

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.11.2017

PRONOUNCED ON : 30.11.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1188 of 2001

The Municipal Commissioner,
Salem Municipality,
Salem.

... Appellant/Defendant

Vs.

1. J.Bhanumathi

2. Minor J.Dinesh

(R2 represented by Guardian R1)

3. J.Sulochana ... Respondents/Plaintiffs 2 to 4

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 26.11.1990 made in A.S.No.67 of 1990 on the file of the Principal District Judge, Salem, reversing the judgment and decree dated 30.03.1989 made in O.S.No.441/1985 on the file of the Principal District Munsif, Salem.

For Appellant : Mr.K.Sridhar

For Respondents : Mr.P.Mathivanan

JUDGMENT

This second appeal is directed against the the Judgment and decree dated 26.11.1990 made in A.S.No.67 of 1990 on the file of the Principal District Court, Salem, reversing the judgment and decree dated 30.03.1989 made in O.S.No.441/1985 on the file of the Principal District Munsif Court, Salem.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for permanent injunction.

4. The case of the plaintiff, in brief, is that the plaintiff is the proprietor of Jayaram theatre and the same was opened on 04.11.1984 and the said theatre is situated in the out-skirts of Salem Municipality and it was previously a vacant site with a thatched shed and it was assessed to tax only at Rs.36/- and the defendant being the Taxing Authority came with its officials and assessed the rental value of the theatre and after completing the inspection, without considering the locality of the property, daily collection and other relevant factors valued at Rs.24,000/- and fixed the tax for one half year at Rs.3760/- under assessment No.7218 and an appeal preferred by the plaintiff as against the same has been

dismissed on 16.07.1984 without assigning any valid reasons. The revision also preferred by the plaintiff against the same had come to be rejected on 15.03.1985 and the order passed by the defendant, while fixing the assessment of the tax is capricious, arbitrary and without any reason. The defendant had made the assessment of the theatre complex situated in the heart of the town fixing the value at a lower level and therefore, the defendant is not entitled to enforce the assessment in respect of the theatre of the plaintiff as determined by it and hence, the suit for appropriate reliefs.

5. The case of defendant, in brief, is that the suit is not maintainable either in law or on facts. It is true that the plaintiff theatre has been assessed by the defendant and the defendant's officers inspected the building and made reports to the Commissioner and thereafter, the Commissioner being the competent authority levied the tax, after pursuing the concerned records and accordingly, the commissioner had fixed the rental value of the building only after the personal inspection of the site with due consideration about the locality, building value, rental value and other aspects and accordingly, the appeal and revision preferred against the same had been rightly dismissed by the concerned authorities and the claim of the plaintiff that the daily collection of his theatre is very low is not correct. The daily collection of the theatre is not the criteria for fixation of the rental value. It is false to state that the defendant has not assessed the property of the plaintiff correctly in accordance with law. The authorities concerned have levied the tax reasonably, after considering all the aspects in accordance with the provision of the Tamil Nadu District Municipalities Act and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PW1 has been examined and Exs.A1 to 5 were marked. On the side of the defendant, DW1 has been examined and Exs.B1 to 3 were marked.

7. On a consideration of the oral and documentary evidence adduced and the submissions made, the trial Court was pleased to dismiss the suit laid by the plaintiff and on appeal by the plaintiff, the First Appellate Court was pleased to set aside the judgment and decree of the trial Court and accordingly, by allowing the appeal preferred by the plaintiff, decreed the suit as prayed for in favour of the plaintiff. Impugning the same, the defendant has preferred this second appeal.

8. At the time of the admission of the second appeal, the following substantial questions of law were formulated for consideration in this second appeal:

- " (i) Is not the suit barred under

Section 354(2) of the Tamil Nadu District Municipalities Act?

(ii) Whether the property tax that has been levied is in terms of the Fair Rent Formula enunciated under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act and the Rules framed therein?"

9. The plaintiff, by way of the suit, has questioned the assessment of his theatre by the defendant alleging that the assessment has not been done by taking into consideration of the proper value of the property in question and also other aspects and therefore, according to the plaintiff, the assessment of the defendant made under Ex.A1 is not as per law and by way of the same, the defendant is not entitled to collect the tax from the plaintiff and hence, the suit has come to be laid for permanent injunction.

10. Per contra, it is the case of the defendant that the plaintiff theatre has been properly assessed by taking into consideration of all the aspects including the value of the property, etc., and accordingly, the annual value has been determined at Rs.24,000/- and thereby, the half year tax has been assessed at Rs.3760/- and hence, inasmuch as the above said assessment has been done in accordance with law, the same is not liable to be questioned by the plaintiff and the plaintiff cannot by way of the suit injunct the defendant from collecting the tax for the property in question, to which, he is entitled to.

11. The plaintiff, in this suit, has not sought for a declaration that the assessment of his theatre by the defendant Municipality by way of Ex.A1 is null and void. However, he has only claimed the relief of injunction stating that the defendant is not entitled to collect the tax as per Ex.A1, as according to the plaintiff, the said assessment was not done in accordance with law.

12. It is found that both the Courts have correctly determined that the defendant has to determine the value of the property before the assessment as per the provisions contained in the Rent Control Act and therefore, it has to be seen that whether the defendant had determined the value of the property as per law before passing the assessment order made under Ex.A1. In this connection, it is found that according to the defendant, the plaintiff in response to his query has given details of the property stating that total extent measures 28,000 sq.feet and the theatre has been constructed in or about 7,600 sq.feet and the value of the building is Rs.2,05,000/- and also given the details about the number of seats in the theatre and also the

value of the ticket as per the class available in the seating arrangements. Now, according to the plaintiff, the same had not been furnished by him and the same had been prepared by the defendant taking advantage of his signature obtained in the blank paper. However, with reference to the above claim of the plaintiff, the plaintiff has not chosen to submit himself for any examination in this matter. Be that as it may, according to the defendant, based upon the inspection conducted by the officers of the defendant, the total area of the site, in which, the theatre is located has been found to be 28,000 sq.feet and the cost of the building by adopting the value furnished by the plaintiff in Ex.B1 being at Rs.2,05,000/- deducting the depreciation at 10% of the same, found the capital cost of the building at Rs.1,84,500/- and accordingly, in the working sheet prepared and marked as Ex.B2 found the annual rental of the building value at Rs.13,950/- and also took into consideration the tea stall, cycle stand owned by the plaintiff and the annual rent from the same is valued at Rs.2400/- and also determining the annual rental land value of the site at Rs.480/- worked out annual rental value at Rs.13,950/-. Accordingly, it is found that the defendant's officials prepared the working sheet marked as Ex.B2 and also the owners statement under Ex.B1 and other connected papers were submitted to the commissioner for further orders and it is found that the commissioner of the defendant municipality on a perusal of the records, on inspection of the site finding that the construction of the theatre in a background area about three kilometer away from the bus stand and therefore, more collection could be expected from the theatre, accordingly, fixed the value of the property's annual rental value at Rs.24,000/- with effect from 01.10.1983 and thereby, based upon the above said order of the Commissioner, it is found that the assessment order under Ex.A1 has come to be issued to the plaintiff.

13. Now, according to the plaintiff, the above said determination of the commissioner as regards the value of the property at Rs.24,000/- is without any basis and therefore, it is stated that the above said value has been fixed by the Commissioner arbitrarily and without any material and hence, the defendant is not entitled to collect the tax from the plaintiff based upon Ex.A1, which has come to be issued pursuant to the above said order of the commissioner. However, it is found that the above said case of the plaintiff, as such, cannot be accepted straightaway, particularly, considering the evidence adduced by the defendant in this matter, it is found from the order of the Commissioner as reflected under Ex.B2, the commissioner has inspected the property and also taking into account, the materials submitted before him, finding the location of the theatre in question and also thereby holding that more collection could be expected from the theatre and not

as claimed by the plaintiff, accordingly, determined the value of the property at Rs.24,000/-. Now, as rightly argued by the defendant's counsel, PW1 examined on behalf of the plaintiff has admitted without any doubt that the value of the property during the year 1983 - 84 per sq. feet is at Rs.10/- and also admitted that a sum of Rs.6,00,000/- had been incurred for putting up the theatre. It is therefore, found that as per the admission of PW1 himself the value of the theatre is at Rs.6,00,000/- and accordingly, it is found that the value of the theatre complex being at Rs.6,00,000/- and considering the location of the theatre and also other facts, it is found that the value of the commissioner determined under Ex.B2 is on the lower side. If the value of the theatre as deposed by PW1 is taken into consideration, it is seen that the annual rental value of the building could be on the higher side and not at Rs.24,000/-. However, it is argued by the plaintiff's counsel that the value of Rs.6,00,000/- as spoken to by PW1, does not represent the real value of the building alone and it includes also the value of the chairs and other amenities provided in the theatre and therefore, the above value of Rs.6,00,000/- cannot be taken into consideration as the value of the theatre complex as such but only inclusive the amenities fitted in the theatre. However, in the plaint, the plaintiff having come forward with the suit seeking for appropriate reliefs, it is for the plaintiff to detail and establish as to what is the actual expenditure incurred by him for putting up the theatre complex and particularly, what is the expenditure incurred by him for fixing the amenities including the chairs etc in the theatre. When the same is not forthcoming on the part of the plaintiff and when admittedly records pertaining to the same would be available with the plaintiff, it is for the plaintiff to place the same before the concerned authorities for the determination of the issues involved in this matter. However, the plaintiff by way of Ex.B1 had claimed the value of the theatre at only Rs.2,05,000/- which cannot be straightaway accepted. Considering the structure of the theatre of the plaintiff, the location of the same and other facilities appurtenant thereto, accordingly, it is found that based upon the inspection of the theatre premises owned by the plaintiff and the other relevant materials, it is noted that the commissioner had determined the value of the building at Rs.24,000/- and when the same is not found to be on the higher side, considering the admission made by the plaintiff that they had incurred Rs.6,00,000/- for constructing the theatre and when there is no material on behalf of the plaintiff to indicate that the said expenditure is inclusive of the amenities fitted in the theatre by way of chairs and other instruments etc., it is seen that as rightly determined by the trial Court, the commissioner had rightly determined the value of the property at Rs.24,000/- and it is further seen that the said value is actually on the lower side. It is also the admitted case of the plaintiff that a

tea shop is located in the theatre and also the cycle stand is available in the theatre, for which, they are collecting necessary charges and also collecting the price for the items sold in tea shop from the people and in such view of the matter, it is seen that the trial Court has rightly held that the Commissioner has fixed the value of the plaintiff theatre at a lower level, than, its actual value and in such view of the matter, has rightly negated the plaintiff's suit.

14. However, the first appellate Court merely on the footing that the defendant has not followed the formulae for fixing the annual rental value under the Rent Control Act, set aside the judgment and decree of the trial Court. However, when even according to the plaintiff's case, the value of the building is at Rs.6,00,000/- and when the plaintiff has not given any segregated list for showing the above said expenditure incurred by him while putting up the theatre and accordingly, it is found that when the plaintiff is also getting income from the theatre by way of the tea shop and cycle stand located therein and also considering the location of the theatre etc, it is found that the commissioner had taken into consideration of the above aspects and rightly determined the value of the theatre at Rs.24,000/.

15. Accordingly, the counsel for the plaintiff is unable to show in what manner, the determination of the Commissioner fixing the annual rental of the building at Rs.24,000/- runs contrary to the rent formulae contemplated under section 4 of the Tamil Nadu Building (Lease and Rent Control) Act and the rules framed therein. Inasmuch as the plaintiff had put up the construction of the theatre by incurring expenditure at Rs.6,00,000/- and when the plaintiff being the suitor had not come forward with any materials to show the expenditure details incurred by him with reference to the same, considering the above said value and the other income earned by the plaintiff by way of tea shop and cycle stand etc., it is seen that the commissioner had rightly fixed the value of the building in accordance with the rent formulae as per law.

16. In the light of the above discussions made, when it is found that the assessment order of the defendant under Ex.A1 is in accordance with law, it is seen that as rightly argued by the defendant's counsel, the principles of law enunciated in the authorities relied upon by the plaintiff's counsel reported in 1977 TLNJ 161 (K.M.S.Abdul Hasan Vs. The Tiruvarur Municipality represented by its Commissioner Municipal Office, Tiruvarur) and AIR 1971 Supreme Court 353 (Guntur Municipal Council Vs. Guntur Town Rate Payers' Association, etc) have been followed by the defendant, while determining the assessment of the theatre in question. Accordingly, the Principles of Law enunciated in the above said decisions are taken into consideration and followed

as applicable to the facts and circumstances of the present case.

17. I, therefore, hold that the property tax has been levied by the defendant municipality in respect of the plaintiff's theatre in accordance with the terms of the rent formulae proposed under Section 4 of the Tamil Nadu Building (Lease and Rent Control) Act and the Rules framed therein and accordingly, the plaintiff is unable to substantiate his case with acceptable and reliable materials. Accordingly, the second substantial question of law formulated in this second appeal is answered against the plaintiff and in favour of the defendant.

18. The counsel for the defendant contended that the suit is not maintainable and barred under Section 354 of the Tamil Nadu District Municipalities Act. However, the jurisdiction of the Civil Court and the maintainability of the suit as such have not been questioned by the

defendant in the written statement and only for the first time during the course of second appeal, the above said point has been raised. However, when considering the case of the plaintiff, according to him, when the assessment order of the defendant is not in accordance with law, as such the civil suit laid by the plaintiff questioning the same is maintainable and it is found that the said point has been considered in the decisions reported in 2014 (2) MWN (Civil) 592 (G.Viswanathan Vs. Kancheepuram Municipality, rep.by its Commissioner, Kancheepuram), 2008 (1) CTC 791 (K.R.Abirami Vs. The Kumbakonam Municipality, rep.by its Executive Authority, The Commissioner, Dr.Muthy Road, Kmbakonam Town) and 2010 (2) CTC 44 (K.R.Gowri Sedhuraman Vs. The Kumbakonam Municipality, rep.by its Executive Authority, The Commissioner, Dr.Murthy Road, Kumbakonam Munsif, Kumbakonam Town), holding that the civil action challenging the assessment order of the defendant as not in accordance with law is maintainable. Accordingly, the first substantial question of law formated in this second appeal is answered in favour of the plaintiff and against the defendant.

19. In conclusion, the judgment and decree of the first appellate Court dated 26.11.1990 made in A.S.No.67 of 1990 are set aside and the Judgment and decree of the trial Court dated 30.03.1989 made in O.S.No.441/1985 are confirmed, accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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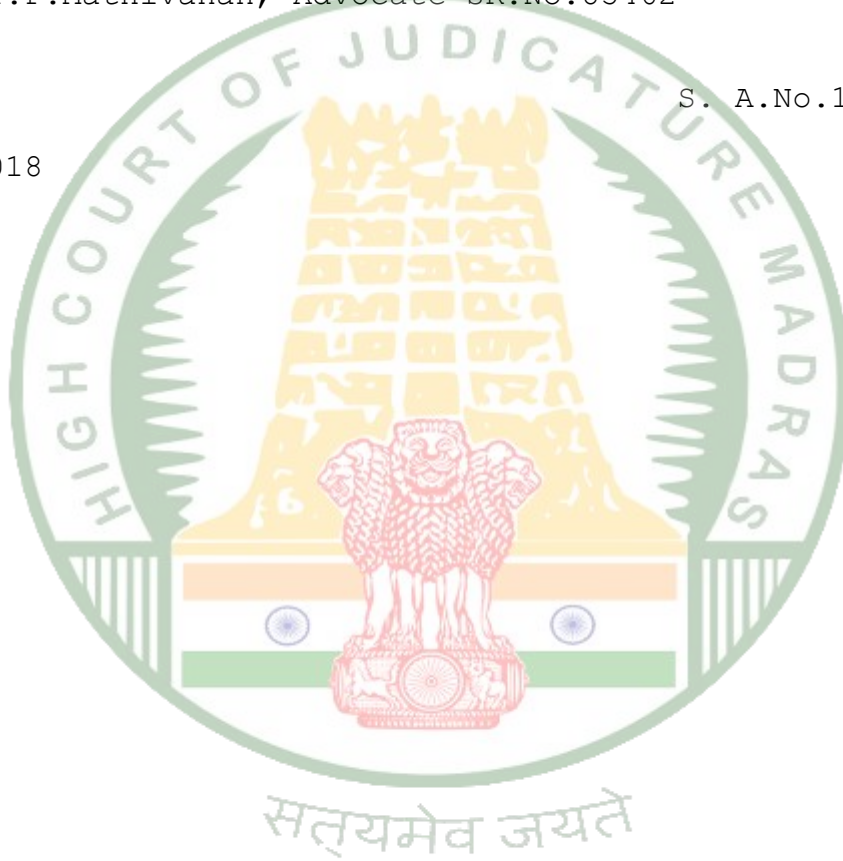
1. The Principal District Court, Salem.
2. The Principal District Munsif Court, Salem.
3. The Section Officer,
VR Section,
High Court, Madras.(2 copies)

+lcc to Mr.K.Sridhar, Associates, Advocate SR.No.84979

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