

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.02.2018

PRONOUNCED ON : 09.03.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.2067 of 2003

1. Dr.Jagan
2. Dr.Ganesh Pandi
3. Smt.Ranganayaki
- 4.Smt. T.Subbulakshmi

... Appellants/Appellants/Plaintiff

Vs.

The Commissioner,
Pollachi Municipality. ... Respondent/Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 30.12.02 in A.S.No.19/2002 on the file of the Subordinate Judge, Pollachi confirming the judgment and decree dated 14.09.2001 in O.S. No.124/2001 on the file of District Munsif, Pollachi.

For Appellants : Mr.C.R.Prasannan

For Respondent : No appearance/ Set ex-parte
Vide order dated 20.02.2018

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 30.12.02 passed in A.S.No.19/2002, on the file of the Subordinate Court, Pollachi, confirming the judgment and decree dated 14.09.2001 passed in O.S. No.124/2001, on the file of District Munsif Court, Pollachi.

2. The second appeal has been admitted and the following substantial question of law was formulated for consideration:

Whether the finding of the Courts below that the suit is not maintainable in view of the statutory remedies available against the order challenged in the suit under the provisions of the TamilNadu District

Municipalities Act is illegal, since the ground put forward is that the procedure established by law has not been followed?

3. Inasmuch as the only point that is involved in this second appeal is as to 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 TamilNadu District Municipalities Act 1920, without following the statutory remedies available under the above said Act.

4. Shorn of unnecessary details, it is found that three special notices had been issued by the defendant Municipality, directing the plaintiffs to pay the half year property tax as detailed thereunder. Challenging the same, the plaintiffs preferred the revision before the respondent authorities as provided under the Act and however, the said revision has come to be rejected. Impugning the order passed in the revision, the plaintiffs preferred the appeal before the Tax Appellate Committee constituted under the Act and it is found that as regards the assessment pertaining to the new assessment number 18889, the Tax Appellate Committee was pleased to reduce the tax to a certain level and accordingly, disposed of the appeal preferred by the plaintiff. Not satisfied with the same, impugning the above said tax assessment determination, as per the special notice dated 23.3.2000, for the new assessment number 18889 as illegal, null and void, the plaintiffs have the civil suit for declaration and permanent injunction against the defendant municipality.

5. The defendant municipality inter alia contended that the property tax has been revised following the procedures contemplated under the Act and in accordance with the rules stipulated therein, also raised the defence that the Civil court has no jurisdiction to entertain the suit levied by the plaintiffs and if at all the plaintiffs are aggrieved over the judgment by the Tax Appellate Committee, their only remedy is to go for second appeal before the District Judge concerned as per the amended rule of the Tamil Nadu District Municipalities Act, 1920 and hence, sought for the dismissal of the plaintiffs' suit.

6. The Courts below concurred with the contentions of the defendant municipality and held that the Civil suit laid by the plaintiffs is not maintainable and the plaintiffs have to avail their remedy only before the authorities constituted under the Act and accordingly, dismissed the suit laid by the plaintiffs. Impugning the same, the present second appeal has been preferred.

7. The plaintiffs' counsel contended that inasmuch as the revision of tax made by the defendant municipality is being impugned as not having been passed or made in compliance with the statutory requirements as provided under the Tamil Nadu

District Municipalities Act and as well as the dictum laid down by the Apex Court, according to him, the Civil Court's jurisdiction is not ousted. Hence, it is contended that the suit laid by the plaintiffs is maintainable and hence, it is argued that inasmuch as the Courts below had not disposed of the suit on merits, the matter should be remitted back to the trial Court for a fresh consideration of the suit on merits. In this connection, he placed reliance upon the decisions reported in 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 Executive Authority, The Commissioner, Dr.Murthy Road, Kumbakonam Town), 2014 (3) CTC 140 (Jayachandran & Bros., Vs. Nagapattinam Municipality) and 2010 (2) CTC 51 (K.A.Arokkiam Vs. The Dindigul Municipality) and thereby contended that in all the above said decisions, the jurisdiction of the Civil Court is found to be maintainable in such matters and therefore, according to him, the second appeal requires acceptance.

8. The plaintiffs' counsel also fairly cited the other two decisions of this Court reported in 1995 (1) CTC 598 (Sivabushanan Ammal Vs. Commissioner, Corporation of Madras) and 2003(1) CTC 19 (N.Chelliah Servai Vs. The Executive Authority, Thirupattur Town Panchayat Office), wherein, it has been held that the jurisdiction of the Civil Court having been ousted impliedly under the provisions of the concerned Act, the Civil Court would not be competent to try such issues and the aggrieved parties over the revision of the property tax etc., should seek their redressal only before the Tax Appellate Committee constituted under the Act and further, avail the second appeal remedy provided under the Act and it has been further held in the above said decisions, the Tax Appellate Committee and the second appellate authority being presided over by the Civil Judges and they having all the trappings of the Civil Court and being conferred with the powers to determine and adjudicate all the issues as regards the revision of the property tax, accordingly held that the Civil court has no jurisdiction to entertain the suit challenging the revision of the property tax.

9. The issues involved in this matter is found to be res integra and it is found that the Apex Court has held that the jurisdiction of the civil Court has been excluded by the concerned Municipality Act and in such view of the matter, the suit is not maintainable in view of the bar of the Civil Court

jurisdiction under the concerned Municipality Act and the above view of the Supreme Court has been rendered in the decision reported in (1994) 6 SCC 572 (Srikant Kashinath Jituri and others Vs. Corporation of the City of Belgaum). The principles relating to the jurisdiction of the Civil Court in the case of acts and orders taken under special enactments have been elucidated by the Apex Court in the decision reported in (1968) 3 SCR 662 (Dhulabhai Vs. State of M.P.) as follows:-

"(1) Where the statute gives a finality to the orders of the special tribunals the Civil Courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under

that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional. or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply."

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 straightaway for holding that the Civil Court has jurisdiction to entertain such actions.

10. As above noted, merely because the enhancement of the property tax has been challenged as excess, arbitrary and illegal, that by itself would not enable the plaintiff to challenge the same by way of a Civil Action, has been laid by the decision reported in (1994) 6 SCC 572 (Srikant Kashinath Jituri and others Vs. Corporation of the City of Belgaum).

Similarly, the Apex Court, in the decision reported in (2003) 10 SCC 38 (NDMC Vs. Satish Chand (deceased) By Lr. Ram chand), has clearly held that when the Municipality Act bars the jurisdiction of the Civil Court, persons aggrieved by the assessment of the tax has to avail the remedy as provided under the concerned statute and the civil suit in such case is not maintainable. Further, this Court following the decision of the Apex court reported in (1994) 6 SCC 572 (Srikant Kashinath Jituri and others Vs. Corporation of the City of Belgaum) has held that the Civil Court's jurisdiction is ousted in the decision reported in 2014-1-LW.229 (The Commissioner, Tambaram Municipality Vs. K.B.Vasudevan). In the decision reported in 2009-5-LW.201 (P.Ramankutty Menon Vs.P.Unnikrishnan), it has been held that merely by contending that the enhancement of the property tax has been made without following the procedures contemplated, the Civil Court's jurisdiction cannot be invoked unless the same has been specifically pleaded and established and in such view of the matter, when the Tamil Nadu District Municipalities Act has provided the mechanism for enabling the aggrieved parties to seek the redressal against the enhancement of the property tax by preferring the appeals concerned before the concerned Tax Appellate Committee and further, before the District judge concerned and when it is found that the Tax Appellate Committee and the District Judge are being presided over by the Civil judges, who are also presiding over the regular Civil Courts and when it is further found that the Tax Appellate Committee as well as the District Judge concerned, while disposing of such matters are provided with all the civil powers for deciding the issues involved in the matter in all aspects, particularly, the Tribunal being conferred with the powers of the Civil Court while disposing of the matter as aforesaid, it is found that the contentions now putforth by the plaintiffs that the revision of the property tax has not been made in accordance with the rules or the legal requirements as adumbrated by the Apex Court, all these issues could be equally urged before the concerned Tax Appellate Committee or the District Judge concerned or in such view of the matter, it is found that the plaintiffs cannot be allowed to contend that inasmuch as they had impugned the revision of property tax as arbitrary, illegal and excess, they are entitled to maintain the Civil action.

11. Inasmuch as 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 plaintiff 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 view of the matter, the substantial question of law formulated in the second appeal is answered against the plaintiffs and in favour of the defendant.

12. For the reasons aforesaid, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS IV)

//True copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge, Pollachi.

2. The District Munsif, Pollachi.

+1cc to Mr.C.R.Prasannan, Advocate SR.No.18281

S. A.No. 2067 of 2003

GJII (CO)
GN(11/04/2018)



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