(1969) 06 MAD CK 0009

In the Madras High Court

Smt. S.R.Y. Bhavani Devi APPELLANT

Vs

Corporation of Madras and Another RESPONDENT

Date of Decision : 17-06-1969

Acts Referred:

Madras City Municipal Corporation Act, 1919 — Section 105

Citation : (1969) 82 LW 724 : (1970) 1 MLJ 395

Hon'ble Judges : M.M. Ismail, J

Bench : Single Bench

Judgement

M.M. Ismail, J.—The petitioner is the owner of premises No. 23, Nungambakkam High Road, Madras-34. The total area of the building

with the adjacent vacant site all round is about 34 grounds, out of which the building portion alone occupies an area of about ten grounds. The

entire main building of the total extent plinth area of about 16,000 square feet excepting a small area of about 1,000 square feet in the north-east

corner of the main building was let out 16 the Madras Industrial Investment Corporation on a monthly rental of Rs. 1,400 from 1st February,

1963. The north-east corner of the building has been let out to M/s. Sarathi Films on a rental of Rs. 50 per month. But there is an out-house in the

north-eastern extremity of the compound and that out-house is in the occupation of a tenant by name Kohinur Confectionary, paying a monthly rent

of Rs. 50. The Madras Industrial Investment Corporation vacated the premises under its occupation on 31st January, 1966 and as such the

portion in its occupation has remained vacant from 1st February, 1966 until 31st August, 1966. During this period the petitioner was getting a rent

of Rs. 100 only made up of Rs. 50 from Sarathi Films occupying a portion of the main building and Rs. 50 from Kohinur Confectionery occupying the out-house. It is under these circumstances the petitioner even on 20th January, 1966, before the major portion of the main building actually fell

vacant, wrote to the Revenue Officer of the Corporation of Madras about the impending vacancy and the likelihood of the main building remaining

vacant and prayed for waiving the property tax for the period of vacancy. She wrote another letter on 3rd March, 1966. Not having any reply

even to this letter, she wrote a third letter on 9th May, 1966. Without sending any reply to any of these letters, the Assistant Revenue Officer by a

notice dated 14th June, 1966 called upon her to pay the property tax of Rs. 2,520.94 within 15 days. On 20th August, 1966, an officer of the

Corporation approached the petitioner with a distress warrant to distrain her goods, and chattels at the place of her residence in Gandhinagar and

demanded from her payment of Rs. 5,181.78 together with warrant fees. The petitioner then sent a revision petition to the Commissioner of the

Corporation and according to the petitioner she has not received any reply from the Commissioner. Four days after the distress warrant by

communication R.D.C. No. 33485 of 1966 dated 24th August, 1966, the Assistant Revenue Officer of the Corporation informed the petitioner

that her request for vacancy remission could not be granted as it is only a partial vacancy. It is to quash this communication of the Assistant

Revenue Officer, the present writ petition has been filed.

2. Mr. G. K. Damodar Rao, the learned Counsel for the petitioner, in support of the writ petition, put forward two contentions. The first contention

is that, while granting or refusing to give remission of the property tax, the authorities were acting in a quasi-judicial capacity and that no

opportunity was given to the petitioner for pressing her case before any final decision was arrived at by them. The second contention is that even

though the vacancy is a partial one, the petitioner is entitled to vacancy remission by virtue of Section 105 of the Madras City Municipal

Corporation Act, 1919.

3. I shall take up the second contention first. Section 105 (1) of the Act says:

When any building whether ordinarily let or occupied by the owner himself has been vacant and unlet for thirty or more consecutive days in any half

year, the Commissioner shall remit so much, not exceeding one-half of such portion of the tax as relates to the building only as is proportionate to the number of days during which the building was vacant and unlet in the half-year.

4. It is necessary to refer to the definition of the term building as contained in Section 3 (4) of the Act. That definition says that "" building "" includes:

(a) a house, out-house, stable, latrine, godown, shed, hut, wall (other than a boundary wall not exceeding 8 feet in height) and any other structure

whether a masonry, bricks, mud, wood, metal or any other material whatever;

(b) a structure on wheels or simply resting on the ground without foundations; and

(c) a ship, vessel, boat, tent, van and any other structure used for human habitation or used for keeping or storing any article or goods.

5. It is an admitted fact that the portion occupied by M/s. Sarathi Films on a monthly rental of Rs. 50 constitutes portion of the main building,

though only a small portion. In this context, the question arises, whether the petitioner is entitled to any vacancy remission u/s 105 of the Act in

relation to the major portion of the main building vacated by the Madras Industrial Investment Corporation and remaining vacant for the relevant

period. As the language of the statute stands. I am unable to accept the contention of the learned Counsel for the petitioner that, notwithstanding a

small portion in the main building being in the occupation of a tenant the petitioner is entitled to vacancy remission, because the major portion of the

building remained vacant. The definition of the term "" building "" in the Act does not support any such contention. It is useful in this context to

compare the definition of the term "" building "" occurring in the Madras Buildings (Lease and Rent Control) Act, 1960, and the definition of the term

building "" in the Madras City Municipal Corporation Act, 1919, extracted by me already. The definition of "" building "" in the Madras Buildings

(Lease and Rent Control) Act, 1960, as given in Section 2 (2) of the said Act is as follows:

''building '' means any building or hut or part of a building or hut, let or to be let separately for residential purposes and includes (a) the garden,

grounds and out-houses, if any, appurtenant to such buildings, hut or part of such building or hut and let or to be let along with such building or hut.

(The other portions of the definition are not necessary for the purposes of this case).

6. To accept the argument of the learned Counsel for the petitioner is to incorporate the definition of the term building in the Madras Buildings

(Lease and Rent Control) Act, 1960 into the Madras City Municipal Corporation Act, 1919, while the statute itself has not done so. Why the

statute has not done so can be easily understood from the fact that u/s 100 of the Madras City Municipal Corporation Act, 1919, property tax is

payable in respect of buildings not only in the occupation of the tenants but also in the occupation of the owners. Therefore, whether a building is

let or not is wholly immaterial and irrelevant for the purpose of liability to pay property tax under the Madras City Municipal Corporation Act,

1919. Hence that a portion of a building is capable of being let out and has been so let out and subsequently remained vacant is wholly irrelevant

for the purpose of levy of property tax under the Madras City Municipal Corporation Act, 1919 and consequently for the purpose of remission u/s

105 of the Act. Therefore, irrespective of any consideration of hardship or injustice on which great stress was laid by the learned Counsel for the

petitioner on the language of Section 105 and with reference to the definition of the term "" building "" occurring in Section 3 (4) of the City

Municipal Act, 1919, it must be held that the owner of a building is entitled to a remission of the property tax only if the building remains wholly

vacant or unlet; and if any portion of the building is in occupation or let out then the provisions of Section 105 of the Madras City Municipal

Corporation Act, 1919 are not attracted and the owner of the building is not entitled to any remission. Consequently I am unable to accept the

second contention of the learned Counsel.

7. As far as the first contention is concerned, no doubt the Corporation authorities would have been well advised in informing the petitioner, before

taking any coercive steps that she was not entitled to any remission of the tax, and certainly the conduct of the Corporation authorities cannot be

commended from any point of view At the same time I am of the view, that no purpose will be served by giving an opportunity to the petitioner in

the context of the facts of this case. With regard to the facts, it is admitted that the portion in the occupation of M/s Sarathi Films is part of the main

building, though a small part. Consequently with reference to the claim for remission u/s 105 of the Act, there is no point of fact to be enquired into or investigated for the purpose of arriving at a decision whether the petitioner is entitled to remission of property tax or not. Hence I am not

satisfied that any case has been made for directing the Corporation authorities now to give an opportunity to the petitioner before taking or

enforcing their decision that the petitioner is not entitled to the vacancy remission because the vacancy that occurred was only a partial vacancy.

Under these circumstances the writ petition fails and is dismissed. There will be no order as to costs.