

(1964) 11 AP CK 0005

In the Andhra Pradesh High Court

Case No : Second Appeal No's. 1027 to 1029 and 1031 of 1961 and 120 of 1962

The Vizianagaram Municipality

APPELLANT

Vs

Puvvada Bhaskara Rao and Others

RESPONDENT

Date of Decision : 17-11-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 1965 AP 326

Hon'ble Judges : Satyanarayana Raju, J;Kumarayya, J

Bench : Division Bench

Advocate : D.V. Sastri, for P. Ramachandra Reddy, for the Appellant; G. Ramanujulu, V. Venkataramanayya and S. Suryaprakasam, for the Respondent

Judgement

Kumarayya, J.—These appeals raise a short question as to the jurisdiction of the Civil Court to interfere with assessment made by the authorities under the District Municipalities Act. Whereas, S. A. Nos. 1027 and 1028/61 and 120/62 are concerned with the assessments made by the executive officer in the purported exercise of his authority under r. 10 of Schedule IV of the District Municipalities Act (V of 1920), the other two appeals are concerned with the assessment made by the Valuation Officer as upheld ultimately by the Municipal Appellate Council. It would appear from the facts of the first set of appeals that in the quinquennial general revision in 1957 the Valuation Officer appointed by the Government raised the tax of the buildings assessing their annual rental value at a very high figure. The revising authority in the subject matter of appeal in S. A. 1027/1961 and the appellate Municipal Council in all other cases considerably reduced the tax. Notwithstanding that the matter was thus finally settled, the executive officer within a few months thereafter in the year 1958 in the purported exercise of his authority under r. 11 enhanced the tax under a special notice to a figure even higher than the original tax, and in certain cases it was out of all proportion to the original levy made by Valuation Officer. Further it was made retrospective to a date falling within 35 days from the municipal appellate council's decision. The assessee therefore brought their respective

suits calling in question the assessment on the ground that it is arbitrary and capricious and virtual violation of the order of the appellate authority and contrary to the provisions of the Act and that it is void and inoperative. In S. A. 1027/1961 it was further urged that the executive Officer had proposed to enhance the rate only after his efforts to secure a portion of the premises for the municipal high school without any condition attached to such sublease had failed. It was contended that this step was not bona fide and the assessment was made in negation of the accepted canons of assessment and ignoring the rental deeds produced. Both the District Munsif and the District Judge found that the increase in the half-yearly tax by the Commissioner was quite arbitrary, capricious and without any just or reasonable basis and the action of the Commissioner is open to question in a civil Court. Similar was the view expressed in S. A. Nos 1028/1961 and 120/1962.

(2) The facts out of which the second set of appeals (i.e., S. As. 1029/61 and 1031/61) arise are these :- In S. A. 1029/61 in quinquennial general revision for the year 1957, the valuation officer had levied a tax of Rs. 1283-0-9 taking the annual rental value as Rs. 8328. The revising authority dismissed the revision and confirmed the assessment but the appellate council reduced the tax too Rs. 1125. Prior to the general revision the building was assessed to a tax of Rs. 970-9-6 showing the annual rental value at Rs. 6300 only. The assessee therefore brought a suit on the ground that the assessment made by the valuation officer as upheld by the appellate Council proceeded on a wrong basis which did not conform with the provisions of the Act. The learned District Judge found that the assessment was based not merely on the rental value of furniture as well, and the calculation was therefore wholly erroneous and not in compliance with the provisions of the Act. In S. A. 1031/ 1961 of course the quantum when compared to the tax payable before the quinquennial revision is not high but the plea was taken on the basis that the rental value has not been calculated on the basis of the registered lease deed about which there is no dispute that it is either collusive or fictitious. Both the courts below have taken exception to the method adopted by the assessing authority as it was not quite in consonance with Ss. 81 and 82 of the District Municipalities Act. Thus it would appear that the assessment has been sought to be interfered with on the basis that it is only arbitrary and capricious but also there was no just or proper basis for making such assessment and it is not in conformity with the provisions of the Act.

(3) The main contention raised by the learned counsel Mr. Venkatappayya Sastry is that the civil courts have no jurisdiction to interfere with the assessment made under the District Municipalities Act by reason of S. 354 and the suits therefore were liable to be dismissed. His next string of argument proceeds on the contention that where a hierarchy of officers has been created under the statute and the remedy to get the wrong redressed has been provided thereunder, it is not open to a party to come to the civil court and / or at any rate without exhausting all the remedies open to him under the statute. We examine how far

these contentions are tenable. The first contention turns upon the true interpretation of S. 354. The said provision reads 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 effect complied with. And no proceedings under this Act shall, merely for defect in form, be quashed or set aside by any court of justice.

(2) * * * (3) * * *

The ouster of civil courts jurisdiction under this provisions is not in terms complete. It is but partial and is limited to the language and intendment of the provisions. It says that the impeachment of any assessment or demand or charge imposed under the authority of the Act is not permissible on the ground that there has been a clerical error or some mistake inter alia in respect of the amount assessed. Thus the jurisdiction of the Court to this extent alone and no further is affected by the provision . But even to attract this limitation on jurisdiction the requisite essential as provided by the section itself is that the provisions of the Act have been in substance and effect complied with by the authority concerned while making such assessment. So, then, if, in making the assessment, the provisions of the Act have not been correctly appreciated or followed, evidently the jurisdiction of the civil court in relation thereto must remain unaffected. It follows therefore where there is no basis on which the levy has been made, or the basis adopted is wrong or arbitrary or the tax is levied on surmises or even on an erroneous view of the statutory provisions of the Act, S. 354 will not stand as a bar against the interference by a civil Court.

(4) No doubt there are also rules framed under the Act contained in schedule IV which define the powers of various authorities competent to make an assessment and refer to the circumstances under which such powers may be exercised. They further provide for remedy to the aggrieved party creating hierarchy of officials and attach finality to the order passed by the council. As may be seen, R. 8 provides for revision of assessment by the competent authority/ once in every five years and also at any time between one complete revision and another if the State Government so direct. R. 8-A makes provision for valuation officer to be appointed by the State Government. Rule 10 enjoins that in every case in which between one general revision and another, the executive authority assesses any property for the first time or increase the assessment on any property otherwise than in consequence of a general enhancement of the rate at which the property tax is leviable, the executive authority shall intimate by a special notice to the owner or occupier of such property that a petition for revising the assessment will be considered if it reaches the municipal office within 60 days from the date

of service of such notice. R. 11 provides for applying for revision to the executive authority R. 12 ensures a reasonable opportunity of representation before the petition is disposed of. R. 13 empowers the executive authority to direct the payment of the amount fixed within 15 days after the date of receipt of information. R. 23 provides for an appeal to the council in respect of the assessment and imposition of the taxes specified therein. R. 28 reads thus :

"The assessment or demand of any tax, when no appeal is made, as hereinbefore provided, and when such an appeal is made, the adjudication of the council thereon shall be final.

Provided that where any assessment or demand is not in accordance with the assessment books nothing in this rule shall be deemed to prohibit a fresh assessment or demand of the tax being made in accordance therewith."

The first question is, whether the finality contemplated by R. 28 would constitute complete ouster of jurisdiction of the civil Court. We do not think that such is the purpose of the rule. All that the word "final" would indicate is that so far as the municipality is concerned, the decision of the council is conclusive. It does not mean further that the decision of the council in no circumstances shall be liable to be questioned in a court of law. If that were the intention, there should have been clear context for the same. As it is, any rule framed under the Act cannot go beyond the scope of any of the substantive provisions of the Act or run counter to it. Undeniably, the avowed aim and object of framing the rules is and should invariably be to advance or carry out the purpose of the substantive provisions of the Act. That is their appointed province which cannot validly extend beyond. In this premises, it is clear that the word "final" used in R. 28 contemplates the finality of the orders so far as municipal authorities are concerned. That in no way is related to the exclusion of civil courts' jurisdiction. The only provision in the statute which deals with the ouster of civil court's jurisdiction is S. 354. As already noticed exclusion thereunder is not complete but only partial and is necessarily limited to the terms and intendment of that provision. Even if the exclusion were complete, the civil courts are not wholly helpless, for exclusion of civil courts' jurisdiction is always subject to certain well recognised limitations. There can be no doubt that the suits as brought are suits of civil nature. S. 9 of the C. P. C. provides that the civil courts have jurisdiction to try all suits of civil nature excepting suits of which cognizance is either expressly or impliedly barred. The section thus starts with a presumption that exclusion of civil courts' jurisdiction is not to be readily inferred. It must either be clearly expressed or necessarily implied. It is further significant that Sec. 9 does not make any distinction between a civil right existing at common law and that created by statute. It is well settled that even if jurisdiction is excluded expressly or by necessary implication the civil courts have jurisdiction to examine cases where the provisions of the Act have not been complied with by the statutory Tribunals or fundamental principles of procedure have been violated. This is what has been said in AIR 1940 105 (Privy Council) at p. 110 by the Privy

Council. Their Lordships there observed thus :

"It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

While referring to these observations with approval, the Supreme Court in *Firm and Illuri Subbayya Chetty and Sons Vs. The State of Andhra Pradesh*, struck a note of caution by observing : -

"It is necessary to add that these observations, though made somewhat wide terms, do not justify the assumption that if a decision has been made by a taxing authority under the provisions of the relevant taxing statute, its validity can be challenged by a suit on the ground that it is incorrect on the merits and as such, it can be claimed that the provisions of the said statute have not been complied with. Non-compliance with the provisions of the statute to which reference is made by the Privy Council must, we think, be non-compliance with such fundamental provisions of the statute as would make the entire proceedings before the appropriate authority illegal and without jurisdiction. Similarly, if an appropriate authority has acted in violation of the fundamental principles or judicial procedure, that may also tend to make the proceedings illegal and void and this infirmity may affect the validity of the order passed by the authority in question. It is cases of this character where the defect or the infirmity in the order goes to the root of the order that makes it in law invalid and void that these observations may perhaps be invoked in support of the plea that the civil court can exercise its jurisdiction notwithstanding a provision to the contrary contained in the relevant statute."

The Supreme Court in that case did not think it necessary to lay down cases where such a plea would succeed. In *Firm Seth Radha Kishan (Deceased) Represented by Hari Kishan and Others Vs. The Administrator, Municipal Committee, Ludhiana*, their Lordships observed thus :

"A suit in a civil court will always lie to question the order of a tribunal created by a statute, even if its order is, expressly or by necessary implication, made final, if the said tribunal abuses its power or does not act under the Act but in violation of its provisions."

It is clear that even if there was a complete ouster of jurisdiction the civil courts are at liberty to interfere where the authorities have acted in violation of the fundamental principles of judicial procedure or committed such errors as would affect the merits of the case, procedural though in nature they (these errors) may be. The civil courts' jurisdiction being so wide, it cannot possibly be contended that the bar created u/s 354 does not empower the civil courts to interfere with the assessments made when the quasi-judicial authority had acted

in a manner wholly against the judicious procedure laid down and did not follow the judicial principles and the provisions of the Act. It is quite a different matter if the authorities had gone wrong in their conclusion having followed the well settled principles and also the provisions of the Act. It would then be only an error of judgment. That may not necessarily give cause for interference by the civil court. S. 354 in fact refers to errors whether they are clerical errors or even mistakes but of a bona fide nature which would not by themselves warrant interference. In order to escape the scrutiny of civil court even such cases, it is however essential that the provisions of the Act must have been in effect and substance complied with. The question is, whether the provisions in relation to assessment have thus been followed by the assessing authority. S. 82 of the Act provides :

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

(2) The annual value of lands and buildings shall be deemed to be the goods 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 part from their sites and the adjacent lands occupied as an appurtenance thereto and the said deduction shall in lieu of all allowances for repairs or on any other account whatever.

Provided

(5) It is noteworthy that this provision in terms declares 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. The tax therefore has to be assessed in due recognition to this basic principle laid down in the Act. But it would appear from the findings reached building both the courts below that this principle has not been adhered to. It is unnecessary for us to deal with this aspect at length as the judgments of the courts below contain a detailed discussion in this behalf. Both the courts have pointed out that there has been a flagrant breach of the rule laid down in S. 82. They have shown how the assessment was based largely on surmises and how the registered lease deeds etc., were wholly ignored without any just or reasonable ground for doing so. It was not even suggested as regards these documents that they are collusive or fictitious or have been entered into with any oblique motive. It is therefore clear that the basic provisions of the Act were not followed in making the assessments. In that case S. 354 does not stand as bar in the way of the civil court. Even in Udipi Municipal Council Vs. K. Vasudevacharya and Others, on which much reliance has been placed on behalf of the appellant, Viswanadha Sastry, J., has pointed out that if on the facts proved, assumed or admitted by the assessing authority, the assessment is found to have proceeded on an erroneous basis, the Civil Court 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. The learned Judge had also said that if the executive authority had come to wrong conclusion on a matter of fact which it was within its competence to decide, the remedy was by way of appeal to the council and civil courts cannot assume the powers of appellate authority and investigate whether the conclusion that Raghava Rao, J., in latter case in *In Re: C.T. Sambandam and Others*, expressed his dissent if the statement of law as made by Viswanadha Sastry J., be taken to mean that however arbitrary, capricious or perverse the assessment may be the assessee must content himself with an appeal under the Act and cannot resort to a suit. This learned Judge's view has been followed by this Court in *Municipal Council, Tenali v. Sri Rama Talkies, Tenali*, 1960-2 Andh W. R. 45. That was a decision given by the Division Bench consisting of Umamaheswaram and Syed Qamar Hasan. JJ. The learned Judge therein observed:-

Where any express provision of the act is contravened or an erroneous view is taken of the provisions, the Civil Court is bound to interfere with the wrong assessment made by the executive authority or the municipal council. It is true that the question whether there has been substantial compliance with the provisions of the Act is a question of fact depending on the particular circumstances of each case. What has to be decided in each case is whether the provisions of the Act have been in effect complied with. A mere pretence or a semblance of following the provisions of the Act does not oust the jurisdiction of the Civil Court under the provisions of S. 9, Civil Procedure Code. It is no doubt true that the Court will not sit as an appellate or revisional Court as against the decision of the executive authority or the municipal council but will certainly interfere when the provisions of the Act have not been in effect or in substance complied with." We are not however concerned in this case with this aspect of law. The question here is not whether following the basis prescribed by law, the assessing authorities have come to wrong conclusion on a matter of fact. So, then, the matter of difference of opinion between Viswanatha Sastry, J., and Raghava Rao, J. as to the statement of law on that point need not detain us. It is plain therefore that the bar under s. 354 has no application to the present case as the assessment has been made without regard to the provisions of the Act both in substance and effect. In that case, the drift and the implication of the words "error" and "mistake" employed in that section on which so much stress has been laid during the course of argument may be said whatever its import or connotations, the term "mistake" used in s. 354 enumerating its definite categories contemplated by the provision does not at any rate include the mistake of not following the provisions of the Act whether in substance or in effect. It would of course then be a case of arbitrariness or capriciousness. It is in this context that the words "arbitrary" and "capricious" have been used in the judgments. The term "arbitrary" is not easy to be defined as to cover its varied aspects dependent on the circumstances of each case. The conclusion has therefore to be reached on the particular facts of each case. Its implications and

incidents however are too well known. In *Mills v. Gannon Brewery Co., Ltd.*, 1920-2 Ch. 38 at p. 44, Lawrance, J., after giving the meaning of the words "arbitrary" and "capriciously" as found in the Oxford Dictionary and referring to the various dicta in that behalf held that "arbitrarily" means "without fair, solid and substantial cause, and without reason given". The Learned Judge there was concerned with the interpretation of that term used in an instrument. The expressions "unreasonably" "wholly unreasonably" and "without reasonable cause" according to the learned Judge all mean the same thing, and each of these expressions correctly defines the meaning of the word "arbitrarily" as used in that particular instrument. The definition sought to be attempted in relation too the particular document cannot naturally be exhaustive. In our judgment, the conclusion whether the assessment was arbitrary or capricious or high handed must always be reached on the particular set of facts and circumstances of each case. It may however be safely held that where there is no basis or data for the conclusion reached or it has been reached ignoring the correct basis or correct provisions of law, or wholly on surmises, it must be said that the Tribunal has acted arbitrarily or capriciously.

(6) We do not think it necessary to say anything further . Suffice it to say that having regard to the findings reached by the courts below that the assessing authorities have made the assessment ignoring the basic provisions of the statute, the civil courts are right in interfering with the assessment made by the authorities concerned. We may further observe that the executive authority has in purported exercise of his powers under r. 10 even gone to the length of undoing the effect of the appellate council's decisions to which the statute, attaches finality. This cannot but be said to be arbitrary. Certainly the power exercisable under r. 10 cannot in fairness go to the length of giving a go-by to the orders which have become final and which must be binding on the parties including the municipality. The executive authority on some pretext or under the pretence of following the provisions of the Act cannot justifiably avoid the effect of the Municipal Council's decision which the statute says should be final. That indeed would constitute the abuse of process of law. it is important to note that only a few months after the council's decision the executive authority enhanced the taxes and that with retrospective effect as to come into force within a few days after the council's decision. The enhanced rate in certain cases far exceeded the original levy itself which the council had cut down. There was no legal basis for the enhancement either. What is more significant is that in one case this was effected after the executive authority had failed to achieve his purpose of taking the building on lease for the school. This cannot be said to be bona fide. We cannot think of a better case than this where the civil courts ought to interfere with such assessments. May be that an appeal was open to the aggrieved party but the party need not wait or have recourse to that remedy alone when it is clear that the assessment was arbitrary, capricious and not at all bona fide. Of course if the assessment was made in due accordance with the basic principles of the statute, appeal was the only appropriate remedy for the

time being. But that is not the case here. The suit for declaration that the assessment was illegal was indeed the proper remedy. In our opinion, the suits have been rightly decreed.

(7) The result is that appeals fail and are dismissed with costs and the judgments and decrees of the courts below are confirmed.

8. Appeals dismissed.