitled to pursue the proceedings. [874 F-C, 875 A-D]

2. (a) Under s. 115, C.P.C. the High Court has power to revise the order passed by Courts subordinate to it. The District Court being subordinate to

A the High Court, is liable to the revisional jurisdiction of the High Court. Moreover, the question of want of jurisdiction of the High Court was not raised before that Court and cannot be allowed to be raised in this Court for the first time. [875 F-G]

B (b) The principles governing interference by the High Court under s. 115, C.P.C. have been laid down by this Court in a catena of decisions, the last of which is *The Municipal Corporation of Delhi v. Suresh Chandra Jaipuria & Anr.* (A.I.R. 1976 S.C. 2621). [875 H, 876 A-B]

C *Baldevdas Shivilal & Anr. v. Filmistan Distributors (India) (P) Ltd. & Ors.* [1970] 1 S.C.R. 435, *M/s. D.L.F. Housing and Construction Co. (P) Ltd. v. Sarup Singh and Ors.* A.I.R. 1971 S.C. 2324, *The Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar, Hyderabad and Anr. v. Ajit Prasad Tarway, Manager (Purchase and Stores) Hindustan Aeronautics Ltd. Balanagar, Hyderabad*, A.I.R. 1973 S.C. 76 and *The Municipal Corporation of Delhi v. Suresh Chandra Jaipuria and Anr.* A.I.R. 1976 S.C. 2621 referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1888/68.

Appeal by Special Leave from the Judgment and Order dated 10-1-1968 of the Madhya Pradesh High Court (Indore Bench) in Civil Revision No. 76/67.

D. V. Patel and S. K. Gambhir for the Appellant.

D *V. P. Raman*, Addl. Sol. Genl., *Y. S. Chitale* and *D. N. Mishra* for the Respondent.

The Judgment of the Court was delivered by

E KAILASAM, J. This appeal is by special leave against the judgment and order of the High Court of Madhya Pradesh, Bench at Indore revising the order of the Additional District Judge and holding that the appellant is liable to pay tax from April 1, 1954 and not from April 1, 1965 only as held by the District Judge.

F The appellant is the owner of a factory at No. 1, Shivaji Nagar, Indore. On January 8, 1954 the rental of the factory was assessed at Rs. 564 per month and the house-tax payable at Rs. 475/14/- with effect from April 1, 1951.

G The dispute is whether tax is payable from April 1, 1954. By an order dated March 20, 1956 the house-tax was determined at Rs. 891/1/- per annum by the Municipal Corporation with effect from April 1, 1954. Against the said assessment the appellant preferred an appeal before the Municipal Appeal Committee, Indore. The Appeal Committee allowed the appeal and remanded the case for deciding it on merits after giving a hearing to the appellant. After remand, the Municipal Corporation again inquired into the matter and determined the rental value at Rs. 940/- per month and reduced the tax to Rs. 793/2/- per year by an order dated 11th February, 1957, as payable from April 1, 1954. The appellant objected to the assessment and gave notice of objection under section 147(1) of the Madhya Pradesh Municipal Corporation Act, 1956, but the objection was summarily rejected by the Municipal Commissioner. The appellant preferred an appeal being Miscellaneous Appeal No. 41 of 1957 to the 1st Additional District Judge, Indore. By an order dated March 10, 1960, the Additional District Judge

allowed the appeal and remanded the case for decision afresh after proper inquiry. On remand, a notice dated February 11, 1963, was issued to the appellant under section 144(1) of the Madhya Pradesh Municipal Corporation Act, 1956, as amended by Act 13 of 1961 calling upon him to furnish the required information. The Corporation also issued another notice to the appellant on May 7, 1964, informing the appellant that the Junior Overseer had submitted a report that considerable changes have been effected in the factory and calling upon him to submit a detailed plan. The appellant replied asking for details. Subsequently, the appellant received a notice dated October 12, 1965, under section 146 of the Madhya Pradesh Municipal Corporation Act whereby he was informed that the annual valuation of the property was assessed at Rs. 10,870.20 and Rs. 764.18 was fixed as the annual property tax with effect from April 1, 1954. He was also informed that if he had any objection he could file his objections under section 147(1) within 30 days from the receipt of the said notice. The appellant filed his objections on November 11, 1965. The Commissioner rejected the objections by his order dated May 26, 1966, and confirmed the valuation of the property and tax imposed by it on October 12, 1965. The appellant was informed by the Corporation by its letter dated June 1, 1966, that the amount of Rs. 764.18 as tax has been fixed with effect from April 1, 1954, on the basis of the valuation of the annual income of Rs. 10,870.20.

Aggrieved by the order of the Commissioner the appellant filed Civil Miscellaneous Appeal No. 70 of 1966 before the 2nd Additional District Judge, Indore. The learned Judge by his order dated December 21, 1966, partly allowed the appeal and held that the appellant would be liable to pay the property tax of Rs. 764.18 with effect from April 1, 1965, only, and not from April 1, 1954. The respondent Municipality then filed a Revision Petition before the High Court and the High Court by its order dated January 10, 1968, in Civil Revision No. 76 of 1967 allowed the Revision Petition and held that levy of the house-tax at Rs. 764.18 would be payable from April, 1, 1954 itself.

Against the order of the High Court the appellant filed a petition under Article 136 of the Constitution and on the grant of a special leave by this Court on August 23, 1968, this appeal has come up before us for final hearing.

The learned counsel for the appellant raised two contentions. He submitted that as a fresh notice was issued under section 144 of the amended Act on October 12, 1965 no tax could be imposed with retrospective effect and the order of the High Court directing payment of tax from April 1, 1954, is against law. It was next contended that the decision of the 2nd Additional District Judge is final and the High Court had no jurisdiction to interfere with it. In any event it had exceeded its powers under section 115 of the Civil Procedure Code.

A From the facts set out it will be apparent that the order fixing the tax at Rs. 891/1/- per annum with effect from April 1, 1954 was made on March 20, 1956. That order was challenged before various forums. The Municipal Appeal Committee had first allowed an appeal preferred by the appellant and remanded the case to the Municipal Corporation. After remand the Municipal Corporation reduced the tax to Rs. 793/2/- by its order dated February 11, 1957.

B But again the assessment was objected to under section 147(1) of the Madhya Pradesh Municipal Corporation Act. The Municipal Commissioner dismissed the objections and thereupon there was an appeal to the Additional District Judge who allowed the appeal and remanded the matter for fresh disposal on March 10, 1960. After remand the Corporation reduced the tax further and fixed it at Rs. 764.18 with effect from April 1, 1954 by its order dated October 12, 1965. The appellant filed objections and the objections were rejected by the Commissioner by its order dated May 26, 1966.

C Against the order fixing the tax at Rs. 764.18 the appellant filed an appeal to the 2nd Additional District Judge, Indore, who by his order dated December 21, 1966 held that the property tax has to be paid only from April 1, 1965 and not from April 1, 1954. That order was challenged by the Municipality before the High Court which

D allowed the Civil Revision and held that the house-tax at Rs. 764.18 is payable from April 1, 1954. It will be thus seen that the proceeding related to the tax payable from April 1, 1954. The point that is taken by the learned counsel is that after the remand by the learned District Judge by his order dated March 10, 1960, the proceedings started by the Municipality by its notice dated October 12, 1965 were under section 146 of the Madhya Pradesh Municipal Corporation Act and as the new Act was not retrospective in its effect the tax is payable only from April 1, 1965. This plea cannot be accepted as from the narration of the facts it can be seen that it was a continuous proceeding relating to the tax payable from April 1, 1954, and there is no substance in the plea that the notice amounted to notice of fresh assessment or re-assessment. Equally untenable is his plea that the notice given by the Municipality on October 12, 1965 cannot have the effect of levying tax for any period earlier than April, 1965. The

E notice issued by the Municipal Corporation bearing No. 18000 dated February 11, 1963, runs as follows :—

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G “Under section 144(1) of the Madhya Pradesh Municipal Corporation Act, you are hereby informed the necessary particulars in the proforma given below, together with the detailed plan of the building of the abovementioned factory may please be furnished within 7 days from the receipt of this letter; for the purpose of assessment. As the case has been remanded by the court, it is necessary to make assessment again.”

H The notice itself specifically states that the assessment was to be made again in pursuance of the order of remand. The notice No. 10195 dated October 12, 1965 is under section 146 of the Municipal Act and it stated that on remand of the matter from the District Court

regarding the assessment of the property No. 1, Shivaji Nagar, the annual tax has been assessed at Rs. 764.18 and called upon the appellant to file any objections if he has within 30 days from the receipt of the notice under section 147(1) of the Act. The notice itself makes it clear that the Commissioner was proceeding to fix the value in pursuance of the remand and called upon him to file his objections under section 147. The plea of the learned counsel for the appellant is that the Commissioner is not authorised to determine the value and impose a tax for any period before the date of issue of the notice. This contention ignores the fact that the valuation and determination of the tax from the year 1954 was pending and the proceedings related to that period. Section 3 of the M. P. Municipal Corporation Act, 1956, Act 23 of 1956, amongst other things provides under sub-section (3) that "All rates, taxes and sums of money due to the Municipalities of such city when this Act is made applicable shall be deemed to be due to the Corporation," and under sub-section (4) of section 3 "All suits or other Legal proceedings, civil or criminal, instituted by or against the Municipality of such city may be continued by or against the Corporation." The proceedings were originally taken under the Madhya Bharat Municipalities Act, 1954 and the proceedings regarding the levy of the house-tax were not concluded when under the new Act the Corporation became entitled to pursue the proceedings. We do not see any basis for the contention that under the new Act the Municipality had no power to pursue the proceedings regarding the levy of the tax for an earlier period. We therefore reject the first contention as being without any substance.

The second contention is based on section 149 of the Madhya Pradesh Municipal Corporation Act, 1956. It provides that any appeal shall lie from the decision of the Municipal Commissioner to the District Court, when any dispute arises as to the liability of any land or building to assessment. Sub-section (1) of section 149 provides that the decision of the District Court shall be final. It was submitted that the decision of the District Court was therefore final and that the High Court was in error in entertaining a Revision Petition. This plea cannot be accepted for, under section 115 of the Civil Procedure Code the High Court has got a power to revise the order passed by courts subordinate to it. It cannot be disputed that the District Court is a subordinate court and is liable to the revisional jurisdiction of the High Court. That leaves us with the last contention of the appellant that the High Court acted beyond its power as a court of revision. This point will have to be summarily dismissed as the question of want of jurisdiction of the High Court was not raised before the High Court and therefore cannot be allowed to be raised in this Court for the first time. The learned counsel for the appellant pleaded that the question involves total lack of powers of the High Court and this Court should hold that the order of the High Court is without jurisdiction. This Court has laid down the principles governing interference under section 115 of the Civil Procedure Code in *Baldevdas Shival & Anr. v. Filmistan Distributors (India) (P) Ltd. & Ors.*, (1) M/s. D.L.F. Housing and Construction Co. (P) Ltd. v.

(1) [1970] 1 S.C.R. 435.

- A . *Sarup singh and Ors.*,⁽¹⁾ and *The Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar Hyderabad and Anr. v. Ajit Prasad Tarway, Manager (Purchase and Stores) Hindustan Aeronautics Ltd. Balanagar Hyderabad.*⁽²⁾ These cases have been referred to in the recent decision of this Court in *The Municipal Corporation of Delhi v. Suresh Chandra Jaipuria and Anr.*⁽³⁾ and the attention of the learned Judges of the High Court was drawn to the law declared by this Court. We consider it unnecessary to discuss the law on the subject over again as this appeal is liable to be dismissed on the ground that the point was not taken before the High Court and the discretion of this Court to interfere or not is beyond question.
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In the result we find that there is no substance in this appeal and dismiss the same with costs.

P.B.R.

Appeal dismissed.

(1) A.I.R. 1971 S.C. 2324.

(2) A.I.R. 1973 S.C. 76.

(3) A.I.R. 1976 S.C. 2621.