

(2009) 09 MAD CK 0278

In the Madras High Court

Case No : Second Appeal No's. 449 and 626 of 2009 and M.P. No's. 1 and 1 of 2009

P. Ramankutty Menon and P. Unnikrishnan

APPELLANT

Vs

The Commissioner, Tiruvottiyur Municipality

RESPONDENT

Date of Decision : 07-09-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 293
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 4
Tamil Nadu District Municipalities Act, 1920 — Section 354(1), 86, 89
Taxation and Finance Rules — Rule 14(2), 9

Citation : (2009) 5 LW 201 : (2009) 8 MLJ 1441

Hon'ble Judges : K. Mohan Ram, J

Bench : Single Bench

Advocate : M.K. Kabir for A. Dhiraviyanathan, for the Appellant;

Final Decision : Dismissed

Judgement

K. Mohan Ram, J.—The respective unsuccessful plaintiffs in O.S. Nos. 137 and 41 of 2002 on the file of the District Munsif cum Judicial Magistrate, Tiruvottiyur, who also lost in A.S. Nos. 53 and 51 of 2006 on the file of the Fast Track Court No. IV and Additional District Court, Ponneri, are the appellants in S.A. Nos. 449 and 626 of 2009 respectively.

2. For the sake of convenience, the parties are referred to as per their ranking in the suit.

3. The plaintiff filed a suit in O.S. No. 137 of 2002 on the file of the District Munsif cum Judicial Magistrate Court, Tiruvottiyur, for a decree declaring that the enhancement of property tax in pursuance of the special notice dated 30.09.1999 is arbitrary, illegal and unjustified and for a consequential permanent injunction restraining the defendants from taking any coercive steps to collect

the enhanced tax. The plaintiff filed a suit in O.S. No. 41 of 2002 on the file of the District Munsif cum Judicial Magistrate Court, Tiruvottiyur, for a decree declaring the demand of property taxes under demand notices dated 30.09.1999 bearing the Nos. 25538, 25535, 25536, 36437, 25539, 25540 and 36396 with respect to the property described in the schedule are illegal and invalid and consequently grant a permanent injunction restraining the defendant from taking any coercive steps to collect the taxes levied under the said demand notices from the plaintiff.

4. The case of the plaintiff in O.S. No. 137 of 2002 in brief is as follows:

(i) The plaintiff therein is the owner of the building bearing Door Nos. 88 and 89, T.H.Road, Kaladipet, Tiruvottiyur, and the same is assessed to property tax in the name of the plaintiff. Previously, the annual value of the suit property was fixed at Rs. 30,000/- and the half yearly property tax was assessed at Rs. 4,062/- and the plaintiff was paying the same promptly. According to the plaintiff, all of a sudden, a notice was served on the plaintiff by the defendant on 30.09.1999 by which the property tax was enhanced from Rs. 4,062/- to Rs. 8,124/- by arriving at the annual value of Rs. 60,000/-. It is the further case of the plaintiff that the Government had issued a Government Order with a specific direction that the property tax should not be enhanced by 100% and under no circumstances it should exceed 30% of the existing tax, but the special notice did not mention any reason for enhancement of property tax. It is contended by the plaintiff that the annual value of the property should be arrived at only as per the formula contained u/s 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, but the special notice does not mention how the annual value was arrived at. It is the further case of the plaintiff that the defendant has not followed the procedure contemplated under the Act to arrive at the annual value and the enhancement of the property tax is unjustified. Admittedly, the plaintiff preferred an appeal dated 05.10.1999 to the Commissioner and thereafter a revision dated 11.01.2000 to the Chairman, Tiruvottiyur Municipal Council, but, according to the plaintiff, there was no proper response. Since the property tax has been enhanced arbitrarily and unreasonable the same is not valid.

(ii) The suit was contested by the defendant by filing a written statement inter alia contending as follows:

The suit property was originally assessed as commercial building and the property tax was levied taking consideration of the market value of the land and the building prevalent then and following the procedure as laid down in Section 4 of the said Rent Control Act. The property tax was levied by the defendant before 01.10.1998 as per Rule 14(2) of the Taxation and Finance Rules Framed under the Tamil Nadu District Municipalities Act, 1920 (hereinafter referred to as "the Act"). The defendant enhanced the property tax as per the circular issued by the Commissioner of Municipal Administration in R.O.C. No. 60572/98 R1 dated 08.01.1999. The plaintiff preferred an appeal dated 09.10.1999 to the Commissioner, Tiruvottiyur Municipality and the appeal was confirmed by the

Chairman as per the rules and the regulations.

5. The case of the plaintiff in O.S. No. 41 of 2002 in brief is as follows:

(i) The plaintiff therein is the owner of the building bearing Door Nos. 85 and 85A, T.H. Road, Kaladipet, Tiruvottiyur, which consists of basement, ground floor, first floor, second floor and a third floor and besides there is another building on the northern side of the building which is used as a car shed and the basement of the building and the southern side of the building were used as godowns. According to the plaintiff, the third floor of the building is used as a residential building occupied by the plaintiff and his family members and the building on the northern side in the ground floor is used as a car shed. Previously, the ground, the first, and the second floors are rented to third parties and the entire building bearing Door Nos. 85 and 85-A were assessed to property tax as follows:

(i) the half yearly property tax for the basement under Assessment No. 25533 was Rs. 2,102/-;

(ii) the half yearly property tax for the ground floor was Rs. 9,672/-;

(iii) the half yearly property tax for the ground floor was Rs. 9,672/-;

(iv) the half yearly property tax for the second floor was Rs. 4,232/-;

(v) the half yearly property tax for the residential third floor was Rs. 2,102/-; and

(vi) the tax for car shed was Rs. 532/- and the godown was Rs. 1,130/-.

and the plaintiff was paying the same promptly. According to the plaintiff, all of a sudden, notices were served on the plaintiff by the defendant on 30.09.1999 by which the property tax was enhanced by 100%. It is the further case of the plaintiff that the Government had issued an Order with a specific direction that the property tax should not be enhanced by more than 25% as per a Government Order since they are residential building and a car shed. It is contended by the plaintiff that the annual rental value of the property tax should be arrived at only as per the formula contained u/s 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, but the special notices do not mention how the annual value was arrived at. It is the further case of the plaintiff that the defendant has not followed the procedure contemplated under the Act to arrive at the annual value and the enhancement of the property tax is unjustified. Admittedly, the plaintiff preferred an appeal dated 05.10.1999 to the Commissioner and thereafter a revision dated 18.0.2001 to the Chairman, Tiruvottiyur Municipal Council, but, according to the plaintiff, there was no proper response. Since the property taxes have been enhanced arbitrarily and unreasonable the same is not valid.

(ii) The suit was contested by the defendant by filing a written statement inter-alia contending as follows:

The defendant denies the allegations in the plaint and states that the suit is not

maintainable. The defendant stated that all the floors are rented to the third parties. The defendant originally assessed property tax for the suit property taking consideration of the market value of the land and the building prevalent then and following the procedure as laid down in fixing fair rent u/s 4 of the said Act. The property tax was levied by the defendant as per Rule 14(2) of the Taxation and Finance Rules Framed under the Tamil Nadu District Municipalities Act, 1920 (hereinafter referred to as "the Act"). The defendant enhanced the property tax as per the circular issued by the Commissioner of Municipal Administration in R.O.C.No.60572/98 RD dated 08.01.1999. The plaintiff preferred an appeal dated 05.10.1999 to the Commissioner, Tiruvottiyur Municipality and the appeal was confirmed by the Chairman as per the rules and the regulations.

6. Though separate suits have been filed by the respective plaintiffs and separate judgments have been passed both by the trial court as well as by the appellant court the issue to be decided in the above second appeals is one and the same. Hence both the appeals are being disposed of by this common judgment.

7. The trial court framed the following issues, namely:

- (i) Whether the plaintiff is entitled to get a decree for declaration as prayed for?
- (ii) Whether the plaintiff is entitled to get a decree for permanent injunction?
- (iii) To what other reliefs, the plaintiff is entitled to?

Thereafter, the trial court has framed the following additional issue namely:

Whether the Court has got jurisdiction to try the suit?

8. During trial, the respective plaintiff was examined as P.W.1 and Exs.A-1 to A-7 have been marked and on the side of the defendant, D.W.1 has been examined and Exs.B-1 and B-2 have been marked. The trial court, on a consideration of the oral and documentary evidence adduced in the case and also taking into consideration of the provisions contained in Section 89 of the Act and certain decisions, has held that the suits are not maintainable as effective and alternative remedy is available under the Act itself to question the enhancement of property tax. Being aggrieved by that, the plaintiff preferred appeals in A.S.Nos.53 and 51 of 2006 before the Additional District Judge (Fast Track Court No. IV), Ponneri. The lower appellate court, on an independent consideration of the entire evidence on record and the reasonings of the Court below and the provisions contained in Section 89 of the Act and the decisions relied upon the respective parties, concurred with the reasonings of the trial court and dismissed the appeals. Being aggrieved by that the above second appeals have been filed.

9. In the memorandum of grounds of second appeals, the following grounds have been raised as common substantial questions of law:

- (i) Whether the Courts below are right in holding that the relief of declaration and injunction cannot be granted even though the enhancement of property tax

is not in accordance with the provisions of the Act and the circular issued by the Government of Tamil Nadu?

(ii) Whether the courts below are wrong in holding that despite the enhancement not being in accordance to the circular issued, the institution of the civil suit is barred by implication u/s 89 of the Tamil Nadu District Municipalities Act?

(iii) In the absence of a specific provision excluding the power of civil court to declare an assessment as void or the courts below right in drawing an inference of implied ouster u/s 89 of the Tamil Nadu District Municipalities Act?

(iv) Whether the courts below should have held that the provisions of Section 89 of the Act would apply only where there is a minor discrepancy in arriving at the Annual Rental Value to be fixed by the Authority under the Act but would not oust the jurisdiction of the civil court if the very enhancement is void?

(v) Whether the decisions of the courts below is correct in the absence of evidence by the respondent to show that the enhancement claimed is in accordance with the provisions of the Act and the circular issued?

(vi) In any event, the courts below should have decreed the suit in the absence of proof that the assessment is in accordance with the provisions of the Act. The failure to do so is illegal and prejudicial in nature.

(vii) Admittedly, the enhancement not being in accordance with the circular issued the courts below ought to have held that the very assessment is void and should have decreed the suit. The finding of the courts below that the circular can be challenged only by way of Writ Proceeding is illegal and arbitrary.

(viii) The courts below are duty bound to compare the enhancements arrived at with the limitation or ceiling imposed under the circular as it is not the circular which is under challenge but the enhancement which is contrary to the same. Therefore, the decision of the courts below is unsustainable in law.

10. Learned senior Counsel for the appellant in each of the above second appeals submits that any assessment or enhancement fixed contrary to the norms circulated is void and hence the suits for declaration are maintainable. Learned senior Counsel further submits that if the assessment is void or not in compliance with the provisions of the Act or contrary to the circular issued and arbitrary in nature, the suits are maintainable and the same are not barred u/s 89 of the Act. He further submits that since the annual value of the suit property has not been fixed as contemplated u/s 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, the consequent enhancement of property tax is invalid and as such the suits are maintainable. Learned senior Counsel for the appellant submits that the suit properties are not being used as commercial buildings, but the same are used only as residential buildings, but on the contrary the defendant's contention before the Courts below is that the suit properties are commercial buildings. In support of the said contentions the learned Counsel relied upon the following decisions:

(i) 1992-1-L.W. 110 (Chellammal v. Alandur Municipality). In the said decision, it has been laid down that when the basis of the levy itself is wrong or that there is no basis at all for the levy and in that sense there is no substantial compliance with the provisions of the Municipalities Act, it is open to the Civil Court to declare the levy as illegal and in fact it is its duty to do so.

(ii) (2008) 2 MLJ 649 (K.R. Abirami v. Kumbakonam Municipality). In the said decision, it has been laid down that an enhancement of property tax by the Municipality in a general revision without complying with Rule 9 of the Taxation Rules, Schedule IV to Tamil Nadu District Municipalities Act (5 of 1920), without issuing a public notice and inviting objection is non est in law. A suit challenging the assessment to property tax is maintainable in a Civil Court if it did not in substance and in effect comply with the provisions of the Act.

(iii) Sree Murugan Engineering Products Vs. The Commercial Tax Officer, . In the said decision it has been laid down as under:

Lastly, we shall deal with the plea regarding alternative remedy as raised by the Revenue. Except for a period when Article 226 was amended by the Constitution (Forty-second Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. In Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, , the Supreme Court held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the petitioner seeks enforcement of any of the fundamental rights or where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

(iv) Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, . In the aforesaid decision, a Constitution Bench of the Supreme Court has laid down the following principles regarding the exclusion of jurisdiction of the Civil Court:

32. Neither of the two cases of Firm and Illuri Subbayya Chetty and Sons Vs. The State of Andhra Pradesh, or Kamala Mills Ltd. Vs. State of Bombay, can be said to run counter to the series of cases earlier noticed. The result of this inquiry into the diverse views expressed in this Court may be stated as follows:

(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the

remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates as special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under the Act. Even the High Court cannot go into the question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.

11. I have considered the aforesaid submissions made by the learned senior Counsel for the appellant, perused the decisions relied upon and other materials made available in the typed set of papers.

12. For considering the aforesaid submissions of the learned senior Counsel for the appellants, it is necessary to look into the provisions contained in Sections 89 and 354(1) of the Act, which read as follows:

89. Taxation Appeals Committee. - (1) There shall be a Taxation Appeals Committee for hearing and disposing of an appeal preferred by any person who is not satisfied with the assessment order made by the executive authority under this Act other than the orders relating to the duty on transfer of property,-

(i) for every town panchayat consisting of the Chairman of the municipal council who shall be the Chairman of the Taxation Appeals Committee and such member of members as may be notified by the State Government from among the members of the town panchayat;

(ii) for every municipality, consisting of the Chairman of the municipal council who shall also be the Chairman of the Taxation Appeals Committee and four Councillors elected by the council.

(2) The business of the Taxation Appeals Committee shall be transacted in accordance with the rules made by the State Government in this behalf.

(3) An appeal against the decision of the Taxation Appeals Committee may be filed within thirty days from the date of the order to the District Judge.

(4) No appeal shall be entertained by the District Judge, unless the appellant deposits with the town panchayat or municipality, as the case may be, the entire amount of tax as decided by the Taxation Appeals Committee and the appellant shall continue to deposit the property tax with the town panchayat or, municipality, as the case may be, as decided by the Taxation Appeal Committee till the disposal of the appeal by the District Judge.

(5) Where as a result of any order passed in an appeal any amount already deposited is in excess of the tax due, the difference, after deducting the tax due, shall be adjusted towards the tax, and fine due in respect of any other period, by the municipality.

354. Assessments, etc., not to be impeached. - (1) No assessment or demand made and no charge imposed, under the authority of this Act shall be impeached or affected by reason of any clerical error or by reason of any mistake (a) in respect of the name, residence place of business or occupation of any person, or (b) in the description of any property or thing, or (c) in respect of the amount assessed, demanded or charged: provided that the provisions of this Act have been in substance and effect, complied with. And no proceedings under this Act shall merely for defect in form, be quashed or set aside by any Court of Justice.

A reading of the aforesaid provisions makes it clear that Section 89 of the Act provides for an appeal remedy to the Taxation Appeals Committee and further appeal to the District Court and as per the provisions contained in Section 354(1) of the Act, no assessment or demand made and no charge imposed under the authority of this Act shall be impeached or affected by reasons unless that the provisions of the Act have been in substance and effect complied with.

13. In the decision reported in M.L. Krishnamoorthy (died) and M.K. Sathyamurthy Vs. The Government of Tamilnadu and The Gudiyattam Municipality, a Division Bench of this Court has laid down as under:

4. It is not denied by the learned Counsel for the appellant that the provisions of District Municipalities Act provides for an appeal remedy to the Taxation Appellate Committee u/s 89 of the District Municipalities Act and further appeal to the District Court. On the face of the availability of an alternative remedy, the plea taken by the appellant that the entire building has to be taken as one unit and different numbers allotted to the adjacent premises could not be viewed as independent units could effectively be agitated before the Taxation Appellate

Committee. On the face of the assessment made, the proper course for the appellant herein is to seek the appeal remedy.

14. In the decision reported in *State of West Bengal and Others Vs. Dr. Subhash Chandra Pratihari*, the Apex Court has laid down as under:

A bar to file a civil suit may be express or implied. An express bar is where a statute itself contains a provision that the jurisdiction of a civil Court is barred e.g., the bar contained in Section 293 of the Income Tax Act, 1961. An implied bar may arise when a statute provides a special remedy to an aggrieved party. Section 86 of the Act restrains a party from challenging assessment and levy of tax in any manner other than as provided under the Act. A provision like this is the implied bar envisaged in Section 9, C.P.C. against filing a civil suit.

In the light of the principles laid down in the aforesaid decisions, the cases on hand have to be considered.

15. Admittedly, the suit properties have been assessed to property tax on the annual values and the half yearly taxes have been assessed. Admittedly, the said half yearly taxes have been enhanced by 100% by the defendant by basing reliance on the circular issued by the Commissioner for Municipal Administration in R.O.C. No. 60572/98 R1 dated 08.01.1999. The contention of the respective plaintiffs is that the Government has issued an Order with a specific direction that the property tax should not be enhanced by 100% and under no circumstances it should exceed 30% of the existing tax and the annual value of the property tax should be arrived at only as per the formula contained in Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act and the defendant has not followed the procedure contemplated under the Act to arrive at the annual value and the enhancement of the property taxes is unjustified.

16. A perusal of the two circulars issued by the Commissioner of Municipal Administration namely R.O.C. No. 60572/98/R1 dated 31.12.1998 and R.O.C. No. 60572/98/R1 dated 23.10.1998 do not stipulate that the property tax should not be enhanced by more than 30% of the existing tax. But in the said circulars the revised ceiling fixed for enhancement of the property tax has been indicated as follows:

1) Owner occupied Residential : Enhancement should not Building Exceed 25%
2) Rented Residential Buildings : Enhancement should not Exceed 50% 3)
Commercial Buildings : Enhancement should not Exceed 10% 4) Industrial
Buildings : Existing Ceiling of 150% retained.

It is the contention of the defendant that treating the suit properties as commercial building the property taxes have been enhanced by 100% and the same is in accordance with the aforesaid circulars and therefore the aforesaid contention of the plaintiff cannot be countenanced.

17. It is contended by the respective plaintiffs that the annual values of the properties have not been arrived at as per the formula contained in Section 4 of

the Tamil Nadu Building (Lease and Rent Control) Act but on the contrary it is the contention of the defendant that the provisions contained in Section 4 of the Rent Control Act have been followed. Even the respective plaintiffs in the plaints have admitted that they were paying the half yearly property taxes levied on the basis of the market values of the property taxes without any demur or protest. As stated above, the enhancement has been effected only on the basis of the aforesaid two circulars. Therefore, the question of fixing the market values of the properties once again, as contemplated in Section 4 of the Rent Control Act, does not arise and therefore the said contention of the plaintiffs cannot be countenanced.

18. As far as the other contention of the plaintiff that the defendant has not followed the procedure contemplated under the Act to arrive at the annual values and the enhancement of the property taxes are unjustified is concerned, it has to be pointed out that the plaintiff has not pleaded as to which procedure contemplated under the Act has not been followed. The aforesaid pleading raised in the plaints is vague.

19. Learned senior Counsel has also not elaborated or substantiated the contention of the plaintiff as to what procedure that is prescribed under the Act has not been followed. Learned senior Counsel only submitted that the provisions contained in Section 4 of the Rent Control Act has not been followed and he is unable to substantiate as to how the provisions of the circulars have not been followed in enhancing the property taxes.

20. Learned senior Counsel for the appellants strenuously contended that the remedy provided for u/s 89 of the Act is not effective and since the provisions of the Act have not been followed the suits challenging the assessment or enhancement of the property taxes are not barred either u/s 89 impliedly or expressly by the provisions contained in Section 354(1) of the Act.

21. I am unable to countenance the aforesaid submission of the learned senior Counsel for the appellants for the reason that as pointed out above the learned senior Counsel is unable to substantiate as to what procedure that is contemplated under the Act has not been complied with by the defendant.

22. The contention of the learned senior Counsel for the appellants is that the suit properties are not being used as commercial buildings but the same are used only as residential buildings, but on the contrary the defendant's contention before the Courts below is that the suit properties are commercial buildings. It has to be pointed out that this factual dispute can be adjudicated only on the basis of the evidence to be adduced by the respective parties before the authorities constituted under the Act. Since this Court has come to the conclusion that the suits are not maintainable, it is open to the appellant in each of the above appeals to raise the aforesaid issue before the authorities concern, if they chose to challenge the enhanced assessment before the authorities constituted under the Act.

23. The contention of the defendant is that the market values of the suit properties were arrived at by applying the principles contained in Section 4 of the Rent Control Act originally and the existing property taxes were enhanced by complying with the criteria laid down in the two circulars and the defendant has further contended that the circulars are not being challenged by the plaintiff.

24. In the decision reported in 1992-1-L.W.110 (referred to supra) and (2008) 2 MLJ 649 (referred to supra) it has been laid down that the suit challenging the assessment of property tax is maintainable in a Civil Court if it did not in substance and in effect comply with the provisions of the Act and therefore the aforesaid two decisions are not applicable to the facts of these cases.

25. In the decision reported in Sree Murugan Engineering Products Vs. The Commercial Tax Officer, while considering the maintainability of a writ petition under Article 226 of the Constitution of India it has been laid down that the petitioner seeks enforcement of any of the fundamental rights or where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged, then the availability of an alternative remedy is not a bar for entertaining the writ petition. But in the cases on hand the facts are different and it is not the case of the plaintiffs that they are seeking to enforce any of the fundamental rights or the principles of natural justice have been violated or the proceedings issued by the defendant levying the property taxes are without jurisdiction or the vires of the Act is being challenged and therefore the aforesaid decision is not of any assistance to the plaintiffs/appellants.

26. In the decision reported in Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, it has been laid down that the questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry. If the facts of the present cases are considered in the light of the aforesaid principles laid down by the Apex Court it has to be pointed out that since the effective alternative remedy by way of an appeal to the Taxation Appeals Committee and further appeal to the District Court is provided u/s 89 of the Act, a civil suit challenging the enhancement of the assessment will not lie unless it is pleaded and established that the procedure contemplated in the Act has not been followed.

27. A reading of Section 354(1) of the Act makes it clear that no assessment or demand made and no charge imposed, under the authority of this Act shall be impeached or affected unless the provisions of the Act have been in substance and effect complied with. So there is an express bar for institution of the suit and only exception is that only in a case where the provisions of the Act have not been in substance and effect complied with in enhancing the property tax, then the suit will lie but not otherwise.

28. Therefore, this Court is unable to countenance the contentions put forth by the learned senior Counsel for the appellant in each of the above appeals. The Courts below have relied upon various decisions and have applied the correct legal principles applicable to the facts of these cases and hence this Court finds absolutely no reason to interfere with the concurrent findings of the Courts below. In view of the legal principles laid in the aforesaid decisions, this Court is of the considered view that no questions of law much less any substantial questions of law arises for consideration in the above second appeals.

29. For the aforesaid reasons, the above second appeals fail and the same are dismissed. However, there will be no order as to costs. Consequently, the connected MP is closed.