(1942) 08 MAD CK 0039

In the Madras High Court

The Panchayat Board, Sivaganga — APPELLANT

Vs

A.R. Veerabadran Chettiar — RESPONDENT

Date of Decision : 20-08-1942

Acts Referred:

Citation : AIR 1943 Mad 84 : (1942) 55 LW 848 : (1942) 2 MLJ 712

Hon'ble Judges : Byers, J

Bench : Division Bench

Judgement

Byers, J.—This appeal arises out of the decision of the Subordinate Judge of Sivaganga in favour of the plaintiff that the proceedings in

respect of his assessment to profession tax were irregular and that he was entitled to a refund of the amount claimed. The plaintiff''s case was that

after he had been assessed to profession tax by the Panchayat Board of Sivaganga, he produced his Income Tax demand for the year comprising

the half year in question under the Explanation to rule 11-A of the Fourth Schedule of the Madras Local Boards Act. At the same time he

preferred an appeal but the appellate tribunal declined to accept the figures given in his Income Tax papers and dismissed his appeal. The learned

Subordinate Judge found that the procedure was irregular and consequently Section 228 of the Act gave no protection to the panchayat board. He

found that the appeal committee was bound to accept the figures given in the Income Tax papers and he decreed the suit accordingly. It is against

this decision that the panchayat board has appealed. A preliminary objection that no appeal lies against the suit because it is of the nature

cognisable by the Court of Small Causes need not be examined because this Court has already held on a revision petition preferred by the appellant that no revision lay and that the matter should be agitated by means of a second appeal, into which the revision petition was with the leave of Court converted.

2. The view taken by the learned Subordinate Judge regarding the stage at which the Income Tax demand notice can be availed of by an assessee is wrong. The explanation to rule 11-A in the fourth schedule contemplates the production of the Income Tax demand as an alternative to furnishing a return of income under rule 11-A (i) and it follows that the production should be within the time fixed by the president for the return in the prescribed form. According to the plaintiff''s own case this was not done, because he produced his Income Tax papers only before the appellate tribunal. On this ground, therefore, the judgment of the learned Subordinate Judge is liable to be set aside and the suit dismissed. However, on looking into the other facts of the case it can readily be seen that the proceedings before the panchayat board were irregular in other respects. According to the plaintiff''s case as set out in the plaint, he received a demand notice on 15th August, 1938, for the payment of Rs. 10 as profession tax which he accordingly paid and afterwards preferred an appeal with which he submitted his Income Tax papers. There is no reference in the plaint to any previous demand for a return under rule 11-A and in the written statement of the panchayat board, the president pleaded that the assessment was fixed by him under the rules upon local enquiry and was correct. Nowhere in the written statement was there any suggestion that the panchayat board had issued a notice under rule 11-A and that the plaintiff had failed to make a return. If the plaintiff had failed to make a return or submit his Income Tax demand in answer to a notice issued under rule 11-A, the panchayat board had an unanswerable case. Under those circumstances the president would have then proceeded to assess the plaintiff under Clause (3) of rule 11-A. The only conclusion possible on the pleadings is that the panchayat board failed to follow the procedure laid down in rule 11-A and that the plaintiff''s first knowledge of the proceedings was the board''s demand for profession tax of Rs. 10. Consequently I find that the assessment proceedings were irregular, although for different reasons given by the learned Subordinate Judge and in the result the Second Appeal is ordered to be dismissed with costs.

