

(1998) 08 MAD CK 0132

In the Madras High Court

Case No : Second Appeal No. 195 of 1986

Sreenivasan and four others

APPELLANT

Vs

Pollachi Municipal Council and another

RESPONDENT

Date of Decision : 27-08-1998

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 82

Citation : (1998) 08 MAD CK 0132

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : N. Nicholas, for the Appellant;

Judgement

K.P. Sivasubramaniam, J.—This Second Appeal is directed against the judgment of the learned Subordinate Judge, Udumalaipettai, in A.S. No. 1983, dated 27.8.1984, reversing the judgment of the learned District Munsif, Pollachi, in O.S. No. 341 of 1972, dated 23.2.1983. Legal representatives of the plaintiff have filed the above Second Appeal. It is not necessary to extract the mutual pleadings and the contentions raised by the both the parties. The only legal issue which arises for consideration is as to whether the process of assessment for properly tax as adopted by the defendant/Municipality is legally justifiable or not While the trial Court upheld the contentions of the assessee/plaintiff, and decreed the suit for injunction, the appellate Court reversed the finding of the trial Court and held that the process of assessment by the defendant was justified and with the result the appeal was allowed. Hence, the present Second Appeal by the legal representatives of the plaintiff.

2. Admittedly, the assessment was not based on the annual rental value in terms of the provisions under the Tamil Nadu Buildings (Lease and Rent Control) Act According to the defendant, the rental value for Door No. 103/C was fixed even-before 1961 with reference to the rent paid by the tenants and tax was fixed for assessment in 1965, that at the time of quinquennial revision in 1968, the Special Officer appointed by the Government for the work, had personally

inspected the building and made personal enquiries as regards the rents paid by the tenants and that at the time of inspection there were five tenants. According to the defendant they were personally enquired and the Special Officer found that the rent realised by the plaintiff was Rs. 150/- per month and hence the tax was revised after giving notice to the plaintiff. The other allegations and counter allegations between the parties are irrelevant inasmuch as the question which arises for consideration is as to whether the process adopted by the defendant/Municipality is in accordance with law.

3. It is not disputed that u/s 82 of the District Municipalities Act, assessment is carried out in respect of the defendant/Municipality. While interpreting the said provision and analogous provisions in the corresponding Acts of other States, the Supreme Court and this Court have consistently held that the gross annual rent has to be assessed only in terms of the provisions contained in the Rent Control Legislation.

4. In *The Corporation of Calcutta Vs. Sm. Padma Debi and Others*, the Supreme Court has held that once the provisions of the Rent Control Act had come into force, the Corporation had no power to fix the annual value higher than the standard rent.

5. In *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, the Supreme Court held that where a building was governed by the provisions of Rent Control Legislation, the landlord cannot reasonably be expected to receive anything more than the standard rent from a hypothetical tenant and the annual value of the building cannot therefore exceed the standard rent, and therefore, the annual value must be limited to the measure of standard rent determinable under the Rent Act and cannot be determined on the basis of the higher rent actually received by the landlord from the tenant.

6. In *Municipal Council v. Town Ratepayer's Assn.* (1991-II M.L.J. (S.C.) 7) the Supreme Court while dealing with S. 82 (2) of the Tamil Nadu District Municipalities Act, has held that the test essentially was what rent the premises can lawfully fetch if let out to a hypothetical tenant. It was held that the Municipality was not free to assess any arbitrary annual value and was bound by the fair or the standard rent which would be payable for a particular premises under the Rent Control Act in force. It was further held that no distinction can be made between buildings for which fair rent had actually been fixed and those in respect of which no such rent has been fixed. These judgments have also been followed by this Court in a number of cases decided by the respective learned single Judges of this Court in the following cases:-

(i) *K.M.S. Abdul Hasan Vs. The Tiruvarur Municipality*,

(ii) *The Municipal Council Vs. Taj Prakasha Thaikal Estate and Others*,

(iii) 1992 (II) M.L.J. 299=1992-I-L.W.110 (*Chellammal v. Alandur Municipality*)

(iv) *Magdoom Sheriff alias Sultan Sheriff Vs. Kancheepuram Municipality*,

7. Per Contra, a judgment rendered by S. Swamikkannu, J., reported in 1981 (II) M.L.J. 191 has adopted a different reasoning. The lower appellate Court has mainly relied on the said judgment for having rejected the contention of the appellant. In the said judgment, the learned Judge even though he had referred to the judgment of the Supreme Court in 1971 (II) M.L.J. 7 (supra) and other judgments of the learned single Judges of this Court, ultimately held that he did not think that the method of estimate contemplated u/s 82 of the Tamil Nadu District Municipalities Act was the one as contemplated under the Tamil Nadu Buildings (Lease and Rent Control) Act. With due respect I am unable to agree with the views expressed by the learned Judge in the face of a judgment rendered by the Supreme Court which have been cited above, particularly the judgment of the Supreme Court in 1971 (II) M.L.J. 7 (supra) in which the Supreme Court had occasion to deal with the very provisions u/s 82 of the Tamil Nadu District Municipalities Act.

8. With the result, the judgment of the lower appellate Court cannot be sustained and has to be set aside. On a perusal of the judgments of the Courts below it also appears that the defendant had also pleaded that in an earlier suit filed by the Municipality for the recovery of the dues, the suit had been decreed and that therefore, the present suit filed by the assessee was barred by res judicata. That issue was decided against the defendant by both the Courts on the ground that no copy of judgment had been filed as an exhibit before the Court to substantiate that the issues raised in both the suits were common. Therefore, the said issue also does not arise for consideration. With the result, the above Second Appeal is allowed and the defendant/Municipality is at liberty to proceed further for fixation of the property tax in accordance with law. No costs.