(1992) 01 AP CK 0010

In the Andhra Pradesh High Court

Case No : Second Appeal No. 286 of 1986

Kancherla Gunneswar Rao — APPELLANT

Vs

The Nidadavolu Municipality — RESPONDENT

Date of Decision : 23-01-1992

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 376, 376(1)
Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (1992) 2 ALT 330 : (1992) 2 APLJ 10

Hon'ble Judges : Syed Shah Mohammed Quadri, J;Ranga Reddy, J

Bench : Division Bench

Advocate : S. Venkata Reddy, for the Appellant; M. Prabhakar Rao, for the Respondent

Final Decision : Dismissed

Judgement

Syed Shah Mohammed Quadri, J.—The question raised in this Second Appeal is whether a Civil suit challenging the validity of the assessment of property tax by the Municipality, under the rules framed under the A.P. Municipalities Act, is maintainable.

2. For appreciating this question, we shall refer to the facts relevant to the question.

3. The Plaintiff is the appellant. He filed O.S.No. 5/74 in the Court of the Prl. District Munsif, Kovvur challenging the validity of the special notice dated 27-8-1973 (Ex.A.1) enhancing the tax from Rs. 65-91 to Rs. 135-97 Ps. on the ground of change in rental value from Rs. 60/- to Rs. 165/-. The Trial Court decreed the suit declaring that the enhancement of half yearly tax from Rs. 65-91 to Rs. 135-91 by the Municipality is illegal. In A.S. No. 61/1980 the appellate court, by its judgment dated 12-12-1985, set aside the judgment and decree of the trial court. Against that judgment and decree, the Second Appeal is filed.

4. When the appeal came up for hearing before a learned single judge, it was urged by the learned counsel for the Municipality that the suit itself was not maintainable in view of the judgment of the Supreme Court in Bata Shoe Co. v. Jabalpur Municipality (1 supra). So the learned single judge referred the Second appeal to a Division Bench observing that the question raised is not only of general importance but also of frequent occurrence.

5. Mr. Sreenivasa Reddy, the learned counsel for the appellant, contends that the judgment of the Supreme Court in Bata Shoe Co''s case (1 supra) was rendered while dealing with Section 84(3) of C.P. & Berar Municipalities Act (for short ''Berar Act'') which is different from Section 376 of the A.P. Municipalities Act (for short ''the A.P. Act'').

6. We shall now read Section 84(3) of the ''Berar Act'' which is as follows:-

"No objection shall be taken to any valuation, assessment or levy nor shall the liability of any person to be assessed or taxed be questioned, in any other manner or by any other authority than is provided in this Act."

This section provides that all questions as to any valuation, assessment or levy or liability of any person to be assessed or taxed, shall be raised in the manner and before the authority mentioned in the Act. Interpreting this provision, the Supreme Court observed:

"From this Sub-section it was clear that any valuation, assessment or levy and the liability of any person to be assessed or taxed can be questioned only in the manner prescribed by the Act and by the authority mentioned in the Act and in no other manner or by any other authority. Since, the Sub-section expressly prohibits a challenge to a valuation, assessment or levy in any other manner than is provided in this Act, and since the Act has devised its own special machinary for inquiring into and adjudicating upon such challenges, the common remedy of a suit stands necessarily excluded and cannot be availed of by a person aggrieved by an order of assessment to Octroi duty. Similarly, the Sub-section excludes expressly the power of "any other authority than is provided in this Act" to entertain an objection to any valuation, assessment or levy of Octroi. This part of the provision is in the nature of ouster of the jurisdiction of civil courts, at least, by necessary implication, to entertain an objection to any valuation, assessment or levy."

7. Section 376(1) of the A.P. Act which is relevant for our purpose is in the following terms:

"No assessment or demand made, and no charge imposed under the authority of the Act shall be questioned or affected by reason of any clerical error or by reason of any mistake.

(a) in respect of the name, residence, place of business or occupation of any person or

(b) in the description of any property or thing, or

(c) In respect of the amount assessed, demanded or charged, provided that the provisions of this Act have been, in substance and effect, complied with; and no proceedings under this Act shall merely for defect in form, be quashed or set aside by any Court."

A perusal of the section extracted above shows that if the provisions of the Act have been complied with in substance and effect, no assessment or demand made and no charge imposed can be questioned on the ground (i) any clerical error or (ii) any mistake in any of the matters specified in Clauses (a) to (c). Thus it is seen that the provisions of the Berar Act are entirely different from the provisions of the A.P. Act. In view of this fact, the contention that the judgment of the Supreme Court in Bata Shoe Co. v. Jabalpur Municipality (1 supra) is an authority for the proposition that Section 376(1) ousts the jurisdiction of the Civil Court, cannot be accepted.

8. It may be pointed out that the provisions of Section 376(1) make it clear that the assessment cannot be questioned on any of the above mentioned grounds, so it follows that it can, however, be questioned on other grounds. But even within the narrow field available under the said Section to an aggrieved person to question any assessment or demand made or charge imposed, it is incumbent to show that in substance and effect the provisions of the Act have not been complied with. The same view taken by a Division Bench of this Court in The Vizianagaram Municipality Vs. Puvvada Bhaskara Rao and Others, . That case arose under the Madras District Municipalities Act (Act No. 5/1920). The provision invoked in support of the contention that the suit is barred viz., Section 354 of the Madras District Municipalities Act, is in pari materia with Section 376 of the A.P. Act. This Judgment is followed by another Division Bench of this Court in Shantilal Bazaz and Another Vs. Municipal Council, Visakhapatnam, .

9. From the above discussion it follows that the contention that the suit filed challenging the assessment of property tax and the demand thereof is not maintainable is too broad a contention to be accepted. It is only when the contention is based on the complaint of non-compliance of the provisions of the A.P. Act which does not relate to mere defect in form but to not following the provisions in substance and effect that such a contention which is a mixed question of fact and Law, can be entertained. It is obvious that the burden of showing non-compliance in substance and effect, is on the person who alleges it. We answer the question accordingly.

10. Now coming to the facts of the case, it is not urged that there has been a plea of non-compliance of provisions of the Act in substance and effect. However, the learned counsel contends, that the appellate Court was not justified in ignoring the rent mentioned in the order of the Rent Controller and in the accounts maintained by the appellant. This is a question of appreciation of evidence which cannot be entertained in second appeal. Even otherwise as far, as

the order of the Rent Controller is concerned, the appellate court held that the proceedings were collusive; regarding accounts of the appellants, the finding of the appellate Court is that, they were brought into existence. We, therefore, find no merit in the Second Appeal and it is accordingly dismissed.

