IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.01.2018

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.17332 of 2004
and W.P.M.P.No.20580 of 2004

1.Dr.T.Azizuddin
2.A.Hamid Sultan
3.A.Rajiuddin
4.Dr.A.Moinuddin
5.A.Shabuddin
6.A.Akthari Begum
7.A.Tajuddin
8.A.Nazreen Sultana
9.A.Faizuddin
10.A.Saifuddin
Petitioners 2 to 10 are rep. by their Power of Attorney
Agent Dr.T.Azizuddin-the 1st petitioner .. Petitioners

Vs.

1.The State of Tamil Nadu,
Rep. by the Assistant Commissioner of
Urban Land Tax,
Tambaram, Tambaram Zone.

2.The Special Commissioner and
Commissioner of Land Reforms,
Chepauk, Chennai-5. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records in RC.No.C2/8858/2002 dated 23.02.2004 of the 2nd respondent and quash the same.

For Petitioners : Mr.K.S.Narayanan
For Respondents : Mr.K.Venkatesh,
Government Advocate

O R D E R

Heard Mr.K.S.Narayanan, learned counsel for the petitioners and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents.

2. The petitioner is aggrieved by the order passed by the second respondent dated 23.02.2004, by which the second respondent dismissed the revision petition filed by the petitioner, challenging the orders passed by the first respondent dated 31.12.2002 levying of Urban Land Tax on a property which devolved upon the petitioners being legal heirs of late M.L.Mahboob bi. It may not necessary for this Court to refer to the earlier proceedings which had taken place and suffice to note the order passed by in W.P.No.19315 of 2000, which was filed by the petitioner, challenging the order passed by the revisional authority dated 24.12.2001.

3. The Court, after taking into consideration, the submissions made on behalf of the petitioners, disposed of the said writ petition by directing the first respondent herein to advert to the legal question about the very liability of the petitioners to get themselves assessed under the Urban Land Tax Act, subsequent to the demise of late Mahboob Bi. Pursuant to which, the petitioners acquired their right to own the land in question. There was a specific direction to the first respondent to take into consideration, whatever legal submissions that may be made at the instance of the petitioners while determining the said question. Till the date, final orders are passed by the first respondent and the assessment is made, it was made clear that the question of payment of tax does not arise.

4. Pursuant to the remission, the first respondent passed an order dated 31.03.2002 and confirmed the demand raised earlier by rejecting the contentions raised. Aggrieved by the same, the petitioner filed a revision before the second respondent. In the revision petition, the petitioners among other grounds, raised the following questions of law :

> "3.The Assistant Commissioner erred in holding that the petitioners failed to comply with the requirement of Section 19(5) of the abovesaid Act and failed to file returns in Form No.35 and therefore they are liable to pay the tax upto Fasli 1409.
>
> 4.The Assistant Commissioner failed to note

that the petitioners case false under Section 19(2) of the Act."

5. Thus, in the grounds of revision raised by the petitioners, they specifically stated that their case will not fall under Section 19(2) of the Act. Apart from pointing out the legal position, the petitioners placed reliance on two decisions of this Court. However, the second respondent while passing the impugned order has not dealt with the legal issue, but appears to have merely brushed aside and referred to Section 19(2) read with 19(4) and affirmed the order passed by the first respondent.

6. The counter affidavit which has been filed very recently i.e, in October 2017 also reiterates the same position, as pointed out by the learned Government Advocate, in paragraph Nos.11, 12 and 15 of the counter.

7. The question would be as to what would be the status of the petitioners upon the demise of the original land owner. The important point to be borne in mind is that the petitioners are all governed by the Mohammedan Law of inheritance. This very issue was decided in the case of Ameena Bi @ Sahebzadi Vs. Assistant Commissioner of Urban Land Tax, Tiruchirapalli North reported in 1992 Law Weekly 103. In the said case, one P.Quda Baksh, who is the husband of the first petitioner therein and father of the petitioners 2 to 8 died, leaving behind him, the petitioners 2 to 8, about 3 grounds and 2154 Sq.ft. of urban land, within the limits of Thiruchirapalli Municipality. After the demise, the first respondent has assessed the entire extent of land left in the hands of the petitioners and demanded urban land tax from them. On the basis of such assessment, this was objected to on the ground that the death of Quda Baksh, each of the petitioners became entitled to 1/8th share in the land and an instantaneous devolution of property has taken place on the demise of the original land owner, the first respondent is not entitled to treat the entire extent of land and levy urban land tax on the same.

8. Further, it was pointed out that if the land is divided into eight shares, it will not attract the imposition of urban land tax. However, such contention was not accepted by the first respondent therein as actual division by metes and bounds should have taken place, if the petitioners wanted to have hold their assets as individual units. The Appellate Authority had sustained the view of the first respondent therein, which order was put to challenge before the Court.

9. The Court, after considering the definition of owner as defined under the Tamil Nadu Urban Land Tax Act 1966 and taking note of the decision of the Hon'ble Division Bench, in the case of Lakshmiammal vs. Assistant Commissioner of Urban Land Tax reported in 1988 Law Weekly 1 and the order of the Hon'ble Divisional Bench, in the case Abdul Khader Ibrahim Vs. Assistant Commissioner of Urban Land Tax, Madurai in W.P.No.852 of 1976 and Munawar Hussain V. Assistant commissioner of Urban Land Tax, Madurai in W.P.No.1351 and 1437 of 1976 and in the case of Assistant Commissioner of Urban Land Tax v. Urban Land Tax Tribunal, Coimbatore in W.P.No.2853 of 1977, allowed the writ petition . The operative portion of the order reads as follows :

> "4.A Bench of this Court, to which I was a party, has held in Lakshmiammal v. Asst. Commissioner of Urban Land Tax that in a taxing statute, the main provisions to be looked into in order to determine the ambit of the burden the tax-payer should bear are the charging section and the provisions providing for allowance. Therefore, it follows that the liability of an owner of Urban Land to pay tax under the Act has to be determined with reference to the terms of S.5 of the Act. The Section imposes an obligation of paying tax on the owner of the Urban Land. I have already, extracted the definition of the term 'owner' found in the Act. The definitionis an inclusive one and includes not only owner who receives or is entitled to receive the rent or profits of the Urban Land on his own behalf, but also a mortgagee in possession as well as an agent. Trustee, guardian, manager or receiver who receives or is entitled to receive the rent or profits on behalf of the owner of the land. In the instant circumstance, we have, therefore, to see whether each of the petitioners can be deemed to be an agent or trustee or manager of one another. For an answer to this question, we must look into the provisions of the Mohamedan Law.
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> 5.Under the Mohamedan Law, devolution of estate taken place on the heirs immediately on the death of the owner of the property. I need only quote certain passages occurring in Mullah's Principles of Mohamedan law, 16th Edition, page 31, in this behalf -
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> "Devolution of inheritance - Subject to the provisions of Ss.39 and 40, the whole estate

of a deceased Mohamedan if he had died intestate or so much of it as has not been disposed of by Will, if he has left a Will (Sec. 118), devolves on his heirs at the moment of his death and the devolution is not suspended by reason merely of debts being due from the deceased. The heirs succeed to the estate as tenants-in-common in specific shares".

To the same effect is the following passage occurring in Tyabji's Muslim Law, 4th Edition page 708:-

"where as Muslim dies without appointing any executor and no person obtains Letters of Administration to the deceased's estate, the whole of it vests in severalty as from the time of his deceased,upon his heirs in proportion to their respective right of inheritance...".

From the above excerpts, it is clear that the moment Quda Baksh died, each of the eight petitioner automatically inherited as one eighth share in his properties. Such being the case, they have become tenants-in common and cannot, therefore, be deemed as an agent or manger or representative for one another. The fact that actual division by metes and bounds has not taken place is of no consequence whatever. Their share in the property is crystallised and inheritance has taken place eo instanti Quda Baksh died. That being the case, the respondents were clearly in error in holding that without actual division by metes and bounds, all the eight petitioners will fall within the definition of 'owner' contained in the Act.

6.Learned Government Pleader invites my attention to two unreported cases of this Court to sustain the order of the respondent. The first is by a Division Bench of this Court Abdul Khader Ibrahim Vs Asst. Commissioner of Urban Land Tax, Madurai . Apart from the Judgment not giving any details of the case, there is no comparison between the facts of the instant case and the case which is cited. That appears to be a case where properties under a Will and in addition to that a Wakf had also been created and some of the legatees had been constituted trustees. It was in that peculiar and complicated state of affairs, this Court refused to entertain the plea of the assessees that the properties the assessees should be assessed individually in their hands for purposes of urban land tax and the Taxing Authorities should not insist upon a sub-division of the property. Such, however is not the case here. The other case cited is in Munawar Hussain Vs. Assistant Commissioner of Urban Land Tax, Madurai. That Judgment has merely followed the Bench Judgment referred to above and does not give any reasons for rejecting the contention of the petitioner therein. Moreover, it appears to be a case where boundaries were also in dispute, because the Court has observed that the petitioner can have the properties properly surveyed and demarcated under the Survey and Boundaries Act, 1923. The facts of the present case have therefore nothing in common with the cases referred to above.

7.It is brought to my attention that Ramanujam, J. has held in Assistant Commission of Urban Land Tax vs. Urban Land Tax Tribunal, Coimbatore that when an item of urban property is owned by two individuals, the Assessing Officer is not entitled to tax the holding as one unit in the absence of a Division by metes and bounds of the property. I am in respectful agreement with the view taken by the learned Judge in that case .The petitioner's case is much stronger than the one dealt with by Ramanujan,J. Because this is a case of inheritance of property by muslims, and as pointed out already the devolution takes place eo instanti the death of the previous owner had taken place.

8.In the light of the discussion contained above, it follows that the impugned order cannot be sustained. The writ petition will, therefore, stand allowed with costs and fresh assessment of the property, if necessary will be done in accordance with the direction given in this Judgment, Counsel's fees Rs.100/-."

10. The above referred decision was followed in the case of A.Mohamed Sheriff and others Vs The Assistant Commissioner, U.L.T., Egmore, Madras 29 and another in W.P.No.6854 of 1980, wherein, it was held as follows :

"In Ammena bi alias Sahbezadi v. Asst. Commissioner of Urban Land Tax, Tiruchirapalli North and M/s. Sarada Binding Works, Madras v.

Asst. Commissioner of Urban Land Tax, Madras, the view of this Court is that when the urban land belongs to different owners, there could not be a consolidated assessment and such assessment will not be legal. It is true that the matter has come up to the stage of recovery. But on the principle countenanced by this Court coming to the rescue of the petitioners, the very assessments made against them jointly will have to be ignored as tainted with illegality. If this is so, the present demand cannot be prosecuted and there is a need for fresh assessments individually of the petitioners and further proceedings prosecuted after such assessments. Accordingly, this writ petition is allowed."

11. The above referred decision would squarely apply to the facts of the case on hand as the legal position being the inheritance of the lands of the owner upon his death, being instantaneous and holding as tenants in common absence of division by metes and bounds is of no consequence and assessment of Urban Land Tax jointly upon all legal heirs has to be held to be illegal.

12.For the above reasons, the petitioners are entitled to succeed. Accordingly, the Writ Petition is allowed. The impugned order dated 23.02.2004 passed by the 2nd respondent is quashed. It is made clear that the tax payable for Fasli 1401 ***- 1402** is liable to be paid as at that point of time, Mahboob Bi was alive. Therefore, the petitioners are directed to pay Rs.9,017/- being the urban land tax payable for Fasli 1401 to 1409. No costs. Consequently, connected Miscellaneous Petition is allowed.

Sd/-
Assistant Registrar(CS-)
dt.08.01.2018

*Amendment as per order dated
11.4.2018 made in WP.No.17332/04
Sd/-
Assistant Registrar(CS II)
dt.14.5.2018

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner of Urban Land Tax, State of Tamil Nadu, Tambaram, Tambaram Zone. 2.The Special Commissioner and Commissioner of Land Reforms, Chepauk, Chennai-5.	To be substituted in the Place of order despatched on 8.3.2018

+1cc to Mr.K.S.NARAYANAN, Advocate, S.R.No. 26845
+1cc to the Spl Government Pleader(Taxes), S.R.No. 1180

W.P.No.17332 of 2004
and
W.P.M.P.No.20580 of 2004

BR(CO)
TR(14/02/2018)
sm:15.5.2018