

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.12.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.689 of 2004

The Commissioner,
Kancheepuram Municipality,
Nellukkara Street,
Kancheepuram.

..Appellant/Appellant/Defendant

-Vs-

Hotel Baboo Surya
A unit of Baboo Hotel (P) Limited
rep. by its Managing Director
A.B.Subramaniya Sah,
having Office at
No.85, East Raja Veethi,
Kancheepuram Town.

..Respondent/Respondent/Plaintiff

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree of the learned Subordinate Judge, Kancheepuram dated 26.03.2003 made in A.S.No.62 of 1999 as confirmed by the judgment and decree of the Additional District Munsif, Kancheepuram dated 21.10.1998 made in O.S.No.1128 of 1993.

For Appellant : Mr.P.Srinivas
For Respondent : Mr.V.Ayyadurai

सत्यमेव जयते
J U D G M E N T

The defendant in O.S.No.1128 of 1993 on the file of the learned Additional District Munsif, Kancheepuram is the appellant herein. The plaintiff is the respondent. The said suit was filed for declaration that the assessment order passed by the defendant in A4/C/R.P.No.1/92 dated 08.09.1993 revising the annual value of the suit property for the purpose of tax under the Tamil Nadu District Municipalities Act, is invalid and unenforceable under law. The learned Additional District Munsif by decree and judgment dated 21.10.1998 decreed the suit and declared the impugned order as invalid and injuncted the defendant from enforcing the same. As against the same, the

defendant filed an appeal in A.S.No.62 of 1999 before the learned Subordinate Judge, Kancheepuram. By decree and judgment dated 26.03.2003, the lower appellate court dismissed the appeal thereby confirming the decree and judgment of the trial court. As against the same, the defendant is before this Court with this Second Appeal.

2. The case of the plaintiff in brief is as follows:

The plaintiff is a Private Company Limited. The said company constructed a building for the purpose of hotel business and they have been assigned the Door Nos.84 B and 85 at East Raja Street and Door No.6 at Vaikuntaperumal Sannathi Street, Kancheepuram. According to the plaintiff, the construction of the hotel building was commenced on 20.01.1992 and the same was later on completed. While so, the defendant Municipality issued a Special Notice of Property Tax dated 30.09.1992 intimating the plaintiff that the annual value of the property had been revised to Rs.9,47,150/- from Rs.360/- and consequently, it was tentatively proposed to impose tax of Rs.1,33,912/- per half year from Rs.59/-. The plaintiff submitted his objection duly on 06.10.1992. The same was acknowledged by the defendant on 27.10.1992. But, there was no enquiry held at all in respect of the said objections made by the plaintiff. Without affording any opportunity whatsoever, according to the plaintiff, the defendant suddenly passed the order under challenge in A3/C/RP.No.1/1992 dated 08.09.1993 thereby fixing the annual rental value of the building at Rs.9,47,150/- and further taxing the building at Rs.1,38,912/- per half year from the first half year commencing from 1992-1993 onwards. Challenging the same, the plaintiff filed the present suit.

3. The defendant took the stand that there is no arbitrariness in the impugned assessment order. According to the defendant, sufficient opportunity was afforded to the plaintiff, due enquiry was held and only thereafter, following the norms prescribed under the relevant provisions of law, the annual rental value of the building was fixed under the impugned order and accordingly, the tax was imposed.

4. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, one Kanubha sah was examined as P.W.1 and as many as 16 documents have been exhibited. On the side of the defendant, one Baskaran, an Official from the defendant Municipality was examined as D.W.1 and as many as 8 documents have been exhibited. Having considered all the above, the trial court decreed the suit and the lower appellate court also confirmed the same. That is how the defendant is before this Court with this Second Appeal.

5. When this Second Appeal was admitted, this Court framed the following substantial questions of law:

1. Whether the civil court has jurisdiction to entertain the suit and whether the suit is maintainable?

2. Whether the courts below were right in coming to the conclusion that no opportunity had been given to the plaintiff in the revision petition when Ex.B.2 has been marked to show the issuance of the notice calling upon the plaintiff for the enquiry? and

3. Whether the courts below were correct in omitting the document Ex.B.7 being the working sheet which shows the reasons to enhance the tax as per the statutory guidelines?

6. I have heard the learned Counsel for the appellant and the learned Counsel for the respondent and I have also perused the records carefully.

7. The learned Counsel for the appellant would submit that there is enormous evidence to show that sufficient opportunity was given to the plaintiff before passing of the impugned order and only after following the principles of natural justice and based on the materials available, the impugned order came to be passed.

8. But the learned Counsel for the respondent would submit that after the objection was submitted by the plaintiff, no enquiry was held and no opportunity was given to the plaintiff.

9. I have considered the above submissions.

10. Admittedly, the Special Notice calling upon the plaintiff to submit his objection regarding the proposed revision of tax was issued on 30.09.1992 under Ex.A.7. For the said Special Notice, the plaintiff submitted his objection on 06.10.1992. There is no denial that the said objection was received by the defendant on 28.10.1992. Though it is contended by the defendant that after the said objection, opportunity was afforded to the plaintiff and due enquiry was held, the impugned order marked as Ex.A.11 would go to show that there is no indication at all that any such opportunity was given to the plaintiff before the said order was passed. The order further does not reflect application of mind on the part of the defendant. There is no indication that the Tax Committee had occasion to consider the objection raised by the plaintiff. Ex.A.11 has been issued only by the Commissioner of the Municipality. Even, he has not stated that he considered the objections raised by the plaintiff. Thus, it is quite obvious that the impugned order came to be passed without affording

sufficient opportunity and without holding any enquiry at all. This is the factual finding given by the two courts below. I do not find any infirmity in the same.

11. But the learned Counsel for the appellant would submit that the civil court has got no jurisdiction to maintain this suit since there is an efficacious remedy available for the plaintiff to work out his remedy under the Act itself by filing an appeal. But in the instant case, admittedly, since the impugned order came to be passed without affording any opportunity, the said suit is maintainable. This legal position has been well settled by a catena of judgments of this Court in (1) 1993 (2) MLJ 262 (Magdoo Sheriff @ Sultan Sheriff vs. Kancheepuram Municipality by its Commissioner, Kancheepuram); (2) AIR 1998 Madras 83 (M/s.Selvakumar Rice and Oil Mills, Salem vs. Tamil Nadu Electricity Board, Salem and another); (3) 2010 (2) CTC 51 (K.A.Arokkiam vs. The Dindigul Municipality, rep. by its Commissioner, Municipality Campus, Main Road, Dindigul ; and (4) 2014 (3) CTC 140 (Jayachandran and Brothers vs. Nagapattinam Municipality, rep. by the Commissioner, Nagapattinam). In view of these judgments, I answer the first substantial question of law against the appellant and I hold that the suit is maintainable.

12. So far as the second substantial question of law is concerned, as I have already concluded, there was no opportunity afforded to the plaintiff by the defendant before passing of the impugned order.

13. So far as the 3rd substantial question of law is concerned, Ex.B.7 would not go to any extent to improve the case of the appellant because the impugned order does not reflect the details given in Ex.B.7. Accordingly, this substantial question of law is also answered against the appellant.

14. At the same time, the courts below have failed to clarify that the defendant can make a fresh assessment after affording sufficient opportunity to the plaintiff from the first half year of 1992-93. Having declared that the assessment order is void, on such a technical ground that no opportunity was given to the plaintiff before passing of the said order, the courts below ought to have given liberty to the defendant to make a fresh assessment after affording sufficient opportunity based on the Special Notice dated 30.09.1992 (Ex.A.7). I make it clear that the defendant is at liberty now to hold enquiry based on Ex.A.7 Special Notice, afford sufficient opportunity to the plaintiff and make fresh assessment for the period commencing from the first half year of 1992-93 till today.

15. In view of the above, the Second Appeal is partly allowed in the following terms:

1. The decree and judgment of the trial court and confirmed by the lower appellate court is modified and there shall be a decree declaring that the impugned order dated 08.09.1993 is invalid and unenforceable;

2. But the defendant may hold enquiry, afford opportunity and make a fresh assessment order based on Ex.A.7 for the period commencing from the first half year of 1992-1993 till today; and

3. Based on the fresh assessment order to be made by the defendant, the amount already paid by the plaintiff for the period commencing from the first half year of 1992-93 shall be adjusted.

No costs.

tsi

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Subordinate Judge, Kancheepuram.
 2. The Additional District Munsif, Kancheepuram.
 3. The Section Officer, V.R. Sec, High Court, Mds.
- + 1 cc to Mr.P.Srinivas, Advocate Sr 68323
+ 1 cc to Mr.V.Ayyadurai, Advocate Sr 68116

BUR/CO
KR/27/1/16

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