

## REVISIONAL CIVIL

Before Daya Krishan Mahajan, J.

MUNICIPAL CORPORATION, DELHI,—Petitioner

versus

CAPT. BHAWANI DASS AND OTHERS,—Respondents

Civil Revision No. 367-D of 1957.

*Punjab Municipal Act (III of 1957)—Ss. 63 and 67—  
Assessment List—Whether can be amended so as to include  
new property built during the year.*

1962

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Held, that section 67 of the Punjab Municipal Act, 1911, gives a limited power to the municipal committee to amend the assessment list so as to include therein a person or the property which ought to have been or ought to be inserted but has not been inserted in the list. A property which was not in existence when these lists were prepared cannot be said to be such property, for it cannot be said that it ought to be inserted or ought to have been inserted in those lists. The municipal committee has, therefore, no jurisdiction or power to amend the list so as to include therein a new property which was not in existence when the lists were prepared.

*Application for revision under section 25 of Act IX of 1887, Punjab Courts Act, of the order of Shri Om Parkash Saini, Additional Judge, Small Cause Court, Delhi, dated the 15th May, 1957, passing a decree for Rs. 405 with costs in favour of the plaintiff against the defendant.*

BISHAMBER DAYAL, ADVOCATE, for the Petitioner:

ISHAR DASS BHATIA, ADVOCATE, for the Respondent.

## ORDER

MAHAJAN, J.—Facts giving rise to this petition under section 25 of the Small Cause Courts Act are as follows: The Municipal Committee, New Delhi,

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in pursuance of section 63 of the Municipal Act started preparing assessment lists for purposes of house-tax for the year commencing 1st April, 1953, and ending on the 31st March, 1954. The respondent's house was not built before the relevant period, that is, the 1st of April, 1953. It was completed on the 1st of June, 1953, and on the 18th November, 1953, the Committee issued notice under section 67 of the Act stating that they were amending the assessment lists prepared for the year 1st April, 1953 to the 31st March, 1954 and thereafter proceeded to assess the house of the respondent and levied tax on him for the period from 1st June, 1953 to 31st March, 1954. The notice that was issued under section 67 of the Act was affirmed by a resolution of the committee on the 18th March, 1954. The respondent paid tax on the 30th June, 1954, and it seems under protest because he filed a suit on the 2nd of May, 1956, for refund of that amount on the ground that the imposition of tax was illegal. The stand of the committee was that the civil Court had no jurisdiction to try the suit and that the assessment was legal and reliance in this connection was placed on the provisions of section 67 of the Act. The trial Court decreed the suit. It held that the civil Court had jurisdiction to try the suit and that the imposition of the tax was illegal and not warranted by section 66 of the Act. The Committee has come up in revision against the decision of the Judge, Small Cause Courts.

The contention of the learned counsel for the committee is that it has the power to include a house for purposes of assessment which did not exist at the time when the lists were prepared. I am, however, unable to agree with this contention. Section 61 of the Act indicates the taxes which the committee may impose. Section 62 prescribes the

procedure for the collection of those taxes. Section 63 is in that part of the chapter which is headed as "Procedure for assessment of immovable property" and lays down the procedure for preparation of assessment lists. Section 64 requires that when the assessment lists are completed they should be published and they shall be open to inspection by the public. Section 65 provides for public notice of the time fixed for revising the assessment lists and it is significant that in case the premises are to be assessed for the first time, a notice under this section has to be given to the owner or occupier of those premises. Section 66 deals with the settlement of the lists and provides that the tax "so assessed shall be deemed to be the tax for the year commencing on the first day of January or first day of April next ensuing as the committee may determine." Then comes section 67, which is in these terms :—

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- "67. (1) The committee may at any time amend the list by inserting the name of any person whose name ought to have been or ought to be inserted, or by inserting any property which ought to have been or ought to be inserted, or by altering the assessment on any property which has been erroneously valued or assessed through fraud, accident or mistake, whether on the part of the committee or of the assessee, or in the case of a tax payable by the occupier by a change in the tenancy, after giving notice to any person affected by the amendment, of a time not less than one month from the date of service, at which the amendment is to be made.
- (2) Any person interested in any such amendment may tender his objection

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to the committee in writing before the time fixed in the notice, or orally or in writing at the time, and shall be allowed an opportunity of being heard in support of the same in person or by authorised agent, as he may think fit."

It will be apparent that a limited power to amend the assessment lists is given by this provision. Amendment can only be made when either the person or the property which ought to have been or ought to be inserted has not been inserted in the list. A property which was not in existence when these lists were prepared cannot be said to be such a property, for it cannot be said that it ought to be inserted or ought to have been inserted in those lists and, in any case, if the intention was that a new property could be inserted under section 67, the Legislature would have enjoined that before this is done, the procedure prescribed in sections 63 to 66 should have been followed. That is not the case under section 67. Section 67 merely prescribes that before the list is amended a notice should issue to the person affected by the amendment and the right that it gives to the person affected is provided in sub-section (2) and that cannot be said to be the right which normally an assessee has when the list are prepared, and that right is to be found in sections 64, 65 and 66. Therefore, in my view, the committee had no jurisdiction or power to amend the list so as to include a new property. It may be the policy of the Legislature that a property which comes into being during the course of the assessment year is not to be reckoned for that year for purposes of tax, but is to be reckoned in the year succeeding that. This very matter was examined by Backett J. in *Municipal Committee, Delhi v. Bhagirath Lal* (Civil Revision No. 160 of 1941), decided on the 8th July, 1941, and the learned Judge in that case had come to the

same conclusion. It is significant that for a period of nearly 21 years that decision has held the field and no attempt has been made either to amend or alter the relevant provisions in the Act. In my view, it is, therefore, too late in the day to contend that the interpretation of the relevant provisions of the Act by Beckett J. is erroneous. I would accordingly dismiss this petition with costs.

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R. S.

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*Before Daya Krishan Mahajan, J.*

MOHAN LALL AGGARWAL,—Petitioner.

*versus*

GIAN SINGH,—Respondent

Civil Revision No. 461-D of 1961.

*Delhi Rent Control Act (LIX of 1958)—Ss. 13 and 50—  
Excess payment made by tenant to landlord—Claim for  
refund of—Whether entertainable by civil Court.*

1963

Nov. 9th

*Held, that the combined reading of sections 13 and 50 of the Delhi Rent Control Act, 1958, leaves no manner of doubt that the jurisdiction of civil Courts has been expressly taken away with regard to any payments made in excess by the tenant to the landlord and the claim for the refund of the excess amount must be determined by the authorities constituted under the said Act.*

*Petition under Section 25 of Act 9 of 1887 for the revision of the order of Shri H. C. Goel, Additional Judge, Small Cause Court, Delhi, dated the 11th August, 1961. Both the preliminary points were decided against the defendant/petitioner.*

I. M. LALL, ADVOCATE, for the Petitioner.

G. S. VOHRA, ADVOCATE, for the Respondent.