(2000) 12 MAD CK 0117

In the Madras High Court

Case No : W.A. No. 1446 of 2000

R. Budree APPELLANT

Vs

State of Tamil Nadu and Others RESPONDENT

Date of Decision : 21-12-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 17, Order 5 Rule 17
Tamil Nadu Urban Land Tax Act, 1966 — Section 11, 11(1), 35

Citation : (2000) 12 MAD CK 0117

Hon'ble Judges : V.S. Sirpurkar, J;M. Chockalingam, J

Bench : Division Bench

Advocate : J.R.K. Bhavanandam, for the Appellant; Haja Nazirudeen, Spl. Govt. Pleader (Taxes), for the Respondent

Final Decision : Allowed

Judgement

V.S. Sirpurkar, J.—The appeal is against the order of the learned single Judge by which, the learned single Judge has dismissed the writ petition. In this writ petition, the Petitioner had challenged predominantly the order passed by the Commissioner of Land Reforms, Chepauk, dated 28-6-2000. This order was passed in the revision filed by the Assessee/Petitioner against the demand notice served in respect of his properties. The Commissioner has observed in paragraph 3 that in spite of the notice to the Assessee, he remained absent and, therefore, the assessment order came to be passed. It seems that the Petitioner also had argued on merits on the ground that the lands were classified as "wet lands". The Commissioner rejected that contention by holding that the lands were not cultivated for more than ten years as there was no irrigation facility available to these lands. On mat basis the Commissioner came to the conclusion that the land is "urban land" in character since Pallavapuram where the lands wore situated fall in the urban character. The order passed by the Assistant Commissioner (Urban Land Tax), dated 12-12-1997 thus came to be confirmed by the Commissioner. It was this order, which was sought to be challenged in the writ petition and the learned single Judge has taken a view that the

Commissioner had already gone into the facts of the case and held that though the lands were classified as "wet lands" in the revenue records, they were "barren lands" as there was no irrigation source maintained by the State Government. The learned Judge, therefore, has confirmed the finding that the lands cannot be treated as "agricultural lands" and have to be construed as "urban lands."

2. The Learned Counsel, at the outset, pointed out that there was absolutely no notice served which is contemplated u/s 35 read with Section 11 of the Urban Land Tax Act. It is an admitted position that the Petitioner had not filed any return and, therefore, this case fell within the ambit of Section 11 of the Act. The Learned Counsel argues that even then before taking an action u/s 11, a notice has to be served as contemplated in Section 11(1) of the Act specifying therein the details as contemplated in that section. The Learned Counsel points out that after this notice, an opportunity has to be given to the Assessee for leading evidence and it is only thereafter that the market value of the urban land and the amount of urban land tax have to be arrived at. The Learned Counsel points out that this notice not having been given to the Petitioner, the whole proceedings further were of no consequence.

3. The Learned Counsel appearing on behalf of the Respondent, however, pointed out that there was a clear evidence in the file to suggest that the notice was actually served. The Learned Counsel points out that the provisions of Section 35 of the Act says a notice under this Act may be served on the person by name, either by post or as if it may be summons issued by a court under the Code of Civil Procedure, 1908. The Learned Counsel, therefore, suggests that since the notice u/s 11(1) was served like "summons", it should be held as a good and sufficient service.

4. In this case, it is an admitted position that the notice was not served by post, which is the first mode of service as contemplated u/s 35 of the Act. Normally when the notice should have been served as a "summons", the relevant rule is Order V, Rule 17 CPC which provides affixation of the copy of the summons but, that too has to be done on account of the refusal on the part of the notice to accept the same or where he cannot be found. Unfortunately, for the Respondent that evidence is not available with them; nor has any proceeding had been noted in that behalf. We would have been satisfied had there been any notation in the file to the effect that on a particular date the notice was sought to be served and that the notice was not found or avoided to accept it or refused to accept it. It is only then that the affixation proceedings can be taken at least as per Order XXI Rule 17 of CPC That not having been done, we cannot held this service to be a good service. Unfortunately for the Respondent, there does not appear to be anything in the file, which we have ourselves seen, to suggest that the notice was sought to be served on the Petitioner and the Petitioner was absent or was not available or that he refused to accept it and, therefore, the same was affixed on the building where he ordinarily resides. Unfortunately, we do not have even

the date on which all these things were done, viz. effort to locate the Petitioner, his refusal, if any, to accept the notice and the date of affixation.

5. The Learned Counsel for the Appellant pointed out that this point was raised before the Commissioner also. However, the Commissioner has not gone into that issue and has only chosen to held on merits of the matters. The Learned Counsel invited our attention to the revision memo wherein the specific ground is raised that no notice under the Act has ever been served on the Appellant wherein, the specific ground is raised that no notice under the Act has ever been served on the Appellant. Unfortunately, even the learned single Judge has not addressed himself to these though in the writ petition also we find that this ground has been raised in para 4 of the affidavit and in ground (b) of the grounds.

6. In mat view, the orders below would have to be set aside. They are set aside. The Department is directed to serve a fresh notice to the Petitioner and the Petitioner as well as the Department would men proceed with the matter in the light of the provisions of law. With these observations, the appeal stands allowed. CMP. No. 12771 of 2000 is closed.

