
(2007) 08 AP CK 0101

In the Andhra Pradesh High Court

Case No : Second Appeal No. 1105 of 2000

Majeti Veerabhadrarao and Others

APPELLANT

Vs

Pithapuram Municipality and Another

RESPONDENT

Date of Decision : 01-08-2007

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 130, 376(2), 85(4)
Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 226
Taxation and Finance Rules — Rule 10, 11, 12, 13, 14

Citation : (2008) 1 ALD 247 : (2008) 1 ALT 729

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : M.S.R. Subrahmanyam, for the Appellant; S. Nageswara Redy, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The appellants are the plaintiffs in O.S. No. 148 of 1990 on the file of the Court of the Junior Civil Judge, Pithapuram. They filed the suit for declaration that the special notice dated 29-9-1988 issued by the respondents/defendant's Municipality levying half-yearly tax on their properties at Rs. 4,052.70 and Rs. 2,392.10 is illegal, capricious and arbitrary. They also sought consequential injunction restraining the defendants from collecting the same. By judgment dated 29-6-1998, the suit was dismissed, which was confirmed in A.S. No.10 of 1998 on the file of the Court of the Senior Civil Judge, Pithapuram. Aggrieved by the same, the present second appeal is filed.

2. The plaintiffs are owners of huge extent of urban property admeasuring Acs. 0.99 ? in survey No. 245 in Pithapuram, which is allegedly a garden land with two properties assessed to property tax with assessment Nos. 475 and 476 respectively. They alleged that the property was divided among four groups of the plaintiffs and they were assessed to property tax separately. The assessment in respect of assessment No. 465/476 was challenged on the ground that the

assessment of property tax based on the principle of capital value is not correct, as it is a garden land and that it should be assessed based on the land revenue. The suit was opposed by the Municipality inter alia on the ground that without availing the remedy of revision under Rule 12 of Taxation and Financial Rules (hereafter called, Taxation Rules) of Andhra Pradesh Municipalities Act, 1965 (the Act, for brevity) is not maintainable and that the assessments made are correct. First plaintiff examined himself as P.W.1 besides examining P.W.2. Documentary evidence by way of Exs. A-1 to A-37 were also marked including Exs.A-2 and A-3 special notices. After considering the oral and documentary evidence, the trial Court dismissed the suit, which was confirmed by the appellate Court.

3. Learned Counsel for the appellants submits that when assessment of tax was not done in accordance with the provisions of the Act, a suit would lie and that the plaintiffs filed Exs. A-5 and A-6 endorsements to show that they filed revision petitions before the Commissioner but they were returned. Secondly he relies on Sub-section (4) of Section 85 of the Act, in support of the contention that the garden land should be assessed based on the land revenue as fixed by the Government. Opposing the contentions learned Standing Counsel relies on the decision of Division Bench of this Court in *Parvathi Combines Vs. The Visakhapatnam Municipal Council*, and *Srikant Kashinath Jituri and others Vs. Corporation of the City of Belgaum*, and contends that when the assessee failed to avail the remedy of revision under Rule 12 of Taxation Rules and appeal therefrom under Rule 22 thereof, suit would not lie as it is specifically barred u/s 376(2) Of the Act.

4. The Courts below found that the property assessed under Exs. A-3 and A-4 is not the land exclusively used for agriculture and there are two buildings thereon. Therefore, the submission that Section 85(4) of the Act applies cannot be countenanced. Insofar as maintainability of the suit is concerned, this Court does not find any force in the submission of learned Counsel for the appellants/ plaintiffs. Section 130 of the Act lays down that the Rules and tables embodied in Schedule-II form part of Chapter-II of Part-IV of the Act. Dealing with finances of the Municipality, Schedule-II i.e., Taxation Rules contains 61 Rules and three appendices. Rules 2 to 28 contain provisions common to taxes in general. Out of these Rules 6 to 11 deal with assessment of property tax in respect of land and/ or buildings in the Municipality.

5. After issuing a special notice or demand notice for payment or (sic. of) assessment of tax, an aggrieved person is given right to move the Commissioner of Municipality by way of revision under Rule 12 of Taxation Rules to reduce the tax on the ground that the capital value or the annual rental value of the property has decreased since the assessment of the property was made or revised. After disposal of the revision petition by the Commissioner, the aggrieved person is again given a right of appeal under Rule 22 of Taxation Rules to Appellate Commissioner appointed by the Government for that purpose. Such appeal has to be filed within fifteen days from the order of the Commissioner in

revision under Rule 12. Section 376(2) of the Act bars a suit in respect of an assessment of property tax. However, if a case is made out that the provisions of the Act have not been complied with while assessing property tax or revising property tax, impliedly a suit for recovery of tax or levy paid to municipality is not barred. Therefore, even in such a case, the aggrieved person has to avail the remedies of revision under Rule 12 and then appeal under Rule 22 of Taxation Rules. In the absence of availing of such remedies, suit cannot be entertained.

6. In *Parvathi Combines Vs. The Visakhapatnam Municipal Council*, considering Section 376(2) of the Act, a Division Bench of this Court laid down as under.

When a statute creates a right or liability and makes inbuilt provision therein to agitate matters pertaining to the rights and liabilities, the jurisdiction of the Civil Court will be, to the extent the jurisdiction is conferred upon the statutory Tribunal, necessarily excluded. In such cases, the jurisdiction of the Civil Court is confined only to ascertain the jurisdictional fact as to whether the case is of such a nature for which the jurisdiction is vested in another Tribunal or in other words whether the power has been exercised by the statutory forum with jurisdiction. Once the conclusion is reached that the tribunal had the jurisdiction to decide the matter, the Civil Court must stay its hands, the matter having been specifically entrusted to the special Tribunal created. So far as the present statute is concerned, leave apart the question of ouster of jurisdiction by necessary implication, there is an express ouster of the jurisdiction as the trial Court itself had found the provisions of the statute had been complied within making the assessment.

6.1 In *Srikant Kashinath Jituri and others Vs. Corporation of the City of Belgaum*, , the Supreme Court laid down that if a party fails to avail the remedies provided by the statute itself before the Municipal authorities, a suit is barred. It was held therein thus.

Learned Counsel contended that if a writ petition is maintainable without filing the second appeal provided by Rule 20 a suit is equally maintainable. In our opinion, the said contention is based upon a misconception. Such an onerous provision may be a ground for entertaining a writ petition on the ground that the alternative remedy provided by the statute is not an adequate or efficacious remedy see *Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others*, , but that can never be a ground for maintaining a civil suit. Both the jurisdictions are different and are governed by different principles. Article 226 provides a constitutional remedy. It confers the power of judicial review on High Courts. The finality clause in a statute is not a bar to the exercise of this constitutional power whereas the jurisdiction of a civil court arises from another statute, viz., Section 9 of the Code of Civil Procedure. In such a case, the bar arising from an express provision like Rule 25, or arising by necessary intendment can be overridden only in cases and situations pointed out in *Dhulabhai v. State of M.P.* AIR 1969 AC 78.

7. The appellants relied on Exs. A-5 and A-6 in support of the contention that they filed revisions before the Commissioner but they were returned with endorsements. Even if some importance is given to these documents non-filing of appeal under Rule 22 of Taxation Rules is fatal and in plain terms the suit is not maintainable.

8. The second appeal is devoid of any merit and is accordingly dismissed. No costs.