

(2002) 08 MAD CK 0068

In the Madras High Court

Case No : S.A. No's. 1835 and 1836 of 1991

K.P.M.M. Kasimani, Sanjeevi Malayan, Karunanidhi,
Nagarajan and Sattur Nadar Uravin Murai

APPELLANT

Vs

Madurai Municipal Corporation

RESPONDENT

Date of Decision : 08-08-2002

Acts Referred:

Madurai City Municipal Corporation Act, 1971 — Section 100(2), 122
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 2(2), 4

Citation : (2002) 4 LW 590

Hon'ble Judges : Prabha Sridevan, J

Bench : Single Bench

Advocate : Subbaiah, for the Appellant; P. Srinivas, for the Respondent

Judgement

Prabha Sridevan, J.—In both the suits, the assessee of property tax has challenged the tax demand as illegal and has prayed for injunction

restraining the respondent Corporation from recovering the tax dues. In both the cases, the assessee succeeded before the Trial Court but lost in

appeal, and therefore, these second appeals have been filed.

2. Mr. S. Subbiah, learned counsel for the appellant would submit that the notice did not give reasons for the revision, which the Municipality is

bound to, especially when the revision is a special revision and not a quinquennial revision. This is the crux of the grievance in S.A. No.

1835/1991.

3. As regards, S.A. No. 1836/1991, the learned counsel would say that having found that the calculation was not correct and having granted the

relief of injunction, the Lower Appellate Court ought to have seen that the relief of declaration must also follow because the assessment has been

held to be incorrect.

4. The learned counsel for the Municipality on the other hand would submit that there is no justification to interfere in second appeal since the

assessment has been made according to the principles laid down in Guntur Municipality Case and no interference is warranted.

5. S.A. No. 1836/1991 :

One of the grounds of challenge was that the Kalyana Mandapam, which is the suit property is not a building, which is let or to be let separately for

residential or non-residential purpose as per Section 2(2) of the Tamil Nadu Building (Lease and Control) Act, and therefore, the assessment of

property tax cannot be made as per Section 4 of the Tamil Nadu Building (Lease and Rent Control) Act. This objection does not deserve any

consideration since in The Guntur Municipal Council Vs. The Guntur Town Rate Payers" Association etc., , the Supreme Court held that when the

Rent Controller has not fixed the fair rent for the building, the Municipal Authorities will have to arrive at the end figure of fair rent in accordance

with the principles laid down in the Rent Control Act. Therefore, the intention was to avoid arbitrariness and to ensure objectivity in the

determination of the annual value of buildings for the purpose of revision of property tax. Therefore, the provisions of the Rent Control Act are

relevant only to the extent of providing the guidance for arriving at the fair rent and therefore, the annual rental value. The Madurai City Municipal

Corporation Act which governs the provisions regarding assessment of property tax defines buildings as follows:

2. (4) ""Building"" includes -

(a) a house, out-house, stable, latrine, godown, shed, hut, wall and any other structure whether of masonry, bricks, mud, wood, metal or any other

material whatsoever.

(b) a structure on wheels or simply resting on the ground without foundations; and

(c) a ship, vessel, boat, tent, van and any other structure used for human habitation or used for keeping or storing any article or goods;

(2) Further in Addison Paints and Chemicals (Private) Ltd., Vs. The Commissioner, Corporation of Madras (1962) 1 MLJ 440 a Division Bench

of this Court held that the clause of buildings referred to in the proviso to Section

100(2) of the Madras City Municipal Act contemplates the class of buildings not ordinarily let, such as temples, memorial buildings, etc.

(3) Section 121(2) of the Madurai City Municipality Corporation Act is similar to the above case of Therefore, even assuming that the Kalyana

Mandapam is a building of a class that is not ordinarily let, only the method of assessment of property tax will vary, the appellant is not a building or

land that is exempt from property tax u/s 122 of the Madurai City Municipal Corporation Act, 1971.

(4) According to the Appellate Court, the respondent herein had not assessed the value of the building according to the principles of Section 4 of

the Tamil Nadu Buildings (Lease and Rent Control) Act and granted an injunction restraining the respondent from levying the property tax as

increased in the impugned demand. The Appellate Court therefore, held that the suit building is liable to be assessed for property tax but since the

calculation made is wrong, the respondent should be restrained by an order of injunction from increasing the tax on the basis of the demand.

(5) The Appellate Court had also clarified that this decree shall not stand in the way of the respondent making a fresh assessment and levying tax in

accordance with law as per Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act. The respondents have not challenged the decree

for injunction granted by the Appellate Court and they are therefore, bound to make a fresh assessment in accordance with law. The Appellate

Court's approach does not suffer from any infirmity, because the demand is not illegal only the assessment is wrong. The appellant has been

protected from any recovery of tax on the basis of this wrong assessment. The second appeal is therefore, dismissed. No costs.

6. S.A.No. 1835 of 1991 :

In this appeal as in the above appeal the question raised was whether the Kalyana Mandapam is a building of class of ordinary let and therefore,

such building should be assessed only on the market value of the land and estimated cost of the building. Though this point of question of law was

urged, no material was placed before this Court to differ from the judgment of the Division Bench reported in Addison Paints and Chemicals

(Private), Ltd. Vs. The Commissioner, Corporation of Madras, . In that case also the Chief Judge of Small Causes Court held that since the

building was not actually let, the Proviso will apply. The Division Bench made it clear that stress is laid on the class or type of building as ordinarily

not suitable for letting out and therefore, they said while a Temple cannot be ordinarily let out, the buildings used for a school for the deaf and

dumb can be leased out if the owner so desires and therefore, they said that there are buildings, which from the very nature of their construction or

design, can be considered as buildings not capable of being let, like temples, memorial structures etc. Following the judgment of the Division Bench

of this Court reported in *The General Committee, Madras Club Vs. The City Municipal Council of Madras* (1954) 1 MLJ 671. Ofcourse the

above mentioned class of buildings are only illustrative and not exhaustive. Yet, this building the Kalyana Mandapam can be let out if the owner so

desires. Therefore, this question of law cannot come to the aid of the appellant. However, the learned counsel for the appellant raised yet another

question which he would assert was a substantial question of law for the purpose of interfering in second appeal. According to the learned counsel,

no reason was given in the demand and therefore, it is liable to quashed.

(b) For this, he relied on the judgment reported in *Dindigul Anna District Tax Payers Sangam etc. Vs. Govt. of T.N. etc.* (1994) WLR 805. The

Division Bench held that failure to set out reasons for enhancement even in the case of a general revision in the notice issued by the Municipality

cannot be sustained and such demands are liable to be quashed. Directions were given to the Municipality to issue fresh notices in accordance with

law. According to the learned counsel this was a pure question of law and not fact and therefore, he was entitled to raise it at this stage. It was

submitted that Section 168, Madurai City Municipal Corporation Act, 1971 gives the Municipality Council a power to assess in case of escaped

assessment and this power could be exercised within three years from the date on which such person should have been assessed and that notice

should be served on such person. According to the learned counsel, the provisions of Section 168 of the Madurai City Municipal Corporation Act,

1971 have not been complied with. But this is not a case of escaped assessment. This was a case where assessment was made according to the

Tamil Nadu Buildings (Lease and Rent Control) Act. In fact, the extract from the pleadings of the Trial Court shows that the appellant was well

aware of the reason why the enhancement was made. The original records are not available and hence reliance is placed on the pleadings extracted

in the judgment. They are as follows:

@cz;ikapnyna tUfpd;w tUkhdj;jpd; mog;gilapy; jPh;khdk; bra;ag;glntz;Lk; vd;w gpuj;jpnaf mwptpf;if thlif fl;Lg;ghL rl;l;j;jpd; fPH; kW eph;zak;

bra;jjhff; Fwpg;gpLtJ bry;YgoahfJ/@

Therefore, the appellant knew the reasons why the revision was made. The authorities gave him notice that the annual rental value would be

assessed as per the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, according to the actual rental amount received. In the

Division Bench judgment, the demands were quashed only because they did not contain reasons for enhancement.

(c) The learned counsel for the appellant pointed out to one extract from the evidence in which the witness has said that against Clause 4, in the

impugned demand there is a blank and that no reason has been given as to why the demand is made. But one sentence from the evidence of the

officer cannot be extracted and read in isolation when the pleadings show that the appellant was fully aware of the reasons of the enhancement.

Once this objection goes, then the matter of calculation is a mere question of fact which cannot be interfered in the second appeal.

Prabha Sridevan, J.

(d) Hence, this second appeal is dismissed. No costs.