(1996) 06 AP CK 0013

In the Andhra Pradesh High Court

Case No : Letters Patent Appeal No. 60 of 1988

Parvathi Combines APPELLANT

Vs

The Visakhapatnam Municipal Council RESPONDENT

Date of Decision : 05-06-1996

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 376(2)

Citation : (1996) 3 ALT 623 : (1996) 2 APLJ 207 : (1996) 1 APLJ 207

Hon'ble Judges : Lingaraja Rath, J;B.S. Raikote, J

Bench : Division Bench

Advocate : C. Poornaiah, for the Appellant; None appeared, for the Respondent

Final Decision : Dismissed

Judgement

Lingaraja Rath, J.—Plaintiff is the appellant. It filed this Letters Patent Appeal against the reversing judgment of the learned single Judge dismissing the suit seeking declaration of the assessment made on 30-3-1975 and the revised assessment on 30-9-1975 in respect of the plaintiff''s cinema theatres, arbitrary, capricious, illegal and liable to be set aside. The previous assessment of the two theatres was assessed at the rateable value of Rs. 6,800/- which was, by the impugned assessment, enhanced to Rs. 15,842-07 p. The assessment was challenged in appeal and revision under the provisions of the Andhra Pradesh Municipalities Act, 1965 (for short ''the Act'') but those proved abortive. The suit was thereafter filed. The trial Court found the provisions of the law in making the assessment to have been complied with, but held the assessment as arbitrary for having not taken into account the assessment in respect of similar theatres which it found was a necessary requirement Under Rule 9 of the Rules framed under the Act. Taking such view, the assessment was set aside. In the appeal, the learned single Judge held the Civil Court to have no jurisdiction to entertain the suit in view of the bar in Section 376 (2) of the Act, and also for the reason that the Civil Court cannot act as an appellate authority over the forums provided for under the Act to question the assessment on merit.

2. After hearing the learned counsel at length we find ourselves in entire agreement with learned single Judge. Section 87 of the Act provides a complete Code for assessment of tax as also the challenges against it. Section 376 (2) of the Act is in the following words:

"No suits shall be brought in any Court to recover any sum of money collected under the authority of this Act or to recover damages on account of any assessment or collection of money made under the said authority; Provided that the provisions of this Act have been in effect, complied with."

There is thus an express bar for entertaining the suit in that regard. It is well known that the exclusion of jurisdiction of the Civil Court can be either by express provision or by necessary implication. When a statute creates a right or a liability and makes in-built provision therein to agitate matter 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 with in making the assessment. Thereafter the Civil Court could not have functioned as an appellate Court to go into the merits of the assessment and find fault with it only because certain other matters available to be utilised were not so utilised. The matter pertains to appreciation of evidence and of materials on record which is beyond the purview of the Civil Court. In that view of the matter, we do not find any scope for interference in the judgment under appeal. The appeal has no merit and is dismissed, but in the circumstances without costs.