

(1981) 09 MAD CK 0080
In the Madras High Court

The Salem Municipal Council

APPELLANT

Vs

Karupanna Pillai

RESPONDENT

Date of Decision : 29-09-1981

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 82

Citation : (1982) 2 MLJ 191

Hon'ble Judges : S. Swamikkannu, J; S. Swamikannu, J

Bench : Division Bench

Judgement

S. Swamikkannu, J.—The substantial question of law that had been framed at the time of admission of this appeal was whether the Courts below have properly construed the provisions of Section 82 of the Tamil Nadu District Municipalities Act (V of 1920). Section 82 of the said Act reads as follows:

82(1) Every building shall be assessed together with its site and other adjacent premises occupied as an appurtenance thereto unless the owner of the building is a different person from the owner of such site or premises.

(2) The annual value of lands and buildings shall be deemed to be the gross annual rent at which they 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, apart from their sites and adjacent lands occupied as an appurtenance thereto; and the said deduction shall be in lieu of all allowance for repairs or on any other account whatever:

Provided that-

(a) in the case of;

(i) any Government or railway building; or

(ii) any building of a class not ordinarily let the gross annual rent of which cannot, in the opinion of the (executive authority), be estimated;

the annual value of the premises shall be deemed to be six per cent, of the total of the estimated value of the land and the estimated present cost of erecting the building after deducting for depreciation a reasonable amount which shall in no case be less than ten per cent, of such costs; and

(c) Machinery (and furniture) shall be excluded from valuations under this section.

(3) The (State) Government shall have power to make rules regarding the manner in which, the person or persons by whom and the intervals at which, the value of the land, the present cost of erecting the building and the amount to be deducted for depreciation, shall be estimated or revised, in any case or class of cases to which Clause (a) of the proviso to Sub-section (2) applies, and they may, by such rules, restrict or modify the application of the provisions contained in Schedule IV to such case or class of cases.

A reading of the above provision clearly shows that the State Government shall have power to make rules regarding the manner in which the value of the land, the present cost of erecting the building and the amount to be deducted for depreciation, shall be estimated or revised in any case or class of cases, to which Clause (a) of the proviso to Sub-section (2) applies. Schedule IV to this Act deals with the taxation and finance rules; Part I deals with the taxation rules dealing with the definition of taxes, etc., whereas Part II of Schedule IV deals with "finance rules". As many as thirty-six rules are in existence under the "taxation rules" in Part I of Schedule IV of the Act. Rule (6) in Part I of Schedule IV to the Tamil Nadu District Municipalities Act (V of 1920) under the heading "assessment of the property tax" states that the value of any land or building for purposes of the property tax shall be determined by the executive authority, provided that the value of any land or building the tax for which is payable by the executive authority shall be determined by the Revenue Divisional Officer or if the Revenue Divisional Officer is also the executive authority by the council. So, it is Rule 6, that has been framed in Part I of Schedule IV to this Act, that is applicable with respect to the determination of the value of the land. It is not any other provision in any other enactment that is governing the assessment of the valuation of the building in question but it is the provisions of Act V of 1920 that governs. It is only by analogy or what is called the principles governing the manner in which an estimate has to be made the principles imbedded in that enactment have been thought to have some kind of a guiding principle. But, nowhere it is laid down in any of the decisions, including the decision in *The Guntur Municipal Council Vs. The Guntur Town Rate Payers' Association etc.*, , that it is incumbent on the Municipal authorities to follow the procedure laid down in the Rent Control Act for assessment of the value of the building, which is the subject-matter of assessment, imbedded under the provisions of the Tamil Nadu District Municipalities Act, 1920.

2. I have carefully gone through the entire judgment reported in *The Guntur Municipal Council Vs. The Guntur Town Rate Payers' Association etc.*, , and it is

not an authority for the contention now raised, on behalf of the appellant herein, about the failure to apply the principles contemplated to estimate the annual value of the building, so far as the assessment by a Municipal Council, under the provisions of Section 82 of Act (V of 1920). On the other hand, what the Supreme Court has observed in *The Guntur Municipal Council Vs. The Guntur Town Rate Payers' Association etc.*, is as follows:

2. Three suits, namely, O.S. Nos. 222, 223 and 466 of 1960 were filed in the Guntur Court in which the relief claimed was for a declaration that the general revision of the rental values of the houses and buildings effected by the Guntur Municipality in the year 1960 for the purposes of assessment of tax was ultra vires and illegal and for a consequential relief of a permanent injunction restraining the municipality from acting on the special notices issued to the tax payers.

3. Section 81 of the Madras District Municipalities Act, 1920, hereinafter called the "Municipalities Act" gives the description and classes of property tax and other taxes leviable by the municipality. Section 82 gives the method of assessment. It is provided by Sub-section (2) of that section that the annual value of the lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to let from month to month or from year to year less certain deductions. The District Munsif by a common judgment delivered in the three suits held that the annual value had to be computed in the context of the rent that, was payable under the Rent Control legislation. The suits were decreed and a declaration was granted that the general revision made by the Guntur Municipality in 1960 by increasing the rental value of houses to more than the rental value which prevailed on the dates provided in the Rent Control Acts in force prior to 1960 was ultra vires and illegal and permanent injunctions were granted restraining the municipality from acting upon the special demand notices issued to the ratepayers and from collecting the enhanced tax. Appeals were filed and the first appellate Court substantially upheld the judgment of the trial Court though certain modifications were made in the decrees passed by that Court. Appeals were taken to the High Court but the same were dismissed.

4. The only point which we are called upon to decide is whether before the fixation of a fair rent of any premises the municipality was bound to make assessment in the light of the provisions contained in the Rent Acts. A subsidiary question also arises whether the Courts below were justified in referring to and passing the decrees keeping in view the Rent Acts which were in force prior to the enactment of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, hereinafter called the "Act". Now Section 82(2) of the Municipalities Act, as stated before, makes provision for the fixation of annual value according to the rent at which lands and buildings may reasonably be expected to be let from month to month or from year to year less the specified deduction. The test essentially is what rent the premises lawfully fetch if let

out to a hypothetical tenant. The municipality is thus not free to assess any arbitrary annual value and has to look to and is bound by the fair or the standard rent which would be payable for a particular premises under the Rent Act in force during the year of assessment. In *The Corporation of Calcutta Vs. Sm. Padma Debi and Others*, , it was held that on a fair reading of the express provisions of Section 127(a) of the Calcutta Municipal Act, 1923, the annual rent could not be fixed higher than the standard rent under the Rent Control Act. There the Rent Control Act of 1950 came into force before the assessment was finally determined and it was observed that the corporation had no power to fix the annual valuation of the premises higher than the standard rent under that Act. The learned Counsel for the appellant has not made any attempt nor indeed he could do so to contest the above view. What has been stressed by him is that Section 7 of the Act makes it clear that it is only after the fixation of the fair rent of a building that the landlord is debarred from claiming or receiving the payment of any amount in excess of such fair rent. It is urged that so long as the fair rent of a building or premises is not fixed the assessment of valuation by a municipality need not be limited or governed by the measure provided by the provisions of the Act for determination of fair rent. Logically such buildings or premises as are not let out to a tenant and are in the self-occupation of the landlords would also fall within the same principle if no fair rent has even been fixed in respect of them.

5. We are unable to agree that on the language of Section 82(1) of the Municipalities Act any distinction can be made between buildings the fair rent of which has been actually fixed by the Controller and those in respect of which no such rent has been fixed. It is perfectly clear that the landlord cannot lawfully expect to get more rent than the fair rent which is payable in accordance with the principles laid down in the Act. The assessment or valuation must take into account the measure of fair rent as determinable under the Act. It may be that where the Controller has not fixed the fair rent the municipal authorities will have to arrive at their own figure of fair rent but that can be done without any difficulty by keeping in view the principles laid down in Section 4 of the Act for determination of fair rent. This would of course be with regard to the assessment of valuation for the period subsequent to the coming into force of the Act. For the prior period it would be the Rent Act in force during the year of assessment in the light of the provisions of which the figure of the fair rent would have to be determined and assessment made accordingly.

6. There is a good deal of confusion in the judgment of the trial Court and the first appellate Court with regard to the Rent Acts the provisions of which would have to be kept in view for the assessment of valuation for the purpose of Section 82(2) of the Municipalities Act. The decrees which have been granted suffer from the same, infirmity. It has been pointed out by the learned Counsel for the respondents that according to the rules contained in the fourth schedule to the Municipalities Act the assessment books have to be revised once in every five years and the quinquennial assessment thus made enures for that period.

But it appears from the rules that a procedure has been prescribed for changing the assessment whenever a case is made out for doing so. We are not concerned with the procedural difficulties which may be experienced; we have to declare that the law is and as appears to be well-settled the assessment of valuation for the purposes of tax must be made in accordance with and in the light of the provisions of the Rent Act which would be in force during the period of assessment.

7. In the result the decrees which have been granted are hereby modified by declaring that the general provision made by the Guntur Municipality by increasing the rental valuation of houses and buildings beyond the fair rent determinable under the Rent Act in force for the period of assessment shall be illegal and ultra vires and a permanent injunction shall issue restraining the municipality from realizing any amount in excess of such tax which may be found due on the valuation fixed according to the principles laid down in our judgment. In view of the entire circumstances, the parties are left to bear their own costs.

3. I have incorporated in full the observation of the Supreme Court for my compliance of the directive, if any, regarding the proposition that has been propounded at the instance of the appellant in this case. Apart from the appellant's contention being one without any substance, I find that the same cannot have any bearing on the ratio decidendi in the decision viz., The Guntur Municipal Council Vs. The Guntur Town Rate Payers' Association etc., .

4. In this regard, the learned Counsel for the respondent, has brought to my notice the un reported decision of this Court pronounced on 30th of October, 1980, in Second Appeal No. 1676 of 1977, wherein this Court has held as follows:

In view of the judgment of the Supreme Court in The Guntur Municipal Council Vs. The Guntur Town Rate Payers' Association etc., , and the decisions of this Court which have followed the said ratio of the Supreme Court, the question has got to be answered only against the appellant-municipality. Hence, the second appeal fails and the same is dismissed. But, there will be no orders as to costs.

5. The decision in Second Appeal No. 769 of 1977 is also relied upon by the learned Counsel for the respondent wherein also the decision in The Guntur Municipal Council Vs. The Guntur Town Rate Payers' Association etc., , has been referred to. In that case, the decision reported in K.M.S. Abdul Hasan Vs. The Tiruvarur Municipality, , was also referred to. I have carefully gone through the decisions referred to by the learned counsel for the respondent.

6. Each case has to be decided on the facts as well as enactments relating to that particular case. Unless and until it is brought to the notice of this Court that there has been some other authority prescribed, apart from the authorities contemplated under Rule 6 to I Schedule IV, Part I "taxation rules" made under the Tamil Nadu District Municipalities Act, 1920, I do not consider that it is germane to the point at issue to consider the applicability of some other method that is contemplated in any other enactment, regarding fixation of fair rent and

the estimate to be made with respect to the municipal assessment of property-tax, together with the educational tax that is made in almost all municipalities nowadays along with the library cess, if any, as it has now been made with the Corporation of Madras, where tax is now collected separately; but it is not clear as to whether such kind of arrangement is being carried out in the municipality now concerned in this case viz., the Salem Municipality. We are concerned more with the situation and amenities relating to the property in question viz., whether it is near the educational institution, bus-stand, market, railway-station, hospital etc., as well as the value of the land, in which the superstructure is situated or the land, if it is a vacant land the value of the vacant land and the rent that is actually fetched by the buildings, which are situated adjacent to that building. These are all factors which have to be taken into consideration for assessment of property-tax. This is actually what is being considered while an appeal is preferred against the order of assessment made by the Revenue Officer in the case of Corporation of Madras, which being subjected to scrutiny by the Chairman of the Taxation Appeals Committee, whose order is further a subject-matter of scrutiny by the the Chief Judge of Small Causes Court, Madras. So, viewing the concerned City enactments with the provisions of the Tamil Nadu District Municipalities Act, which are applicable to the mofussil municipalities. I do not think that the method of estimate contemplated is one which is prescribed under the Tamil Nadu Buildings (Lease and Rent Control Act, which is popularly known as "The Rent Control Act". Though the institution constituted under that Act is a Tribunal, it is popularly known as the Rent Controller, because it is a quasi-judicial authority and what is expected is a special procedure. Therefore, this is another point which had to be taken into consideration against the contention that has been raised on behalf of the appellant in this case because it is as a suit viz., O.S. No. 796 of 1970 that the claim had been instituted before the Court of the learned District Munsif at Salem. Under these circumstances, how far a procedure, which is adopted for a speedy disposal, by a quasi-judicial organisation such as a Rent Controller, can be made applicable, even if not the decision, at least the principles applied for deciding the value of the property can be made applicable to a premises which has become a subject-matter of suit, is really an interesting point which requires deep consideration. Under these circumstances, even implicitly following the ratio imbedded in The Guntur Municipal Council Vs. The Guntur Town Rate Payers' Association etc., , to the facts of this case, I do not find that there is any justification to uphold the contention raised on behalf of the appellant herein, inasmuch as there is no launu or non-application of any of the relevant provisions of the rules and regulations or provisions of the enactment concerned, viz., the Tamil Nadu District Municipalities Act of 1920, by the authorities concerned, which requires interference by this Court in this second appeal either for any elucidation or for deciding any question of law. As a matter of fact, the question of law that has been framed is not at all in existence in this case. The entire matter revolves on facts and under these circumstances, there is no merit in this second appeal. The appeal is liable to be dismissed and it is accordingly dismissed. Under the

circumstances, there is no order as to costs.