

(1983) 09 MAD CK 0014
In the Madras High Court
Case No : S.A. No. 874 of 1979

Koothanallur Town Panchayat Board

APPELLANT

Vs

Mariam Beevi Ammal

RESPONDENT

Date of Decision : 09-09-1983

Acts Referred:

Tamil Nadu Panchayats Act, 1958 — Section 120
Tamil Nadu Panchayats Rules — Rule 23

Citation : AIR 1985 Mad 50 : (1983) ILR (Mad) 295 : (1984) 97 LW 202

Hon'ble Judges : Swamikkannu, J

Bench : Single Bench

Advocate : R. Muthukumaraswami and V. Ramajagadeesan, for the Appellant;
G. Subramaniam, for the Respondent

Judgement

1. The defendant in O. S. No. 477 of 1972, on the file of the District Munsif's Court Mannargudi, is the appellant herein. The respondent plaintiff

filed the suit for a declaration that the assessment of Rs. 1418-31 levied by the defendant for the building, bearing door No. 4 Hospital Road,

Koothanallur, is illegal and as a consequential relief for directing the defendant to refund the excess amount of Rs. 818-31, collected by the

defendant with costs of suit.

2. The case of the plaintiff is its follows. The plaintiff is the owner of the building called "Jabbar Talkies" bearing door No. 4 Hospital Road,

Koothanallur. The building is a recent construction and it was completed in the year 1971, after a very long time. The defendant Panchayat Board

assessed the building to property tax of Rs. 2362-85 including the library cess of Rs. 68-85 and issued a special notice of house-tax, new

assessment which was served on the plaintiff on 17-7-1971 for the year

1971-72. On receipt of the notice, the plaintiff preferred a revision petition on 8-8-1971, to the Executive Officer, alleging that the proposed assessment was excessive and, far in excess of the rental value of the building and that it should be revised. The Executive Officer reduced the tax on the revision petition to only Rs. 1418-31. The revised tax is also illegal and is far in excess of the actual rental value of the property. The Panchayat Board, in its resolution, dt. 30-10-1971, arbitrarily and without assigning any reasons confirmed the tax of Rs. 1418-31 and rejected the appeal preferred by the plaintiff. The cost of construction of the building was only Rs. 70,000. So the tax has to be imposed only on the rental value. The tax on similar building at Kodavasal and Koradacheri was not more than Rs. 412 per year. The annual rental value of the building can never exceed Rs. 600. Therefore, the plaintiff instituted the suit for the reliefs mentioned above.

3. On the other hand, the case of the defendant Panchayat Board as contended in the written statement is as follows :

The defendant Panchayat Board assessed the suit building to property tax of Rs. 2363-85 including library cess of year 1971-72. It is true that the

plaintiff filed a revision, petition for reduction of property tax. The defendant took into account all the aspects of the problem and after due

Verification the suit building and the site on which it is constructed, fixed the capital value of the suit property as Rs. 1,50,000 and the property tax

was assessed Rs. 1377 and the library cess was fixed at Rs. 41-31. Thus the total property tax for the suit property was fixed in Revision Petition

No. 1 of 1971-72 at Rs. 1418-31, per annum. The plaintiff preferred an appeal against the assessment by the Executive Officer to the President in

council of the defendant Panchayat. The defendant-Panchayat Board, after thoroughly examining the appeal confirmed the assessment of the

property tax for the suit property. It is not true to say that the annual rental value of the suit property cannot exceed Rs. 600 per year and that the

cost of construction of the building was only Rs. 70,000. The defendant Panchayat Board and its Executive Officer have correctly valued the suit

property at Rs. 1,50,000. The rental value at the rate of 6% has been arrived at Rs. 9000 per year. A depreciation amount of Rs. 900 arrived at

the rate of 10% has been deducted from the rental value. Thus, the property tax

has been calculated at the rate of 17% p.a., on Rs. 8100 and arrived at Rs. 1377. The library cess of three paise per rupee has been assessed and fixed at Rs. 41.31. Thus, the total property tax has been assessed for the suit building and fixed at Rs. 1418.31 p.a. The plaintiff has not chosen to avail himself of the opportunity of appeal before the proper forum. The Civil Court has no jurisdiction to entertain the suit.

4. On the above pleadings, the following issues were framed for trial : -

1. Whether the assessment imposed on the building is not correct and proper for, the reasons stated in the plaint?
2. Whether any amount is refundable to the plaintiff by the defendant, and if so, what amount?
3. To what relief, if any, is the plaintiff entitled?

5. On behalf of the plaintiff, P. W. I, Nagappan was examined and Exs. A. 1 to A.4 were marked. On behalf of the defendant Panchayat. D. W. I

S. Krishnan, Executive Officer of the defendant Panchayat was examined. No document was filed on behalf of the defendant. On the evidence

available on record the trial court held under issues Nos. 1 and 2 that the assessment of Rs. 1418-31 levied on the building was illegal and far in

excess of the tax legitimately due to the building and that the plaintiff is entitled to a refund of Rs. 550-81. Consequently, the suit was decreed to

the extent indicated above. The parties, were directed to bear their respective costs. On appeal the learned Subordinate Judge, Thanjavur,

confirmed the judgment and decree of the trial court and dismissed the appeal with costs. Hence the defendant Panchayat filed this second appeal.

6. At the time of the admission of the second appeal, the following substantial questions of law were framed for consideration

1. Whether the Civil Court has got jurisdiction to try the suit questioning the assessment of tax by the Executive Officer of a Panchayat?
2. Whether the suit as filed by the respondent without challenging, their legality or validity of the basis of the assessment is maintainable?
3. Whether Rule 23 of the Rules relating to the assessment of tax contained in the Manual of Panchayat Administration Part I will not be a bar for the maintainability of the suit?

4. Even assuming that the Civil Court has got jurisdiction to try the suit, can the Civil Court interfere with the order of assessment on the basis of re

assessment of the capital value?

7. The learned counsel for the appellant defendant Panchayat, refers to the decision reported in R. Subbaraya Mudaliar Vs. Suramangalam Town

Panchayat, and contends that the respondent herein has not shown which provisions of the Madras Panchayats Act (XXXV of 1958) have not

been complied with in substance and effect and as such the very entertainment of the suit by the trial Court is not in accordance with law.

8. On the other hand, Mr. G. Subramaniam, learned counsel for the plaintiff-respondent herein, contends that after exhausting the remedies by

way of appeal and revision as contemplated under the provisions of Madras Panchayats Act (XXXV of 1958) (hereinafter referred to as the

"Act"), the plaintiff has come forward with the suit for its declaration and for consequential relief of refund of the excess amount collected by the

defendant and that, therefore the suit is maintainable. In support of his contention he refers to the provisions of Ss. 2(I), 2(13), 119, 120, Sch. I to

the Act and R. 2 of the Notification No. 40 (Chapter IV-Taxation and Finance). Regarding the maintainability of the suit, learned counsel for the

respondent refers to the provisions of S. 174 of the Act as well as S. 9 of the Civil P.C.

9. Section 2(I) reads as follows -

"Building" includes a house, out-house, tent, stable, latrine, shed, hut, wall (other than a boundary wall not exceeding 8 feet in height), and any

other such structure whether of masonry, bricks, wood, mud, metal or any other material whatsoever;

S. 2(13) runs as follows:

"House" means a building fit for human occupation, whether as a residence or otherwise having a separate principal entrance from the common

way, and includes any shop, workshop, or warehouse or any building used for garaging or parking buses or as a bus stand;

S. 119 of the Act is as follows:

(1) Every village Panchayat shall levy in the village and every town Panchayat shall levy in the town a house-tax, a profession tax and a vehicle tax

;

(2) A duty shall also be levied in every Panchayat village and every Panchayat town on certain transfers of property in accordance with the

provisions of S. 124 ;

(3) Subject to such rules as may be prescribed and with the sanction of the Inspector and subject to such restrictions and conditions, if any, as may

be imposed by him either at the time of granting sanction or later, the Panchayat may also, levy in the village or town as the case may be, a tax on

agricultural land for a specific purpose.

S. 120 of the Act is to the following effect : -

(1) 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 bases

(3) The Government shall, by notification, determine in regard to any village or town or any class or villages or towns whether the house tax shall

be levied every half year or year and in so doing have regard to the following matters, namely: -

(i) the classification of the local areas under S. 3 ;

(ii) the . annual receipts of the Panchayats ;

(iii) the population of the village or town and the predominant occupation of such population; and

(iv) such other matters as may be prescribed.

(3-A) Subject to the provisions of sub-sec (3), the house tax shall be, levied at such rates as the Panchayat may fix in regard to such basis of levy

specified in column (1) of Schedule I, as the Panchayat may adopt, not being less than the minimum rates and not exceeding the maximum rates

specified in, the corresponding entries -

(i) in column (2) of that Schedule, if the tax is levied every half year, and

(ii) in column (3) thereof, if it is levied every year

10. The following classifications are made regarding the basis of levy in Sch. I to the Act with reference to S. 120(3) :-

(i) if the tax is levied on the basis of the capital value ;

(ii) if the tax is levied on the basis of the annual value

(iii) if the tax is levied on the basis of classified plinth area.

11. R. 2 of Notification No. 40, which deals with the manner of ascertaining the annual or capital value of houses is as follows :

For purposes of assessment to house tax, the capital value of a house shall be deemed to be the total of the estimated value of the land and the

estimated present cost of erecting the house after deducting for depreciation a reasonable amount which shall in no case be less than ten per

centum of such cost;

Machinery and furniture shall be, excluded for valuation under this sub-rule; -

(a) The annual value of a house shall be deemed to be the gross annual rent at which the house may reasonably be expected to let from month to

month, or from year to year, less a deduction of ten per centum of such annual rent and the said deduction shall be in lieu of all allowances for

repairs or on any other account whatever.

(b) In the case of -

(i) any Government or railway building falling within the definition of "house" under the Madras Panchayats Act, 1958, or

(ii) any building, falling within the definition aforesaid, or a class not ordinarily let, the gross annual rent of which cannot; in the opinion of the

executive authority, be estimated, the annual value shall be deemed to be six per cent of its capital value".

12. Referring to the above provisions of the Act, Mr. G. Subramaniam, learned counsel for the respondent, contends that D. W. 1, the Executive

Officer of the defendant Panchayat had not given the method by which he arrived at the assessment of the suit building and the when the revision

petition was filed by the respondent herein, the capital value, arrived at by D. W. 1 at Rs. 2,50,000 was reduced to Rs. 1,50,000. Though D. W.

1 has stated that in accordance with the provisions of the Act, the assessment was made at Rs. 1418.31 for the year 1971-72, yet D. W. 1 has

not produced any document showing the calculation of the value of the suit cinema house. When the respondent preferred an appeal against the

order passed in the revision petition of the respondent, the said appeal was rejected by the President of the Panchayat Board. The contention of

the respondent was that the value of the building was only Rs. 70,000.

13. It is pointed out by Mr. G. Subramaniam, learned counsel for the respondent that D. W. 1 has admitted in his cross-examination that only by

measuring approximately the dimensions of the auditorium of the main building, he had assessed the tax. This assessment is not in accordance with

the provisions of the Act as well as R. 2 of the Notification No.40. It is submitted by the learned counsel for the respondent that since the mode of

assessment as contemplated under the specific provisions of the Act as well as Sch. I to the Act and R. 2 of the Notification No. 40 was not

followed by D. W. 1. the respondent had been driven to the necessity of instituting the suit against the appellant Panchayat. I am unable to reject

this contention as wholly unsustainable.

14. S. 174(2) of the Act is as follows -

(2) No suit shall be brought in any Court to recover any sum of money collected under the authority of this Act or to recover damages on account

of assessment or collection of money made under the said authority;

Provided that, the provisions of this Act have in substance and effect been complied with.

The learned counsel for the respondent drew my attention to the decision reported in *Arasiramani Panchayat v. Sellappa Gounder*, (1961) 2 MLJ

585 which was decided under S. 111 of the Madras Village Panchayats Act (X of 1950). In the present enactment of 1958, the corresponding

provisions is S. 174, In this regard, the provisions of S. 354 of the District Municipalities Act 1920 was also referred to by the learned counsel for

the respondent. The rule relating to S. 111 of the Madras Act X of 1950 was Rule 22 of the Notification X dealing with "appeals". Under the

present enactment viz, the Madras Panchayats Act 1958, the relevant rule is Rule 23. The learned counsel relied upon the above said rule and

contend that the suit was maintainable. Regarding the maintainability of the suit, learned counsel, for the respondent also refers to the decision

reported in *In Re: C.T. Sambandam and Others*, , wherein dealing with S. 354 of the District Municipalities Act 1920 it has been held as follows -

In all cases in which the provisions Of the Municipalities Act have not in substance and effect been complied with, a suit by the owner of a house

questioning the assessment to property tax is maintainable. S. 354 District

Municipalities Act is no bar to such a suit. Such right to file a suit is apart from and in addition to the right of appeal provided for by Schedule IV of the Act. The rulings reported in R. P. Board, Rosala Patti v. H. N. Etc. Sabha 1978 TLR 1732, R. Subbaraya Mudaliar Vs. Suramangalam Town Panchayat, , and Salem Municipal Council Vs. S.V. Subramanian, , are referred to by the learned counsel for the respondent. He submits that the assessment made by D. W. 1, was arbitrary and not in accordance with the provisions of the Act. I see some force in this contention.

15. The learned counsel for the appellant herein refers to R.23 of the notification No. 4 dealing with assessments and collection of taxes and contends that the assessment made by the defendant Panchayat has become final and, therefore, the suit is not maintainable. The said provision reads as follows -

23. The assessment or demand of any tax when no appeal is made as herein before, provided, and when such an appeal is made, the adjudication of the Panchayat thereon shall be final :

Provided that, where any assessment or demand is not in accordance with the assessment books, nothing in this rule shall be deemed to prohibit afresh assessment or demand of the tax being made in accordance., therewith.

I am unable to uphold the contention raised on behalf of the appellant Panchayat. The Civil Court is not, so to say, a court of appeal against the order of the assessing authority. It is well settled that where the basis of the levy itself is Wrong or there is no basis at all for the levy and in What sense there is no substantial compliance with the provisions of the Act, it is open to the civil court to declare the levy illegal and in fact it is the duty of the Court to do so. If the levy of tax by a local authority is within the framework of the Act and is in substantial compliance with the provisions of the Act, certainly the civil court has no jurisdiction to go into the question whether the levy is excessive or not. According to D. W., 1, the valuation of the suit building was arrived at, Rs. 1,50,000. on a rough estimate, He admitted in the course of the crossexamination that the cost of construction of the building would be Rs. 90,000. He has not stated as to how he arrived at the valuation on a rough estimate and whether he has taken into consideration the relevant guidelines mentioned in the Act. Though in the written statement, the mode of assessment is mentioned, yet, it

was not spoken to by D. W. 1 comprehensively when he gave evidence. Therefore, when there is no specific statement emanating from D. W.1,

regarding the manner of assessment, the suit filed by the respondent herein is maintainable.

16. Regarding the merits of the respective contentions of the parties in the suit, it is but necessary that the trial Court has to be provided with

required materials for arriving at just and proper decision in this case. Though certain mode of assessment is prescribed in the written statement,

yet, the method adopted by D. W. 1 in arriving at the value of the suit building initially at Rs. 2,50,000, and subsequently reducing it to Rs.

1,50,000 was not clearly explained. No document has been filed by the appellant herein. Neither the order passed in the revision petition preferred

by the respondent nor the order of the President, defendant Panchayat dismissing the appeal filed by the respondent has been filed in the suit so as

to enable the Courts below to find out whether the procedures prescribed in the Act for assessing the suit building to property tax have been

followed or not. All these aspects require clarification and further evidence. In these circumstances, this Court is of the opinion that the suit should

be remitted to the trial Court for fresh disposal.

17. Hence, for the reasons stated above, this second appeal is allowed. The judgment and decree of the courts below are set aside. The suit is

remanded to the trial Court for fresh disposal according to law after giving opportunity to both. The parties to adduce necessary evidence, both

oral and documentary, the trial court is, required to give a decision in the light of the observations made above. Since the suit is of the year 1972,

the trial Court is directed to dispose of the same as early as possible. The court-fee paid on the memorandum of second appeal is ordered to be

refunded to the appellant herein. The parties are directed to bear their own costs throughout.

18. Appeal allowed