
(1972) 04 MAD CK 0053
In the Madras High Court
Case No : Second App. No. 471 of 1970

A.K. Narayanan

APPELLANT

Vs

Coimbatore Municipal Council

RESPONDENT

Date of Decision : 28-04-1972

Acts Referred:

Citation : (1972) 04 MAD CK 0053

Hon'ble Judges : Palaniswamy, J

Bench : Single Bench

Advocate : V.P. Raman, N.R. Chandran and S.R. Srinivasan, for the Appellant; S. Mohan and Alagiriswami, for the Respondent

Final Decision : Allowed

Judgement

Palaniswamy, J.—The appellant, who is the plaintiff and who has failed in both the courts below, is the owner of the suit building in which he

is having a hotel by name ""Hotel Seetharam"". He constructed the building after demolishing the small structure that existed previously and

completed the construction in November 1964. He received the notice Ex. A-1 dated 17th August, 1965 from the Commissioner of Coimbatore

Municipality stating that for the reasons stated therein the amount shown therein as half yearly tax namely, Rs. 46-16 was proposed to be raised to

Rs. 1153-96 from the half year commencing from 1st October, 1964. The plaintiff was asked to be present at the Municipal Office at the

appointed time if there was any objection to the said proposal. The plaintiff made his representations objecting to the proposal. Subsequently, the

plaintiff received another notice dated 7th March, 1966 (Ex. A-2) stating that the Finance Committee, acting under the powers delegated to it by

the Municipal Council, had by its resolution No. 87 dated 5th March, 1966 (Ex. B-2) stated that the assessment in respect of the plaint property be fixed at Rs. 3,000-39 for half year with effect from 1st October, 1964. The plaintiff was called upon to pay tax at that rate. Questioning the validity of that notice the plaintiff laid the suit contending inter alia that the said demand was illegal, that the Finance Committee had no jurisdiction to fix the value, and that he had no notice of the proposal to fix the tax at the rate mentioned in the notice. He prayed for a declaration that the resolution was illegal and void and inoperative and as a consequential relief he prayed for a permanent injunction restraining the municipality from implementing or giving effect to the said resolution. The Municipality contended that the new building was completed and occupied by the plaintiff in November 1964, that proposal for fixing the assessment was initiated by the Finance Committee in August 1965 and after inspection of the premises by the members of the committee the annual value was fixed, on the basis of which the tax was arrived at Rs. 3000-39, that the plaintiff had opportunity to state his objections and that, therefore, the resolution was in order.

2. Both the courts below negatived the contentions of the plaintiff and held that the resolution is valid. Hence this appeal.

3. On behalf of the appellant-plaintiff two main contentions were urged. The first was that under R. 4 of schedule IV to the Madras District

Municipalities Act, 1920 (hereinafter referred to as the Act), the Finance Committee, acting under the powers delegated by the Municipal Council,

has no jurisdiction to fix tax of a building for the first time in a case where the property has not been inadvertently or improperly omitted from

assessment. The second contention was that even if the Finance Committee had jurisdiction, the plaintiff was entitled to reasonable opportunity to

show cause why the assessment should not be made as proposed and that he had no such opportunity.

4. In my view, both these contentions appear to be well-founded. R. 4 reads as follows:

4(1) If, at any time, it appears to the council that any person or property has been inadequately assessed or inadvertently or improperly omitted

from the assessment books relating to any tax or that there is any clerical or arithmetical error in the said books, it may direct the executive

authority to amend the said books in such manner as it deems just or necessary;
Provided that no such direction shall be given where it involves an increase in the assessment, unless the person concerned shall have been

afforded a reasonable opportunity to show cause to the Council why the assessment books should not be amended as proposed;

(2) Such amendment shall be deemed to have taken effect on the earliest date either in the current half year or in the two half years immediately preceding it on which the circumstances justifying the amendment existed.

5. It would appear from the language of this rule that the Council gets jurisdiction to act thereunder under any of the following contingencies:

- i. if any person or property has been inadequately assessed;
- ii. if any person or property has been inadvertently or improperly omitted from the assessment books relating to any books; or
- iii. if there is any clerical or arithmetical error in the assessment books.

6. It is the common case of the parties in the instant case that the present building of the plaintiff is a new one having been completed only in

November 1964. This is not a case where the property had been inadequately assessed or inadvertently or improperly omitted from the

assessment books. The power to determine the tax is conferred upon the executive authority under R. 3, which reads as follows:-

3. The Executive Authority shall save, as otherwise provided in this Act, determine the tax to which each property or person is liable;

Provided that in the case of taxes payable by the Executive authority the original assessment shall be made by the Revenue Divisional Officer or if

the Revenue Divisional Officer is also the Executive Authority by the Council.

7. It would be seen from a reading of Rr. 3 and 4 that they are intended to be applied under different circumstances. It is true that even for the first

assessment the council may get jurisdiction under R. 4. But, that can be only in a case where the property, which should have been assessed, had

been inadequately assessed or had been inadvertently or improperly omitted to be assessed. No question of inadequate assessment or inadvertent

or improper omission to assess arises as the action taken by the Executive authority was pending when the Finance Committee took action. Only if

the Executive authority had assessed inadequately, the Committee would have got jurisdiction to deal with the cases as a case of inadequate

assessment, if in its opinion the assessment made by the executive authority was inadequate. It is, therefore, rightly contended that the Finance

Committee had no jurisdiction to take action for imposing the tax upon the plaintiff's building under the circumstances in which the resolution was

passed. After the plaintiff received the notice Ex. A. 1, he made his representations objecting to the tax proposed by the Executive Authority. The

Finance Committee appears to have inspected the property and stated that the monthly income was Rs. 2600. On that basis, the Finance

Committee passed a resolution stating that tax may be levied on that basis. It was on that basis that the Executive authority fixed the assessment at

Rs. 3000-39. The complaint of the plaintiff is that before the assessment was made at that rate, he had no notice of the basis upon which the tax

was proposed to be fixed at that rate. It appears that when the members of the Finance Committee inspected the building, the plaintiff was present.

That has been taken by the courts below as amounting to notice. This view is clearly erroneous. It is not the case of the defendant. Municipality

that at the time when the members inspected the property, they informed the plaintiff that they had proposed to fix the annual value on the monthly

rental income of Rs. 2600. It is difficult to accept the view of the courts below that there was sufficient compliance of the provisions requiring

notice to be given to the plaintiff before the tax was proposed to be amended, even if it is conceded for the sake of argument that the council had

jurisdiction to take action under R. 4. The reasonable opportunity contemplated in the proviso to R. 4 would become an empty formality if the

person concerned is not told on what basis the assessment is proposed to be amended and at what rate the assessment is proposed to be made.

As such requirement was not complied with the assessment made by the Executive Authority on the basis of the resolution of the Finance

Committee is unsustainable. In this view, the appeal is allowed and the suit is decreed with costs throughout. No leave.