

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.11.2019

DELIVERED ON : 12.11.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A. No.765 of 2008

Chidambaram Co-operative Urban Bank Ltd.,
represented by its Secretary
102, North Car Street,
Chidambaram ... Appellant/Plaintiff

Vs

Chidambaram Municipality,
Represented by its Commissioner,
Chidambaram Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 C.P.C. against the judgment and decree passed in A.S.No.95 of 2006 dated 20.07.2007 on the file of the Court of Sub-Ordinate Judge, Chidambaram in reversing the Judgment and decree passed in O.S.No.70 of 2002 dated 08.01.2005 on the file of the Court of Additional District Munsif, Chidambaram.

For Appellant : Mr.A.Muthukumar

For Respondent : Mr.P.Srinivas

JUDGMENT

This second appeal has been filed challenging the Judgement and decree passed in A.S.No.95 of 2006 dated 20.07.2007 on the file of the learned Subordinate Judge, Chidambaram reversing the Judgement and decree dated 08.01.2005 passed by the Additional District Munsif Court, Chidambaram in O.S.No.70 of 2002.

2. The following substantial questions of law were formulated by this Court at the time of admission of this Second Appeal on 21.05.2008:

"1.When the respondent has not fixed the fair rent of the building as per the provisions of the Rent Control Act and as held in AIR 1971 SC 353, 1992 (1) LW 110 and 1998 (3) LW 175 whether the assessment

order of the respondent Ex.A4 is valid in law?

2. Whether the respondent is justified in law in taking the entire site for the determination of land value when only plinth area and vacant site up to 50% of plinth area alone can be taken for fixing the fair rent under the Rent Control Act?

3. Whether the respondent is justified in law in taking guide line value instead of market value for the determination of the value of the site?"

In addition to the substantial questions of law already formulated on 21.05.2008, the following substantial question of law is also formulated:

"4. Whether the civil courts jurisdiction is ousted when the statutory right of appeal is available under the Tamil Nadu District Municipalities Act, 1920?"

Brief facts leading to the filing of this appeal:

3. The Appellant is the plaintiff and the respondent is the defendant in the suit O.S.No.70 of 2002.

4. For the purpose of convenience, the parties are described as per their ranking before the Trial Court.

5. The plaintiff filed a suit O.S.No.70 of 2002 before the learned Additional District Munsif Court, Chidambaram (a) seeking to declare that the property tax assessment order of the defendant dated 12.02.2002 in respect of the suit building, is void and unenforceable; (b) for a decree of permanent injunction restraining the defendant from enforcing the assessment order dated 12.02.2002 in respect of the suit building.

6. The case of the plaintiff, as seen from the plaint averments, is that the suit property is a building bearing Door No.101, North Car Street, Chidambaram. It is their case that after demolition of the existing superstructure which was completed on 13.05.2001 a new building was constructed and the plaintiff bank is functioning in the newly constructed building ever since 14.05.2001. According to them, the defendant has arbitrarily fixed the half yearly property tax for the suit building at Rs.75,160/-. According to them, previously when it was a partly terraced (Madras terraced) and a partly tiled building, the plaintiff was paying property tax only at Rs.710/- per half year.

7. According to the plaintiff, on 06.02.2002, the defendant called for details regarding the suit building from the plaintiff which included (a) amount spent for construction (b) plinth area of construction, (c) extent of vacant site adjoining the built up area (d) date of completion of new

building and (e) date of commencement of functioning of the plaintiff bank in the new premises.

8. It is the case of the plaintiff that they provided all the details sought for by the defendant on 09.02.2002. It is their case that on 12.02.2002, the defendant sent a notice to the plaintiff fixing the half yearly tax at Rs.75,160/- with effect from 01.04.2001. According to them, by total non-application of mind, the defendant has arbitrarily fixed the tax at Rs.75,160/- per half year.

9. It is also pleaded by the plaintiff that on 07.02.2002, it appears that the defendant had sent a communication to the Registrar to ascertain the market value of the suit property. According to the plaintiff, the data regarding the market value of the suit property is not correct and therefore, the annual rental value is also not correct and hence, based on the said incorrect annual value, the assessment of tax by the defendant is erroneous. It is also the case of the plaintiff that depreciation charges and maintenance charges for the vacant site were not taken into consideration by the defendant while assessing the property tax payable by the plaintiff to the defendant.

10. It is further pleaded in the plaint that the market rate for the year 2002 should not have been taken into account, since the plaintiff was in occupation of the premises long before the year 2002. It is also further pleaded in the plaint that objections were sent by the plaintiff to the notice dated 12.02.2002 sent by the defendant fixing the half yearly tax at Rs.75,160/-.

11. According to the plaintiff, a stereo-typed reply was sent on 01.03.2002 by the defendant rejecting the objections made by the plaintiff. According to the plaintiff, they sent a letter dated 19.03.2002 to the defendant to reconsider the arbitrary fixation of tax sympathetically for which no reply was sent.

12. According to the plaintiff, the annual house tax comes to Rs.1,50,000/- which works out to Rs.12,516/- per month. According to them, even if the building is let out to a tenant, it will fetch only Rs.15,000/- per month as rent. According to them, the defendant has arbitrarily assessed the annual value of the land and building without any basis. According to them, the defendant has also not allowed 10% deduction for repairs while assessing the tax.

13. It is also the case of the plaintiff that being a Cooperative Urban Bank fully controlled by the Government of

Tamil Nadu, the suit building is deemed to be a building of the Government. Therefore, 6% of the total value of the building, after allowing reasonable amount for depreciation which is not less than 10% should have been the formula adopted by the defendant to their building. According to them, without giving opportunity to the plaintiff, the defendant has arbitrarily fixed the tax at an exorbitant rate.

14. It is also the case of the plaintiff that the assessment order is vitiated by irregularities and is also opposed to the Principles of natural justice and it has been done in violation of guideline register and the provisions of the Tamil Nadu District Municipalities Act, 1920.

15. The defendant have filed their written statement wherein they have stated that the building in which the plaintiff bank was earlier functioning is a hundred year old building for which, the plaintiff was paying property tax at Rs.710/- per half year and only after demolition of the existing superstructure and the construction of the new building, the property tax was revised by the defendant to Rs.75,160/- per half year. According to the defendant, the plaintiff has not furnished the details of the newly constructed building to the defendant within 15 days from the date of completion of the building as stipulated under Section 89(1)(a) of the Tamil Nadu District Municipalities Act, 1920. Since the details were not furnished, the defendant by its notice dated 06.02.2002 requested the plaintiff to furnish the details as referred to in paragraph 3 of the plaint.

16. According to the defendant, they have duly considered the objections raised by the plaintiff on 09.02.2002 and only thereafter has fixed the property tax at Rs.75,160/- per half year with effect from 01.04.2001. According to the defendant, they assessed the property tax of the suit building only in accordance with Section 82 (3) of the Tamil Nadu District Municipalities Act, 1920.

17. It is also the case of the defendant that only after ascertaining the guideline value from the District Registrar, Chidambaram through his letter dated 11.04.2002 which discloses the guideline value for the land as Rs.813.30 sq. ft., the property tax assessment under Section 82(2)(a)(ii) of the Tamil Nadu District Municipalities Act, 1920, was made for the suit building occupied by the plaintiff. According to the defendant, the annual rent for the suit building as on 01.04.2001 is Rs.4,27,686/- and the monthly rent works out to Rs.35,600/-. Therefore, according to the defendant, the plaintiff's allegation that the suit building will fetch only a monthly rent of Rs.15,000/- is incorrect.

18. According to the defendant, the working sheet for the revised assessment of property tax for the suit building at Rs.75,160/- has taken into consideration the details of the date of commencement of construction as well as cost and the said working sheet was also sent to the plaintiff along with the impugned assessment order dated 12.02.2002. According to the defendant, in the plaint, the plaintiff has suppressed the fact that the working sheet for assessment of property tax for the suit building was furnished to the plaintiff by the defendant.

19. The defendant has also categorically pleaded that only at the time of adjudication of revision or appeal by the Commissioner of Municipality, the statute provides for personal hearing of the assessee. It is their case that the assessment of property tax of the suit building has been done only in accordance with Section 82 of the Tamil Nadu District Municipalities Act, 1920. The defendant has also pleaded that the plaintiff is not entitled for permanent injunction as sought for in the plaint.

20. Before the Trial Court, five documents were marked as Ex.A1 to Ex.A5 on the side of the plaintiff and two witnesses were examined namely (a) Karunamoorthy, the secretary to the plaintiff bank (PW1) and (b) M.S.R.Ravi (PW2). On the side of the defendant, five documents were marked as Ex.B1 to Ex.B5 and one witness was examined Umar Badhusha, District Revenue Inspector, Chidambaram (DW1).

21. The Trial Court by its Judgement and decree dated 08.01.2005 in O.S.No.70 of 2002 partly decreed the suit in favour of the plaintiff by granting the declaratory relief by declaring that the assessment order of the defendant dated 12.02.2002 in respect of the suit building is void and not enforceable, but however, rejected the relief of permanent injunction restraining the defendant from enforcing the assessment order dated 12.02.2002 in respect of suit building sought for by the plaintiff. The Trial Court granted the relief of declaration on the ground that the defendant has not ascertained the fair rent in accordance with law. However, since the plaintiff in the suit has given an undertaking that they will pay the property tax, if it is assessed by the defendant in accordance with law, the relief of permanent injunction was refused to the plaintiff.

22. Aggrieved by the Judgement and decree dated 08.01.2005 passed by the learned Additional District Munsif, Chidambaram in O.S.No.70 of 2002, the defendant has filed an appeal, before the Lower Appellate Court namely, Sub Court, Chidambaram in

A.S.No.95 of 2006.

23. The lower appellate court by its judgement and decree dated 20.07.2007 passed in A.S.No.95 of 2006 reversed the finding of the Trial Court by allowing the appeal filed by the defendant. According to the lower appellate court, there is a statutory right of appeal available under the Tamil Nadu District Municipalities Act, 1920 as against the impugned assessment order dated 12.02.2002 and without exhausting the said statutory remedy, the plaintiff had directly approached the civil court. Since the plaintiff did not avail the opportunity given to them for objecting to the impugned assessment order dated 12.02.2002 as given under Ex.A3 and Ex.A4, the lower appellate court while allowing the appeal filed by the defendant has granted liberty to the plaintiff to state their objections to the impugned assessment order dated 12.02.2002 to the defendant within one month from the date of the judgment and decree dated 20.07.2007 passed in A.S.No.95 of 2006 and failure to do so, will result in confirmation of the impugned assessment order by which the property tax payable by the plaintiff for the suit building per half year was fixed at Rs.75,160/-.

24. Aggrieved by the Judgement and decree dated 20.07.2007 passed by the lower appellate court in A.S.No.95 of 2006 reversing the findings of the Trial Court, this second appeal has been filed by the plaintiff in the suit.

Submissions of the learned counsels:

25. Heard Mr.A.Muthukumar, learned counsel appearing for the Appellant/plaintiff and Mr.P.Srinivas, learned counsel appearing for the respondent/defendant.

26. The learned counsel for the Appellant/plaintiff submitted that the assessment of property tax by the defendant is contrary to the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Hence, according to him, when the assessment of the fair rent has not been done in accordance with Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, the impugned assessment order has to be declared as null and void. He further submitted that when there is violation of statutory procedure contemplated under Section 82 of the Tamil Nadu District Municipalities Act, 1920 by the defendant who has not adhered to Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 while assessing the property tax, a civil court has got jurisdiction to declare the impugned assessment order as null and void. According to him, the Lower Appellate Court has erroneously come to the conclusion that when there is a statutory right of appeal available under the Tamil Nadu District Municipalities Act, 1920 as against the impugned assessment order, a civil suit is not maintainable. In support

of his submission, the learned counsel for the Appellant/plaintiff relied upon the following authorities:

(a) Kalairasi vs. Thanjavur Municipality, Thanjavur reported in 2008 - 2-L.W.374

(b) H.C.Lodha vs. Dr.C.Ranganathan and others reported in 1989 (1) MLJ 213 (FB)

(c) Sreenivasan and others vs. Pollachi Municipal Council, Pollachi reported in 1998 - 3 - L.W. 775

(d) Chellammal vs. Alandur Municipality, represented by its Commissioner reported in 1992 (1) LW 110

(e) Magdoo Sheriff alias Sultan Sheriff vs. Kancheepuram Municipality by its Commissioner reported in 1993 (2) MLJ 262

(f) The R.C.Diocese of Madurai, through Procurator Rev.Fr.A.Vedamanickam, K.Pudur, Madurai vs. Srivilliputtur Municipality through its Commissioner reported in 2002 (1) MLJ 391

27. Per contra learned standing counsel appearing for the respondent/defendant would submit that the defendant has adhered to the statutory requirements for assessing the property tax as contemplated under Section 82 of the Tamil Nadu District Municipalities Act, 1920 and only thereafter has passed the impugned assessment order dated 12.02.2002. According to him, sufficient opportunity was granted to the Plaintiff for furnishing the details of the newly constructed building and only thereafter, the impugned property tax assessment was made.

28. The learned counsel for the respondent/defendant would also point out that under Section 89(1)(a) of the Tamil Nadu District Municipalities Act, 1920 when the construction of the new building is completed, the assessee will have to furnish the details of the new building within 15 days from the date of completion. According to the defendant, the plaintiff did not furnish details as per the statutory requirement and only thereafter, the defendant sent a communication to the plaintiff on 06.02.2002 seeking for details of the newly constructed building. According to the defendant, only after getting all the details, the impugned assessment order was made and the working sheet for arriving at the assessment was also furnished to the plaintiff which fixed the property tax payable by the plaintiff at Rs.75,160/- which is in accordance with the procedure contemplated under Section 82 of the Tamil Nadu District Municipalities Act, 1920. It is further submitted that when there is no violation of any statutory procedure for method of assessment as contemplated under Section 82 of the Tamil Nadu District Municipalities Act, 1920, the civil courts jurisdiction is ousted.

Discussion:

29. It is not in dispute that there is a statutory right

of appeal under Rule 23 under Schedule IV (Taxation and Finance Rules) of the Tamil Nadu District Municipalities Act, 1920 to assail the assessment order dated 12.02.2012 passed under Section 82 of the said Act. Along with the impugned assessment order, the defendant had enclosed a working sheet which gives full particulars as to how the property tax was revised to Rs.75,160/- from Rs.710/-. Eventhough the said working sheet Ex.B1 was attached along with the impugned assessment order dated 12.02.2002, the Plaintiff chose not to file for reasons best known to them, the working sheet Ex.B1 along with the impugned assessment order dated 12.02.2002 which was marked as Ex.A4. In fact, it was only the defendant who filed the working sheet which was marked as Ex.B1. Under Section 89(1)(a) of the Tamil Nadu District Municipalities Act, 1920 within 15 days from the date of completion of the new building, the plaintiff ought to have furnished the particulars of the new building to the defendant. Admittedly in the instant case, the said statutory requirement was not complied with by the plaintiff.

30. In the written statement, the defendant has categorically pleaded that they have assessed the property tax under the impugned assessment order dated 12.02.2002 only in accordance with Section 82 of the Tamil Nadu District Municipalities Act, 1920 which deals with the method of assessment of property. Ex.B1 is a copy of the working sheet furnished to the plaintiff by the defendant along with the impugned assessment order dated 12.02.2002, the translated copy is reproduced hereunder:

Chidambaram Municipality

Working sheet for paragraph 7 of the reply petition

- 1) Cost of construction of the bank building : Rs.13,00,000/-
(As per order No.11 of the Property Tax Calculation)
- 2) Total value of the plot : Rs.58,28,108/-
(As per serial No.16)
- 3) Value of building and plot : Rs.71,28,108/-
- 4) Gross Annual Rental Value : Rs.71,28,108/- x 6
100
(6% of the value of the building and plot in terms of Section 82 (2)(a)(ii) of the Tamil Nadu District Municipalities Act, 1920) : Rs.4,27,686/-
- 5) Monthly rent : Rs.4,27,686/-
12

: = Rs.35,640/-

Commissioner

Chidambaram Municipality

Chidambaram Municipality
Assessment of Property Tax Working Sheet
Newly constructed Building
(Imposition of Property Tax as per Section
82(2) (a) (ii) of the Tamil Nadu
District Municipalities Act, 1920.)

1. Taxation Number : 2927
2. Name of the taxpayer : Secretary, Chidambaram
Cooperative Urban Bank,
Chidambaram
3. Ward No. : 8
4. Street Name : North Street
5. Door No. : 101
6. Construction of the Building : R.C.C. (ground floor)
7. Floor area of the building : 3150 Sq. Ft
8. Use of the building : Cooperative Urban Bank
9. New building completion date : 13-5-2001
10. Date of commencement of
operation of the bank in the
new building : 14-5-2001
11. Cost of construction of building
(Excluding wealth made for bank
convenience) : Rs.13,00,000/-
12. Maintenance cost of the building : Rs.1,30,000/-
(Cell 11 x 10%)
13. Net : Rs.11,70,000/-
(Cell 11-12)
14. Total area of the plot : 7166 sq.ft
15. As per register of the registration
department, the value of 1 sq. ft
(enclosed a copy of the Joint
Registrar, Chidambaram letter No.
708/mgo /2002/ dt.8-2-2002 : Rs.813.30
16. Total value of the land : Rs.813.30 x 7166
= Rs.58,28,108/-

- 17.Value of the land and building : Rs.69,98,108/-
(Cell 13 + 16)
- 18.Annual value (Cell 17 x 6%) : Rs. 4,19,886/-
- 19.Ratio of half yearly property Tax : 17.9%
- 20.Date on which the tax hike
takes effect : Half year stating from
1-4-2001
- 21.Half yearly property tax : Rs.75,160/-
(Cell 18 x 19)
- (a) Property Tax 14% : Rs.58,786/-
(b) Educational Cess 2.5% : Rs.10,497/-
(c) Library Cess 1.4% : Rs.5,879/-
Total : Rs.75,160/-

Commissioner,
Chidambaram Municipality

31. The receipt of the copy of the working sheet Ex.B1 from the defendant along with the impugned assessment order has also not been disputed by the plaintiff as seen from their deposition. As seen from the working sheet Ex.B1, the details of the land and building furnished by the plaintiff as per Ex.A2, letter dated 09.02.2002 has been accepted by the defendant in toto. While determining the annual value for the purpose of assessment of property tax, the defendant has taken into consideration, the extent of site and building, date of construction of the new building, date of occupation of the new building by the plaintiff, cost of construction of new building, deduction towards maintenance charges and guideline value. In the working sheet Ex.B1, a reference has also been made to a letter dated 08.02.2002 of the Registrar, Chidambaram disclosing that the guideline value for the site is Rs.813.30 per sq. ft. As seen from the working sheet, calculation details has been furnished to the plaintiff by the defendant with regard to the determination of property tax at Rs.75,160/-. The particulars furnished by the plaintiff to the defendant by its letter dated 09.02.2002, Ex.A2 has been duly incorporated in the working sheet Ex.B1 by the defendant.

32. Even though the plaintiff has disputed the assessment of annual rental value by the defendant for the new building,

the defendant has categorically pleaded in their written statement that the assessment was done only in accordance with section 82 of the Tamil Nadu District Municipalities Act, 1920 and that there is no violation of the statutory procedure.

33. The Trial Court has partly decreed the suit in favour of the plaintiff by granting the relief of declaration that the impugned assessment order dated 12.02.2002 is null and void, in view of non-compliance of statutory requirements for fixation of fair rent as contemplated under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. However, the Trial Court has rejected the relief of permanent injunction based on the undertaking given by the plaintiff to pay the property tax as and when the same has been assessed by the defendant in accordance with law.

34. It is the case of the plaintiff that the assessment of the annual rental value at Rs.4,19,826/- is erroneous as market value fixed at Rs.813.30 per sq. ft is incorrect. However, the same has been denied by the defendant who has deposed that only based on the information furnished by the Joint Registrar, Chidambaram by his letter dated 08.02.2002, the market value was fixed at Rs.813.30 per sq. ft. It was also submitted by the learned counsel for the plaintiff that the defendant while calculating the market value of the site in which the building was constructed, the defendant ought to have taken into account only that portion of the site on which the building was constructed and of a portion upto 50% thereof of the vacant land if any appurtenant to such building. According to the plaintiff, the defendant has erroneously taken the entire extent of the site i.e., 7166 sq. ft. while calculating the annual rental value of the building. However, this submission has been stoutly denied by the learned counsel for the defendant.

35. The only grievance of the plaintiff as seen from the plaint averments is that the assessment of property tax at Rs.75,160/- per half year is exorbitant and is not based on the market value of the land and the building. No reasons have been given in the plaint as to why the statutory right of appeal available under the Tamil Nadu District Municipalities Act, 1920 was not availed of by the plaintiff. The plaintiff will have to satisfy that there was total disregard of the statutory requirements by the defendant and only then, a civil suit is maintainable challenging an assessment order.

36. Eventhough, the learned counsel for the Appellant vehemently argued that Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 was not adhered to by the defendant, there is absolutely no pleading to that effect as seen from the plaint. As seen from the plaint averments, the

plaintiff is aggrieved only by the figures found in the working sheet and not with reference to the method of assessment of property tax adopted by the defendant. When there is a statutory right of appeal available under the Tamil Nadu District Municipalities Act, 1920 as against the impugned assessment order and when there is no violation of the method of assessment as seen from Ex.B1, Civil courts jurisdiction is ousted.

37. A litigant who chooses to approach the civil court despite the existence of a statutory appeal available under the Tamil Nadu District Municipalities Act, 1960 has to necessarily plead in the plaint that the defendant has violated the statutory provisions. In the case on hand, there is no such pleading found in the plaint. Therefore, it can be inferred that the plea taken by the plaintiff is only an after thought, after the filing of the suit.

38. This Court needs only to be subjectively satisfied as regards Ex.B1 and cannot hold a roving enquiry over the same, when there is a statutory right of appeal available under the Tamil Nadu District Municipalities Act, 1920. As seen from Ex.B1, working sheet, the pre-requisites required for arriving at the fair rent as per Section 4 of the Tamil Nadu Buildings Lease and Rent Control Act, 1960 have been taken into consideration by the defendant, though the figures contained therein have been disputed by the plaintiff.

39. The very object of a special code like that of the Tamil Nadu District Municipalities Act, 1920 will be defeated if these kinds of suits are entertained where the plaintiff has challenged indirectly only the quantum of property tax. By clever drafting of the plaint, they have made it appear that the method of assessment as contemplated under Section 82 of the Tamil Nadu District Municipalities Act, 1920 have not been adhered to by the defendant in the assessment of property tax.

40. Section 354 of the Tamil Nadu District Municipalities Act, 1920 stipulates that property tax assessment cannot be impeached by any court of justice, when the provisions of Act have been in substance and effect complied with. Section 354 of the Tamil Nadu District Municipalities Act, 1920 reads as follows:

"354. Assessments, etc., not to be impeached._

(1) No assessment or demand made, and no charge imposed, under the authority of this Act shall be impeached or affected by reason of any clerical error or by reason of any mistake (a) in respect of the name, residence, place of business or occupation of any person or (b) in the description of any property or thing, or (c) in respect of the amount assessed, demanded or charges; provided that the

provisions of this Act have been, in substance and effect, complied with. And no proceedings under this Act shall for defect in form, be quashed or set aside by any Court of Justice.

(2) No suit shall be brought in any Court to recover any sum of money collected under the authority of this Act or to recover damages on account of any assessment, or collection of money made under the said authority:

provided that the provisions of this Act have been, in effect, complied with.

(3) No distraint or sale under this Act shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any error, defect or want of form in the bill, notice, schedule, form, summons, notice of demand, warrant of distraint, inventory, or other proceeding relating thereto if the provisions of this Act, the rules and by-laws have in substance and effect been complied with:

Provided that every person aggrieved by any irregularity may recover satisfaction for any special damage sustained by him"

41. From the pleadings and evidence available on record, it is seen that the defendant has followed the method of assessment as contemplated under Section 82 of the Tamil Nadu District Municipalities Act, 1920 by taking into consideration all the prerequisites required while assessing the property tax for the new building constructed by the plaintiff. If the plaintiff was aggrieved by the assessment of property tax under the impugned assessment order, his remedy is only to file an appeal as contemplated under the Tamil Nadu District Municipalities Act, 1920, as the procedure contemplated under Section 82 of the Tamil Nadu District Municipalities Act, 1920 has been followed by the defendant.

42. The questions raised by the plaintiff regarding the wrong fixation of (a) guideline value, (b) annual rental value and (c) market value of the site are purely questions involving figures and does not involve any violation of any statutory requirement as prescribed under Section 82 of the Tamil Nadu District Municipalities Act, 1920. Only in cases where there is total disregard of statutory requirements, the civil court can come to the rescue of an aggrieved party. After giving a careful consideration to the pleadings, evidence and materials available on record, this Court is of the view that such an eventuality has not arisen, in the case on hand.

43. The Full Bench decision of the Madras High Court relied upon by the learned counsel for the Appellant/plaintiff in the case of H.C.Lodha vs. Dr.C.Ranganathan and others reported in 1989 (1) MLJ 213 (FB) does not aid the plaintiff as it is the categorical stand of the defendant as seen from the written statement that they have adhered to the method of assessment of property tax as contemplated under Section 82 of the Tamil Nadu District Municipalities Act, 1920. The working sheet Ex.B1 has also taken into consideration all the pre-requisites required for fixation of fair rent. The plaintiff has indirectly raised dispute only with regard to the figures mentioned in Ex.B1. Whether the figures mentioned in Ex.B1 are correct or not cannot be challenged in a civil suit as there is a statutory right of appeal available under the Tamil Nadu District Municipalities Act, 1920 itself. The Full Bench decision of the Madras High Court referred to supra deals with only as how fair rent is calculated and does not deal with Section 82 of the Tamil Nadu District Municipalities Act, 1920.

44. The following judgements relied upon by the learned counsel for the Appellant/plaintiff also does not support the case of the plaintiff:

(a) Kalairasi vs. Thanjavur Municipality, Thanjavur reported in 2008 - 2-L.W.374, (b) Sreenivasan and others vs. Pollachi Municipal Council, Pollachi reported in 1998 - 3 - L.W. 775, (c) Chellammal vs. Alandur Municipality, represented by its Commissioner reported in 1992 (1) LW 110, (d) Magdoo Sheriff alias Sultan Sheriff vs. Kancheepuram Municipality by its Commissioner reported in 1993 (2) MLJ 262 and (e) The R.C.Diocese of Madurai, through Procurator Rev.Fr.A.Vedamanickam, K.Pudur, Madurai vs. Srivilliputtur Municipality through its Commissioner reported in 2002 (1) MLJ 391.

45. In all the above referred judgements, the working sheet giving the details of the calculation for arriving at the property tax assessment was not furnished to the assessee. But in the case on hand, the working sheet Ex.B1 was furnished by the defendant to the plaintiff. The working sheet Ex.B1 has taken into consideration all the pre-requisites required for fixation of fair rent under Section 4 of the Tamil Nadu Buildings Lease and Rent Control Act, 1960. The oral evidence of DW1 also does not disclose that there has been any violation of statutory procedure as contemplated under Section 82 of the Tamil Nadu District Municipalities Act, 1920. The pleadings of the plaintiff as seen from the plaint also does not reveal that the defendant has violated any statutory requirement. Since there is no violation of Section 82 of the Tamil Nadu District Municipalities Act, 1920, if aggrieved by the impugned assessment order, the only remedy available to the

plaintiff is to file a statutory appeal available under the Tamil Nadu District Municipalities Act, 1920. Hence, the Judgements referred to supra will also not aid the plaintiff.

46. In an identical case involving assessment of property tax by Punjab Municipal Corporation, the Hon'ble Supreme Court in the case of NDMC & Satish Chand (Deceased) by LRs. reported in 2003 (10) SCC 38 held that Sections 84 and 86 of the Punjab Municipal Act, 1911 bars the jurisdiction of the civil court, where the grievance relates to the assessment or the principle of assessment by necessary implication. Section 84 under the Punjab Municipal Act, 1911 is the appeal provision and Rule 23 under Schedule IV (Taxation and Finance Rules) is the appeal provision under the Tamil Nadu District Municipalities Act, 1920. The Sections under the respective Acts enable any aggrieved party to prefer an appeal against an assessment order.

47. Rule 23 under Schedule IV (Taxation and Finance Rules) under the Tamil Nadu District Municipalities Act, 1920 provides a complete remedy to a party aggrieved by the assessment and levy of tax. When the defendant has categorically pleaded in its written statement that there is no violation of any statutory procedure and when the pleading as found in the plaint also does not disclose violation of any particular statute more so Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, as claimed by the plaintiff, the Judgement of the Hon'ble Supreme Court referred to supra is squarely applicable to the facts of the instant case. The Hon'ble Supreme Court has also followed the frequently cited decision of the Hon'ble Supreme Court in the case Dhulabhai vs. State of M.P reported in AIR 1969 SC 78 as to when the civil courts jurisdiction is ousted and only thereafter has held that there is an implied bar for a civil court to entertain a suit when the statute provides a special remedy to an aggrieved party to file an appeal. In the case on hand also, the Tamil Nadu District Municipalities Act, 1920 provides an appeal under Rule 23 under Schedule IV (Taxation and Finance Rules) of the Act as against the impugned assessment order. Hence, the civil courts jurisdiction is ousted.

48. The Trial Court has erroneously entertained the suit despite the fact (a) that there is no admission on the part of the defendant that there is violation of Section 82 of the Tamil Nadu District Municipalities Act, 1920, (b) there is no pleading in the plaint that the defendant has not adhered to Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, while fixing the property tax (c) No reasons were given in the plaint as to why the statutory right of appeal was not exercised by the plaintiff and (d) the plaintiff has suppressed the receipt of the working sheet Ex.B1 in the plaint.

49. However, the Lower Appellate Court has rightly allowed the appeal filed by the defendant by directing the plaintiff to

file the statutory appeal available under the Tamil Nadu District Municipalities Act, 1920 holding that civil suit is not maintainable.

50. Whether the defendant has taken the entire site for determination of land value and whether taking guideline value instead of market value for the determination of value of the site are all matters to be heard by the Appellate authority under the Tamil Nadu District Municipalities Act, 1920 as they involve only figures and that cannot be challenged before a civil court. Therefore the substantial questions of law 1, 2 and 3 formulated by this Court on 21.05.2008 at the time of admission of this second appeal is answered against the plaintiff. The substantial question of law formulated by this Court namely whether the civil courts jurisdiction is ousted with regard to the property tax assessment under the provisions of the Tamil Nadu District Municipalities Act, 1920 is answered in favour of the defendant by holding that the civil courts jurisdiction has been ousted in view of the reasons stated above.

Conclusion:

51. For the foregoing reasons, there is no merit in this second appeal and therefore, judgement and decree dated 20.07.2007 passed by the learned Subordinate Judge, Chidambaram in A.S.No.95 of 2006 is confirmed. Since this Court has confirmed the Judgement and decree dated 20.07.2007 passed by the learned Subordinate Judge, Chidambaram in A.S.No.95 of 2006 and as was granted by the Court below, one month time from this date is granted to file the statutory appeal to the Appellant to challenge the impugned assessment order as provided under the Tamil Nadu District Municipalities Act, 1920. Accordingly, the second appeal stands dismissed. No costs.

Sd/-

सत्यमेव जयते Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The Sub-Ordinate Judge, Chidambaram

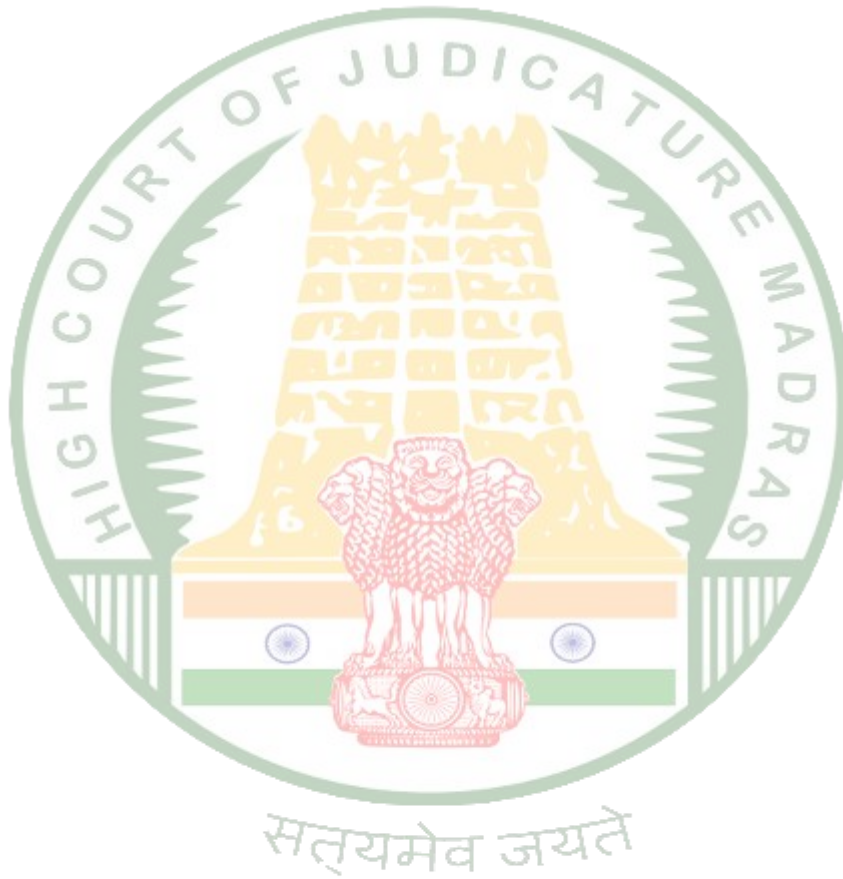
2. The Additional District Munsif, Chidambaram

+1cc to Mr.P.Srinivas, Advocate SR.No.93988

+1cc to Mr.A.Muthukumar, Advocate SR.No.93648

S.A. No.765 of 2008

SR(CO)
GMY(19/11/2019)



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