

(1974) 04 MAD CK 0044

In the Madras High Court

Case No : W.A. No. 469 of 1971

D.P.F. Textiles Private Ltd. Mettupalayam Road, Coimbatore 11

APPELLANT

Vs

The Town Panchayat Vellakinar and others

RESPONDENT

Date of Decision : 29-04-1974

Acts Referred:

Tamil Nadu Panchayats Act, 1958 — Section 125

Citation : (1974) 04 MAD CK 0044

Hon'ble Judges : Maharajan, J; Kailasam, J

Bench : Division Bench

Advocate : R.G. Rajan and N. Varadarajan, for the Appellant; K. Alagiriswamy for 1st Respt., for the Respondent

Judgement

Kailasam, J.—This appeal is preferred by the D.P.F. Textiles, Private Limited, Coimbatore, against the judgment of a single Judge of this Court in Writ Petition No. 2982 of 1969. The only question that was raised by the learned counsel, Mr. R.G. Rajan, is that the Panchayat in question is not competent to levy the house tax on the basis of annual rental value. The facts that are necessary for the purpose of this case may be set out. The appellant was assessed to a tax of Rs. 989-55 p for the period from the second half-year of 1956 to the first half year of 1961-62. For the second half-year of 1961-1962, the assessment was increased to Rs. 2882-25p. The appellant filed a suit O.S. No. 734 of 1962 in the District Munsif's Court, Coimbatore, in which the assessment was reduced by 10 per cent. On appeal, the appellant succeeded and the extra levy was set aside and the judgment of the appellate Court was confirmed in Second Appeal No. 177 of 1966. For the year 1964-65 the Panchayat levied a tax of Rs. 5,938-45p., but it was subsequently reduced to Rs. 1,979-10 p. From the year 1956 to the year 1964-65, the basis of the levy of the house tax was on the capital value of the building. In the year 1967, the panchayat adopted only the annual rental value as the basis and on 17th October, 1967, fixed the tax payable by the appellant for the year as Rs. 15,720. An appeal to the Town Panchayat failed and the tax at Rs. 15,720 was confirmed.

2. Aggrieved at this order, the appellant challenged the levy before this court by way of a writ petition. The main contention raised by the appellant before the learned single Judge was that the Panchayat acted beyond its powers in adopting the annual rental value as the basis of the tax. The other two questions that were raised by him were that the Panchayat did not apply its mind to the directions given by the authorities when it adopted the annual rental value, and therefore, the levy was illegal. It is unnecessary to refer to the second contention or to the other contention as the learned counsel confined himself only to the question as to the power of the Panchayat to adopt the annual rental value for fixing the house-tax payable by it.

3. In order to appreciate this contention, Ss.63 and 64 of the Madras Act X of 1950 may be referred to. S.63 empowers every Panchayat to levy in the village a house-tax, a professional tax and a vehicle tax. S. 64 (1) provides that the house-tax referred to in S.63 (1) shall be levied on a house in the village on any one of the following basis, viz., (a) annual value, (b) capital value or (c) such other basis as may be prescribed. As Ss. 63 and 64 of Act X of 1950 stood, there could be no doubt that the Panchayat could levy the tax on any one of the three basis viz., on annual value, capital value or such other basis as may be prescribed. When Madras Act XXXV of 1958 was passed, S.120 (1) was enacted, which runs as follows:

The house-tax shall be levied on all houses in every village and town on the basis on which such tax was levied in the local area concerned immediately, before the commencement of this Act;

Provided that the Government may by rules prescribe that the tax shall be levied on the basis of classified plinth area or on the basis of annual rent value or capital value or on a combination of any two or more of the above basis.

While Sub-S. (1) of S.120 enacts that the house-tax shall be levied on the basis on which the tax was levied immediately before the commencement of the Act, the proviso enables the Government to frame rules prescribing that the tax shall be levied on the basis of classified plinth area or on the basis of annual rental value or capital value or on a combination on of any two or more of the above bases. The effect of these provisions is that the method adopted by the Panchayat shall continue till rules are framed by the Government. The Government are empowered to prescribe that the Panchayat may adopt any one of the categories mentioned in the sub-section above, viz., annual rental value or capital value or a combination of any two or more of the above bases.

4. It is admitted that the Panchayat in question was adopting the capital value of the building as the basis for assessment of the house-tax, and under S. 120 (1) that will have to be continued till rules are framed under the proviso to S. 120 (1). The question arises whether, when the present assessment was made, the Government had framed rules enabling the Panchayat to adopt the annual rental value. The Government, in exercise of the powers conferred under sub-Ss. (1)

and (4) of S. 120 and S. 125 of the Madras Panchayats Act, 1958, framed rules. R. 2 prescribes the manner of ascertaining the annual or capital value of houses, and R. 2 (a) prescribes the method of determining the annual value. While prescribing the manner of ascertaining the annual rental value or capital value of the houses, the rule does not prescribe that all Panchayats could adopt either of the methods in fixing the house-tax payable. The rule, as framed, would only indicate the method of fixing the annual and capital value of the houses. Again, under Notification No. 41, the Government, in exercise of the powers conferred on them under Sub-S.(1) of S. 120, provided that, with the previous sanction of the Revenue Divisional Officer, the Panchayats may, in lieu of levying house-tax on the basis of the capital or annual value of houses, levy tax on the basis of their plinth area. Here again, the rule, while authorising the Panchayats with the previous sanction of the Revenue Divisional Officer to adopt the basis of the plinth area instead of levying house-tax on the basis of the capital or annual value, does not state that all Panchayats are empowered to adopt the basis of the capital or/and annual value of the houses. By Notification No. 4, in exercise of the powers conferred on the Government under Ss. 120, 121, 122, and 123 and S. 178 of Act XXXV of 1958 it was provided under Rule 5 as follows:

Rate of assessment of house tax:-

When the Panchayat has resolved to assess houses for the purpose of house tax either on their annual or their capital value, the rates fixed by the Panchayat may either be proportionate to the value of each house, or may advance in systematic progression with the value of the house; but shall, in no case, decrease as the value of the house increases.

This rule was strongly relied on by the learned counsel appearing for the Panchayat as having conferred power to adopt the annual or capital value for fixing taxes. Under S.120, the Panchayat will have to continue the basis which it was adopting, pending framing of the rules by the Government empowering the Panchayat to adopt the basis of annual rental value or capital value or some other method. It would have been perfectly proper for the Government to have framed Rules applicable to all Panchayats. The various notifications referred to prescribe the method of arriving at the tax on the basis of annual rental value or capital value, but they do not state that a Panchayat, which is adopting capital value for levy of tax under S. 120(1) and which is bound to continue that method, is empowered to adopt the annual rental value after the rules have been framed. Though the point taken by the learned counsel for the appellant is technical and it appears the Government proceeded on the basis that the Panchayat could adopt either of the two methods for fixing the house tax, we feel that the Government had not framed any Rules under the provision to S.120 (1) prescribing that all the panchayats may adopt the various methods for arriving at the tax leviable or empowering the Panchayats which were adopting one or other of the basis which they were bound to adopt under S.120(1) to adopt other methods. As the Rules stand at present, we see no way of not accepting the

contention of the learned counsel for the appellant, however, technical it may be. We hope the Government would remedy the situation by framing proper Rules. The appellant cannot dispute its liability on the basis of the capital value which the Panchayat was adopting. On the facts, we feel that the tax payable by the appellant on the basis of the capital value is not likely to be less than Rs. 10,000 per year. Subject to fixation of the correct amount by the Panchayat, the appellant will pay, towards tax due to the Panchayat, at the rate of Rs. 10,000/- per year for the years in question. The panchayat will re-consider the assessment on the basis of the gross capital value. The Panchayat will also consider the objection raised by the appellant, viz., that, part of the building was used for educational and research purposes and the contention of the learned counsel for the Panchayat that the institution does not come under any of the specified classes which were exempted of the house tax under the Act. The appellant is granted three month's time from this date for payment of the tax as directed above. There will be no order as to costs.