

(2010) 08 MAD CK 0497
In the Madras High Court
Case No : S.A. No. 266 of 1997

Vaithialingam

APPELLANT

Vs

The Cuddalore Municipality and Rajamani Ammal (given up)

RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Coimbatore City Municipal Corporation Act — Section 132
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 4
Tamil Nadu District Municipalities Act, 1920 — Section 354, 364(2), 82, 82(2)
Tamil Nadu District Municipalities Rules, 1920 — Rule 28, 6, 8

Citation : (2010) 08 MAD CK 0497

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : R. Subramanian, for the Appellant; G. Munirathinam, for R1, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The Appellant/Second Plaintiff has filed this Second Appeal as against the Judgment and Decree dated 25.11.1996 made in A.S. No. 217 of 1994 on the file of Learned Principal Subordinate Judge, Cuddalore.

2. The First Appellate Court viz., the Principal Subordinate Judge, Cuddalore, in the Judgment in A.S. No. 217 of 1994 dated 25.11.1996 has among other things observed that "the Plaintiffs have not filed the Rental Agreement entered into by them with the Nationalised Bank and also they have not utilised the remedies provided under the Tamil Nadu District Municipalities Act, viz., that they have not filed any Appeal as against the dismissal of the Revision Petition and therefore under such conclusion that the Plaintiffs are not entitled to get the relief of declaration and injunction and consequently dismissed the Appeal with costs.

3. Before the trial Court 1 to 4 issues have been framed for determination in the trial of the case. On the side of the Plaintiffs, PW1 has been examined and Ex.A.1 to Ex.A.5 have been marked. On the side of the Defendant/Municipality witness

DW1 has been examined and Ex.B.1 and Ex.B.2 have been marked.

4. The trial Court, on an appreciation oral and documentary evidence available on record has come to the resultant conclusion that the enhancement of property tax is a valid one and resultantly declined relief of declaration and permanent injunction by dismissing the suit with costs.

5. Dissatisfied with the Judgment and Decree made in A.S. No. 217 of 1994, dated 25.11.1996 on the file of Learned Principal Subordinate Judge, Cuddalore, the Appellant/Second Plaintiff has preferred this Second Appeal before this Court.

6. At the time of admission of the Second Appeal, this Court has framed the following substantial questions of law.

(1) Whether in law the Courts below are right in fixing the property tax on the basis of the rent a hypothetical tenant would have paid?

(2) Whether in law the Courts below are right in upholding the revision of tax made without proper notice and without following the procedure as contemplated u/s 82(2) of the T.N. District Municipalities Act?

(3) Whether in law the Courts below are right in permitting enhancement by more than three times within two years of the previous revision without any increase in the rental income?

7. The Contentions, Discussions and Findings on Point Nos. 1 to 3:

According to the Learned Counsel for the Appellant/Second Plaintiff, the Judgment and Decree of the Courts below are erroneous and unsustainable in law and as a matter of fact both the Courts should have been seen that more than three times has been made and the frequent revision is opposed to all statutory norms and guidelines.

8. The Learned Counsel for the Appellant/Second Plaintiff urges before this Court that even the Ex.B.1 Tax Revision Accounts shows that the Tenant has been paying Rs. 1,700/- towards amenities and both the Courts committed an error in determining the rent at an imaginary figure and moreover the acceptance of DW1's evidence by both the Courts below is not a correct one.

9. The contention of the Learned Counsel for the Appellant/Second Plaintiff is that no notice has been served on the Plaintiffs in regard to the demand for enhancement of property tax, but in reality notice has been served on the Accountant of a third party and in fact, the amount received from the Tenant for providing amenities cannot be taken into the fold of Rent account.

10. In short, the submission of the Learned Counsel for the Second Appellant/Plaintiff is that both the Courts have not taken into consideration the relevant facts and attendant circumstances of the case in an integral fashion which has resulted in miscarriage of justice and therefore prays for allowing the Second Appeal, in the interest of Justice.

11. Per contra, the Learned Counsel for the First Respondent/Defendant submits that both the Courts have come to the right conclusion that the Plaintiffs are not entitled to claim the relief of declaration of permanent injunction as prayed for in the plaint and the same need not be interfered with by this Court at this stage of the Second Appeal.

12. Expatiating her submissions, the Learned Counsel for the Appellant/Second Plaintiff contends that the First Respondent/Defendant has not followed the procedure envisaged as per Section 82(2) of the Tamil Nadu District Municipalities Act, 1920 and also both the Courts below equally have not borne in mind the procedure prescribed under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, for fixing the fair rent in respect of a building.

13. According to the Learned Counsel for the Appellant/Second Plaintiff, the Second Court in the suit has held that the Trial Court in a Judgment that the suit is maintainable, but the First Appellate Court viz., Principal Subordinate Judge, Cuddalore in the Judgment in A.S. No. 217 of 1994 has held that the suit is not maintainable.

14. The Learned Counsel for the Appellant/Second Plaintiff puts forward a plea that no prior notice of inspection of the building has been given by the First Respondent/Defendant to the Plaintiffs and as such an opportunity to raise objections has not been provided to the First Respondent/Defendant by the Plaintiffs, which is a violation of the principles of natural justice.

15. To lend support to the said contention, the Learned Counsel for the Appellant/Second Plaintiff cites the decision of this Court A. Srinivasan and Ors. v. Commissioner, Coimbatore City Municipal Corporation, Town Hall, Coimbatore-1 and Ors. (2010) 2 MLJ 75 wherein it is held as follows;

Before making an inspection of the existing building, no notice u/s 132 of the Coimbatore City Municipal Corporation Act, was served on the petitioners. Therefore, even though it may be an original assessment for a new building, the petitioners should have had an opportunity to refute such a stand and file their objections. Since that opportunity was lost to the petitioner, the impugned demand should go.

16. In support of the plea that failure to mention the reasons for enhancement of the property tax, the notice of demand in this regard is illegal, the Learned Counsel for the Appellant/Second Plaintiff relies on the decision of this Court Dindigul Anna District Tax Payers Sangam represented by its President M.V.R.A. Soundararajan, No. 116, Big Bazaar Street, Dindigul v. Government of Tamil Nadu represented by its Secretary to Government, Municipal Administration and Water Supply Department, Fort St. George, Madras-9 and Anr. 1994 2 L.W. 715 at Page 716 wherein at Paragraphs 15 and 16, it is observed here under;

It is clear from the decision in The Guntur Municipal Council Vs. The Guntur Town Rate Payers' Association etc., that when the Rent Controller has not fixed the fair

rent for a building, the municipal authorities will have to arrive at their own figure of fair rent in accordance with the principles laid down in the Rent Control Act. It is also clear from the preamble portion of the guidelines were issued only to enable the municipal authorities to arrive at their own figure of fair rent of the buildings in accordance with the principles laid down u/s 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act and Section 82(2) of the Act and to ensure objectivity and avoid arbitrariness in the determination of the annual value of the buildings for the purpose of revision of property tax.

On a careful examination of the guidelines dated 14.05.1993 issued by the Commissioner of Municipal Administration to the Municipal authorities, the said guidelines have been issued only in conformity with the provisions contained in Section 82 of the Act and Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act. Further, there is nothing wrong in the municipal authorities fixing different basic value for different zones depending upon the importance of the locality, the market rate of the land and the other amenities available in that zone, for the purpose of the fixation of the annual rental value of the buildings provided they are in conformity with the fair rent formula and the provisions of the Act. The guidelines issued by the Government will certainly avoid arbitrariness and ensure uniformity and objectivity in the determination of the annual rental value of the buildings.

17. The Learned Counsel for the Appellant/Second Plaintiff draws the attention of this Court to the decision K.R. Santharam Vs. The Commissioner, Madurai City Municipal Corporation, , wherein it is held that the Madurai City Municipal Corporation is not entitled to assess property tax and enhance the same for more than three years preceding the assessment year and the authorities are duly bound to mention reasons for claiming enhancement etc.

18. The Learned Counsel for the Appellant/Second Plaintiff brings it to the notice of this Court the decision Sanjai Gupta v. The Commissioner, Corporation of Chennai, Ripon Buildings, Chennai-600 003 and Anr. 2009 (2) CTC 465, wherein inter alia held as follows;

In our opinion, this submission is misconceived. The occasion to file an Appeal will arise only after an order is passed and based thereon a demand is made. In the present case, the appellant having filed the objections, they were expected to be decided. Without deciding the same, this levy has been calculated and the balance amount of Rs. 20,69,393/- has been demanded.

19. In the present case on hand, the evidence of PW1 and DW1 play a vital role for the purpose of better appreciation of the case, in the considered opinion of this Court.

20. It is the evidence of PW1 (Second Plaintiff) that the First Plaintiff is his mother and of the suit property belongs to his grandmother (since deceased) and after her death his mother (First Plaintiff) and his brother are absolutely entitled to the suit property as legal heirs and after the demise of her grandmother they

are paying the property tax and Ex.A.1 is the receipt for the payment of property tax and at the time property tax has been Rs. 2035.70paise and for the second half during 1987-1988 the property tax has been levied as Rs. 2374.40paise and thereafter, the same has been enhanced to Rs. 3098/- without any reason which has been paid by them as per the Ex.A.2 Receipt and Ex.A.3 is the demand notice of property tax in respect of first half for the year 1993.1994 whereby a claim is made for Rs. 9784/- and for the enhancement of the said tax no notice has been issued to them and they have not been examined and the upstairs portion of the house relates to the claim of enhancement of property tax and that Canara Bank is the Tenant for the upstairs portion of the house and the monthly rent is Rs. 2,400/- and the other amenities is Rs. 2,400/-

21. PW1 in his further evidence has deposed that the First Respondent/Defendant has not followed the procedure prescribed under law for enhancing the property tax and therefore, the enhancement of property tax is Rs. 9787/- from Rs. 3098/- is not correct and that the First Respondent/Defendant has not inspected the upstairs portion of the Bank and no information regarding inspection has been given and the suit has been filed to the effect that the First Respondent/Defendant cannot asked for enhancement of property tax.

22. PW1 (in his cross examination) has deposed that in the suit property there are two floor and the first floor and second floor has been let out to the Canara Bank and the rent for the first floor is Rs. 1,700/- and for the second floor is Rs. 3150/- and that the Canara Bank is a Nationalised Bank and no Rental Agreement has been written and to a suggestion that the Nationalised Bank officials will inspect the place and they will agree for the fair rent, he has stated that it might be so and for Ex.A.3 demand notice for 1992/1993 first half year the tax is Rs. 9784/- and they have filed Revision as against Ex.A3 demand notice which has been dismissed as per the order in Ex.A.5. The evidence of PW1 (in his cross examination) is to that effect that after Ex.A.5 order he has not paid tax to the Municipality and Theradi Street after Lawrence Road in Cuddalore is an important commercial place and that it does not know on 23.09.1992 , the Municipality Commissioner and the Tax Collector have come and inspected the suit property.

23. DW1 (Tax Collector) in his evidence has stated that for the suit property the property tax of Rs. 2714/- has already been levied earlier and later the same has been increased and the tax has been increased, Special notice has been given and since the owner of the house has not been there, the said special notice has been served to the Clerk Arunachalam and the tax has been enhanced to Rs. 9784/- and the tax has been enhanced because of the fact that the property has been let out to Canara Bank on monthly rent of Rs. 4850/- and therefore along with the Revenue Inspector and Commissioner have inspected the suit property and even in the Special notice it has been mentioned that the enhancement of property tax has been made because of letting out the property to the Canara Bank and at the time of serving notice, the Plaintiff has not been present and

therefore, it has been served on his Accountant and for the enhancement property tax, the Plaintiff has issued a cheque and after stating "Stop Payment" he has stopped the cheque being encashed and Ex.B.1 is the true copy of the Revision Register.

24. DW1 (in his cross examination) has deposed that before enhancing the property tax to Rs. 9784/- no notice has been given to the Plaintiff has not been averred of the inspection made by them in respect of the suit property, but the Bank Manager knows about the inspection of the suit property and as per Rent Certificate furnished by the Canara Bank in Ex.B.1, the rent details has been mentioned and in Ex.B.1 the monthly rent is mentioned as Rs. 3150/- and for other facilities it is mentioned as Rs. 1700/- and these written entries have been scored out and the same have been written in black ink and and struck off and written in blue ink and the correction has been made by the Revenue Inspector in the Ex.B.1 Xerox copy of Revision of Property Tax Register.

25. The Learned Counsel for the First Respondent/Defendant submits that PW1 in his evidence has stated that he is an Income Tax Assessee and he is showing the real income in the Income Tax Returns, but has not produced the same to find out what has been the actual rent received and how much sum has been received towards amenities and he has not denied the Annual Rental value of the building and after the dismissal of the Review Petition, the Plaintiffs ought to have preferred an Appeal to the Council of Municipalities as per Section 354 of the Tamil Nadu District Municipalities Act and after the decision of the Council in the Appeal then is to be filed, but in the present case in Ex.B.2, the First Respondent/Defendant has made a demand in the property tax and assigned reasons thereto. Further, it is the contention of Learned Counsel for the First Respondent/Defendant that all the decisions cited on behalf of the Appellant/ Second Plaintiff are all relating to the cases where no reasons have been assigned and in the instant case on hand, no substantial questions of law have arisen and both the Courts have arrived at a finding of fact and once the Plaintiffs accepted the annual monthly rent paid by the Bank then it is not open to them to take a different stand and in fact Ex.B.2 Special Notice of property tax the annual value is mentioned as Rs. 58,200/- and the amount of tax is also mentioned as Rs. 9400/- and that apart the Municipality has assigned the reason that the increase in property tax has been made for letting out the property to Canara Bank.

26. It is to be noted that Section 82(2) of the Tamil Nadu District Municipalities Act, 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 the month to month or year to year less the specified deduction. The crucial test is what rent the premises can legally fetch if let out to a hypothetical tenant.

27. It is not out of place for this Court to make a significant mention that the First Respondent/Municipality is not free to assess any arbitrary value and it is bound by the standard rent which will be payable for a certain premises under

the Rent Control Act in force during the relevant period of assessment. The assessment of valuation must take into account the measure of fair rent as determinable under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

28. The municipality while fixing the annual rental of the property for the purpose of tax has to take into account the rent realised by the Landlord and also the principles and methods prescribed in Section 82 of the Tamil Nadu District Municipalities Act, as opined by this Court significantly a rental value cannot be determined higher than the standard rent under the Rent Control Act.

29. A fair rent fixed under the house Rent Control Act may ordinarily be taken into consideration by the Municipal Authorities in computing the Annual value u/s 82 of the Tamil Nadu District Municipalities Act, 1920, but they are not bound to take such rent as necessarily the rent for which the premises may reasonable be expected to be let.

30. The provisions of Sections 82 read with Rule 6, 8 and 28 of Schedule IV of the Tamil Nadu District Municipalities Act make it candidly clear (1) that the executive authority has the power to fix the rental value of any building for the purpose of levy of property tax; (2) that the value so determined when entered into the assessment books, is the basis of the levy of the property tax; (3) that without an amendment of the assessment, the tax cannot be altered, and (4) that even an amendment has only a limited retrospective operation as per decision Madras Municipality through its Commissioner, D. Gnanaolivu v. R. Kamakshisundaram Chettiar and Anr. AIR 1956 Mad 49.

31. As a matter of fact, the rent fixed between the willing Landlord and willing Tenant uninfluenced by extraneous consideration must normally be regarded, as a reasonable one.

32. Section 354 of the Tamil Nadu District Municipalities Act, 1920, reads as follows;

354. Assessments, etc., not to be impeached.-(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 charges : 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) No suit shall be brought in any Court to recover any sum of money collected under the authority of this Act or to recover damages on account of any assessment, or collection of money made under the said authority:

Provided that the provisions of this Act have been, in effect, complied with.

(3) No distraint or sale under this Act shall be deemed unlawful nor shall any

person making the same be deemed a trespasser, on account of any error, defect or want of form in the bill, notice, schedule, form, summons, notice of demand, warrant of distraint, inventory, or other proceeding relating thereto if the provisions of this Act, the rules and by-laws have in substance and effect been complied with:

Provided that every person aggrieved by any irregularity may recover satisfaction for any special damage sustained by him.

33. The effect of Section 354(2) of the Act is that when the Chairman and the Council have proceeded in the matter of assessment in accordance with the Act, no suit will lie against them even if their actual decision is wrong as per the decision Appu L.R.M. Lakshmanan Chetti Vs. Mncpl. Council, .

34. The jurisdiction of a Civil Court in the matter of assessment is limited by the proviso to Section 364(2) of the Act and it is only to see if the provisions of the Act have been complied with or not by the Authorities concerned and a Court of law cannot itself proceed to determine what the correct assessment ought to be.

35. In the instant case on hand, though a plea has taken on behalf of the Appellant/Second Plaintiff that the Plaintiffs have not given the special notice before the enhancement of property tax, DW1 in his evidence has clearly stated that since at the time of serving of a special notice, the plaintiff has not been available and therefore, it has been served on his Accountant and as such it cannot be said that the plaintiffs have not been served with the special notice for enhancement of property tax and the said contention of the Appellant/Second Plaintiff is not accepted by this Court.

36. It is the evidence of DW1 (in his cross examination) that they have been inspected the suit property on 17.09.1992 and prior to the inspection no notice has been issued to the Plaintiffs and on 17.09.1992 they have not noted down the site building and measurement. Very perusal of Ex.B.1 Part III List of property of which the tax requires revision shows that because the suit property has been let out to Canara Bank the property tax is to be increased.

37. A perusal of the plaint filed by the Plaintiffs shows that the Plaintiffs have sought the relief of declaration with the enhancement of property tax to Rs. 9784/0 is illegal, ultra vires and unreasonable and they also sought for the relief of consequential injunction restraining the First Respondent/Defendant Municipality from collecting the said amount. Admittedly, PW1 in his evidence (cross examination) has deposed that he has preferred the Revision Petition in regard to the property tax claim of Rs. 9784/- for the year 1992-1993 and the same has been dismissed as per Ex.A.5 Order dated 04.03.1993. A perusal of Ex.A.5 Order indicates that there is not reason to reduce the property tax and therefore the demand made earlier has been confirmed and in case if there is any objection the Appeal may be filed within 15 days from the date of receipt of the order before the Property Tax Revision Council as against the said order of Ex.A.5 dated 04.03.1993, the Plaintiffs have not preferred any Appeal before the

Property Tax Revision Council. In Ex.A.5 the name of the First Plaintiff is seen and the order has been communicated to her. When the Appellant/Second Plaintiff and the First Plaintiff have got a remedy by way of preferring an Appeal as against the order passed in Ex.A.5 dated 04.03.1993, they have not exhausted the said remedy and they have directly approached the trial Court and filed a suit in O.S. No. 612 of 1993 seeking for the relief of declaration that the assessment of enhancement of property tax to Rs. 9784/- is legal etc., and for consequential injunction which is per se not maintainable in the considered opinion of this Court and therefore, this Court, answering the substantial questions of law Nos. 1 to 3 does not arise for consideration and consequentially, the Second Appeal fails.

38. In the result, the Second Appeal is dismissed, leaving the parties to bear their own costs. The suit filed by the Appellant/Second Plaintiff and the Second Respondent/First Plaintiff is not maintainable and it is dismissed. However, liberty is granted to the Appellant/Second Plaintiff to agitate the matter of enhancement of property tax to Rs. 9,784/- viz., Ex.A.3 before the Competent Forum in the manner known to law.