

(2009) 12 MAD CK 0127

In the Madras High Court

Case No : Writ Petition No's. 11676 and 11677 of 2008

N.D. Raghavan, rep. By his Power Agent and N.D.J.
Renganath

APPELLANT

Vs

The Special Commissioner and Commissioner of Land
Reforms, The Assistant Commissioner, Urban Land Tax and
The Special Tahsildar, Urban Land Tax

RESPONDENT

Date of Decision : 03-12-2009

Acts Referred:

Tamil Nadu Urban Land Tax Act, 1966 — Section 11, 30, 7, 9
Tamil Nadu Urban Land Tax Rules, 1966 — Rule 17(36)

Citation : (2010) 1 LW 402

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : R. Tholkappian, for the Appellant; Haza Nazirudeen, Spl.
Government Pleader (Tax), for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—These writ petitions are directed against the orders of the second Respondent, the Assistant Commissioner of Urban Land Tax, dated 05.03.1996 and 31.07.2001 in ULT. Case No. 562/85 and 487/01 respectively, as confirmed by the first Respondent, the Special Commissioner and Commissioner of Land Reforms, Chennai in the impugned orders dated 28.01.2005 and 01.02.2005 respectively.

2. Both the cases relate to urban land tax in respect of 39 grounds and 1120 sq.ft. and 39 grounds and 582 sq.ft. in Injambakkam Village, Tambaram Taluk respectively. The relief sought for is for directing the Respondents to treat the above said lands as falling outside the purview of the Tamil Nadu Urban Land Tax Act, 1966.

3. It is the case of the writ Petitioner that the land comprised in Survey No. 165/180 measuring about 39 grounds 1120 sq.ft., which is the subject matter of

W.P. No. 11676 of 2008 is used only for agricultural operations and was assessed to urban land tax by the second Respondent in ULT Case No. 562 of 1985 and a sum of Rs. 729/- was levied for fasli 1385. That was questioned by way of revision before the first Respondent, who by order dated 09.09.1998, remanded the matter to the second Respondent and after remand, the second Respondent in ULT Case No. 288/1401 dated 03.09.2001, levied urban land tax from fasli 1401 corresponding to the calendar year 1991, and the Petitioner preferred a revision before the first Respondent u/s 30 of the Urban Land Tax Act, 1966, and by the impugned order dated 28.01.2005, the first Respondent directed the second Respondent to issue an erratum to levy tax from the year 1986 instead of 1975 and to that extent the revision was allowed. Thereafter, the Petitioner filed review before the first Respondent on the ground that the land falls under the category of "open space recreational zone", in which any construction is banned by G.O. Ms. No. 190 dated 23.02.1980 and an open space theatre was constructed after obtaining special permission from the Government and the portion occupied by the theatre is a very small built up area and the theatre is run in the name, Prarthana Theatre with office hall and screening area and the rest of the land is kept vacant and the entire area is agricultural land. The said review was dismissed by the first Respondent on 04.08.2005.

3(a). In the meantime, the second Respondent passed an erratum on 10.03.2005, levying tax from fasli 1396 to 1400, against which the writ petition is filed. The Petitioner has filed the above writ petition with delay and the reason for the delay is stated to be that the previous counsel to whom the papers were entrusted misplaced the same and after the bundle was traced, the writ petition was filed.

3(b). The challenge to the assessment is made on the ground that the land is not coming within the term, "urban land" since it is not kept for being used as house site and "urban land" excludes specifically agricultural lands and horticultural lands and lands of other character. It is stated that the first Respondent has even noted that casuarina trees were raised in the land for faslis 1397 to 1411 and therefore, the construction of the building was not possible and the said fact has not been taken note of. It is stated that the constructed area occupies only about 3 grounds and rest of the land has been used for parking cars in the open air theatre and the area falls under the "open space recreational zone", as per the CMDA Rules. It is stated that the open space recreational zone is not termed as urban land and therefore the levy of urban land tax is illegal.

4. Likewise, the land to the extent of 39 grounds and 582 sq.ft. in Injambakkam village, Tambaram Taluk, which is the subject matter of W.P. No. 11677 of 2008 is comprised in Survey No. 1/48, is stated to be used for agricultural operations. It is stated that the second Respondent in the order dated 18.01.1996 held that the land is not taxable as it is agricultural lands and thereafter, the Petitioner has not converted the land for any non-agricultural purpose and the Petitioner has been cultivating casuarina in the said land. There was some anti-social elements,

who burnt the casuarina trees in the land, about which police complaint was given. It was, in those circumstances, the land was assessed to tax under the Tamil Nadu Urban Land Tax Act by the second Respondent, and by order dated 31.07.2001, the second Respondent levied a sum of Rs. 4494/- per fasli as tax from fasli 1410 and the said order was passed without notice in the prescribed form to the Petitioner. The Petitioner preferred a revision before the first Respondent on 06.12.2001, which was rejected by the first Respondent on 01.02.2005 on the ground that the land is lying vacant, relying upon the adangal extract for fasli 1413 and also on the basis that the Petitioner has constructed a compound wall around the land.

4(a). In this case also the delay is explained as stated in the other case and the assessment is challenged on similar grounds. In addition, it is stated that putting up of a compound wall does not take away the character of agricultural land. It is also stated that simply because The land is kept vacant, which was originally used for agricultural purpose, it cannot be treated as urban land. It is also stated that in these two cases the first Respondent served notice in Form No. 4-C by affixture. Even though the mode of service of notice under the Rules is silent, inasmuch as the Petitioner is within the city limit, notice should be served in an acceptable method to the Petitioner and not by affixture. It is stated that the contents of the notice are against Section 11 of the Tamil Nadu Urban Land Tax Act, 1966.

5. The above said admitted facts relating to these two cases make it clear that the assessment under the Tamil Nadu Urban Land Tax Act, 1966, has been made on the basis that the land is used as an open air theatre and the vast area is used for parking vehicles and not used for agricultural purposes.

6. Again, in respect of the writ petition in WP. No. 11677 of 2008, the main assessment appears to be on the ground that a compound wall has been put around the land and therefore in effect it ceases to be the agricultural land. That apart, one other legal ground that has been raised by the Petitioner, as submitted by the learned Counsel is that the notice is stated to have been served by the first Respondent by affixture on the ground that the land owner's address was not known, and since nobody appeared for enquiry, the land was found to be urban land, and therefore ex parte assessment orders were passed. That is reflected in the orders of the first Respondent in these two cases.

7. Section 11 of the Tamil Nadu Urban Land Tax Act, 1966, while contemplating the procedure in respect of cases where no return is filed, states as follows:

11. Procedure in case where no return is filed.-

(1) Where the owner of urban land has failed to furnish the return u/s 7, and the Assistant Commissioner has obtained the necessary information u/s 9 he shall serve a notice on the owner in respect of each urban land specifying therein-

(a) the extent of the urban land;

(b) the amount which, in the opinion of the Assistant Commissioner, is the correct market value of the urban land; and direct him either to attend in person at his office on a date to be specified in the notice or to produce or cause to be produced on that date any evidence on which the owner may rely.

(2) After hearing such evidence, as the owner may produce and such other evidence as the Assistant Commissioner shall, by order in writing, determine the market value of the urban land and the amount of urban land tax payable in respect of such urban land.

(3) Where the owner has failed to attend or to produce evidence in pursuance of the notice under Sub-section (1), the Assistant Commissioner shall, on the basis of the information obtained by him u/s 9, by order in writing, determine the market value of the urban land and the amount of the urban land tax payable in respect of such urban land.

8. In cases where the owner of urban land who is liable to submit his return fails to file the same, which is mandatory u/s 7 of the Act, Section 11 contemplates service of notice containing particulars and that notice is in Form 4-C of the Tamil Nadu Urban Land Tax Rules, 1966. The said Form 4-C is as per Rule 17(36) of the Tamil Nadu Urban Land Tax Rules, 1966. It is true that u/s 11 of the Act which contemplates service of notice on the owner with certain particulars, there is no method of service to be effected under the Act or the Rules. In the absence of any such method of service of notice by the Assistant Commissioner while passing orders as per the Act, it is the case of the second Respondent Assistant Commissioner that the notice in Form 4-C has been served on the Petitioner by affixture.

9. A combined reading of Section 11(1) and Form 4-C makes it clear that the purpose of issuing such notice is to see that the Assessee is given opportunity to file his objection on the complaint raised by the second Respondent against the Petitioner in not filing return as per Section 7 of the Act. In fact, the purpose of service of notice is to arrive at a conclusion for imposing penalty for the failure to file return as per Section 7-D of the Act. Therefore, the service of such notice in Form 4-C is not an empty formality and it is a meaningful one, in the light of the principles of natural justice, so as to enable the Assessee to put forth his case by way of objections. In fact, after filing of such objections, it is for the second Respondent, Assistant Commissioner to conduct an enquiry and on enquiry, to come to a final conclusion.

10. Normally, when affixture is resorted to as a method of service, it is expected that the authorities has already taken steps to serve notice on the party concerned in the normal method of service, which is either by post or by personal service. Even though it is stated in the first Respondent's order that the second Respondent was not aware of the address of the Petitioner, the first Respondent's order itself was communicated to the address of the Petitioner. Therefore, the stand of the Respondents that since the second Respondent did

not know the address of the Petitioner, and therefore resorted to service by affixture, is not acceptable. As already noticed, it is only after steps are being taken to serve in the normal method of service to the person concerned, the service by affixture is to be resorted to. The absence of service of such notice in proper manner to the Petitioner before the second Respondent passed the assessment order would certainly take away the right of the Petitioner to put forth his case by way of objections.

11. It is relevant on the facts and circumstances of both the cases to state that vast area of the land is kept vacant and not used for any urban purposes and therefore the Petitioner has raised a point as to whether the Tamil Nadu Urban Land Tax is applicable, when the entire area is kept vacant. In fact, in one case it appears that the second Respondent, Assistant Commissioner has assessed on the ground that the entire area has been covered with a compound wall and the question has to be decided is, whether by putting a compound wall, agricultural land would become urban land. It is also stated and it is an admitted fact that in a small portion a open air theatre is situated and the remaining portion is used for parking vehicles. Therefore, necessarily the authorities have to decide as to whether the area becomes an urban land.

12. In these circumstances, it requires a proper enquiry, which can be possible after due opportunity being given to the Petitioner. In the absence of such opportunity to the Petitioner, when the order of assessment is passed by the second Respondent by way of ex parte assessment, I am of the considered view that the valuable right of the Petitioner in putting forth his case in an appropriate manner is deprived of and this aspect has not been taken note of by the first Respondent while dealing with the revision and the revision has been dealt with in a casual manner, as if the notice was served on the Petitioner by affixture and the land is classified as dry land and therefore it should be treated as urban land. In fact, the record shows that the said land has been classified as agricultural land, as approved by the authorities under the Act on earlier occasion and subsequently the same has been converted into urban land. In such case, a proper opportunity should have been given to the Petitioner to explain his case.

13. The first Respondent, in respect of the adjacent land in Survey No. 1/47, Injambakkam Village, taking note of the fact that there also Form 4-C notice was served by affixture and the land was classified as wet land as per the Revenue Records and that has been wrongly assessed to urban land tax and the land was used for cultivating fruits and vegetables and casuarina, set aside the order of the Assistant Commissioner (ULT) Alandur, dated 31.07.2001, and remanded the matter back to the Assistant Commissioner. However, the first Respondent has taken a different stand in respect of the Petitioner's land and therefore, the impugned orders challenged in these writ petitions are liable to be set aside and the matters are remanded back to the second Respondent for proper assessment.

14. In such view of the matter, the impugned orders passed by the Respondents are set aside and the matters are remanded back to the second Respondent,

Assistant Commissioner of Urban Land Tax, Tambaram, Chennai to conduct proper enquiry after serving proper notice to the Petitioner and pass appropriate orders after receiving objections and conducting enquiry in the manner known to law.

The writ petitions are allowed accordingly. No costs. Connected miscellaneous petitions are closed.