

---

**(2010) 01 MAD CK 0052**

**In the Madras High Court**

**Case No :** SA (MD) No. 1039 of 2009 and MP (MD) No. 1 of 2009

K.R. Gowri Sedhuraman

APPELLANT

Vs

The Kumbakonam Municipality

RESPONDENT

---

**Date of Decision :** 22-01-2010

**Acts Referred:**

Tamil Nadu District Municipalities Act, 1920 — Section 81, 82, 83, 84, 85

**Citation :** (2010) 01 MAD CK 0052

**Hon'ble Judges :** A. Selvam, J

**Bench :** Single Bench

**Advocate :** M.V. Santharaman, for the Appellant; D. Malaichamy, for the Respondent

**Final Decision :** Allowed

---

## **Judgement**

A. Selvam, J.—Challenge in this second appeal is to the concurrent Judgments and decrees passed in Original Suit No. 512 of 2005 by the

First Additional District Munsif Court, Kumbakonam and in Appeal Suit No. 76 of 2007 by the Principal Sub Court, Kumbakonam.

2. The appellant herein as plaintiff has instituted Original Suit No. 512 of 2005 on the file of the trial Court for the reliefs of declaration and

perpetual injunction, wherein the present respondent has been shown as sole defendant.

3. It is averred in the plaint that the plaintiff is the owner of the house situates in TS. Nos. 520, 521, 522 and 525. The plaintiff has given a petition

to the defendant in the year 1999 for getting permission so as to put up construction and accordingly permission has been granted. The plaintiff has

finished construction and subsequently the same has been informed to the defendant. All of a sudden on 24.11.2004, the defendant has cancelled

the earlier taxation numbers 26776, 26777 and 26778 and further the defendant has directed the plaintiff to pay a sum of Rs. 19,940/-. The plaintiff has given a petition so as to reduce the tax fixed by the defendant and the same has been dismissed. The amending Act 65 of 1997 has not been notified and therefore, the same has not come into force. The defendant has fixed the revised tax only on the basis of the said Act. The defendant has not given any opportunity to the plaintiff before revising the tax. Under the said circumstances, the present suit has been instituted so as to declare that the demand notice dated 24.11.2004 is illegal and also for restraining the defendant from collecting the amount mentioned therein by means of permanent injunction.

4. In the written statement filed on the side of the defendant, it is averred that from 01.04.1999 revised tax has been fixed. The plaintiff has demolished the old building and put up new building. Therefore, the old taxation numbers have been cancelled. As per the revised tax, the plaintiff is bound to pay Rs. 19,940/-. The revised tax has been fixed as per the Tamilnadu District Municipalities Act. The defendant has properly estimated the value of the building in question and subsequently fixed the revised tax. Against the order passed by the defendant, the plaintiff ought to have preferred appeal and therefore, the present suit is not legally maintainable and further, after amending Act 65 of 1997, the old procedure for fixing tax has become redundant and there is no merit in the suit and the same deserves to be dismissed.

5. On the basis of the rival pleadings raised on either side, the trial Court has dismissed the suit. Against the Judgment and decree passed by the trial Court, the plaintiff as appellant has preferred Appeal Suit No. 76 of 2007 on the file of the first appellate court.

6. The first appellate Court after hearing both sides and upon reappraising the evidence available on record has dismissed the appeal, whereby and whereunder confirmed the Judgment and decree passed by the trial Court. Against the concurrent Judgments passed by the Courts below, the present second appeal has been preferred at the instance of the plaintiff as appellant.

7. As agreed by the learned Counsels appearing for both sides, the present second appeal is disposed of on merits at the stage of admission.

8. On the side of the appellant/plaintiff, the following substantial questions of law have been raised for consideration:

(a) Whether the Judgment and decree passed by the lower appellate Court and trial Court are liable to be set aside since the same is opposed to

well established documentary evidence on record such as Exs.A1 to A14 and Exs.B1 to Exs.B8 and therefore perverse?

(b) Whether the Courts can go beyond pleadings and beyond the documents and circular orders and can give a finding that opportunity is given to

the appellant/plaintiff in tax matter?

(c) Whether the assessment order without following the principles (fair rent principles) laid down under the Act is valid?

(d) Whether the Municipality can make the assessment without giving opportunity to the appellant without furnishing the work sheet and calling for

objections before the same is converted into a demand by entering in the assessment book to make the same a demand?

(e) Whether the assessment by the Municipality without giving opportunity to the assessee is valid under law? and whether can be two demands for

a same period for the same building?

9. The epitome of the case of the plaintiff is that the plaintiff is the owner of the house which situates in TS. Nos. 520, 521, 522 and 525 and he

demolished the old building and put up a new building with the prior approval of the defendant and the old taxation numbers are 26776, 26777

and 26778 and the defendant has cancelled the same and issued a demand notice dated 24.11.2004 and thereby directed the plaintiff to pay a sum

of Rs. 19,940/- as revised tax. Before assessing revised tax, no opportunity has been given to the plaintiff and further, the revised tax has been

made only on the basis of the amending Act 65 of 1997 and the same has not been notified and therefore, the procedure adopted by the defendant

in fixing revised tax is totally illegal. Under the said circumstances, the present suit has been instituted for the reliefs sought for in the plaint.

10. Per contra it has been contended on the side of the defendant that the plaintiff has demolished the old building and put up a new building and

the tax has been revised as per amending Act 65 of 1997 and after advent of the amending Act, the old procedure for fixing tax has become

redundant and therefore, the revised tax fixed by the defendant is not illegal and

under the said circumstances, the present suit deserves to be dismissed.

11. As explicated earlier, the Courts below have concurrently non suited the plaintiff. Under the said circumstances the following aspects have become emerged:

(a) Whether the revised tax fixed by the defendant is illegal and also arbitrary?

(b) Whether the plaintiff is entitled to get the reliefs of declaration and perpetual injunction?

(c) Whether the concurrent Judgments and decrees passed by the courts below are perfectly correct or the same require interference?

12. It is an admitted fact that the property mentioned in the plaint is the absolute property of the plaintiff. It is also equally an admitted fact that the defendant has revised the tax and issued the demand notice in question which has been marked as Ex.A1. In Ex.A1 it has been specifically mentioned that the plaintiff has demolished the old building and put up RCC building and from 01.04.1999, the tax in question has been revised and in that way the plaintiff is liable to pay Rs. 19,940/-.

13. The learned Counsel appearing for the appellant/plaintiff has laconically contended that the defendant has revised the tax in question as per the amending Act 65 of 1997 and the same has not been notified by the Government of Tamilnadu and therefore, erstwhile provisions have to be followed in fixing property tax as per Sections 81 to 91 of the Tamil Nadu District Municipalities Act, 1920 and further, amending Act 65 of 1997

has already been repealed by the Government of Tamilnadu and altogether the said act has become redundant and the defendant has issued

Ex.A1, demand notice only on the basis of the said Act and further the calculation made by the defendant so as to fix revised tax is only on the

basis of the said Act and therefore, the entire procedure followed by the defendant is totally illegal and also arbitrary. Under the said

circumstances, the present suit has been instituted for the reliefs sought for therein. But the Courts below without considering the above legal

aspect, have erroneously non suited the plaintiff and therefore, the concurrent Judgments passed by the Courts below are liable to be interfered

with and the suit is liable to be decreed as prayed for.

14. In order to repel the argument advanced by the learned Counsel appearing for the appellant/plaintiff, the learned Counsel appearing for the respondent/defendant has also equally contended that the plaintiff has demolished the old building and subsequently put up a new building and accordingly Ex.A1 has been issued after revising the tax in question as per the amending Act 65 of 1997 and the plaintiff has also given a petition so as to reduce the same and the same has also been dismissed and against the said order, the plaintiff ought to have preferred appeal before the concerned forum and no appeal has been filed and therefore, the present suit is not legally maintainable. Under the said circumstances the concurrent Judgments passed by the Courts below are perfectly correct and the same do not warrant interference.

15. As stated earlier, the property in question is the absolute property of the plaintiff. The only point that has now winched to the fore in the present second appeal is as to whether the revised tax fixed by the respondent/defendant is within the contour of law or the same is illegal and also arbitrary?

16. The learned Counsel appearing for the appellant/plaintiff has befittingly drawn the attention of the Court to the effect that the amending Act 65 of 1997 has not been notified by the Government of Tamilnadu and therefore, the old provisions have to be followed in fixing taxes and further the said Act has been repealed and therefore the said Act is or was not in force. Since the said Act is or was not in force, it is needless to say that the defendant ought to have followed erstwhile provisions available in Tamilnadu District Municipalities Act, 1920.

17. Now the Court has to analyse as to whether the revised tax in dispute has been fixed as per the correct provisions of law. In the written statement filed on the said of the defendant, it has been clearly averred that the tax in question has been revised only on the basis of the provisions of amending Act 65 of 1997. In paragraph-6 of the written statement it has been explicitly stated that after advent of the amending Act 65 of 1997, the old Act has become redundant. Therefore, it is quite clear that the tax in question has been revised only on the basis of the amending Act 65 of 1997.

18. It has already been pointed out that the amending Act 65 of 1997 has not

been notified by the Government of Tamilnadu and subsequently the same has been repealed and therefore, the defendant has to follow relevant provisions which are available in the Tamilnadu District Municipalities Act, 1920.

19. At this juncture, it would be more useful to look into the evidence given by D.W.1. One Aadi Narayanan has been examined as D.W.1. He

has stated in his evidence that he is serving as Revenue Inspector in the defendant/Municipality and further he has stated in his evidence that the tax in question has been revised only on the basis of the amending Act 65 of 1997.

20. It has already been pointed out that the amending Act 65 of 1997 is or was not in force at any point of time. In fact, the same has not been

notified and subsequently the same has been repealed and therefore, the defendant has to follow the relevant provisions of the Tamilnadu District

Municipalities Act. In the instant case, the same have not been followed and therefore, it is needless to say that Ex.A1, demand notice is totally

illegal and also arbitrary.

21. The learned Counsel appearing for the appellant/plaintiff has befittingly drawn the attention of the Court to the decision reported in 2009 (5)

CTC 220 (Mangayarkarasi v. The Kumbakonam Municipality, rep. by its Executive Authority, The Commissioner, Dr. Murthy Salai,

Kumbakonam Munsif, Kumbakonam), wherein this Court has specifically held that in a case like this, civil suit is legally maintainable and this Court

has followed the following decisions:

(i) Shanmugha Nadar Vs. The Corporation of Madurai, , wherein this Court has held that ""if an assessment does not in substance and in effect

comply with the provisions of the Act, then a civil suit is maintainable so as to set aside the assessment.

(ii) K.R. Abirami v. The Kumbakonam Municipality rep. by its Executive Authority, the Commissioner, Dr. Murthy Road, Kumbakonam Town

2008 (1) CTC 791, wherein it has been held that ""if sufficient opportunity has not been given with regard to assessment of tax, the proceeding is

liable to be vitiated by way of filing a civil suit"".

22. From the conjoint reading of the decisions referred to supra, it is made clear that the present suit is legally maintainable even though the

appellant/plaintiff has not filed any appeal against the dismissal order passed by the defendant.

23. The main substantial question of law raised on the side of the appellant/plaintiff is as to whether the assessment should be made only on the basis of principles of fair rent?

24. It has already been pointed out in many places that since amending Act 65 of 1997 has become redundant, the defendant has to follow the old procedure and therefore, the main substantial question of law raised on the side of the appellant/plaintiff is really having substance. Under the said circumstances all the substantial questions of law raised in the present second appeal on the side of the appellant/plaintiff are decided in her favour.

25. The Courts below without considering the real legal point involved in the present case have erroneously non suited the plaintiff. In view of the foregoing enunciation of both the factual and legal aspects, it is needless to say that the concurrent Judgments passed by the Courts below are totally absurd and the same are liable to be set aside.

26. In fine, this second appeal is allowed without cost at the stage of admission. Connected Miscellaneous petition is closed. The Judgment and decree passed in Original Suit No. 512 of 2005 by the First Additional District Munsif Court, Kumbakonam, upheld in Appeal Suit No. 76 of 2007 by the Principal Sub Court, Kumbakonam are set aside and consequently Original Suit No. 512 of 2005 is decreed as prayed for without cost. However, the respondent/defendant is at liberty to revise the tax in question by following existing procedure of law.