

(1955) 03 MAD CK 0024

In the Madras High Court

Case No : Civil Revision Petition No. 1458 of 1952

The Madurai Municipality

APPELLANT

Vs

R. Kamakshisundaram Chettiar and Another

RESPONDENT

Date of Decision : 24-03-1955

Acts Referred:

Contract Act, 1872 — Section 72

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 4

Tamil Nadu District Municipalities Act, 1920 — Section 354, 82, 82(2)

Citation : (1956) ILR (Mad) 530

Hon'ble Judges : P.V. Rajamannar, C.J.;Somasundaram, J

Bench : Division Bench

Advocate : V. Seshadri and K.S. Ramamurthi, for the Appellant; R. Gopalaswami Ayyangar, for the Respondent

Final Decision : Allowed

Judgement

P.V. Rajamannar, C.J.—This revision petition was first heard by Rajagopala Ayyangar, J. who directed it to be heard by a Bench, as he

thought it was desirable to have an authoritative pronouncement on the question which arose in the case. The revision petition arose out of a suit

brought by the first Respondent to recover a sum of Rs. 664-9-5, being the alleged excess amount of property tax collected by the Madurai

municipality in respect of a house belonging to the Plaintiff and the second Defendant. The facts necessary for a disposal of this petition may be

briefly stated. For the half-year ending with 30th September 1947, and subsequent half-years, the Municipality demanded and collected from the

Plaintiff property tax based on a rental value calculated on the basis of the rent which was actually being paid by the tenant of the property, namely,

Rs. 225 per month. In 1949, the tenant filed an application before the Rent

Controller, Madurai, for fixing the fair rent of the house. The Rent

Controller fixed the fair rent at Rs. 140 per month. Under the provisions of the Madras Buildings (Lease and Rent Control) Act, the Plaintiff as

landlord was obliged to refund the rent collected in excess over and above the fair rent fixed from 1st October 1946 (i.e.) the date on which the

Act came into force. The tenant claimed such refund, and the Plaintiff was obliged to refund a sum of Rs. 2,635. He thereafter filed the present suit

for recovery of the excess amount of property tax collected from him by the municipality. The basis of the Plaintiff's claim was that, as the property

tax collected from him was assessed on the rental value as calculated on the amount of rent actually being then paid, namely, Rs. 225, now that the

fair rent had been fixed at Rs. 140, there should be, in effect, a revision of the assessment, and the municipality must be deemed to have collected

an excess amount of property tax, i.e., more than that to which they were properly entitled. The learned Subordinate Judge decreed the suit. The

municipality has filed the above revision petition.

2. Section 82 of the Madras District Municipalities Act, lays down the method of computation of the annual value of property for the purpose of

levying the property tax. The annual value is deemed to be the gross annual rent at which lands and buildings may reasonably be expected to let

from month to month or from year to year less a deduction, in the case of buildings, of ten per cent of that portion of such annual rent which is

attributable to the buildings alone. Schedule IV to the Act, contains rules relating to the assessment of the property tax. Rule 6, says that the value

of any land or building for purpose of the property tax shall be determined by the executive authority. Rule 8 provides for the revision of the

assessment books at any time by inter alia altering the valuation of any property. Such amendment, when made, shall be deemed to have taken

effect on the first day of the half-year in which it is made. There is provision for appeal, and Rule 28 declares that the assessment or demand of any

tax, when no appeal is made, as provided (and when such an appeal is made, the adjudication of the council thereon) shall be final.

3. From the above statutory provisions, it is clear, i. that the executive authority has the power to fix the rental value of any premises for the

purpose of levy of property tax, ii. that the value so fixed, when entered in the

assessment books, is the basis of the levy of the property tax, iii.

that, without an amendment of the assessment, the tax cannot be altered, and
iv. that even an amendment has only a limited retrospective

operation. Now, in this case, it is not pretended that there was any application by the Plaintiff for a revision of the entry in the assessment book.

There is, therefore, nothing prima facie illegal in the levy and collection of the property tax calculated on the annual rental value as entered in the assessment book.

4. The contention on behalf of the Plaintiff, so far as we are able to gather from learned Counsel's argument, is that the Court can interfere with the

value fixed, by the executive officer when it is computed on a totally wrong principle. u/s 82(2) of the Act the annual value shall be deemed to be

the gross annual rent at which the building may reasonably be expected to let. The effect of the Rent Controller's decision that Rs. 140 is the fair

rent is that that is the rent for which the building may reasonably be expected to let. In fact, the landlord will not be entitled to anything more. So,

such fair rent must form the basis for a calculation of the annual value. In support of this contention, learned Counsel for the Respondent relied

upon the judgment of Raghava Rao, J., in Coimbatore Municipality v. Govindayyar (1953) 1 M.L.J. 128. In that case, the Plaintiff was the owner

of a house-property in Coimbatore. The Coimbatore municipality fixed the annual value of the building at Rs. 4,440, and levied property tax on

that footing. The Plaintiff alleged that the said computation of value was capricious and unreasonable, because the fair rent for the house had been

fixed by the District Collector of Coimbatore under the House Rent Control Order at Rs. 150, and on the basis of that rent, the annual rental value,

properly computed, would only come to Rs. 1,665. The Plaintiff, therefore, claimed a refund of the amount of property tax collected in excess by

the municipality. The learned Judge held that the suit was competent and that the Plaintiff was entitled to the relief sought by him. The learned Judge

was of opinion that the order of the Collector fixing the fair rent should have been accepted by the municipality and the action of the municipality in

disregard of the order was capricious and arbitrary and it must be held that the provisions of the Act had not been complied with, and therefore

there was no bar to the suit under the terms of Section 354 of the Madras

District Municipalities Act. The facts in the present case are slightly different from the facts in that case. In the case before us the assessment of the property tax was not made after the Rent Controller had fixed the

fair rent. On the date of the levy and earlier when the rental value was fixed, there was no material except the actual rent being paid by the tenant.

In the case before Raghava Rao, J., the rental value was apparently fixed after the Collector had fixed the fair rent under the House Rent Control

Order. Nevertheless, it must be admitted that the reasoning on which the decision is based does help the Respondent in this case.

5. As indicated by Rajagopala Ayyangar, J., in his order of reference, this petition can be disposed of on the short ground that there cannot be a

refund of a tax paid under an assessment which had become final and which was certainly not illegal, when it was imposed and collected. In

everyone of the cases in which there has been a refund of a tax on the ground that it was illegal, the illegality was present even when the tax was

imposed. Now, it cannot be denied that the tax in the present case was perfectly legal when it was imposed and collected. No authority has been

brought to our notice in which a refund has been granted of a tax which was proper and legal when it was imposed and paid. That is why the

Counsel for the Respondent wanted to bring his case u/s 72 of the Contract Act. But we are unable to agree with him that that section has any

application to this case. This is not a case of money paid under mistake or coercion. Neither the Municipality nor the Assessee was under any

mistake as to the tax payable and the tax was voluntarily paid. The contention of the Respondent apparently was that, because a fair rent was fixed

under the Rent Control Order subsequently and under one of the provisions of that order such fixation operates retrospectively as between the

landlord and the tenant, it must be deemed that the rental value fixed by the Municipality for the years now in question was wrongly computed and

therefore a larger amount of tax was collected than was lawfully due. It is a well-established principle of law that retrospective operation should be

strictly confined to the limits expressly declared or necessarily implied by statute, and there cannot be retrospective operation by analogy. The

provision under the Rent Control Order and Act which makes the landlord liable to repay the amount of rent collected by him in excess of the fair

rent fixed, cannot have general application. The Respondent's Counsel was unable even to suggest any other legal basis for his claim.

6. Though this would be enough to dispose of this civil revision petition, we think it is desirable that we should also deal with the other question

which has been fully argued and which is of general importance, namely, whether the annual value for the purposes of Section 82 of the Madras

District Municipalities Act should necessarily and always be computed on the basis of the fair rent for the concerned property as fixed under the

Madras House Rent Control Act. Of course, where there has been no such fixation of fair rent, the question would not arise.

7. The earliest case cited on this point is that in *The Municipal Corporation of the City of Rangoon v. The Surati Bara Bazaar Co. Ltd.* (1923) ILR

1 Rang. 668 (F.B.). It was there held by a Full Bench of the Rangoon High Court that, in the absence of special circumstances, the Corporation of

the City of Rangoon must take as its basis of assessment of buildings and land for taxation the standard rent in those cases in which the standard

rent has been fixed by the Rent Controller. Section 80(2) of the City of Rangoon Municipal Act defined annual value as the gross annual rent for

which buildings and land liable to taxation might reasonably be expected to let from year to year. In arriving at the conclusion that the standard rent

fixed by the Controller should form the basis, the learned Chief Justice who delivered the judgment of the Full Bench was largely influenced by the

fact that the Rangoon Rent Act made it an offence to take more than the standard rent. The learned Chief Justice observed:

The landlord, the standard rent having been fixed by the Controller, could not reasonably expect to get any higher rent for the premises. Did he

attempt to do so, he would be guilty of an offence for which he would be liable to a heavy fine.

and again at another place:

It would be an offence for a landlord to accept any rent higher than the rent fixed by the Rent Controller.

His final conclusion was, as already stated, that the Corporation must, in the absence of special circumstances, take as its basis the standard rent in

those cases in which the standard rent had been fixed by the Rent Controller. Under the Madras House Rent Control Act it would not be an

offence for a landlord to accept a rent higher than the rent fixed by the Rent Controller, if the tenant willingly pays such rent. It may be that the landlord cannot demand and exact more, but nothing prevents a willing tenant from paying more than the rent fixed by the Controller. Apart from this distinction, one need not quarrel very much with the final conclusion of the learned Judges that ordinarily the standard rent should be taken as the basis for ascertaining the annual value. It was obviously not their opinion that the standard rent should always be taken as the basis and that otherwise the action of the Corporation would be illegal.

8. The Full Bench decision of the Corporation of the Town of Calcutta Vs. Ashutosh De, really turned on a special section, namely, Section 26 of the Calcutta Rent Act, 1920, which ran thus:

During the continuance of this Act the Corporation of Calcutta or any other local authority shall not raise its assessment of any premises above the standard rent on the ground of increase of value.

In the absence of a similar section in the Madras Rent Control Act, that decision furnishes very little assistance.

9. The identical question before us was fully discussed by a Division Bench of the Bombay High Court in Gulam Ahmed v. Bombay Municipality

AIR 1951 Bom. 320, where both Indian and English decisions having a bearing on the question were examined. The learned Judges came to the

conclusion that in arriving at the rateable value, for purposes of Section 154(1), City of Bombay Municipal Act, 1888, of property to which the

Bombay Rent Control Act, 1947, applied, the maximum value to be assigned to the property need not be limited to the maximum standard rent of

the property. Section 154(1) of the Bombay Municipal Act corresponds to Section 82 of the Madras District Municipalities Act. The learned

Judges followed the decision of the House of Lords in Poplar Assessment Committee v. Roberts (1922) 2 A.C. 93.

10. In Poplar Assessment Committee v. Roberts (1922) 2 A.C. 93 it was held that, in arriving at the valuation for the purposes of the Valuation

(Metropolis) Act, 1869, of a hereditament to which the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, applied, the maximum

gross value to be assigned to that hereditament was not limited to the standard rent, together with the additions thereto permitted by the latter Act.

Section 4 of the Valuation (Metropolis) Act, 1869, defined "gross value" as the "annual rent which a tenant might reasonably be expected, taking

one year with another, to pay for a hereditament...."; and "rateable value" was defined" as--

the gross value after deducting therefrom the probable annual costs of repairs and insurance and other expenses as aforesaid.

11. This definition was considered to be in pari materia with the definition of $\frac{1}{2}$ net annual value in the Parochial Assessments Act, 1836, which

was in the following terms:

The rent at which the hereditament might reasonably be expected to let from year to year...

Lord Herschell, L.C., in *London County Council v. Erith Churchwardens of Parish of Erith and Assessment Committee of Dratford Union* (1893)

A.C. 562, 588 said:

The annual rent which a tenant might reasonably be expected, taking one year with another, to pay for a hereditament is the same thing as, the rent

at which the same might reasonably be expected to let from year to year.

It follows, therefore, that the decision of the House of Lords in *Poplar Assessment Committee v. Roberts* (1922) 2 A.C. 93 directly applies to the

present case. Lord Buckmaster observed:

Just as the tenant is hypothetical, so also is the rent; it is only used as a standard which must be examined without regard to the actual limitation of

the rent paid by virtue of covenant as between landlord and tenant, and also, as I regard it, to statutory restrictions that may be imposed upon its

receipt. From the earliest time it is the inhabitant who has to be taxed. It is in respect of his occupation that the rate is levied, and the standard in

the Act is nothing but a means of finding out what the value of that occupation is for the purposes of assessment. In my opinion, the rent that the

tenant might reasonably be expected to pay is the rent which, apart from all conditions affecting or limiting its receipt in the hands of the landlord,

would be regarded as a reasonable rent for the tenant who occupied under the conditions which the statute of 1869 imposes.

Lord Parmoor fully analyses the fundamental distinction between the occupation value on which rating depends and the actual rent which denotes

the liability between owner and tenant. After citing Blackburn, J.'s dictum that

no statutory restrictions on the profit-earning or rent-earning

capacity of the hereditament must be taken into consideration, the noble Lord proceeded to say:

The question, however, remains whether a restriction on rent under the Rent (Restrictions) Act, 1920, can be regarded as a statutory restriction on

the value to an occupier of the profit-earning or rent-earning capacity of the "Cobden's Head". Ordinary rent is not a restriction on the profit-

earning or rent-earning capacity of an hereditament in the hands of an occupier and has never been so regarded. I am unable to see in what way a

statutory restriction on rent payable from a tenant can operate as a statutory restriction on the profit-earning or rent-earning capacity of the

Cobden's Head", or how the value to an occupier is affected or controlled by the fact that a landlord cannot enforce, as against a tenant, a rent

higher than the statutory standard rent in operation at the time.

In *Ryde on Rating* (eighth edition), the principles laid down in *Poplar Assessment Committee v. Roberts* (1922) 2 A.C. 93 are thus summarized

(page 285):

This decision involves the position (1) that "the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for

an hereditament" may be something more than can be recovered from any tenant under a general Act applying to that hereditament, and may

include something which, if any tenant has paid, he is entitled to recover; and (2) that in ascertaining what that rent is, no regard may be had to the

landlord (whether actual or hypothetical), or to any restrictions which may fetter him as a party to the bargain by which that rent is fixed.

In a later case in *Slaytor v. Newcastle-upon-Tyne Assessment Committee* (1926) 1 K.B. 172, Bankes, L.J., interpreted this decision as laying

down that the contract between landlord and tenant is not conclusive in considering what is the gross estimated rental of a rateable hereditament.

12. Instances can easily be imagined in which there may be a fair rent fixed by the Rent Controller which would not at all represent the annual value

calculated on the basis of the rent for which the building may be expected to let. Indeed, the landlord and the tenant can even contrive to have the

fair rent fixed at a low figure for the very purpose of obtaining decrease in the property tax. There is also the further fact that in fixing the fair rent,

the Rent Controller is compelled to follow the provisions of the Rent Control Act, under which the fair rent is made to depend upon certain factors,

for example, the prevailing rates of rent in the locality for the same or similar accommodation in similar circumstances during the twelve months

prior to 1st April 1940. A perusal of Section 4 of the recent Rent Control Act would show that the determination of the fair rent is to a certain

extent artificial and hypothetical and may not represent the rent at which the premises could reasonably be expected to be let during the year of

assessment to property tax. With respect, we follow the ruling of the Bombay High Court in *Gulam Ahmed v. Bombay Municipality* AIR 1951

Bom. 320, and hold that though the fair rent fixed under the House Rent Control Act may and ordinarily should be taken into consideration by the

municipal authorities in computing the annual value u/s 82, they are not bound to take such fair rent as necessarily the rent for which the premises

may reasonably be expected to be let within the meaning of Section 82 of the Madras District Municipalities Act.

13. There is no reason evident in this case that the annual value fixed by the municipality for the assessment years in question was grossly

unreasonable or arbitrary. The tax calculated on such annual value would, therefore, be proper and lawful. The Plaintiff is not entitled to any relief

by way of refund of any portion of such tax.

14. The civil revision petition is allowed and the suit is dismissed with costs throughout.