
(1970) 01 MAD CK 0037
In the Madras High Court

R. Subbaraya Mudaliar

APPELLANT

Vs

Suramangalam Town Panchayat

RESPONDENT

Date of Decision : 05-01-1970

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 354
Tamil Nadu Panchayats Act, 1958 — Section 174

Citation : (1970) 83 LW 635 : (1970) 2 MLJ 546

Hon'ble Judges : B.S. Somasundaram, J

Bench : Division Bench

Judgement

B.S. Somasundaram, J.—This second appeal arises out of a suit filed by the appellant, the owner of a cinema theatre, in Suramangalam, Salem District, questioning the enhancement of property tax by the Panchayat. The tax for this theatre for the half-year ending 31st March, 1959, was only Rs. 233-87. This was increased for the half-year ending 30th September, 1959 to Rs. 622-92. On 16th November, 1959, the appellant requested the Executive Officer to furnish information as to the basis of the assessment. On the same day, the latter informed him that the tax was determined on the basis of a rental value of Rs. 800 per mensem. On his appeal, the tax was reduced to Rs. 467-10. This was on the basis of a monthly rental value of Rs. 600. They added the water tax and library cess and demanded Rs. 774.12 for the succeeding half-year. The appellant's petition to the Collector of Salem, did not have any effect. Thereupon, he filed the suit for recovering Rs. 1,273-08 paid as tax. He contended that the levy was illegal, arbitrary and capricious and without any notice to him before the enhancement. The Panchayat resisted his claim stating that the levy which was in pursuance of the general revision, was quite proper and reasonable and that it did not call for any interference by Court. The learned District Munsif decreed the suit. But, on appeal, the learned Subordinate Judge, Salem, dismissed the suit, observing that the levy was quite proper and legal. The correctness of this decision is now canvassed in this appeal.

2. Section 174 of the Madras Panchayats Act, 1958, is as below:

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 in substance and effect been 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) No suit 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 assessment or collection of money made under the said authority.

Provided that the provisions of this Act have in substance and effect been complied with ;

(3) No distraint or sale under this Act shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any error, defect, or want of form in the bill, notice, schedule, form, summons, notice of demand, warrant of distraint, inventory, or other proceedings relating thereto, if the provisions of this Act, and of rules and by-laws made thereunder, have in substance and effect been complied with:

Provided that every person aggrieved by any irregularity may recover satisfaction for any special damage sustained by him.

The proviso to Clause (2) indicates that when there is no compliance in substance or in effect with the provisions of the Act, there could be a cause of action for a suit. *Arasiramani Panchayat v. Sellappa Goundar* (1961) 2 M.L.J. 585, also lays down that for invoking the jurisdiction of the civil Court, to question the validity of an order of assessment, it should be shown that in levying the assessment, the provisions of the Act or Rules, have not, in substance or effect, been complied with. "Civil Courts can interfere only when the assessment complained of is either in excess of or in contravention of the powers conferred upon the Corporation by the statute, and where the provisions of the Act are not complied with in substance and in effect." "Non-compliance with the provisions of the Act in substance and effect, fall generally under two heads, viz., (a) with reference to the subject-matter of the grievance itself and (b) in regard to the procedure adopted relating to the assessment and levy of the tax. In regard to (a), it will be a case of an assessment which is oppressive, capricious, unreasonable, and ex facie, exhibiting mala fides, which would make it naturally fall either under the head of excess or in contravention of the powers conferred upon the Corporation by the statute. The Civil Court is not called upon to try the merits of the question but to see if the authorities possessed of limited jurisdiction have exceeded their bounds." Vide *Alli Ramanan, In re* (1957) 70 Law Weekly 19. *Madurai Municipality, by Commissioner Vs. K.N.K. Jagannatha Ayyar*, , lays down that even if the Commissioner had arrived at an erroneous

decision, the proper forum for redress was the Municipal Council to whom an appeal lay. It is for the statutory authority to decide first what was the actual rental received and on the basis of that, fix the assessment payable by the owner of the house. Where the Court finds that in substance and effect the provisions of the Act have been complied with by the Municipality, the ban, imposed by Section 354 (2) of the District Municipalities Act will apply. Even at the outset, I may observe that the appellant has not shown that the provisions of the Panchayats Act have not been complied with in substance and effect. The only relevant averment in the plaint in this regard, viz., in sub-paragraph 8, is to the effect that it is a case of a general revision and the Rules do not prescribe the issue of any notice to the individual concerned.

3. Rule 9 contemplates only a torn torn in the village, and in the instant case before us, the appellant had knowledge about the proceedings. He had addressed letters the Executive Officer asking for clarification as regards the basis of assessment. He had also preferred an appeal and partly succeeded therein. Therefore, his grievance that there was no notice to him prior to the enhancement, is without any substance and it cannot be availed of for holding that there has been a non-compliance with the provisions of the Act.

4. The appellant has also not shown that the assessment in this case was either arbitrary or capricious or one done mala fide. He has not placed any material to show that it is so. The civil Court is not, so to say, a Court of appeal against the order of the assessing authority. When once it is satisfied that the assessing authority has exercised its judgment fairly on the materials placed before it, and has come to a particular conclusion as to the annual value of the property, the jurisdiction of the civil Court is ousted by Section 354 of the Madras District Municipalities Act. Where the levy of tax by a local authority is within the framework of the Act and is in substantial compliance with the provisions of the Act, the Civil Court has no jurisdiction to go into the question whether the levy is excessive or not.

5. The Municipal Council of Municipal Council Vs. S.C.M. Haniffa and Others, , points out that the profit basis method is the well-accepted basis and is one of the practical working rules to determine what a hypothetical tenant would be willing to pay as rent of the premises to a hypothetical landlord who is prepared to let the premises as it stands. The expression " annual letting value" was considered by Lord Halsbury in Cartwright v. Sculcoates Union (1899) 1 Q.B. 667, in these terms:

The problem is to ascertain, according to the statute, what a tenant from year to year might reasonably be expected to give as rent. For the solution of that problem it appears to me that apart from the decisions...all that could reasonably effect the mind of the intending agent ought to be considered.

In Kingston Union v. Metropolitan Water Board L.R. (1926) A.C. 331, the Court considered that the actual profits made by the occupants for the time being was

a useful and relevant factor to determine what a tenant would be willing or likely to pay for hiring the premises. Their Lordships of the Supreme Court, in the decision reported in *Motichand Hirachand and Others Vs. Bombay Municipal Corporation*, , have held that the measure for purposes of renting is the rent which a hypothetical tenant looking at the building as it is, would be prepared to pay. While estimating the rent which he would be prepared to pay, he would naturally take into consideration all the advantages together with the disadvantages attached to the property, that is the maximum beneficial use to which he would be able to put the property. In doing so, he is bound to take into consideration the fact of the property being situated at a unique place. As observed in the decision reported in *Municipal Council Vs. S.C.M. Haniffa and Others*, , the locality of the theatre the rent which the lessees of the theatres in the neighbourhood are paying, the accommodation in the theatre, the percentage of the different classes of seats, its reputation for exhibiting class pictures or otherwise, are relevant aspects to be taken into consideration as bearing upon the profit which would enter into the mental calculation of the hypothetical tenant. The appellant has not placed any material to show that the assessing authority has assessed the property in an arbitrary manner without any basis. Exhibit B-1, the revision register shows that the monthly rental for the suit theatre was fixed at Rs. 800 and the officer who did it has given his reasons, which are as below:

If the theatre in question is let out on a monthly rent, the lease will fetch Rs. 800 as rent. I consider this as fair and fix at Rs. 800 as rent per month and tax to be assessed accordingly. There are three shops in addition to this, which, from enquiries I am told, are fetching at Rs. 15 each per month.

6. This theatre is on the border of the Salem Municipality. There is no other permanent theatre within six or seven miles. The Salem Railway Junction is within Suramangalam limits, and a number of Railway workers are residing in this place. The Salem Magnesite Works is to the north of the road and thousands of workers are engaged in this factory. On the side of the appellant, it is urged that the taxes for Siddheswara Talkies and Jothi Talkies which are situated within Salem Municipal limits, are far less and that on that basis the tax assessed for this theatre is excessive. It is in evidence that these two theatres only second and third rate pictures and they are in the outskirts of the Salem Municipal Limits. Even though the appellant had produced the daily collection report for the Siddheswara Talkies, he has not chosen to produce his own collection books to substantiate his contention that the levy is unduly high. The Board has carefully considered his appeal and by their resolution Exhibit B-7, even though they were satisfied that the monthly rental for the suit theatre was more than Rs. 600 they fixed it at the rate of Rs. 600 per month. Thus it cannot be said that the valuation fixed by the assessing authorities is either capricious or arbitrary and one fixed without any basis. The appellant also has not established that the assessing authorities failed to observe the provisions in substance and in effect, so as to attract the jurisdiction of the civil Court.

7. The appeal fails and the same is dismissed with costs. No leave.