(1949) 08 MAD CK 0050

In the Madras High Court

The Udipi Municipal Council APPELLANT

Vs

K. Vasudevacharya and Others RESPONDENT

Date of Decision : 04-08-1949

Acts Referred:
Tamil Nadu District Municipalities Act, 1920 — Section 81(3), 81(4)

Citation : (1949) 2 MLJ 629

Hon'ble Judges : Viswanatha Sastri, J

Bench : Division Bench

Judgement

Viswanatha Sastri, J.—This second appeal has been preferred by the Udipi Municipal Council whose suit for the recovery of Rs. 103-5-9

as arrears of property tax due from the three defendants has been dismissed by the Courts below. The tax is sought to be levied u/s 81(3) of the

Madras District Municipalities Act (hereinafter referred to as the Act) on 6 acres and 38 cents of vacant land belonging to the defendants and

situate within the limits of the Municipality. The defendants, here respondents, resist the claim on the grounds that they should have been assessed

to property tax u/s 81(4) of the Act and not u/s 81(3) and they should have been separately and individually assessed on the share of the property

held by each of them. Their contentions were accepted by the Courts below. It is unnecessary to set out other defences which are not now

material.

2. The appellant urged two points before me (i) the assessment in this case was rightly made u/s 81 (3) of the Act, and (ii) even otherwise, it is not

open to the civil Court to decide on the propriety of the assessment in this case. Lands which are not used exclusively for agricultural purposes are taxable on a percentage of their capital value u/s 81(3), while lands used exclusively for agricultural purposes are taxable on a proportion of their

annual value u/s 81(4). The burden of the tax is lighter in the latter case than in the former,. The property in question is a vacant land overgrown

with a few wild plants and shrubs of spontaneous growth whose leaves are said to be used as manure for cultivable lands. The question is whether

when the vacant site in question has never been ploughed, tilled or sown at any time and no tree or shrub has been planted by the owner, it could

be said that the land has been used exclusively for agricultural purposes merely because the leaves of the shrubs growing on the plot are used for

manuring other lands.

3. It has been held that income derived from forest trees of spontaneous growth and jungle fruits is not "" agricultural income "" within the meaning of

the Income Tax Act. Sri Rajah Ravu Venkata Mahipathi Gangadhara Rama Rao Bahadur, Yuvarajah of Pithapuram and Another Vs. The

Commissioner of Income Tax, , Province of Bihar v. Maharaja Pratab Udainath Sahi Deo I.L.R.(1941)Pat. 699. Under the Income Tax Act

agricultural income"" means income derived from land which is used for agricultural purposes. In Kaju Mal v. Saligram (1923) 46 M.L.J. 536 : L.R.

51 IndAp 11 : ILR 5 Lah. 50 the Judicial Committee affirmed a decision of the Lahore High Court to the effect that a bit of natural forest which

did not lie within a village site was exempt from pre-emption as it was not agricultural land or land used for purposes subservient to agriculture. In

Kesho Prasad Singh v. Sheo Prakash Ojka (1924) 47 M.L.J. 824 : L.R. 51 LA. 381 : ILR 46 All. 831 it was held that a mango tope was not

land used for agricultural purposes within the meaning of Section 79 of the Agra Tenancy Act, 1901. ""Agriculture"" in its ordinary and primary sense

implies the tillage or cultivation of the soil by human effort with or without the aid of animal or mechanical power. It is also used in a wider sense to

cover the allied pursuits of harvesting and gathering in the crops and the rearing of live stock, see S.K. Kadirvelsami Naicker by his authorised

agent, C. Chockalingam Pillai Vs. S.P. Sultan Ahmed Badruddin Rowther (died) and Others, . An anthology of Indian decisions on this topic will

be found in Sarojini Devi v. Subramaniam (1944) 1 M.L.J. 361 : ILR 1945 Mad. 61, where this Court held that mango grove was "" agricultural land within the meaning of the Hindu Women''s Property Act."" The meaning of the expressions "" agricultural "","" agricultural land"" and ""agricultural

purposes"" would depend upon the definitions of these terms in various enactments and the object and purpose of such enactments. In Emperor v.

Alexander Allen (1901) 12 M.L.J. 393 : ILR 25 Mad. 627 it was held that pasture lands must be considered to be lands used solely ''"" for

agricultural purposes "" within the meaning of Section 63 of the Madras District Municipalities Act of 1884 as amended in 1897 which was then in

force. The language of Section 81(4) of the Act is similar and applies to land used ""exclusively for agricultural purposes "". If a piece of urban

vacant site is exclusively used as a granary for storing the produce of agricultural land or as a cattle shed for plough bulls or as a storehouse for

manure or agricultural implements or even for the purpose of growing plants to be used as manure for agriculture, it must be held to be used for

agricultural purposes "" within the meaning of Section 81(4). See Murugesa Chetti v. Chinnathambi Goundan I.L.R.(1901)Mad. 421 . The land

itself need not be tilled or cultivated nor need any produce be raised therein by human effort. Section 81 (4) is not confined to cultivable or

agricultural land and applies to land exclusively used for agricultural purposes. In this case it is in evidence of P.W. 1 that dried leaves of the shrubs

on vacant plots like the present one are collected and used as fuel while green leaves are used as bedding for cattle and manure for cultivable

lands. D.W. 1 admits that the shrubs and plants on this land may grow into trees fit for firewood and that the dry leaves of the plants are used as

fuel. On this evidence it cannot be said that the land now sought to be assessed is used exclusively for agricultural purposes.

4. Further I consider that the Court had no power to interfere with the assessment levied by the Municipal Council or its executive authority in this

case. Section 354(1) of the Act omitting portions not now relevant, is as follows:

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

in respect of the amount assessed, demanded or charged; provided that the provisions of this Act have been, in substance and effect, complied

with.

It has no doubt been held by this Court that where the basis of the assessment is itself erroneous, the levy of tax on that basis is illegal and it is open

to the Court to interfere and prevent the unauthorised levy or order a refund if the tax has been collected under compulsion. Municipal Council,

Mangalore v. The Codial Bail Press (1903) 14 M.L.J. 410 : ILR 27 Mad. 547, Sankaranarayana Reddi v. Taluk Board, Aruppukottai (1937) a

M.L.J. 903, (Sri Sri Sri Izattasar Kandukuri) Balasuryaprasada Rao Pantulu Garu Vs. Taluk Board of Chicacole, , Kamaraja Pandia Naicker v.

Secretary of State (1934) 69 M.L.J. 695. But these cases have, in my opinion, no application to the facts of the present case. The Municipal

Council was empowered to levy an assessment u/s 81(3) and (4) of the Act on vacant lands. If the land was used exclusively for agricultural

purposes, the assessing authority had to proceed u/s 81(4) and if not, u/s 81(3). It had power to determine and determined the question of fact on

the evidence and materials available and its conclusion was that the land in question was not used exclusively for agricultural purposes. It may be

that a different view on the facts is possible. All that can be said for the respondents is that the executive authority of the Municipal Council came to

a wrong conclusion on a matter of fact which it was within its competence to decide. If so, their remedy was by way of an appeal to the Municipal

Council. The Civil Court cannot assume the powers of the assessing authority and investigate the facts afresh to find out whether its conclusion on

the facts is correct. If on the facts found, assumed or admitted by the assessing authority, the assessment is found to have proceeded on an

erroneous basis, the Civil Courts can step in and declare the invalidity of the assessment on the ground that the provisions of the Act have not been

in substance and effect complied with. No statutory body can give itself power to impose a tax on citizens by an erroneous interpretation of the

taxing provisions in the statute and if it does so, the aggrieved taxpayer has a right to get redress in the ordinary Courts. In the present case,

however, I am of the opinion that the assessment cannot be assailed on this ground. The error, if any, related to the appreciation of the materials

available for arriving at a conclusion on a question of fact which the assessing authority had to determine in the course of making an assessment.

5. Lastly there remains the question of the liability of the different defendants in respect of the tax demanded by the Municipality. It has been found

by the Courts below that respondents 1, 2 and 3 have distinct and separate shares in the lands sought to be assessed and they have been

separately assessed to property tax for many years in the past. The lower appellate Court has held that the clubbing together of the three

assessments into one and the removal of the names of respondents 2 and 3 from the assessment register without notice to them was improper and

that there w as no demand in respect of the property tax on respondents 2 and 3. On these grounds respondents 2 and 3 have been exonerated

from liability by the lower appellate Court irrespective of the correctness of its conclusion on the other points in the case. Mr. K. Kuttikrishna

Menon, the learned Counsel for the appellant, could not dispute the correctness of the decision of the lower appellate Court on this last point.

6. I reverse the decision of the lower appellate Court and remand the appeal for disposal on the merits. There will be no order as to costs in this

second appeal.

ORDER

7. It is represented that the first respondent has deposited the amount payable by him and that a remand is unnecessary. I therefore direct that the

second appeal be dismissed.