

(2007) 10 AP CK 0034
In the Andhra Pradesh High Court
Case No : S.A. No. 198 of 1999

Pulamachetti Rajeswaramma

APPELLANT

Vs

Gram Panchayat

RESPONDENT

Date of Decision : 10-10-2007

Acts Referred:

Andhra Pradesh Gram Panchayats Act, 1964 — Section 144, 151, 151(2)
Andhra Pradesh Gram Panchayats Rules, 1964 — Rule 10, 11, 12, 13, 20
Andhra Pradesh Municipalities Act, 1965 — Section 376(2), 87
Andhra Pradesh Panchayat Raj Act, 1994 — Section 261(2), 267
Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 226

Citation : (2007) 10 AP CK 0034

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : M. Ram Mohan, for the Appellant; Ch. Dhananjaya, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—The following substantial questions of law had been pointed out by the learned Counsel representing the appellant, and the said questions are as hereunder:

(a) Whether, on the facts and in the circumstances of the case, the Lower Appellate court is justified in reversing the well considered judgment and decree of the trial Court especially in the light of admissions of DW 2, the Assessment Officer, that there was no basis for assessment of rental value or capital value for the building in question and that assessment was done solely at his discretion and in disregard and without complying in effect and in substance, of the provisions of the Gram Panchayat Act and the Rules thereunder.

(b) Whether, on the facts and in the circumstances of the case, the levy of tax for the building in question is arbitrary and capricious especially when there is gross

violation of provisions of Gram Panchayat Act and the Rules made thereunder for assessment of tax and also when the building in question alone was singled out for the purpose of levy of tax as compared to the other similarly situated buildings.

2. Further, it is pointed out by the learned Counsel representing the appellant that the appellate Court totally erred in arriving at a conclusion that the civil suit itself is not maintainable and yet another substantial question of law has to be decided in addition to the substantial questions of law, on the strength of which the second appeal had been admitted. The counsel would maintain that when the provisions of the Andhra Pradesh Grampanchayat Raj Act, 1964 (for short "the Act") and the Rules framed thereunder had not been complied with, to lay down a broad proposition that under no circumstances the Civil Court can entertain a suit, cannot be sustained. The learned Counsel had taken this Court through the averments made in the plaint and would submit that inasmuch as the suit was filed complaining the non-compliance of the procedure, the same can be examined by a competent Civil Court. The learned Counsel also, on facts, had pointed out that the Court of first instance recorded acceptable reasons and the Appellate Court without touching several of the factual findings principally recorded a finding relating to the non- maintainability of a suit in a Civil Court and reversed the same. Learned Counsel also relied upon certain decisions in this regard.

3. Per contra, Sri M. Ch. Dhananjay, learned Counsel representing respondent-Gram Panchayat, Pathapatnam would maintain that under the provisions of the Act and the Rules framed thereunder, there are remedies available in relation to such assessment and when demand is made, a Civil Court as such cannot entertain a suit in the light of the clear language employed in Section 151 of the Act. Learned Counsel also pointed out that there are certain remedies available to challenge such assessment and without exhausting such remedies in the hierarchy, invoking the jurisdiction of the Civil Court is impermissible. Even otherwise, learned Counsel would submit that though specifically the plea relating to non- issuance of notice had not been raised, the issuance of notice u/s 144 of the Act, prior to institution of the suit, being mandatory, despite the fact that such plea was not specifically raised. This being a pure question of law, respondent-Gram Panchayat may be permitted to raise the said question and on that ground alone the suit is liable to be dismissed and hence, the decree and judgment of the Appellate Court, wherein the decree and judgment of the Court of first instance had been reversed, need not be disturbed in the Second Appeal.

4. Heard the counsel.

5. For the purpose of convenience, the parties hereinafter would be referred to as plaintiff and defendant as shown in O.S. No. 40 of 1986 on the file of the Court of District Munsif, Pathapatnam.

6. The suit was filed for a declaration that the enhancement of the house tax for

the plaintiff's house bearing assessment No. 1412 in Pathapatnam Gram Panchayat is ultravires, without jurisdiction, illegal, arbitrary and un-enforceable, and for consequential permanent injunction restraining the defendant from enforcing the demand for payment of Rs. 5948-66ps. towards house tax for the years 1984-85 & 1985-86; (b) for refund of Rs. 3076-95ps. being the excess amount of tax collected from the plaintiff under coercive process; (c) for costs of the suit; and (d) for such other reliefs as the court deems fit and proper having regard to the facts and circumstances of the case.

7. It was averred in the plaint as hereunder: The plaintiff is the owner of the house bearing Assessment No. 1412, which is situated at Pathapatnam Gram Panchayat and the said house was constructed in the year 1975. That the annual house tax from 1975-76 till 1982-83 was Rs. 422-75ps. That the annual house tax for the said house was suddenly and abruptly raised to Rs. 3,499-20ps., for the year 1983-84. That there was no improvement of the house after its construction in 1975, the plaintiff was unwilling to pay the house tax as demanded for the year 1983-84 and was not willing to comply with the demand served on her for payment of the house tax, but on the assurance of the Executive Officer of the Panchayat that the house tax for her house will be re-assessed, and hence the plaintiff paid the house tax for the year 1983-84 on 20-1-1984 under protest. That after payment of the tax, the plaintiff preferred as appeal to the Panchayat for reduction of the tax that the Panchayat reduced the tax to Rs. 3,149-28ps., in the appeal and communicated its resolution dated 28-5-1985 to the plaintiff. That the Panchayat issued an urgent demand notice dated 12-3-1986 which was served on the party on 13-3-1986 demanding payment of the house tax for the year 1984-85 and 1985-86 at Rs. 3,149-28ps. That the assessment of the house tax for the house of the plaintiff bearing assessment No. 1412 is illegal and ultravires and not in conformity with the statutory provisions of the Act, the assessment is capricious and arbitrary and without any basis. That the plaintiff is entitled to have the assessment, set aside and pray for refund of the amount paid by her for the year 1983-84. That to the knowledge of the plaintiff no engineer ever came to the house of the plaintiff to assess its capital value. That it is not known under what basis the Panchayat assessed the house tax, but suddenly raised seven times. That the Revision Officer Gram Panchayat appears to have fixed the tax on the basis that the annual rental value of the house is Rs. 36,000/- and the fixation of the annual rent to the house is contrary, exorbitant, arbitrary and without any basis. Hence, the suit is filed.

8. The defendant-Gram Panchayat filed written statement denying the averments. It is averred that after the first revision, the house of the plaintiffs became a center for the commercial spot and around the house sheller mill was constructed and 6 godowns were also located and cool drinks are also being prepared in a room of the building. On account of commercial importance, the value of the plaintiff's house was incomparably increased. That the Revision Officer who was got the experience in assessing the value of the buildings and

also fixing the rental value of the buildings as per the rates prevailing in the locality assessed the rental value of the suit building at Rs. 300/- per month. The building of the plaintiff being assessment No. 1412 consisting several spacious rooms constructed in modern form with all facilities including Air-condition facility. That the building was constructed in the year 1975 with cement and brick and during the revision, the building of petitioner that was existing was valued by the 1st Revision Officer as per the existing rates and assessment was made as per rules. That the Panchayat reduced the tax on the appeal of the plaintiff as per rules. That the plaintiff made further constructions and the floor of the building was also changed to one of cement to mosaic and the upstairs construction was made with all accessories like bathroom, lavatory etc. that a machine was fixed in the building and she getting prepared cool drinks. That the plaintiff arranged an air condition to one of the rooms. That the costs of the building is incomparably increased from the first revision to second revision. That the time of first revision, the location of the plaintiff's house was not the heart of the village but by the date of second revision the village was improved and many houses being constructed in the locality where the plaintiff's house situated. That the said locality became busy locality of the village by the date of second revision and hence, the market value of the said area and the cost of the building was raised. That the Revision Officer after inspecting the plaintiff's house assessed its rental value as per the rules and the said fact is known to the plaintiff. But the plaintiff did not question the revision authorities while the house was revised for second time is high. She accepted the assessment of the revision for the second time and paid the amount for the Panchayat and preferred an appeal. The Panchayat as usual reduced taxes. That the Panchayat as per rules demanded the plaintiff to pay the house-tax and while she committed default, a demand notice was issued to her. That the defendant-Panchayat has got meagre income and to run its administration if the lumpsum amount payable by the plaintiff to the Panchayat are withheld it is very difficult to run smoothly. That the plaintiff accepted the assessment made by the second Revision Officer and paid the amount to the Panchayat at the first instance and subsequently she committed default in paying the tax to the Panchayat evidently shows that it is an after thought of plaintiff. That the assessment is correct and it is not arbitrary and capricious. That the plaintiff is come before court suppressing the material facts i.e., further construction was made after the first revision and nature of the building was also changed subsequent to first revision. That the plaintiff has not come to court with clean hands and hence she is not entitled for injunction. That there is no cause of action to the suit and hence, the defendant-Panchayat prays to dismiss the suit with costs.

9. On the strength of these pleadings, the following issues were settled.

- 1) Whether the plaintiff is entitled for the relief claimed for?
- 2) If so to what extent?

10. The plaintiff examined herself as P.W. 1 and her husband was examined as

P.W. 2. Exs.A.1 to A.7 were marked. On behalf of the defendant D.Ws.1 to 4 were examined. Exs.B.1 to B.6 were marked.

11. The trial Court recorded findings in detail and came to the conclusion that fixation of tax is arbitrary and the same is without any basis and accordingly decreed the suit with costs. Aggrieved by the same, the matter was carried by way of appeal and the Appellate Court at para 8 framed the point for consideration as to whether the judgment and decree of the lower Court are sustainable or not.

12. The Appellate Court proceeded to record its findings from paras 10 to 15 of the judgment and allowed the appeal.

13. The Appellate Court relying upon the decision of a Division Bench in Parvathi Combines Vs. The Visakhapatnam Municipal Council,), which was delivered while considering Section 376(2) of the Andhra Pradesh Municipalities Act, 1965 read with Section 87 of the said Act, came to the conclusion that the same principle to be applied and arrived at a conclusion that the Civil Court cannot entertain a suit of this nature.

14. The counsel on record pointed out to the oral and documentary evidence available on record and also the findings recorded by both the Court of first instance and also the Appellate Court. Apart from the oral evidence, the documentary evidence Ex.A.1 the office copy of letter dated 20-01-1984, Ex.A.2 acknowledgment of the said letter, Ex.A.3 reply from the Executive Officer dated 17-02-1984, Ex.A.4 urgent notice issued by Executive Officer dated 12-03-1986, Ex.A.5 the demand notice dated 25-12-1985, Ex.A.6 and A.7 entries, had been relied upon. Exs.B.1 and B.2 resolutions, Exs.B.3 and B.4 entries, Ex.B.5 notification and Ex.B.6 information with regard to market value of the properties assessed by Sub Registrar also had been marked. Certain aspects relating to the gross rental value, the assessment to be made on annual basis, the procedure to be followed in relation thereto and other aspects had been discussed in elaboration by the Court of first instance.

15. As can be seen from the findings recorded by the Court of first instance, the learned District Munsif was of the opinion that the prescribed procedure and formalities had not been followed, and the fixation of the amount under assessment questioned in pursuance of which some demand was made is arbitrary and without any basis. However, the Appellate Court, as already referred to supra, reversed the same while answering the principal question relating to the jurisdiction of the Civil Court to entertain a suit of this nature.

16. Be that as it may, on a careful reading of the written statement filed by the defendant, no such specific plea had been taken. It is also needless to say that no specific plea relating to the non-issuance of notice u/s 144 of the Act had also been taken. It is needless to say that no issue has been settled in relation thereto. But, however, the questions relating to the very jurisdiction of the Civil Court to entertain the suit and the very non-issuance of notice, which is held to

be mandatory, definitely can be canvassed in a second appeal since these questions were argued by the respective counsel on the strength of admitted facts, no further facts need be established by adducing further evidence in this regard.

17. In *Srikant Kashinath Jituri and others Vs. Corporation of the City of Belgaum*, , the Apex Court observed:

Sri Tarkunde, the learned Counsel for the appellants submitted that inasmuch as the right of second appeal to the District Court is coupled with an onerous condition viz., deposit of the entire property tax - neither the appellate authority nor any other authority, it is stated, is empowered to relax that condition, either partly or wholly, whatever be the circumstances. The said remedy of appeal cannot be called an adequate or efficacious remedy. For this reason, the learned Counsel submitted, the suit is maintainable. 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*. The jurisdiction of the Civil Court in such matters is governed by the principles afore stated and the ground now urged by Sri Tarkunde is not one of the grounds recognised for invoking the jurisdiction of the Civil Court. It is not correct to say that whatever is good for Article 226 is good for suit as well.

18. In *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, while laying down general principles regarding exclusion of jurisdiction of Civil Court, the Apex Court observed as under:

(1) Where the statute gives a finality to the orders of the special tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court 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 a 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 that Act. Even the High Court cannot go into that 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 if the claim is clearly within the time prescribed 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 jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply

19. Strong reliance was placed on the view expressed by the Division Bench of this Court in *Parvathi Combines v. the Visakhapatnam Municipal Council* 1996 (2) APLJ 207 (HC), wherein the Division Bench had an occasion to deal with Section 376(2) of Andhra Pradesh Municipalities Act, 1965 and the learned Division Bench observed at para 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 or 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 provisions or by necessary implication. When a statute creates a right or

a 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 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 utilized were not so utilized. 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.

20. Section 151 of the Act deals with assessment etc not to be impeached and Sub-section (2) of Section 151 of the Act, no doubt which had been repealed by the subsequent Enactment (Andhra Pradesh Panchayat Raj Act, 1994), had specified that no suit shall be brought in any Court to recover any sum of the amount collected under the authority of this Act and recover damages of assessment for collection of money made under the said authority provided the provisions of this Act have any substance and effect been complied with.

21. Though the Division Bench expressed the view relating to the exclusion of jurisdiction of the Civil Court, in the decisions referred to supra, learned Judge of Madras High Court in Udipi Municipal Council Vs. K. Vasudevacharya and Others, while dealing with Section 354(1) of the Madras District Municipalities Act 1920 and assessments thereunder after referring to R.S. Sankaranarayana Reddiar Vs. The Taluk Board of Aruppukottai and Another, : (Sri Sri Sri Izattasar Kandukuri) Balasuryaprasada Rao Pantulu Garu Vs. Taluk Board of Chicacole, observed that no statutory body such as a municipality can give itself power to impose a tax on citizens by an erroneous interpretation of taxing provisions in the statute and if it does so, the aggrieved tax payer has a right to get redress in the ordinary course. Where, however, the assessment levied by the municipality cannot be assailed on this ground and the error, if any, relates to the appreciation of the materials available for arriving at a conclusion on a question of fact which the municipality has to determine in the course of making an assessment the Court has no power to interfere with the assessment.

22. A Division Bench of this Court in The Vizianagaram Municipality Vs. Puvvada

Bhaskara Rao and Others, of the Madras District Municipalities Act, 1920 and the assessment thereunder, and the jurisdiction of the Civil Court to question the same and how far it was excluded, observed at paras 3 and 4 as hereunder:

The main contention raised by the learned Counsel Mr. Venkatappayya Sastry is that the Civil Courts have no jurisdiction to interfere with the assessment made under the District Municipalities Act by reason of Section 354 and the suits therefore were liable to be dismissed. His next string of argument proceeds on the contention that where a hierarchy of officers has been created under the statute and the remedy to get the wrong redressed has been provided thereunder, it is not open to a party to come to the civil court and/or at any rate without exhausting all the remedies open to him under the statute. We examine how far these contentions are tenable. The first contention turns upon the true interpretation of Section 354. The said provision reads thus:

(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.

(2) ...

(3) ...

The ouster of civil courts' jurisdiction under this provision is not in terms complete. It is but partial and is limited to the language and intendment of the provisions. It says that the impeachment of any assessment or demand or charge imposed under the authority of the Act is not permissible on the ground that there has been a clerical error or some mistake inter alia in respect of the amount assessed. Thus the jurisdiction of the Court to this extent alone and no further is affected by the provision. But even to attract this limitation on jurisdiction the requisite essential as provided by the section itself is that the provisions of the Act have been in substance and effect complied with by the authority concerned while making such assessment. So, then, if, in making the assessment, the provisions of the Act have not been correctly appreciated or followed, evidently the jurisdiction of the civil court in relation thereto must remain unaffected. It follows therefore where there is no basis on which the levy has been made, or the basis adopted is wrong or arbitrary or the tax is levied on surmises or even on an erroneous view of the statutory provisions of the Act, Section 354 will not stand as a bar against the interference by a civil Court.

No doubt there are also rules framed under the Act contained in Schedule IV which define the powers of various authorities competent to make an assessment and refer to the circumstances under which such power may be exercised. They

further provide for remedy to the aggrieved party creating hierarchy of officials and attach finality to the order passed by the council. As may be seen, Rule 8 provides for revision of assessment by the competent authority once in every five years and also at any time between one complete revision and another if the State Government so direct. Rule 8-A makes provision for valuation officer to be appointed by the State Government. Rule 10 enjoins that in every case in which between one general revision and another, the executive authority assesses any property for the first time or increases the assessment on any property otherwise than in consequence of a general enhancement of the rate at which the property tax is leviable, the executive authority shall intimate by a special notice to the owner or occupier of such property that a petition for revising the assessment will be considered if it reaches the municipal office within 60 days from the date of service of such notice. Rule 11 provides for applying for revision to the executive authority Rule 12 ensures a reasonable opportunity of representation before the petition is disposed of. Rule 13 empowers the executive authority to direct the payment of the amount fixed within 15 days after the date of receipt of information. Rs. 23 provides for an appeal to the council in respect of the assessment and imposition of the taxes specified therein. Rule 28 reads thus:

The assessment or demand of any tax, when no appeal is made, as hereinbefore provided, and when such an appeal is made, the adjudication of the council thereon shall be final. Provided that where any assessment or demand is not in accordance with the assessment books nothing in this rule shall be deemed to prohibit a fresh assessment or demand of the tax being made in accordance therewith.

The first question is, whether the finality contemplated by Rule 28 would constitute complete ouster of jurisdiction of the civil Court. We do not think that such is the purpose of the rule. All that the word "final" would indicate is that so far as the municipality is concerned, the decision of the council is conclusive. It does not mean further that the decision of the council in no circumstances shall be liable to be questioned in a court of law. If that were the intention, there should have been clear context for the same. As it is, any rule framed under the Act cannot go beyond the scope of any of the substantive provisions of the Act or run counter to it. Undeniably, the avowed aim and object of framing the rules is and should invariably be to advance or carry out the purpose of the substantive provisions of the Act. That is their appointed province which cannot validly extend beyond. In this premises, it is clear that the word "final" used in Rule 28 contemplates the finality of the orders so far as municipal authorities are concerned. That in no way is related to the exclusion of civil courts' jurisdiction. The only provision in the statute which deals with the ouster of civil court's jurisdiction is Section 354. As already noticed exclusion thereunder is not complete but only partial and is necessarily limited to the terms and intendment of that provision. Even if the exclusion were complete, the civil courts are not wholly helpless, for exclusion of civil courts' jurisdiction is always subject to certain well recognized limitations. There can be no doubt that the suits as

brought are suits of civil nature. Section 9 of the C.P.C. provides that the civil courts have jurisdiction to try all suits of civil nature excepting suits of which cognizance is either expressly or impliedly barred. The section thus starts with a presumption that exclusion of civil courts' jurisdiction is not to be readily inferred. It must either be clearly expressed or necessarily implied. It is further significant that Section 9 does not make any distinction between a civil right existing at common law and that created by statute. It is well settled that even if jurisdiction is excluded expressly or by necessary implication the civil courts have jurisdiction to examine cases where the provisions of the Act have not been complied with by the statutory Tribunals or fundamental principles of procedure have been violated. This is what has been said in AIR 1940 105 (Privy Council) by the Privy Council. Their Lordships there observed thus:

It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

While referring to these observations with approval, the Supreme Court in *Firm and Illuri Subbayya Chetty and Sons Vs. The State of Andhra Pradesh*, struck a note of caution by observing:

It is necessary to add that these observations, though made in somewhat wide terms, do not justify the assumption that if a decision has been made by a taxing authority under the provisions of the relevant taxing statute, its validity can be challenged by a suit on the ground that it is incorrect on the merits and as such, it can be claimed that the provisions of the said statute have not been complied with. Non-compliance with the provisions of the statute to which reference is made by the Privy Council must, we think, be non-compliance with such fundamental provisions of the statute as would make the entire proceedings before the appropriate authority illegal and without jurisdiction. Similarly, if an appropriate authority has acted in violation of the fundamental principles or judicial procedure, that may also tend to make the proceedings illegal and void and this infirmity may affect the validity of the order passed by the authority in question. It is cases of this character where the defect or the infirmity in the order goes to the root of the order that makes it in law invalid and void that these observations may perhaps be invoked in support of the plea that the civil court can exercise its jurisdiction notwithstanding a provision to the contrary contained in the relevant statute.

The Supreme Court in that case did not think it necessary to lay down cases where such a plea would succeed. In *Firm Seth Radha Kishan (Deceased) Represented by Hari Kishan and Others Vs. The Administrator, Municipal Committee, Ludhiana*, their Lordships observed thus:

A suit in a civil court will always lie to question the order of a tribunal created by a statute, even if its order is, expressly or by necessary implication, made final, if the said tribunal abuses its power or does not act under the Act but in violation of its provisions.

It is clear that even if there was a complete ouster of jurisdiction the civil courts are at liberty to interfere where the authorities have acted in violation of the fundamental principles of judicial procedure or committed such errors as would affect the merits of the case, procedural though in nature they (these errors) may be. The civil courts' jurisdiction being so wide, it cannot possibly be contended that the bar created u/s 354 does not empower the civil courts to interfere with the assessments made when the quasi-judicial authority had acted in a manner wholly against the judicious procedure laid down and did not follow the judicial principles and the provisions of the Act. It is quite a different matter if the authorities had gone wrong in their conclusion having followed the well settled principles and also the provisions of the Act.

It would then be only an error of judgment. That may not necessarily give cause for interference by the civil court. Section 354 in fact refers to errors whether they are clerical errors or even mistakes but of a bona fide nature which would not by themselves warrant interference. In order to escape the scrutiny of civil court even in such cases, it is however essential that the provisions of the Act must have been in effect and substance complied with. The question is, whether the provisions in relation to assessment have thus been followed by the assessing authority. Section 82 of the Act provides:

(1) Every building shall be assessed together with its site and other adjacent premises occupied as appurtenance thereto unless the owner of the building is a different person from the owner of such site or premises.

(2) The annual value of lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to let from month to month or from year to year less a deduction, in the case of buildings, of ten per cent of that portion of such annual rent which is attributable to the buildings alone apart from their sites and the adjacent lands occupied as an appurtenance thereto and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever.

Provided....

23. Reliance was also placed in *Municipal Council, Tenali v. Sri Ram Talkies, Tenali* (1960) II An.W.R. p.45 wherein the Division Bench while dealing with Section 82 (1) and (2) of the Madras District Municipalities Act, 1920 observed:

Section 82(1) of District Municipalities Act, the plaintiff was liable to pay property tax only in respect of the annual value of the building. The plaintiff was not liable to pay the tax in respect of the site (which belonged to two different owners) on which the cinema building was constructed. It is only the owners of the site that

had to be proceeded against for the collection of the property-tax in respect of the site on which the cinema-house was constructed.

The Municipality violated the provisions of Section 82(1) in collecting the property-tax in respect of both the site and the building from the plaintiff.

Where any express provision of the Act is contravened or an erroneous view is taken of the provisions, the Civil Court is bound to interfere with the wrong assessment made by the executive authority or the municipal council. It is true that the question whether there has been substantial compliance with the provisions of the Act is a question of fact depending on the particular circumstances of each case. What has to be decided in each case is whether the provisions of the Act have been in effect complied with. A mere pretence or a semblance of following the provisions of the Act does not oust the jurisdiction of the civil Court under the provisions of Section 9, Civil Procedure Code. It is no doubt true that the Court will not sit as an appellate or revisional Court as against the decision of the executive authority or the municipal council but will certainly interfere when the provisions of the Act have not been in effect or in substance complied with.

In the instant case, the rent agreed to be paid under the lease-deeds include both for the building and the machinery and furniture contained therein. It is in evidence that the actual cost of erecting the building was Rs. 55,000/- and the value of the cine-equipment, etc., amounted to Rs. 74,500/-. There can be no doubt that the depreciation and the wear and tear of the cine-equipment and furniture, etc., will be greater than that of the building and that the rent for the cine-equipment etc. would be more than the rent for the building. Inasmuch as the Municipal council has not given cogent reasons for apportioning the rent or the hiring charges for the cine-equipment, etc., at roughly 10 per cent of the amount stipulated under the lease-deeds, the order passed by the Municipal Council is quite arbitrary and capricious and is not based on any data or evidence. The apportionment of the rent between the building and the cine-equipment, etc., should be in the ratio of 2 :3. When plaintiff is seeking a refund of the property-tax alleged to have been paid in excess, the Court is entitled to decide what is the proper assessment on the building in order to direct refund of the excess amount that is illegally collected.

24. It is stated that the said Act had been repealed by the Andhra Pradesh Panchayat Raj Act, 1994 and the present Section 267 deals with assessment etc., need to be impeached and Sub-section (2) of Section 261 virtually is in para materia with Sub-section (2) of Section 151 of the repealed Act.

25. It is pertinent to note that Section 151(2) of the Act, governs the present litigation. To lay down a broad proposition that under no circumstances the Civil Court can entertain a suit, cannot be sustained. It may be that the Civil Court is competent to examine, if the provisions of the Act had not been followed at all or in certain like cases. Under what circumstances, the Civil Court can interfere, the

situations cannot be elaborated exhaustively. At the best, they can be illustratively given. It is needless to say that this aspect may have to be decided depending upon the facts and circumstances of a particular given case. Hence, it cannot be laid down as a broad proposition, under no circumstances, the Civil Court can entertain a suit where a demand had been made in relation to the assessment. However, it is brought to the notice of this Court that the notice u/s 144 of the Act had not been issued at all and hence, the suit itself is not maintainable.

26. In the light of the peculiar facts and circumstances, especially inasmuch as the specific pleas in this regard had not been taken, the decree and judgment of the Appellate Court are hereby set aside and the matter is remanded to the Court of first instance for the purpose of giving opportunity to both the parties to put in the respective additional pleadings taking all the pleas and the parties are also at liberty to adduce further evidence in this regard and the Court of first instance to decide the matter afresh in accordance with law.

27. Accordingly, the Second Appeal is allowed to the extent indicated above. No order as to costs.