IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2019

PRONOUNCED ON : 13.02.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.967 of 2005

Vani Sekar ...Appellant

Vs.

The Commissioner
Ambur Municipality ...Respondent

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.106 of 2002, on the file of the Additional District & Sessions Judge, FTC, Tirupattur, Vellore District dated 31.12.2004 in reversing the well considered judgment and decree in O.S.No.24 of 2001 on the file of the Additional District Munsif, Ambur dated 07.12.2001.

For Appellant : Mrs.V.Srimathi

For Respondents : No appearance. Set exparte vide order dated 07.02.2019.

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 31.12.2004 passed in A.S.No.106 of 2002, on the file of the Additional District & Sessions Court, FTC, Tirupatur, Vellore District reversing the judgment and decree dated 7.12.2001 passed in O.S.No.24 of 2001 on the file of the Additional District Munsif Court, Ambur.

2. The second appeal has been admitted on the following substantial questions of law.

> ***"a) Whether the jurisdiction of the civil court is ousted, when the statutory authorities are acting beyond the scope of their powers and in violation to the statutory prescriptions?***
>
> ***b. Whether the court below is right in coming to a conclusion that the plaintiff has to submit her objection personally and not through any agent, when there***

is a specific provision under Schedule IV Rule 12?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. The Parties are referred to as per their rankings in the trial Court for the sake of convenience.

5. The plaintiff has come forward with the suit seeking for the relief of declaration to declare the assessment of property tax determined by the defendant as illegal and void and for the consequential relief of permanent injunction refraining the defendant from collecting the property tax by way of distraint action. It is found that the plaintiff has constructed a cinema theatre and thereupon, the defendant officials had inspected the same and sent a special notice of assessment of property tax by registered post fixing the tax at Rs.88,670/- per year from 01.10.1988 onwards and granted 30 days time to the plaintiff in filing her objection if she is aggrieved over the same. It is found that the plaintiff sent a notice through her counsel with reference to

the abovesaid levy of property tax by the defendant Municipality and the same had been acknowledged by the defendant. It is the case of the plaintiff that without considering the abovesaid representation of the plaintiff sent through her lawyer and also in violation of the provisions contained in the Tamilnadu District Municipalities Act, the defendants had sent a demand notice of property tax to the extent of Rs.3,05,860/- without proper calculations and threatened the plaintiff that they would initiate coercive steps to collect the same on the failure of the plaintiff to comply with the demand and accordingly it is stated that the plaintiff has been necessitated to lay the suit for appropriate relief.

6. The defendant Municipality contended that the tax was assessed and levied only as per the prevailing Rules and Provisions of the Act and accordingly demand notice was issued to the plaintiff and the plaintiff had not preferred any revision against the demand notice sent by the defendant as per law and the legal notice sent by the plaintiff through her counsel had been properly replied and though the plaintiff had been given sufficient opportunities and time to pay the tax as per the Rules, inasmuch as the plaintiff has failed to pay the same, it is stated that the defendants are correct in taking further action against the plaintiff and accordingly contended

that the suit laid by the plaintiff is not maintainable and prayed for the dismissal of the same.

7. Based on the materials placed on record, both oral and documentary, the Trial Court was pleased to accept the case of the plaintiff and granted the appropriate reliefs in favour of the plaintiff. Aggrieved over the same, the defendant preferred the first appeal. The first appellate court holding that the civil suit instituted by the plaintiff against the levy of property tax is not maintainable as well as the plaintiff has not preferred any revision in accordance with law challenging the levy and demand of property tax by the defendant, accordingly proceeded to entertain the appeal preferred by the defendant and thereby set aside the judgment and decree of the trial court and consequently dismissed the suit laid by the plaintiff. Impugning the same, the present second appeal has been preferred by the plaintiff.

8. The plaintiff's counsel contended that inasmuch as the assessment of property tax and the demand made by the defendant in connection with the same is not carried out in accordance with the provisions of the Tamilnadu District Municipalities Act, but on their own whims and fancies, the officials of the defendant

municipality had assessed and levied the property tax without providing an opportunity to the plaintiff to put forth her views to the same, and even though the plaintiff has objected to the levy of property tax by sending a legal notice through her counsel, without responding to the same in a proper manner, the defendant is attempting to initiate coercive steps against the plaintiff and as the defendant is persisting in its coercive steps to collect the tax from the plaintiff, it is putforth that the plaintiff has been necessitated to levy the suit and accordingly contended that inasmuch as the levy of property tax made by the municipality is being impugned as not having passed and made in compliance with the statutory requirements as provided under the abovesaid Act as well as the dictum laid down by the Apex Court, according to her, the civil court's jurisdiction is not ousted and therefore, contended that the appellate court has erred in holding that the civil court's jurisdiction is barred in respect of the reliefs sought for by the plaintiff and further erred in holding that the plaintiff should approach the authorities concerned under the abovesaid Act, challenging the levy of property tax made by the defendant Municipality and thereby contended that the abovesaid determination of the first appellate court needs reversal.

9. In respect of the abovesaid issue, I had an occasion to consider the position of law and after considering the various decisions of the Apex Court as well as the decisions of our High Court as well as other courts, in the decision reported in ***2018-2-L.W 269 (Dr.Jagan and others Vs. The commissioner, Pollachi Municipality)***, I have held that when the jurisdiction of the civil court is either expressly or impliedly ousted, there is no question of invoking the jurisdiction of the Civil Court and merely because the plaintiff had impugned the revision of property tax as null and void or passed not in adherence to the principles laid down under the Tamilnadu District Municipalities Act, that cannot be the basis straightaway for holding that the Civil court has jurisdiction to entertain such actions and in such view of the matter, it is found that as rightly determined by the first appellate court, when the special enactment governing the issues involved in the matter provide for effective machineries to ventilate the grievances of the plaintiff and by way of the same, the jurisdiction of the civil court is found to be excluded for canvasing the said points, it is found that the first appellate court is totally justified in holding that the plaintiff should have only approached the authorities under the Act concerned to ventilate her grievances with reference to the levy of tax impugned by her in the suit and consequently rightly held that

the civil suit is not maintainable inasmuch as effective remedies are available under the concerned Act to the plaintiff and particularly when the appellate committees/tribunals provided under the Act are presided over by the judicial officers. In such view of the matter, the contention that the authorities concerned under the Act, would not be competent to determine the issues involved in the lis, as such, cannot be countenanced and accordingly I do not find any reason to interfere with the determination of the first appellate court that the civil action laid by the plaintiff challenging the levy of property tax is not maintainable.

10. The position of law has been detailed in the abovesaid decision rendered by me in the following manner.

> "Tamilnadu district municipality 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 asessment 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 Tamilnady 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 straightway for holding that the civil court has jurisdiction to entertain such actions.

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.

(1972) 85 L.W. 8 S.N. = AIR 1971 SCC 353 (Guntur Municipal Council Vs. Guntur Town Rate Prayers 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, Kimbakonam 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 Executive 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.)

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

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

2009-5-LW 201 (P.Ramankutty Menon Vs. P.Unnikrishnan)."

11. Furthermore, the first appellate court is also correct in holding that the legal notice sent by the plaintiff through her counsel could not be considered as a valid revision preferred by her as provided under the Act and when the abovesaid notice has been responded by the defendant municipality by way of a reply and when the legal notice sent by the plaintiff cannot be construed as a proper revision preferred under the concerned Act in all parameters,

it is found that the question of the defendant municipality determining the points raised by the plaintiff through her legal notice does not arise. As rightly determined by the first appellate court, the plaintiff should have approached the authorities constituted under the Act, challenging the levy of property tax as per law, if she is aggrieved over the same.

12. The plaintiff's counsel in support of her contention placed reliance upon the decision of the Apex court reported in ***MANU/SC/0479/1972 (The Barsi Municipal Council, Barsi, District Sholapur Vs. The Lokmanya Mills, Barsi, Limited, Barsi and ors)***. The principles of law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at the hand.

13. In the light of the above discussions, the substantial questions of law formulated in this second appeal are accordingly answered against the plaintiff and in favour of the defendant municipality.

14. In conclusion, the second appeal fails and is accordingly dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

13.02.2019

Index : Yes/No
Internet:Yes/No
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1. The Additional District & Sessions Court,
   FTC, Tirupatur, Vellore District .
2. The Additional District Munsif Court, Ambur.
3. The Section Officer, V.R.Section,
   High Court, Madras.

T.RAVINDRAN,J.

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Pre-delivery Judgment in S.A.No.967 of 2005

13.02.2019