

(2013) 06 MAD CK 0230
In the Madras High Court
Case No : S.A. No. 1417 of 2011

J. Bhakthavathsala Rao

APPELLANT

Vs

Corporation of Chennai

RESPONDENT

Date of Decision : 26-06-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Madras City Municipal Corporation Act, 1919 — Section 137B, 138G

Citation : (2013) 7 MLJ 364

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : J. Bhakthavathsala Rao, Party in Person, for the Appellant; B.B. Senthil Kumar, for the Respondent

Final Decision : Partly Allowed

Judgement

G. Rajasuria, J.—This Second Appeal is focussed animadverting upon the judgment and decree dated 05.04.2011 passed in A.S. No. 459 of 2010 by the learned IV Additional City Civil Judge, Chennai confirming the judgment and decree passed in O.S. No. 8144 of 2008 dated 19.08.2010 by the learned IV Asst. City Civil Judge, Chennai. The parties are referred to hereunder according to their litigative status and ranking before the trial Court.

2. Compendiously and concisely, the germane facts absolutely necessary for the disposal of these two Second Appeals, would run thus:

(a) The plaintiff filed the suit seeking the following reliefs:

(i) For a declaration that the final notice of enhancement of the Corporation Tax served on 05.12.2008 for the building bearing New No. 50, Old No. 221, Govindappa Naicken Street, Chennai 600 001 is not done according to law;

(ii) For a consequential injunction restraining the defendant, its officers, servants, agents, men, etc., from demanding and collecting property tax at any rate higher than Rs. 653/- per half year, till the revision is done as per law;

(inserted as per order dated 30.03.2009 passed in I.A. No. 190 of 2009)

(a) For a permanent injunction restraining the defendant, his officers,

servants, agents, men etc., from demanding and collecting half yearly Corporation Tax for the building bearing New No. 50, Old No. 221, Govindappa Naicken Street, Chennai 600 001 at any rate higher than Rs. 653/- per half year, till revision is done as per law; and

(b) For costs.

(extracted as such)

(b) The gist and kernel of the plaint averments would run thus:

The plaintiff is the owner of the building bearing D. No. 50 Old No. 221, Govindappa Naicken Street, Chennai 600 001, under Zone-02, Division-029 of Corporation of Chennai. The said building is assessed for the property tax under the provisions of the Chennai City Municipal Corporation Act, 1919. Earlier there were proceedings relating to the same house. The property tax was refixed at Rs. 653/- per half year with effect from 1/1993-94. However, the letter dated 10.09.2007 was issued by the Corporation Chennai to the plaintiff enhancing the annual valuation from Rs. 5,460/- (Rupees five thousand four hundred and sixty only) to Rs. 10,265/- (Rupees ten thousand two hundred and sixty five only) and thereby the half yearly property tax was enhanced from Rs. 653/- (Rupees six hundred and fifty three only) to Rs. 1,227/- (Rupees one thousand two hundred and twenty seven only) with effect from 2/1998-99. For the provisional notice under G.R.S. No. 0029/00213, objections were submitted to the authority concerned by the plaintiff. The plaintiff was personally heard by the authority concerned, however, the authority did not accept and uphold the objections raised by the plaintiff. The Assistant Revenue Officer vide his letter dated 17.10.2008 called upon the plaintiff to pay the enhanced tax of Rs. 1,227/- (Rupees one thousand two hundred and twenty seven only) per half year from 2/1998-99. As such, the demand is illegal and unenforceable. Accordingly, he filed the present suit.

(c) Per contra, refuting and challenging, impugning and inveighing the averments in the plaint, the written statement was filed by the defendant. The defendant already paid the metro water tax according to the enhanced annual value of the property fixed at Rs. 10,265/- (Rupees ten thousand two hundred and sixty five only) as determined by the Corporation of Chennai upto 1/2007-2008. After hearing the plaintiff concerning his objections on the property tax demand, the final notice was issued by the Corporation through the registered post on 21.11.2008. The suit was filed beyond the period of limitation. There was no cause of action for filing the suit. The suit was not maintainable either in law or on facts. Accordingly he prayed for the dismissal of the suit.

(d) The trial court framed the relevant issues.

(e) Up went the trial during which the plaintiff/Bhakthavathsala Rao examined himself as P.W.1 and Exs. A1 to A10 were marked; and one Ugamani was examined as D.W.1.

3. Ultimately the trial court dismissed the suit, as against which the appeal was filed for nothing but to be dismissed confirming the judgment and the decree of the trial Court.

4. Challenging and impugning the judgments and decrees of both the fora below, this second appeal has been focussed on various grounds and also suggesting the following substantial questions of law:

(a) Whether the Lower Appellate Court is right, in holding that the enhancement can be done under Rule 137-B of Chennai City Corporation Act, 1919, retrospectively, under escaped assessment, when Chennai Corporation has admitted that, the notices Ex. A4 and Ex. A10 were issued under GRS (General Revision) and when the Corporation, in its written statement of O.S. No. 8144 of 2008 had not specifically taken any stand under rule 137-B.

AIR (38) 1951 Mad 277 (C.N. 66)

(b) Whether the Lower Appellate Court is right, in validating the legality of Ex. A4 and Ex. A10, without discussing the applicability of the provisions of law?

(c) Whether the Lower Appellate Court is right in holding that even in cases where provisions of law were not followed, Civil Court has no jurisdiction and that the Appellant should approach the taxation Appellate Tribunal under Rule 138-G of Chennai Corporation Act, 1919?

(extracted as such)

5. My learned Predecessor formulated the following substantial questions of law:

(a) Whether the Lower Appellate Court is right in holding that the enhancement can be done under Rule 137-B of Chennai City Corporation Act, 1919, retrospectively, under escaped assessment, when Chennai Corporation has admitted that the notices Ex. A4 and Ex. A10 were issued under GRS (General Revision) and when the Corporation, in its written statement of O.S. No. 8144 of 2008 had not specifically taken any stand under Rule 137-B?

(b) Whether the Lower Appellate Court is right in validating the legality of Ex. A4 and Ex. A10, without discussing the applicability of the provisions of law?

6. The appellant as party-in-person argued his matter reiterating his stand in the plaint and also citing decisions on his side.

7. Whereas the learned counsel for the Corporation would reiterate his stand as found in the written statement and also contend that the civil court had no jurisdiction, as there is effective remedy for preferring appeal before the Appellate Tax Tribunal under Chapter V-A of the Chennai City Municipal Corporation Act, 1919 (for short "the Act"). As per him, the courts below were

right in dismissing the suit on the ground that the appropriate remedy for the plaintiff was to file an appeal, but he failed to do so.

8. At the outset, I would like to refer to the decision cited on the side of the appellant, reported in AIR (38) 1951 Mad 277 [The Corporation of Madras v. Messrs. Abdul Hussain Nazarally & Co.], an excerpt from it would run thus:

Section 137-B enables the Corporation to assess a person to any taxes or fees leviable under that Chapter who had escaped assessment. The question is whether it can be said that the respondent escaped assessment. It seems to me that a person can be said to escape assessment or tax if some portion of his property has not been taxed at all. If, as is the case here, the Corporation merely thought that the assessment was too low and ought to be raised, the words "escaped assessment" would be totally inapplicable.....

The cited precedent is applicable in the facts and circumstances of this case for the simple reason that as on the date of the rendering of the said judgment, Chapter V-A of the Act was not in the statute Book. Over and above that, the following words "or has been assessed in any half-year or year at a rate lower than the rate at which he is assessable or, in the case of property tax has not been duly assessed in any half-year or year consequent on the building or land concerned having escaped proper determination of its annual value" were subsequently added in S. 137-B of the Act vide Section 55 of the Chennai City Municipal (Amendment) Act, 1961 (Tamil Nadu Act 56 of 1961). Now there is inbuilt safeguard provided for preferring appeal. As such, an effective remedy of statutory appeal is contemplated under Chapter V-A of the Act itself.

9. Section 138G of the Act is extracted hereunder for ready reference:

138-G. Appeal.--(1) Any person or employer aggrieved by any order or decision of the commissioner in relation to the payment of tax (including penalty, fee and interest) may, within such time as may be prescribed, appeal to the Taxation Appeals Tribunal.

(2) The decision of the Taxation Appeals Tribunal shall be final and shall not be questioned in any court of law:

Provided that no such decision shall be made except after giving the person affected a reasonable opportunity of being heard.

10. The party in person also cited the following decisions of this Court:

(i) (2008) 3 MLJ 649 [K.R. Abirami v. Kumbakonam Municipality, rep. By its Executive Authority, Commissioner, Kumbakonam Town]

(ii) K.A. Arokkiam Vs. The Didigul Municipality,

11. A mere running of the eye over those decisions would exemplify and demonstrate, convey and portray that the factual matrixes in those cases are entirely different from this case. In those cases, the party exhausted their

remedy contemplated under the District Municipalities Act and thereafter filed the suit. In such circumstances, the Court rendered the verdicts, but so far this case is concerned, straightaway the plaintiff filed the suit before the City Civil Court, Chennai.

12. My mind is reminiscent and redolent of the following decision of the Hon^{ble} Apex Court reported in N.D.M.C. Vs. Satish Chand (Deceased) by Lr Ram Chand, an excerpt from it would run thus:

6. Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

7.....

8. In view of the aforesaid position in law, we are of the considered view that the civil suit filed respondent challenging the assessment and demand of property tax by the appellant was clearly barred. The judgments of the lower appellate Court and the High Court are, therefore, set aside and the judgment of the trial Court is hereby restored. The civil suit filed by respondent is dismissed as not maintainable. The appeal is allowed. There will be no order as to costs.

13. A mere running of the eye over the said precedent of the Hon^{ble} Apex Court, would clearly highlight and spotlight that whenever there is inbuilt safeguard in the special enactment, then that has to be exhausted and the cited precedent *supra* is precisely on similar set of facts involved in this case. To say the least, even in the precedents cited on the side of the plaintiff, the Hon^{ble} Apex Court's judgment is not found referred to. No doubt, it is as thoroughly settled as any proposition of law could be that when authority contemplated under the law decides a matter in violation of principles of natural justice and that too violating the maxim, *Jura naturae sunt immutabilia*-Principles of natural justice cannot be dispensed with and should be adhered to; and *audi alteram partem* No man shall be condemned unheard.". Then in such cases, Section 9 of CPC could be invoked by filing an original suit, but in this case no such grievance is found exemplified or portrayed in the plaint. As such both the fora below were justified in jointly taking the view that the suit was a misconceived one, as without exhausting the statutory remedy contemplated in Chapter V-A of the said Act, the suit was filed.

14. However, one modification is required in the facts and circumstances of the case. The party-in-person would pathetically and vehemently plead before me that when law contemplates only past assessment for six years, absolutely there was no jurisdiction on the part of the authority to demand tax from 1998 onwards, so to say for about past nine years.

15. I could not get any fitting reply from the side of the Corporation in this

regard. Section 137-B of the Act, as it stood on the date of issuing demand notice, would show that under any circumstances, only for six years" property tax alone such escaped or left out or wrong assessment could be dealt with and demanded and not more than that. Accordingly, I would like to quash the assessment for the period anterior to six years to the final notice dated 25.09.2007. Relating to the past six years period is concerned, it is for the appellant/plaintiff to approach the Tax Appellate Tribunal and file appeal excluding the time taken for prosecuting these proceedings in all the three fora.

16. Accordingly, the above substantial questions of law are answered to the effect that the civil court has got no jurisdiction to entertain the suit in view of Chapter V-A of the Chennai City Municipal Corporation Act, 1919 in respect of assessment of tax made six years anterior to the impugned notice. However, the civil court had jurisdiction to quash the assessment made beyond six years anterior to the impugned notice and accordingly, liberty given to the plaintiff to file necessary statutory appeal before the Appellate Tax Tribunal under the Act within a period of month from the date of receipt of a copy of this order. On balance, the Second appeal is partly allowed. No costs. In order to disambiguate the ambiguity, if any, I would like to point out that the plaintiff is given liberty to prefer appeal before the Tax Appellate Tribunal within a period of one month from the date of receipt of a copy of this order and the Tax Appellate Tribunal without raising any objection regarding the limitation period, shall consider the appeal and dispose it of on merits as expeditiously as possible. Till the facility accorded to the appellant is accomplished, there shall not be any recovery of such tax as per that impugned demand. If the appellant/plaintiff fails to file any appeal, then the Corporation is at liberty to proceed further as per law.