(1965) 01 MAD CK 0004

In the Madras High Court

Case No : Second Appeal No. 320 of 1962

The Pudukottai Municipality APPELLANT

Vs

Palaniappa Talkies RESPONDENT

Date of Decision : 21-01-1965

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 124, 354
Tamil Nadu District Municipalities Rules, 1920 — Rule 19, 23, 27, 28

Citation : (1966) ILR (Mad) 561

Hon'ble Judges : Natesan, J

Bench : Single Bench

Advocate : A. Alagiriswami and V. Ramaswami, for the Appellant; K.S. Desikan and K. Raman, for the Respondent

Final Decision : Dismissed

Judgement

Natesan, J.—The question that calls for consideration in this second appeal is whether pending the disposal of an appeal statutorily provided

for in the Madras District Municipalities Act (Madras Act V of 1920) which had been filed against an assessment, the Assessee could file a civil

suit impeaching the assessment and claim refund of the tax paid. The right to challenge the assessment in a civil Court where the provisions of the

Act have not in substance and effect been complied with is not questioned before me. It is not disputed that where no appeal as provided for under

the statute had been preferred, the assessment could be challenged in a civil Court on the ground of non-compliance in substance and effect of the

provisions of the Act. The learned Counsel would, however, submit that if the levy of the tax was within the framework of the statute and in

substantial compliance with the provisions thereof, the civil Court would have no jurisdiction to go into the question whether the levy is excessive or not. The point raised in the second appeal is that as the Assessee had chosen to prefer an appeal pending disposal of it, any suit impugning the

assessment would be premature.

2. The facts that have led up to this second appeal may be briefly stated. The Plaintiffs are the partners of Palaniappa Talkies and the Defendant

municipality assessed them to profession tax at Rs. 100 per half year for the two half years in 1958-59 and for the first half year of 1959-60 ending

with 30th September 1959. Appeals were preferred against the assessments and the Taxation Appeal Committee of the municipal council

disposed of the assessment appeals for the two half years of the year 1958-59 reducing the tax to Rs. 50 per half year. The appeal in respect of

the first half year of 1959-60 was not disposed of and while the same was pending, the Plaintiffs instituted the suit out of which the present second

appeal arises contending that the levy of the tax for the three half years in question was arbitrary and illegal and the provisions of the Madras

District Municipalities Act and the rules framed thereunder were not followed while making the assessment. Refund of the taxes paid was claimed.

The Courts below have concurrently held that the action of the municipality in making the levy was capricious and arbitrary without due compliance

of the provisions of the District Municipalities Act and the rules framed thereunder. In the absence of any basis to justify the levy, it was held illegal

and ultra vires.

3. Sri A. Alagiriswami appearing for the municipality does not, as he cannot in the second appeal, question the finding that the levy was capricious

and arbitrary and without reference to the provisions of the Act and the rules framed thereunder. Learned Counsel, therefore, does not before me

impugne the decree of the Courts below in so far as it relates to the assessment for the two half years of 1958-59. But the learned Counsel though

not in a position to attack the decree in favour of the Plaintiff for the first half year of 1959-60 otherwise, contends that the suit itself was not

maintainable in respect of this half year. The contention as put forward amounts to a plea that the Plaintiffs had no cause of action in respect of this

half year at the time when the suit was instituted. The relevant provisions of the District Municipalities Act (Act V of 1920) for the purpose of this

contention may be set out. Section 354 of the Act runs thus:

(1) No assessment or demand made, and no charge imposed, under the authority of this Act shall be impeached or affected by reason of any

clerical error or by reason of any mistake (a) in respect of the name, residence, place of business, or occupation of any person or (b) in the

description of any property or thing, or (c) in respect of the amount assessed demanded or charged: provided that the provisions of this Act have

been, in substance and affect, complied with. And no proceedings under this Act shall, (merely) for defect inform, be quashed or set aside by any

Court of Justice.

(2) No suit shall be brought in any Court to recover any gum of money collected under the authority of this Act or to recover damages on account

of any assessment, or collection of money made under the said authority:

Provided that the provisions of this Act have been, in effect, complied with.

4. Part III, chapter VI of the Act contains provisions regarding taxation and Section 124 therein provides that the rules and tables embodied in

schedule IV shall be read as part of the chapter. Rule 19 of schedule IV of the Act provider the procedure for levy of profession tax by the

executive authority. Rule 23 provides for an appeal to the council in respect of an assessment or imposition of tax under the proceedings of the

executive authority under Rule 19 above referred to. The appeal has to be in writing within the period provided which is short, and has to set forth

concisely under distinct heads the grounds of objections to the decision or proceedings appealed against. Rule 27 provides that the assessment

books shall be corrected in accordance with any orders passed by the council. Rule 28 is important and emphasis is laid on this rule by the learned

Counsel for the Appellant. It runs thus:

The assessment or demand of any tax, when no appeal is made, as herein before provided and (when such an appeal is made, the adjudication of

the council thereon) shall be final.

5. The argument of the learned Counsel is that together with the provisions for appeal, the levy is one integrated process and if there is no appeal,

the assessment by the executive authority if an appeal is made the adjudication of the council thereon gives it a finality. The contention is that while

it will be open to an Assessee to ignore the provision of an appeal and seek relief in a Civil Court in a case where he is entitled to approach the civil Court and while it is equally open to the Assessee to approach the civil Court after the disposal of the appeal pending the appeal the civil

Court cannot be approached. The assessment according to the learned Counsel for the Appellant has not become final and the proceedings

relating to the assessment must be deemed to be pending. There can be no cause of action in such circumstances as by preferring the appeal the

assessment has lost its finality and the Plaintiff can challenge only an assessment that has become final. In my view there is force in this contention.

The observations of Varadachariar J. in Kamaraja Pandia Naicker v. The Secretary of State for India in Council (1934) 69 M.L.J. 695, 701 to

which my attention was drawn by Mr. K.S. Desikan, learned Counsel for the Respondent, in a way supports the view I take. Varadachariar J.,

observes thus:

It will be scarcely right to speak of the Revenue Board in a case like the present as a ''special tribunal'' see the observations in Valliammal v. The

Corporation of Madras ILR (1912) Mad. 41, the Board acts only as part of the executive machinery and not as an independent body settling a

dispute between the tax-payer and the taxing authority.

6. The appeal is as it were a part of the machinery of assessment. The scope or ambit of the appeal to the council is not limited and once the Tax

Appeal Committee of the council is seized of the appeal, the assessment loses its finality till adjudication by a committee. When the appeal is

pending in the council, the assessment must be deemed to be pending with the authority under the provisions of the rules relating to finalizing the

assessment. Learned Counsel appearing for the Appellant and the Respondents state that there is no decision covering this point and the question

is res integra. The cases like Valli Ammal v. The Corporation of Madras ILR (1912) Mad. 41, 43 and Narasimha Rao v. Municipal Council

Narasaraopet ILR (1934) Mad. 949 which held that the word final must be taken to refer only to the proceedings before the municipality are not

of much help as the emphasis therein is on the character of the finality, that the finality given was not intended to shut out the jurisdiction of the

Courts. Nor is the observation of Happel J. in Commissioner, Municipal Council Vs. Srimathi Siddeswara Devi and Others, to the following effect:

where there is a mistake of fact the remedy is by way of an appeal to the

Municipal Council and the civil Court has no jurisdiction provided the

provisions of the Act have been in substance and effect complied with.

very helpful to either side. As already stated, learned Counsel for the municipality does not contend that if the appeal had been disposed of a suit

would not be competent, if otherwise tenable. In Madurai Municipality, by Commissioner Vs. K.N.K. Jagannatha Ayyar, , the appeal before the

municipal council had been disposed of. Even so in Coimbatore Municipality v. Govindayyar (1953) 1 M.L.J. 128, the remedy by way of an

appeal had been availed of. Dealing with the provision as to appeal Raghava Rao J. remarks at page 132:

The circumstance that in the case before me the right of appeal provided for by the Schedule IV to the Act was exercised is immaterial in view of

my interpretation of Section 354 of the Act as yielding the plain result on its language that quite apart from the right of appeal a suit does lie where

in fact the provisions of the Act have not been in substance and effect complied with.

7. Earlier in the judgment after referring to Section 354 of the Act, the learned Judge observes at page 130:

The maintainability of such a suit where there has been no such compliance with the provisions of the Act which is the necessary implication of the

section cannot be treated as whittled down or eviscerated by the mere existence of a right of appeal provision in Schedule IV of the Act.

8. This case also does not appear to deal with a case where an appeal has been filed and was pending. When Section 354 speaks of an

assessment it can refer only to an assessment which has become final under the Act. The above case Coimbatore Municipality v. Govindayyar

(1953) 1 M.L.J. 128 was the subject of consideration on another aspect dealt in the case and dissented from in that regard by a division Bench of

this Court in Madurai Municipality v. Kamakshisundaram ILR (1956) mad. 530. The division Bench does not touch the aspect of the case with

which we are now concerned. Reference was made by learned Counsel for the municipality to cases relating to prerogative writs where it has been

held that the Applicant before he approaches the Court must have exhausted other remedies open to him under the law. But the rule has been

repeatedly held to be one that did not bar the jurisdiction of the High Court to entertain the petition for writ or deal with it but rather a rule which

Courts have laid down for the exercise of their discretion. See: A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj

Wadhwani and Another, . This line of cases cannot be of much help in this matter. In my view if the Assessee prefers an appeal pending the

disposal of the appeal, a suit would be premature. Rule 27 of the District Municipalities Act provides for the correction of the assessment books in

accordance with the orders passed by the council on appeal and grant of a refund of tax paid, on its being reduced or remitted by the council. In

the circumstances while the provision of an appeal would not bar a suit for refund of tax illegally levied and realized, the pendency of the appeal if

preferred would suspend the cause of action for its duration.

9. In this case it is stated from the Bar and it is admitted on both the sides that the appeal was dismissed sometime in 1961. The question is

whether in such circumstances and when particularly the plea in this form was not taken in the first Court there is need for driving the Plaintiff to a

fresh suit. The finding as to the invalidity of the assessment was not questioned before me. There was no difference in the procedure followed for

the levy in question from that of the levies for the two half years of 1958-59. On the merits, the Courts below have come to the conclusion that the

levies are illegal and not in substantial compliance with the provisions of the Act. The learned District Munsif refers to some correspondence

between the parties and observes that the only difficulty which the Defendant had felt was in reopening the matter after the disposal of two of the

matters by Tax Appeal Committee and during the pendency of the third appeal before the said committee. In these circumstances, when on the

merits the Plaintiff has to succeed, the subsequent event, the dismissal of the appeal, could be taken notice of and relief granted to the Plaintiff in

this suit itself. There is nothing to be gained by driving the parties to a fresh litigation particularly so when I find that the suit may be barred by

limitation. In the result, while upholding the contention of the learned Counsel for the Appellant in law, I do not think the circumstances call for a

modification of the decree in respect of the tax collected for the half year ending 30th September 1959.

10. In the result, the second appeal fails and is dismissed, but in the

circumstances the Plaintiffs will be entitled only to half of the costs as taxed here as well as in the Courts below.

