(2001) 07 MAD CK 0102

In the Madras High Court

Thirubuvanam Town Panchayat APPELLANT

Vs

Nabisa Bibi RESPONDENT

Date of Decision : 30-07-2001

Acts Referred:

Citation : (2001) 3 MLJ 473

Hon'ble Judges : A. Ramamurthi, J

Bench : Division Bench

Judgement

A. Ramamurthi, J.—The defendant in O.S.No. 406 of 1985 on the file of District Munsif Court, Valangaiman at Kumbakonam, has preferred the second appeal aggrieved against the Judgment and decree in A.S.No. 2 of 1989 on the file of Sub Court, Kumbakonam dated 4.10.1989 reversing the judgment and decree of the trial court dated 9.12.1988.

2. The case in brief is as follows: The plaintiff filed a suit for declaration that the assessment made by the defendant Panchayat is arbitrary and contrary to the Rules with consequential relief of permanent injunction. The plaintiff had purchased a vacant site measuring 2000 Sq.ft. in S.No. 79/6. Thirubuvanam Jamath Authorities formed layouts and the house sites were sold to different persons. The plaintiff purchased two plots for a consideration of Rs. 5,000 on 18.1.1982. She wanted to put up a house in the property as she was not owning any other house. About 29 plots were sold by the owners, in which one or two constructions have been completed; but, so far as the plaintiff is concerned, the construction was incomplete. Thirubuvanam Panchayat Union had also not put up any street light and drainage facility. The Executive Officers of the Panchayat Union also did not visit the construction of the plaintiff and the valuation has not been determined in accordance with law. However, on 12.9.1985, the plaintiff received a demand notice, showing the annual assessment of the house tax as Rs. 567 on the tentative value of Rs. 50,000 and the annual rental value at Rs. 3,000. She has not been informed on what basis, the assessment has been determined by the Authorities and hence, filed the suit.

3. The defendant resisted the suit and stated that the plaintiff had completed the construction and she was occupying the same. The Civil Court has no jurisdiction to entertain the suit. The Executive Officers inspected the proposed construction and took photographs also. After completion of the construction only, the assessment was made by the Authorities in accordance with law. The plaintiff occupying the house property, cannot postpone the payment of the house tax. The rental value for each month has been fixed at Rs. 250. The plaintiff has not come to court with clean hands and as such, she is not entitled to the relief of permanent injunction. The Bill Collector had inspected the property and submitted a report and thereafter, the Executive Officer had also inspected and only after observing all the formalities, the order of assessment was made.

4. The trial court framed 7 issues and on behalf of the plaintiff, P.W.1 was examined and Exs. A-1 and A-2 were marked. On the side of the defendant, D.W.1 was examined and Ex.B-1, photo with negative was marked. The trial court dismissed the suit and aggrieved against this, the plaintiff has preferred A.S.No. 2 of 1989 on the file of Sub Court, Kumbakonam and the learned Judge after hearing the parties, allowed the appeal, set aside the Judgment and against this, the defendant has come forward with the present second appeal.

5. At the time of admission of the second appeal, the substantial questions of law were framed by this Court.

(1) Has the Lower court erred in coming to the conclusion that the appellant should follow the procedure set out in Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 i.e., more particularly after fixing the value of the site and building?

(2) Is the lower court is right in coming to the conclusion that the fair rent ought to have been calculated for the Building when the Panchayat Act gives the right to the appellant to levy tax on the capital value of the building?

(3) Is the lower court right in decreeing the suit especially when the respondent has not produced the best evidence available with her viz., the cost of the construction of the building?

6. Heard the learned Counsel of both sides.

7. The points that arise for consideration are:

(1) Whether the plaintiff is entitled to the relief of declaration?

(2) Whether the plaintiff is entitled to the relief of permanent injunction?

8. POINTS: The plaintiff has come forward with a specific case that she had purchased two plots from Thirubuvanam Jamath Authorities measuring 2000 sq.ft. for consideration of Rs. 5,000. She started construction and even before completion of the same, the defendant Panchayat sent the assessment notice under Ex.A-2 fixing the annual house tax at Rs. 567. The plaintiff had purchased the plots under a registered document Ex.A-1 dated 18.1.1982. Learned Counsel

for the plaintiff mainly contended that even before completion of the construction, the assessment has been made by the defendant and none of the officers had inspected the property. Moreover, the assessment has not been made in accordance with the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act and they have also not fixed the fair rent for the property.

9. Learned Counsel for the appellant/defendant contended that the lower Appellate Court erred in coming to the conclusion that the appellant should calculate the market value of the land and superstructure and then only, assessed to house tax. The fair rent need not be arrived at for fixing of the house tax as the Panchayat Act does not provide for such procedure. The Plaintiff having failed to produce the best evidence available, cannot allow to contend that it is the duty of the Panchayat to fix the value of the site and building. The tax imposed on the capital value is perfectly in order and neither the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act nor the decision rendered by this Court as well as the Apex Court would have any bearing to the facts of the case.

10. The defendant panchayat has filed Ex.B-1 photograph with negative. Although D.W.1 stated that the Executive Officer of the Panchayat and the Bill Collector have inspected the property and given a report, nothing has been filed into the court. There is also no basis in the contention that if the plaintiff was aggrieved about the assessment, she should have preferred an appeal before the Authorities provided under the Act and she is not competent to file a suit directly. It is settled position of law giving the guidelines as to how the annual house tax has to be determined by the Panchayat as well as Corporation authorities. The formula provided under the Tamil Nadu Buildings (Lease and Rent Control) Act has to be adhered to in order to find out the fair rent, which is payable, if the tenant is in occupation of the property will pay the same. No such procedure contemplated under the Rules or the guidelines given by the court was adhered to in the case. Considering the fact the report said to have been prepared by the officers has not been filed into the court 1 am of the view that the order passed by the lower appellate court is proper and correct. It is the duty of the public authorities to adopt the procedures in accordance with law and thereafter only, they should send the notice. Although it is stated that they have complied with the formalities, no such document has been filed into the court. Under the circumstance, I am of the view that the finding arrived at by the lower appellate court is based on legal evidence and there is no illegality or infirmity in the judgment calling for interference, Hence, the points are answered accordingly.

11. For the reasons stated above, the second appeal fails and is dismissed. No costs. However, it is made clear that it is open to the defendant Panchayat to assess the property in accordance with law and is entitled to collect the tax from the date of completion of the construction of the building.