

(1976) 07 MAD CK 0040

In the Madras High Court

Case No : Second Appeal No's. 516, 520 and 521 of 1973 Decided by Full Bench on order of reference made by Ismail J. on 5-2-1976

The Singanallur Municipality

APPELLANT

Vs

The Vasantha Mills Ltd., Coimbatore and Others

RESPONDENT

Date of Decision : 08-07-1976

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 82, 82(1), 82(2)

Citation : AIR 1977 Mad 134 : (1977) ILR (Mad) 335 : (1977) 90 LW 36

Hon'ble Judges : P.S. Kailasam, C.J.;Ramanujam, J;Koshal, J

Bench : Full Bench

Judgement

P.S. Kailasam, C.J.—These three second appeals raise an important question of law concerning the interpretation of the proviso to Sec.

82(2) of the Tamil Nadu District Municipalities Act, 1920. The plaintiffs in the three suits, who are Mills, were assessed to property tax by the

Singanallur Municipality by its Special Officer. According to the Mills, the assessment of property tax was not in accordance with the provisions of

the Tamil Nadu District Municipalities Act and therefore the assessment was illegal and void. They filed the suits O. S. Nos. 1278 of 1968, 1402

of 1968 and 1192 of 1968 praying for a declaration that the basis of the taxation was illegal as the provisions of the Act had not been complied

with. The Municipality contended that tax was assessed according to the proviso to Sec. 82(2) of the Act as the buildings in question were of a

class not ordinarily let, the gross annual rent of which could not, in the opinion of the executive authority, be estimated. The trial court dismissed the

suits, holding that the ration authority was given wide discretion in choosing any of the methods of determining the annual rental value and that the

court would not be entitled to question that discretion and give a finding of its own whether the building was capable of being let out or could be

ordinarily let out. On appeal by the three mills, the Third Additional Subordinate Judge, Coimbatore, allowed the appeals on the ground that the

Municipality could not successfully contend that the buildings belonged to a class not ordinarily let. The lower appellate court observed that the

provisions of Sec. 82 must be complied with by the Municipality in substance and in effect, that judged by that standard the assessment made in

the cases on the basis of the capital value was not proper and that on that account the Municipality had failed to comply with the provisions of the

Act.

2. Thereupon, the Municipality preferred the above three second appeals. In the first instance they came up before Ismail J., who, after referring to

the relevant decisions, found himself unable to agree with the view taken by a single Judge of this Court in *The Rajalakshmi Mills Limited and*

Others Vs. The Singanallur Municipality and Another, , and as he was of the opinion that the question required to be considered by a larger Bench,

he directed the appeals to be posted before a Bench. They were accordingly placed before this Full Bench, as the question is of great importance

and of frequent occurrence and the decisions on the point have to be clarified.

3. Sec. 82(1) of the Act deals with the method of assessment of the property. It runs as follows--

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.

Sec. 82(2) states--

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 the 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 presented cost of erecting the building after

deducting for depreciation a reasonable amount which shall in no case be less than ten per centum of such cost.

4. The point that arises for determination is whether the buildings in question belong to a class not ordinarily let the gross annual rent of which

cannot in the opinion of the executive authority be estimated. Two requirements have to be fulfilled before the proviso can apply: (i) the building

should be of a class not ordinarily let, and (ii) the gross annual rent of which cannot, in the opinion of the executive authority, be estimated. The

buildings in question are mills in Coimbatore district. The evidence of the Special Officer examined as D.W. 1 is as follows:--

The Mills were never let out. In that area mill was at any time leased out. No buildings in the premises are let out. No similar buildings are let out in

that area. It was not possible to work out the annual rental value except on the basis of the capital value.

In cross-examination he stated--

There may be buildings adjacent to this leased out. But they are not of similar type. It is not true to say that it can be leased out and if leased out it

will fetch only R. 5000 per month.

This evidence of the Special Officer clearly complies with the requirements of the proviso to Sec. 82(2) of the Act for he states that the buildings

belonging to a class not ordinarily let out, the gross annual rent of which cannot, in his opinion, be estimated. We see no reason for not accepting

this evidence of the Special Officer that the buildings belong to a class not ordinarily let, the gross annual rent of which cannot, in opinion of the

executive authority, be estimated. On the facts, themselves, we have to find in favour of the Municipality and allow the second appeals.

5. We however, find it necessary to deal with the decisions which have been rendered by this court and the misunderstanding of those decisions by

the lower appellate court. In the General Committee, Madras Club v. City Municipal Council of Madras, 1954 1 MLJ 671, a Bench of this court

had to construe the proviso to Sec. 100(2) of the Madras City Municipal Act which is in pari materia with the language of Sec. 82(2) with which

we are now concerned. The question before the Bench was whether the building of the Madras Club would fall within the proviso to Sec. 100(2).

The Chief Judge of the Court of Small Causes found that the building could be leased out both for residential and business purposes. It was not

contended before him that the building could not be let out, if so desired. The Bench of this court observed--

In our opinion, the building does not fall within the scope of sub-sec. (2) of Sec. 100 and does not fall within the scope of proviso (a)(ii) of sub-

sec. (2)."" The Bench observed that the proviso laid down a particular method of valuation for any building of a class not ordinarily let, the gross

annual rent of which cannot in the opinion of the Commissioner be estimated. In construing these words, the Bench observed--

We are clearly of the opinion that the building in question cannot be held to be a building of a class not ordinarily let. It is not sufficient that a

building has actually been not let to bring it within the category. So many buildings in which the owners reside are not ordinarily let nor even

ordinarily intended to be let. But they certainly do not belong to the category of buildings of class not ordinarily let. The buildings which are

contemplated as belonging to that class are buildings like temples, memorial buildings, etc.

With respect, we feel that the above observations correctly lay down the law. The question whether a building belongs to a class not ordinarily let

out has to be decided with reference to the purpose for which it was put up and the purpose for which it is used. The two examples, given by the

Bench are illustrative, and not exhaustive. Buildings like temples and memorial buildings are buildings of a class not ordinarily let, but certainly they

are capable of being let and the question whether they are capable of being let or not is irrelevant.

6. In purporting to follow the above decision, a later Bench of this court in addition Addison Paints and Chemicals (Private), Ltd. Vs. The

Commissioner, Corporation of Madras, , stated as follows--

In this case unfortunately the learned Chief Judge of the Court of Small Causes has based his conclusion on the short ground that the building I not

actually let. He has not considered whether the buildings is capable of being let."" This test, whether the building is capable of being let out or not, is

erroneous and does not reflect the correct position of law as laid down in Sec. 82(2) of the Act. The observations of the Bench have misled a

single Judge of this Court in *The Rajalakshmi Mills Limited and Others Vs. The Singanallur Municipality and Another*, to apply the test whether a

building is capable of being let. The building in that case was also mills, and the learned Judge after referring to the General Committee. *Madras*

Club v. City Municipal Council of Madras, 1954 1 MLJ 671 observed--

It may be seen that in liquidation proceedings of companies like that of the plaintiffs (mills) arising under the Companies Act, 1956, leases to run

such companies to safeguard the interests of creditors have frequently been ordered by courts. The assumption that such buildings fall under the

category of buildings not ordinarily let is erroneous." The learned Judge proceeded to construe the Bench decision as restricting "the class of

buildings not ordinarily let to temples and memorial buildings. We are of the opinion that this decision has been erroneously rendered, as the test is

not whether a buildings is capable of being let, but whether it belongs to a class not ordinarily let.

7. In the result we hold that the decision in the General Committee, *Madras Club v. City Municipal Council, Madras*, 1954 1 MLJ 671 has

correctly laid down the law and that the test applied in *Addison Paints and Chemicals (Private), Ltd. Vs. The Commissioner, Corporation of*

Madras, whether a buildings is capable of being let or not is erroneous. We also overrule the decision in *The Rajalakshmi Mills Limited and Others*

Vs. The Singanallur Municipality and Another, .

8. The second appeals are allowed. But, in the circumstances of the case, there will be no order as to costs.

9. Appeals allowed.