IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.07.2018

PRONOUNCED ON : 09.08.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.Nos. 1920 to 1924 of 2004

Hitesh V.Shah ...Appellant in all the second appeals/ Plaintiff in all the O.S

Vs.

1. The Commissioner,
   Corporation of Chennai,
   Ripon Building,
   Chennai - 600 003.

2. The Asst. General Officer,
   Zone - VIII
   Corporation of Chennai,
   4th Street, Lake Area,
   Nungambakkam,
   Chennai - 600 034.

... Respondents in all the second appeals/ Defendants in all the O.S

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 14.07.2003 passed in A.S.Nos.288, 289, 290, 292 & 291 of 2002 respectively on the file of the I Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 29.03.2001 passed in O.S.Nos.1897, 1893, 1895, 1894 & 1896 of 1999 respectively on the file of the XI Assistant Judge, City Civil Court, Chennai.

For Appellant in all the second appeals : Mr.B.Balachander for M/s.Menon and Goklaney

For Respondents in all the second appeals : Mr. C.Ravichandran

COMMON JUDGMENT

Challenge, in these second appeals, are made to the Judgements and Decrees dated 14.07.2003 passed in A.S.Nos.288, 289, 290, 292 & 291 of 2002 respectively on the file of the I

Additional Judge, City Civil Court, Chennai, confirming the Judgments and Decrees dated 29.03.2001 passed in O.S.Nos.1897, 1893, 1895, 1894 & 1896 of 1999 respectively on the file of the XI Assistant Judge, City Civil Court, Chennai.

2. The second appeals have been admitted on the following substantial questions of law:

> " (1). Whether the lower appellate court was correct in concluding that the prayer as contained in paragraph 10(a) of the plaint could be considered as an admission that notice proposing to enhance the property tax had been served on the appellant herein?
>
> (2). Whether the lower appellate court was correct in concluding that the appellant/plaintiff had to file an appeal before the Tribunal even when an order, enhancing the property tax had not been passed by the 1st respondent herein?
>
> (3). Whether the appeal could be filed to the Tribunal without first, the notice from the 1st respondent, proposing to enhance the property tax being sent to the appellant/plaintiff and final orders being passed by the 1st respondent after hearing the objections of the appellant/plaintiff?
>
> (4). Whether the notice contemplated under Section 137(B) of the Chennai City Municipal Corporation Act, 1919 had to be issued only if the 1st respondent was filing a suit?
>
> (5). Whether the 1st respondent was justified in issuing the demand card indicting highest property tax to be paid by the plaintiff/appellant without earlier issuing the notice as contemplated under section 137(B) of the Chennai City Municipal Corporation Act, 1919?"

3. In all these matters, the appellant has sought for the reliefs of declaration that the revision of property tax effected by the respondents in respect of the suit properties and thereby, making the demand of enhanced property tax is illegal, void and improper and for permanent injunction

restraining the respondents from collecting the enhanced tax and for further reliefs.

4. It is mainly contended by the appellant that in respect of the properties involved in the matters, the respondents had issued the demand card enhancing the property tax without sending any notice as regards the enhancement of tax and accordingly, inasmuch as the appellant had not been provided with an opportunity to putforth his objection to the proposed enhancement of the tax, it is stated that the appellant had been necessitated to lay the civil actions against the respondents for appropriate reliefs.

5. The respondents have contended that the tax revision has been effected in respect of the properties involved in the matters after serving due notice on the appellant, which was acknowledged by his employee Balasubramanian and accordingly, the tax revision is made in accordance with law after effecting general survey of all the properties in Chennai and it is also contended by the respondents, that if the appellant is aggrieved by the enhancement of the tax, his remedy is only to prefer necessary appeal to the concerned authorities as provided under the Act and therefore, it is stated that the challenge made by the appellant by way of the civil actions as regards the enhancement of the property tax are not maintainable and the same are liable to be dismissed.

6. It is found that in respect of the properties belong to the appellant, the respondents had conducted a general survey during 1993 and the general survey is effected in respect of the properties located in Chennai and accordingly, taking into account the various factors, the respondents had effected the revision of property tax as regards the properties belonging to the appellant and accordingly, it is stated by the respondents that notice had been served on the appellant and as at the relevant point of time, the appellant was not available, hence the notice was served on his employee Balasubramanian and the served copy of the notice has come to be marked as Ex.B1 and thus, it is contended that the notice of the enhanced property tax has been duly served and further, it is also stated that if at all the appellant is aggrieved over the revision of the property tax, his remedy is only to prefer the necessary appeal before the concerned authorities/ tribunals constituted under the Act and not by way of the civil actions and therefore, the civil actions are liable to be rejected.

7. On a perusal of the materials placed on record, it is found that as per the evidence of DW2, the notice proposing the enhancement of the property tax of the properties belonging to

the appellant had been served on his employee Balasubramanian. The witness examined on behalf of the appellant as PW1, during the course of his evidence, has not disputed the fact that Balasubramanian is not in the service of the appellant. All that, he would state is that no record is available on their file as to the service of any notice on Balasubramanian by the respondents. Further, as per the evidence of PW1, Balasubramanian had died and accordingly, it is found that as rightly contended by the respondents' counsel, taking advantage of the demise of Balasubramanian, the appellant had put forth a case that the notice of the enhancement of the property tax has not been served on him. When the materials placed on record go to show that due notice has been served on the employee of the appellant, it is seen that the appellant cannot be allowed to contend that the respondents had enhanced the property tax without serving any notice on him or without providing an opportunity to put forth his objection to the same. Further, the appellant has not entered into the witness box to testify that he had not been served with the notice by the respondents before the revision of the property tax.

8. It is the case of the respondents that before the tax had been revised, the general survey had been effected in the Chennai City for all the properties located and accordingly, taking into account the property value, accordingly, considering all the parameters, the property tax had been revised not only with reference to the properties belonging to the appellant, but also in respect of the other properties located in Chennai. Further, it is also contended that if at all the appellant is aggrieved over the revision of the property tax, the remedy is only to prefer the appeal to the higher authorities/tribunal constituted under the Act and not by way of the civil actions. The abovesaid contention put forth by the respondents found acceptance by the Courts below.

9. In this connection, I had an occasion to consider the challenge made to the revision of property tax under the Tamil Nadu District Municipalities Act, 1920 and after relying upon the decisions of the apex Court and our high Court, I had held that the civil action, challenging the enhancement of assessment, would not lie and accordingly, rejected the contentions put forth as regards the maintainability of the civil action with reference to the same, in the decision reported in 2018-2-L.W.269 (Dr.Jagan and others Vs. The Commissioner, Pollachi Municipality) in the following manner:

> " Tamil Nadu District Municipalit Act (1920), property tax revision, challenge to, Civil Court's jurisdiction, scope C.P.C., Section 9/Civil court's

jurisdiction Challenge to revision of tax - civil action challenging enhancement of assessment would not lie - Civil suit not maintainable

Whether the civil suit is maintainable as regards the challenge made to the revision of the tax made by the authorities concerned under the provisions of the Tamil Nadu District Municipalities Act 1920, without following the statutory remedies available under the abovesaid Act.

It is thus found that when the jurisdiction of the Civil Court has been either expressly or impliedly ousted, there is no question of invoking the jurisdiction of the Civil Court and merely because the plaintiffs had impugned the revision of the property tax as null and void or passed not in adherence to the principles laid down under the Act, that cannot be the basis straight away for holding that the Civil Court has jurisdiction to entertain such actions.

Inasmuch effective remedies are available under the concerned Act by way of an appeal to the Taxation Committee and further appeal to the district Court, it is seen that the Civil action challenging the enhancement of the assessment would not lie and in the light of the above position, following the decisions of the Apex Court as above referred to, I hold that the findings of the Courts below that the Civil Suit laid by the plaintff is not maintainable are in accordance with law and in accordance with the decisions rendered by the Apex Court as above pointed out and in such viw of the matter, the substantial question of law formulated in the second appeal is answered against the plaintiffs and in favour of the defendant.

(1972) 85 L.W.8 S.N.= AIR 1971 SCC 353 (Guntur Municipal Council Vs. Guntur

Town Rate Payers Association, etc.);

(2002) 1 MLJ 391 (The R.C.Diocese of Madurai, through Procurator Rev.Fr.A.Vedamanickam, K.Pudur, Madurai Vs. Srivilliputtur Municipality through its Commissioner, Srivilliputtur, Ramnad District);

1992 LW 110 (Chellammal Vs. Alandur Municipality, represented by its Commissioner); 2008 (1) CTC 791 (K.R.Abirami Vs. The Kumbakonam Municipality, rep. by its Execitive Authority, The Commissioner, Dr.Murthy Road, Kumbakonam Town);

2014-1-L.W.843 = 2014 (3) CTC 140 (Jayachandran & Bros., Vs. Nagapattinam Municipality);

2010-3-L.W.117 = 2010 (2) CTC 51 (K.A.Arokkiam Vs. The Dindigul Municipality);

1995 (1) CTC 598 (Sivabushanan Ammal Vs. Commissioner, Corporation of Madras);

2003 (1) CTC 19 (N.Chelliah Servai Vs. The Execution Authority, Thirupattur Town Panchayat Office);

(1994) 6 SCC 572 (Srikant Kashinath Jituri and others Vs. Corporation of the City of Belgaum);

(1968) 3 SCR 662 (Dhulabhai Vs. State of M.P.);

(1994) 6 SCC 572 (Srikant Kashinath Jituri and others Vs. Corporation of the City of Belgaum);

(2003) 10 SCC 38 (NDMC Vs. Satish Chand (deceased) By Lr.Ram Chand);

(1994) 6 SCC 572 (Srikant Kashinath Jituri and others Vs. Corporation of the City of Belgaum);

2014-1-LW.229 (The Commissioner, Tambaram Municipality Vs. K.B.Vasudevan); and

2009-5-LW.201 (P.Ramankutty Menon Vs. P.Unnikrishnan); referred to.”

10. Accordingly, it is seen that when the Municipality Act/Corporation Act provides for effective remedies by way of the appeal to the authorities/Tribunals and also further appeal to the District Court, it is seen that the civil action, challenging the enhancement of the property tax, would not lie and further, when as per the legal pronouncements of the apex Court as abovenoted, the special Acts bar the civil actions and when the remedies are available under the special Acts, expressly or impliedly, for challenging the revision of property tax, it is found that as rightly determined by the Courts below, the civil actions of the appellant challenging the revision of the property tax are not maintainable.

11. The appellant's counsel contended that if the notice had been served on the appellant, his remedy would have been only to prefer the appeal to the higher authorities as provided under the Act and on the other hand, inasmuch as no notice had been served on the appellant with reference to the revision of the property tax, it is his contention that the civil action would lie. However, as above discussed and pointed out, considering the materials placed on record, when it is found that notice had been served on the appellant's employee and the factum of the said employee working under the appellant having not been controverted, the appellant cannot be allowed to contend that he had been served with the notice of the property tax revision by the respondents.

12. In the light of the above discussions, in my considered opinion, no substantial question of law is found to be involved in this second appeal. Be that as it may, the substantial questions of law formulated in the second appeal are answered against the appellant in the light of the reasonings aforestated.

13. In support of his contention, the respondents' counsel relied upon the decisions reported in (2010) 10 Supreme Court Cases 512 (Man Kaur (Dead) By Lrs. Vs. Hartar Singh Sangha) and (1990) 2 MLJ 354 (M/s.Tamil Nadu Adi Dravidar Housing and Development Corporation Ltd., by its Managing Director, Madras - 600 010 Vs. The Appellate Authority/Deputy Commissioner of Labour, Coimbatore and another). The principles of law outlined

in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

Resultantly, all the second appeals fail and are accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

sms

To

1. The I Additional Judge,
   City Civil Court, Chennai.

2. The XI Assistant Judge,
   City Civil Court, Chennai.

3. The Section Officer,
   V.R.Section, High Court,
   Madras.(2 Copies)

+2cc to Mr.C.Ravichandran, Advocate, S.R.No.54934
+2cc to Mr.Menon & Goklaney, Advocate, S.R.No. 54771

S.A.Nos. 1920 to 1924 of 2004

SKV(CO)
GN(20/09/2018)