(1965) 11 MAD CK 0009

In the Madras High Court

Case No : C. R. P. No. 2290 of 1962

Jayam Ammal APPELLANT

Vs

The Municipal Council, Kumbakonam RESPONDENT

Date of Decision : 01-11-1965

Acts Referred:

Citation : (1965) 11 MAD CK 0009

Hon'ble Judges : Anantanarayanan, J

Bench : Single Bench

Advocate : G. Rameswamy, M.A. Sadanand and R. Sadagopan, for the Appellant; A. Raman and S. Subramaniam, for the Respondent

Judgement

Anantanarayanan, J.—This revision proceeding is by the plaintiff in S.C.S. 172 of 1962 against the defendant-Municipality (Municipal

Council, Kumba-konam) for recovery of a sum of Rs. 284-58 under the following circumstances. The plaintiff claimed that she was the owner of

the building in T. S. 5/908 in Sri Nageswara North Street, Kumbakonam, and that the building was assessed to a half-yearly property tax of Rs.

29-53 prior to 1st October 1960. Subsequently, the plaintiff obtained a licence for reconstruction of her building, under the relevant provision of

law. There has been some controversy about the precise date on which the reconstruction of the building was really completed by the plaintiff

(revision petitioner). She seems to have advanced a case that this was by the end of March 1961, while the defendant Municipality put forward the

plea that the reconstruction was completed by 6th March 1961. Ultimately the trial Court found, on the merits of the evidence, that the

reconstruction was completed by 6th March 1961, and we may take this as a conclusive finding of fact. Admittedly on 6th March 1961 the building inspector of the Municipality inspected the completed or reconstructed premises, and made a report upon the enhanced value of the property due to the improvements. This report (Ex. B-7) is on record. Rule 4 of Schedule IV of the District Municipalities Act enables the Municipality, under such circumstances, to issue a notice, and to follow a procedure which could culminate in enhancing the half yearly assessment, though this may occur between the two quinquennial revisions. In the present case, the Municipality issued such a notice on 17th June 1961, and the revision-petitioner submitted objections thereto an 26th June 1961. Ultimately, the Municipality enhanced the assessment on 10th August 1961 from Rs. 29-93 to Rs. 295-61, virtually ten times or more. The plaintiff paid the demand under protest, and instituted a statutory appeal to the Taxation Committee. This appeal was dismissed, and the plaintiff instituted the suit for recovery of the particular sum or instalment paid under protest, namely, Rs. 284-58.

2. The defendant Municipality seems to have filed a written statement, in which some objection was taken to the maintainability of the suit and to the forum. But I find, from the judgment of the Court below, that these matters were not pressed at the trial, and they have not been gone into and adjudicated upon. For these reasons, I shall assume that the suit was maintainable, and that the Court had the requisite jurisdiction. Learned Counsel for revision petitioner advanced certain arguments in support of the claim of the plaintiff, which relate to the validity of the assessment itself. According to learned Counsel, though the Municipality purported to follow the procedure laid down in R. 4 of Sch. IV, a reasonable opportunity was not given to his client to show cause against the enhanced assessment. Further, the assessment was arbitrary, and such an enhancement amounting to ten times the original assessment is not contemplated by law. I must make it clear that I am not proceeding into any of these grounds, and that they are strictly not necessary for the disposal of the revision petition. I must also emphasise that the suit itself related only to the recovery of this particular instalment of tax paid under protest and it did not directly attack the validity of the assessment. The parties must be left to their separate remedies, if, and when, those remedies are pursued by them as advised.

3. As the matter now stands, it relates simpliciter to S. 89 (1) (a) and (b) of the District Municipalities Act. Under S. 89 (1) (a), if such a building is

reconstructed as in this case, the owner is bound to give notice thereof to the executive authority within 15 days from the date of completion.

Under S. 89 (1) (b) if that date falls within the last two months of a half-year, the owner will be entitled, subject to this giving notice under S. 89 (1)

(a) to ""a remission of the whole of the tax or enhanced tax as the case may be, payable in respect of the building only for that half-year"".

4. The learned District Munsif dismissed the suit on the ground that S. 89 (1) (b) of the Act could not be invoked by the plaintiff because the

plaintiff did not give the requisite notice. On the facts and in law, this is insupportable. The Court below obviously thought that a notice in writing

should be given, within the period specified in the statute. The law does not say so and the Court below is in error. The decision in Supreme Court

in Nilkantha v. Kashinath A.I.R 1942 S. C. 666 is authority for the view that where the word ""notice"" alone occurs, in any such context, "" it means

not only a formal intimation but also an informal one. Similarly it (Legislature) must be deemed to have in mind the fact that service of a notice

would include constructive or informal notice "".

5. On the facts of the present matter, there can be no doubt whatever that the defendant Municipality had the requisite notice. Actually, it was the

case of the plaintiff that the concerned Officer of the Municipality was orally informed about the completion of the reconstructions. That would

appear to be the truth for the Building Inspector did inspect the reconstruction the same day after the completion (6th March 1961, and his report,

Ex. B-7, is on record. Even a very informal intimation would do, as the purpose of the statute is to protect the municipality where it is deliberately

kept in ignorance of the completion of the reconstruction, beyond the specified period. It is incontrovertible, that in this case, notice was given, and

hence the plaintiff is indisputably entitled under S. 89 (1) (b) of the Act to a refund of the entire tax for the concerned half-year. I accordingly allow

the revision and decree the suit for this relief alone; namely, Rs. 256-68 which was the amount finally claimed in the suit, after the plaintiff had given

up a small claim in respect of the succeeding half-year. The question of the validity of the assessment is explicitly excluded from the purview of this decision. The parties will bear their own costs throughout.

