
(1992) 02 MAD CK 0063
In the Madras High Court

Sultan Abdul Khader

APPELLANT

Vs

The Corporation of Madras

RESPONDENT

Date of Decision : 11-02-1992

Acts Referred:

Madras City Municipal Corporation Act, 1919 — Section 137B

Citation : (1992) 2 MLJ 63

Hon'ble Judges : Abdul Hadi, J

Bench : Division Bench

Judgement

Abdul Hadi, J.—Defendant is the appellant in this appeal against the decree in favour of the respondent/Corporation of Madras, in the latter's suit O.S. No. 5943 of 1969, on the file of the VII Assistant Judge, City Civil Court, Madras, for recovery of property tax amounting to the tune of Rs. 10,849 for the period from second half of 1964-65 to second half of 1968-69 (both inclusive). The suit amount admittedly relates to enhanced tax levied u/s 137-B of the Madras City Municipal (Corporation) Act, 1919. No doubt the defendant has purchased the suit property only on 25.10.1966 and one contention of the Learned Counsel for the appellant is that his vendor had not been impleaded in the suit. But under the Act even the purchaser will be liable for the property tax on the property purchased by him, even with reference to the period prior to his purchase.

2. But the substantial contention of the learned Counsel for the appellant is that even assuming the procedure prescribed under Schedule IV to the Act has been followed by the Corporation for enhancing the tax, the notice required u/s 137-B has not been served at all on the defendant and that therefore the present suit would not lie. On the other hand, the learned Counsel for the respondent/Corporation contends that the notice contemplated u/s 137-B is only a notice calling for objection to a proposed enhancement of the property tax.

3. I have considered the rival submissions. The argument of the learned Counsel for the respondent/Corporation has absolutely no basis in the light of what is specifically spoken to in Section 137-B of the Act. Section 137-B runs as follows:

Notwithstanding anything to the contrary contained in this Act or the rules made thereunder, if for any reason any person liable to pay any of the taxes or fees livable under this chapter has escaped assessment in any half-year or year (or has been assessed in any half-year or year at a rate lower than the rate at which he is assessable or, in the case of property tax has not been duly assessed in any half year or year consequent on the building or land concerned having escaped, proper determination of its annual value, the Commissioner may, at any time within three years from the date on which such person should have been assessed, serve on such person a notice assessing him to the tax or fee due and demanding payment thereof within fifteen days from the date of such service; and the provisions of this act and the rules made thereunder shall so far as may be apply as if the assessment was made in the Half-year or year to which the tax or fee relates.

So it is clear that the notice spoken to u/s 137-B is only a notice assessing the owner to tax and demanding payment thereof, It is not a notice proposing to enhance the property tax and calling for objection therefor. That notice is actually issued under Rule 3 of Schedule IV to the Act. Pursuant to such a notice under Rule 3 the party concerned may give his objections and enquiry would be held and the enhancement of assessment is completed thereby. Thereafter pursuant to Section 137-B, notice assessing the property concerned to tax and demanding payment thereof from him, should go.

4. In *Nafisa Zahara Begum Vs. The Corporation of Madras*, , both the notice proposing to enhance the tax and calling for objections and the notice demanding the enhanced tax were sent to the assesses on the same day and on that ground the notice demanding the tax was quashed. In that context after quashing the said notice the learned Judge observed that it would be open to the Commissioner to issue a fresh notice under the rules, amend the property tax books after giving notices to the petitioner to make a representation and thereafter invoke, if so advised, the powers u/s 137-B for the realisation of the tax. This observation of the learned Judge in the said decision also makes it clear that after completion of the procedure prescribed under Schedule IV for enhancement of the tax the notice contemplated u/s 137-B has necessarily to be issued before the tax could be collected.

5. In view of the fact that such a notice, as contemplated u/s 137-B has not been issued in the present case, the respondent/Corporation cannot make the suit claim and the suit on that account has to necessarily fail. In the present case there is no dispute that such a notice u/s 137-B has not been served on the defendant. The learned trial Judge himself says that the plaintiff has not proved that notice of demand was served on the defendant. But the learned Judge proceeds to say that it is not necessary to maintain the Suit claim. That is not correct, as I have pointed out earlier.

6. I may also point out that in the evidence recorded I find that D.W.1 (defendant) has deposed

Further even P.W.1 has not asserted positively that the notice u/s 137-B had been served on the owner. He only said that he could not say whether the said notice was served on the owner. He also had deposed that he did not know whether the procedure u/s 137-B was followed at all.

7. In the light of the above evidence and in the light of the law as stated above, the suit has to necessarily fail and hence the suit is hereby dismissed. The appeal is allowed. In the circumstances of the case there will be no order as to costs throughout.