

**(2002) 07 AP CK 0102**  
**In the Andhra Pradesh High Court**  
**Case No : SA No. 132 of 1992**

Donkada Ammajamma

APPELLANT

Vs

Srikakulam Municipality, Srikakulam

RESPONDENT

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**Date of Decision :** 05-07-2002

**Acts Referred:**

Andhra Pradesh Municipalities Act, 1965 — Section 83, 87, 92

**Citation :** (2002) 4 ALD 822 : (2003) 2 ALT 806

**Hon'ble Judges :** G. Yethirajulu, J

**Bench :** Single Bench

**Advocate :** D. Ramlinga Swamy, for the Appellant; M. Prabhakar Rao, SC for Municipalities and Municipal Corporations (Andhra Area), for the Respondent

**Final Decision :** Allowed

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## Judgement

G. Yethirajulu, J.—This appeal is directed against the judgment and decree in AS No. 40 of 1990 of the Principal Sub-Court, Srikakulam confirming the judgment and decree in OS No. 217 of 1987 on the file of the Principal District Munsif, Srikakulam.

2. The appellant herein is the plaintiff and the respondent is the defendant in the suit. The plaintiff filed the suit for declaration that the assessment made by the defendant-Municipality enhancing the tax of her house from Rs. 420/- to Rs. 1444/-per half-year through a separate notice is illegal, arbitrary and ultra vires and for a consequential permanent injunction restraining the defendant from collecting the enhanced tax.

3. The plaintiff is having a house in Srikakulam town. The house was assessed with a tax of Rs. 420/- per half-year. The plaintiff let out two portions of the house for the Office of the Deputy Director, Adult Education. The defendant--Municipality enhanced the half-yearly tax from Rs. 420/-to Rs. 1444/-. The plaintiff used to pay the said tax as per the fresh assessment. On 16-10-1985 the Office of the Deputy Director, Adult Education vacated the house.

Immediately the plaintiff intimated the same to the defendant and subsequently filed a revision petition seeking revision of the tax. But the defendant did not pass any order on the same. Hence the suit.

4. The defendant while resisting the suit through a written statement contended that two portions of the suit building was let out on 1-8-1982 to the Office of the Project Officer, Adult Education, and Office of the Deputy Director, Adult Education, Srikakulam on a monthly rent of Rs. 383A and Rs. 363/- respectively. The remaining 1/3rd portion was retained in the occupation of the owner. The property was assessed on the basis of monthly rent of Rs. 756/- for the rented portions, Rs. 125/- for the owner occupied portion, and the property tax was fixed at Rs. 1534-85 per half year. Against the said assessment the plaintiff filed Revision Petition No. 95 of 1995 before the Commissioner and the same was heard in the presence of the plaintiffs husband. The assessment of the rented portions was retained and the assessment of the owner occupied portion was reduced from monthly rental value of Rs. 125/- to Rs. 60/- by reducing the tax from Rs. 1534-85 to Rs. 1444/- per half year. The plaintiff filed another Revision Petition No. 6 of 1986 stating that the tenants vacated the building. After hearing the said revision petition, the defendant reduced the annual rental value from Rs. 9,792/- to Rs. 9,000/- and the same was intimated to the party. The rental value of the building let out was disclosed, hence the plaintiff cannot contend that the assessment is capricious. Even though the building was vacated, the plaintiff is bound to pay the tax for that half year. Since the plaintiff has not exhausted the statutory remedies open to her, the suit is not maintainable and the same is liable to be dismissed.

5. The trial Court after considering the oral and documentary evidence adduced by both parties came to a conclusion that the plaintiff is not entitled for the relief of declaration. Accordingly the suit was dismissed through its judgment dated 13-2-1989.

6. The plaintiff being aggrieved by the judgment and decree of the trial Court preferred AS No. 40 of 1990 challenging its validity and legality.

7. The 1st appellate Court after considering the evidence available on record dismissed the appeal confirming the judgment and decree of the trial Court through its judgment dated 28-11-1991.

8. There is a concurrent finding of fact by the Courts below holding that the assessment made by the defendant-Municipality cannot be disturbed. But the learned Counsel for the appellant-plaintiff submitted that though the plaintiff is not entitled to agitate about the quantum of tax imposed by the defendant-Municipality, the plaintiff is entitled to agitate about the failure of the defendant in following the procedure prescribed under law while re-fixing the tax. He therefore submitted that it amounts to a substantial question of law. In view of the above submission, the substantial question of law that arises for consideration before this Court is:

Whether the procedure adopted by the defendant-Municipality in revising the property tax of the plaintiffs house is in accordance with law?

9. This is the story of a senior citizen retiring from service prior to 1982 and constructing a rickety terraced building in a remote area of Srikakulam Municipality in the name of his wife who is no other than the plaintiff in the suit. As per the measurements mentioned in Ex. B10-assessment order, the house consists of three contiguous portions with two rooms in each portion comprising an area of about 360 sq.ft. According to the plaintiff, the house was constructed in the year 1982 investing all the pensionary benefits of her husband. The house is with ordinary cement flooring and there are no amenities for the building like protected water, separate toilets to each portion of the house, separate bathrooms, compound wall, and municipal drainage etc. There are plenty of mosquitoes due to stagnation of water in the surroundings and there is no sanitation in the locality.

10. According to PW1, the husband of the plaintiff, they are residing in the entire house from 17-10-1985, that the house is not completely constructed, and it is situated at the farthest end of the town. The assessment was made immediately after the construction of the house in 1982 fixing half-yearly tax at Rs. 420/- by taking the monthly rental value at Rs. 125/-.

11. The Revenue Inspector of defendant Municipality who was examined as DW2 deposed that there was no leveling of the ground of the house by the date of the first assessment and only the slab of the building was completed. There is no compound wall or a car shed to the house of the plaintiff. The house consists of small rooms. About 100 yards away from the plaintiffs house there is a Harijanwada. At the time of initial assessment in 1983, the tax was imposed at Rs. 420/- per half-year. Subsequently the plaintiff let out two portions of the house for the occupation of the Offices of the Project Officer, Adult Education, Srikakulam and Deputy Director, Adult Education. They accepted to pay rent at Rs. 393/- per month for one portion and Rs. 363/- per month for another portion. On a petition filed by the plaintiff the defendant Municipality passed an order revising the tax with the following observations:

Inspected. The assessment property consists of three portions of which two were let out to the Office of the Project Officer and Deputy Director, Adult Education for rents of Rs. 393/- and Rs. 363/- respectively. The third portion is under the occupation of the owner for residence. The owner occupied portion, if let out, can reasonably fetch a rent of Rs. 125/- p.m. as per the rents prevailing for the residential portions in the locality. The building is therefore assessed on a monthly rental value of Rs. 881/- (Rs.756/- (non-residential) + Rs. 125/- (residential)).

12. Accordingly the Commissioner of the defendant-Municipality enhanced the tax from Rs. 420/- to Rs. 1534-85 ps. per half year. The special notice regarding enhancement of the property tax was served on the plaintiff on 28-9-1984 and

the plaintiff preferred a revision petition vide RP No. 94 of 1984 on 26-10-1984. The Commissioner of the defendant Municipality passed the following order dated 29-3-1985 on the said revision petition:

Heard the party represented by her husband Sri G.Sangameshwara Rao. Inspected the building. The building is located at the farthest end of Bondilipuram. Two portions are let out to Government Offices paying the rents of Rs. 393/- + Rs. 363/- = Rs. 756/- and the owner is occupying a residential portion. Since no protected water supply is provided to the house by the Municipality, the rental value of the owner occupied portion is fixed at Rs. 60/- per month. The total rental value for the building is fixed at Rs. 816/- i.e., Rs. 756/-(non-residential) + Rs. 60/- (residential) making the total tax payable per half year at Rs. 1444/-.

13. The plaintiff paid the said tax. Subsequently on 16-10-1985 the tenants vacated the two portions of the building. On the next day i.e., on 17-10-1985 the plaintiff made an application to the defendant Municipality intimating that the tenants vacated the two portions of the house and requesting to revise the Tax to its original assessment. The defendant Municipality did not immediately take the said representation as a revision petition and instructed the plaintiff to file a revision petition in February, 1986, the period for fresh assessment. Accordingly the plaintiff filed a revision petition vide RP No. 6 of 1986 on 10-2-1986 requesting to reduce the tax, The Commissioner of the defendant Municipality kept the matter pending for about seven months and ultimately he is alleged to have passed the following order on 11-9-1986:

Since the building has been vacated by the Office of the Project Officer and Deputy Director, Adult Education, the building is assessed on the annual rental value for residential buildings and the building is owner occupied. The rental value is reduced to Rs. 750/- per month.

14. The Commissioner, having observed in his order (Ex.B7) dated 29-3-1985 that since the building is located at the farthest end of Bondilipurani, the rental value of the owner occupied portion is reduced to Rs. 60/- from Rs. 125/-, did not assign any reasons as to what are the considerations that made him to arrive at the rental value at Rs. 750/- per month when all the three portions are owner occupied residential portions. The Commissioner having fixed the rental value of the entire building under the occupation of the owner in 1982 by observing that, if let out, it can reasonably fetch a monthly rent of Rs. 125/- for all the three portions, as per the rents prevailing for residential portions in the locality, is not justified in coming to a conclusion that even after the vacation of the offices it fetches a rental value of Rs. 750/- per month.

15. The defendant contended that when once the building was let out and the rental value disclosed, the plaintiff cannot plead that the tax imposed is abnormal and the same is capricious. In the light of the contentions of the plaintiff that the defendant while assessing the property tax failed to follow the

procedure prescribed under law and in the light of the contentions raised by the defendant Municipality, I wish to refer to the relevant provisions of the Act and the legal position governing this branch of law.

16. Section 87 of the A.P. Municipalities Act, 1965, ("the Act" for brevity) prior to its amendment under Ordinance No. 4/82 reads as follows;

87. Method of assessment of properly :--

(1) Every building shall be assessed together with its site and other adjacent premises occupied as an appurtenance thereto unless the owner of the building is a different person from the owner of such site or premises.

(2) The annual rental value of lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to let from month to month or from year to year less a deduction, in the case of buildings, of ten per cent of that portion of such annual rent which is attributable to the buildings alone, apart from their sites and the adjacent lands occupied as an appurtenance thereto; and the said deduction shall be in lieu of all allowances for repairs, or on any other account whatever:

Provided that in respect of any building and the land appurtenant thereto, the fair rent of which has been u/s 4 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (Andhra Pradesh Act 15 of 1960), the gross annual rent shall be the annual amount of the fair rent so fixed.

(3) All furniture and all plants and machinery contained or situated in or upon any building or land shall be included in determining the valuation under this section.

Explanation:--For the purposes of this section, an area not exceeding three times the plinth area of the building including its site shall be deemed to be adjacent premises occupied as an appurtenant to the building, and assessed to tax in accordance with the provisions of this section, and the area, if any, in excess of the said limit shall be deemed to be land not occupied by or adjacent and appurtenant to such building and tax shall be levied thereon in accordance with the provisions of Sub-section (3) of Section 85 as if it were land to which that sub-section applies.

17. The plaintiffs house is a residential house. It is not exclusively meant to let out on rent. The leasing out of two portions of the house was for a short tenure. Subsequent to October 1985 the house remained owner occupied. The Commissioner observed at the time of initial assessment that the house is not completely constructed, that it is situated at the farthest end of the town and the assessment was made by taking the monthly rental value at Rs. 125/-and accordingly fixed the tax at Rs. 420/- per half year. In 1984 when the Commissioner assessed the property after letting out two portions of the house observed that the owner occupied portion, if let out, can reasonably fetch a rent of Rs. 125/- p.m. as per the rents prevailing for the residential portions in the

locality. While disposing of the revision petition filed by the plaintiff the Commissioner reduced the monthly rental value of the owner occupied portion from Rs. 125/- to Rs. 60/- per month. The above remarks made by the Commissioner at the time of initial assessment and subsequent assessments, makes it clear that the Commissioner was conscious that the house fetches only nominal rent since it is a very small house situated in a remote area of the town.

18. The learned Counsel for the appellant-plaintiff submitted that since all the portions of the house became owner occupied after October 1985, the property tax has to be reduced to the earlier rate and a direction has to be given accordingly.

19. The Courts below did not accept the said plea on the ground that there is no provision in the Act enabling the Commissioner to reduce the tax as and the tenant vacates the house, but in this connection it may be essential to refer to Section 92 of the Act providing for granting vacancy remission and it reads as follows:

92. Vacancy remission :--(1) When any building or land or any portion of any premises which has been treated as a separate property for the purpose of assessing the property taxes has been vacant (thirty or more consecutive days in any half-year) for the (Commissioner) shall, subject to the provisions hereinafter contained, remit the property taxes, if any, to a maximum of one half of the amount paid in respect of taxes, for the number of days that such vacancy lasted.

(2) For the purpose of Sub-section (1),--

(a) premises shall be deemed to be vacant only if they are unoccupied and unproductive of rent;

(b) premises shall be deemed to be productive of rent, if let to a tenant having a continuing right of occupation thereof, whether they are actually occupied by such tenant or not;

(c) premises furnished or reserved by the owner for his own occupation whenever required shall be deemed to be occupied whether they are actually occupied by the owner or not;

(d) premises used or intended to be used for the purposes of any industry which is seasonal in character shall not be deemed to be vacant merely on account of their being unoccupied and unproductive of rent during such period or periods of the (half-year) in which seasonal operations are normally suspended;

(e) a vacancy which has continued during the whole of the month of February shall be deemed to have continued for not less than thirty consecutive days;

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20. According to the above provision, whenever a house becomes vacant the owner of the house has to give a notice in writing to the Municipality demanding

remission even if a portion of a building is vacant and the Commissioner has to grant proportionate remission under the terms of Section 92 of the Act. Admittedly, the plaintiff addressed a letter to the Municipal Commissioner informing that the tenants vacated the two portions of the house on 16-10-1985 and requested to reduce the tax, but the Commissioner kept the matter pending till 11-9-1986 and ultimately passed an order on the said date without assigning any reasons reducing the rental value of the building from Rs. 816/- to Rs. 750/- per month. The order do not reflect as to what is the basis for the Commissioner to arrive at such figure. There is no mention whether there was any revision of taxes in that locality prior to 11-9-1986 and whether there is any enhancement of the rental value and the tax in pursuance of such subsequent revision and what was the difficulty for the Commissioner to restore the original, tax which used to be paid by the plaintiff prior to the letting of two portions of the house. In the absence of assigning sufficient reasons, the order of the Commissioner dated 29-3-1985 and the subsequent order dated 11-9-1986 are liable to be set aside.

21. The assessing authority should take note that there is a vital distinction from the point of view of the owner between the self-occupied premises and tenanted premises. Since the right to shelter under a roof being a basic necessity of every human being, residential premises which are self-occupied must be treated on a more favourable basis than tenanted premises, so far as the assessability to property tax is concerned. The assessing authorities would have to determine the rent which the owner may reasonably expect to get if, such house was let out to a hypothetical tenant and on arriving this determination, the assessing authority would have to take into account the principles for the assessment of self-occupied properties. A judgment of the Supreme Court in *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, , is an authority on this aspect.

22. In *The Singanallur Municipality Vs. The Vasantha Mills Ltd., Coimbatore and Others*, , the Madras High Court held that the test for the assessing authority to assess a building for tax is whether a building belongs to a class not ordinarily let out to be decided with reference to the purpose for which it was put up and the purpose for which it is used, but not whether a building is capable of being let.

23. In *Kothuri Ramaiah v. Guntur Municipal Council* 1988 (2) ALT 131, Justice K. Ramaswami, the then Hon''ble Judge of this Court, while dealing with the aspect whether a civil Court has a jurisdiction to go into the correctness of the quantum of the annual rental value observed that the civil Court cannot go into the correctness of the quantum of the annual rental value. It has to go into the question whether the procedure prescribed under the Act fixing the annual value has been correctly followed by the assessing authority or not. The learned Judge further observed that the assessing authority has to determine the gross annual rent which the building and the appurtenant site may reasonably expected to fetch from month to month or from year to year by taking into consideration the

location of the building, the type of construction, the plinth area, the nature of use to which it is put and such other criteria as may be prescribed.

24. In *The Guntur Municipal Council Vs. The Guntur Town Rate Payers' Association etc.*, , the Supreme Court while dealing with the assessment of tax of a building governed by the Rent Control Act held that the landlord cannot lawfully be expected to get more rent than the fair rent which is payable in accordance with the principles laid down in the Rent Control Act. The assessing authority must take into account the measure of fair rent as determinable under the Rent Control Act. Where the controller has not fixed the fair rent, the Municipal authorities will have to arrive at their own figure of fair rent, but that can be done without any difficulty by keeping in view the principles laid down in Section 4 of the Act for determination of the fair rent.

25. In *The Corporation of Calcutta Vs. Sm. Padma Debi and Others*, , the Supreme Court held that a bargain between a willing lessor and a willing lessee uninfluenced by any extraneous circumstances may afford a guiding test of reasonableness.

26. In view of the above decisions, it can be safely concluded that the inflated or deflated rent received due to fortuitous considerations is not the basis of reasonableness to assess the rental value of the building and the acid test is the willing owner letting to a willing tenant and the premium at such bargain and the prevailing rents in the neighbourhood would furnish the guidance for fixation of the annual rental value and the authority before determining the rental value, particularly of a owner occupied house, has to take into consideration all the factors mentioned above and determine the annual rental value.

27. The following are some guidelines to be followed at the time of making the assessment for imposition of property tax.

1. The assessing authority shall take into consideration (a) type of construction, (b) the age of the building, (c) the locality of the building, (d) the purpose for which it is put, (e) the plinth area of the building, (f) open space available for the building, (g) compound wall, (h) number of portions of the building, (i) the conveniences available to each portion of the building or common facilities, (j) supply of protected water, (k) drainage facility, (1) the type of roads, (m) street lights, (n) the rental value of similar buildings in the locality, (o) the advantages of the locality, (p) the disadvantages of the locality, (q) the deductions permissible under the Act or rules and other relevant criteria prescribed under the rules as guiding factors.

2. The assessing authority shall not get himself influenced on account of inflated or deflated rent received due to fortuitous reservations or closeness or relationship of the parties or conduct to suppress the rent while considering its reasonableness.

3. The Commissioner shall take into consideration the rents prevailing in the

neighbourhood and put the case to acid test as to what will be the rent a willing owner gets by letting the building to a willing tenant.

28. The property tax is not intended to penalise the owners of the houses. It is a kind of contribution from the owners of the houses situated in every local body to meet the expenses of maintaining the roads, drainages, streetlights, parks and providing drinking water etc. No owner of the house should feel that he is taxed more than the owners of similar houses and he should gain an impression that he is not discriminated on any other consideration.

29. Right to comfortable living with dignity has become a right to life under Article 21 of the Constitution of India. Therefore, it is the duty of the respective local bodies to maintain healthy atmosphere in all the localities of the town and in order to meet such expenditure the respective local bodies are empowered to impose property tax on the owners of the houses, but it should be reasonable and revisable from time to time. In the event of any discrimination in fixing the rental value or imposing the tax, it will be hit by Article 14 of the Constitution. Therefore, the assessing authority has to keep in mind the above aspects while assessing the buildings to property tax.

30. In the result, the appeal is allowed by setting aside the judgments and decrees of the Courts below in AS No. 40 of 1990 and OS No. 217 of 1982. The Commissioner/ assessing authority is directed to take into consideration the above guidelines and pass appropriate orders restoring the tax to the original assessment and if it is difficult for him to restore it to the original tax of Rs. 420/- per half-year, he should assign sufficient reasons and give a speaking order listing out the circumstances under which he is prevented from restoring the original tax. This judgment do not come in the way of the defendant-Municipality to enhance the tax, if any, in the general revision that might have taken place subsequent to the original assessment of the year 1982 or for future revisions or on account of any improvements made by the plaintiff to the suit house. Each party to bear its own costs.