BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.04.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
S.A.(MD)No.960 of 2011
and
M.P.(MD)No.1 of 2011

A.Baskar Vincent ... Appellant/Respondent/Plaintiff

Vs.

Tuticorin Corporation,
Through its Commissioner,
Having Office at
D.No.1, W.G.C. Road,
Tuticorin. ... Respondent/Respondent/Defendant

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree, dated 20.06.2011 in A.S.No.10 of 2011, on the file of the Additional District Court/Fast Track Court No.1, Thoothukudi, reversing judgment and decree, dated 19.01.2009 in O.S.No.278 of 2005, on the file of the Principal District Munsif, Tuticorin.

For Appellant : Mr.R.J.Karthick
For Mr.R.Subramanian

For Respondent : Mr.S.Saji Bino

JUDGMENT

The plaintiff is O.S.No.278 of 2005 on the file of the Principal District Munsif Court, Thoothukudi, is the appellant herein. The suit schedule property belonged to the plaintiff. The plaintiff had rented out the said building. The plaintiff would claim that upto 1997, the half yearly house tax for the suit schedule property was only Rs.162/-. He would claim that without following the procedure set out in the District Municipalities Act, it was arbitrarily enhanced to Rs.4,087/- and the officials of the defendant/local body coerced the plaintiff to pay a sum of Rs.28,609/- in the year 1999. The plaintiff was threatened with disconnection of water supply and also the drainage connection. Therefore, the appellant had to pay the said amount under protest. The appellant has been remitting the half yearly tax at Rs.4,087/- under protest ever since. Since the very levy and collection of the said amount from the plaintiff was illegal, the plaintiff issued Ex.A.21/notice dated 21.05.2005 seeking refund of the amount paid by the plaintiff under protest. Since there was no response to the same, he filed the aforesaid suit on 09.06.2005. The plaintiff examined himself as P.W.1 and marked Exs.A.1 to A.22. A corporation official was examined as D.W.1 and Exs.B.1 and B.2 were marked through him.

2.The learned Trial Judge after a detailed consideration of the evidence on record decreed the suit and directed the defendant/corporation to refund the suit amount of Rs.77,609/- with interest. Questioning the same, the defendant filed A.S.No.10 of 2011 before the Additional District Court/Fast Track Court No.1, Thoothukudi. By judgment and decree dated 20.06.2011, the judgment and decree passed by the Trial Court was set aside and the appeal was allowed. Challenging the same, the second appeal came to be filed.

3.The second appeal was admitted on the following substantial questions of law:-

> *"(a) Whether in law is the lower Appellate Court right in holding that the civil Court's jurisdiction is ousted?*
>
> *(b) When the trial Court has found that the respondent has not followed the proper procedure or provisions of the relevant statue and rules, is not the lower Appellate Court wrong in holding that civil Court is not having jurisdiction vide 1994 (2) LW 715? and*
>
> *(c) Has not the lower Appellate Court failed to see that the respondent had collected money in violation of Exhibit B.2 and hence they are bound to refund the excess amount?"*

4.Heard the learned counsel on either side.

5.The learned counsel appearing for the appellant would contend that even though the determination of property tax can be challenged before the Tribunal constituted under the relevant statue and there are also departmental remedies, still the jurisdiction of the Civil Court cannot be said to be ousted. He would also state that the collection of any tax will have to be under the authority of law and if there has been an illegal collection, a suit for refund would always lie. In this regard, the learned counsel would place reliance on the decision reported in *(1925) 49 MLJ 542 (The Krishna Jute and Cotton Mils Vs. The Municipal Council)*. His further contention is that the plaintiff had remitted property tax at the revised rate only under protest. Payment of property tax would constitute a continuing cause of action. The last payment was made by him on 31.12.2002. The suit was instituted on 09.06.2005. Thus the suit was very much in time. Therefore, he submitted that the decision of the Trial Court has to be necessarily restored and the judgment and decree passed by the First Appellate Court has to be set aside. He submitted that the substantial questions of law may be answered in favour of the appellant.

6.Per contra, the learned standing counsel for the corporation would submit that the plaintiff has not at all challenged the validity of the levy and therefore, a suit for refund simpliciter may not lie. His second contention is that the payment of property tax for each half year would constitute an independent payment and therefore, except in respect of the payments made within three years prior to the filing of the suit, there was no scope for seeking refund of the amounts paid prior to the said cut-off period. He pressed for dismissal of the second appeal.

7.I carefully considered the rival contentions and went through the evidence on record. There is no dispute that the suit schedule building belongs to the appellant and that the same has been rented out in favour fire services department. The learned counsel for the appellant is right in his contention that the jurisdiction of the Civil Court is not ousted merely because the statute had provided for alternative remedies for the assessee. It is a well settled proposition of law that property tax will have to be levied and collected in accordance with the procedure laid down in the statute and if there is any infraction of the procedure, a civil suit would definitely lie to question the action of the local body. Therefore, I have no hesitation to answer the first question of law in favour of the appellant.

8.However, the defendant-corporation in their written statement have categorically pleaded that even though originally property tax was fixed at Rs.162/- for every half year till 1993-94, since a Government department was functioning in the suit schedule building, based on the annual rent, the property tax was revised and enhanced to Rs.4,087/- with effect from 1993-94. The stand of the corporation is that this revision was based on the rent collected by the building owner from the fire services department. The further stand of the defendant is that post 1993-94, there has been no revision or enhancement of the property tax. In any event, the plaintiff was aware of the stand of the department atleast from the year 1998. Nothing stopped the plaintiff from questioning the determination of the property tax by the local body. The plaintiff could have moved the Tribunal. The plaintiff has not done so. If the plaintiff felt aggrieved that proper procedure was not followed in the matter of determination, the plaintiff could have very well filed a suit seeking a declaration that the determination of the property tax by the local body was illegal. The plaintiff did not seek any such relief. As rightly pointed out by the learned standing counsel for the respondent, so long as there is no challenge to the primary determination by the department, in a suit for refund, the validity of the primary demand cannot be gone into. The Hon'ble Supreme Court in the decision made in Civil Appeal No.2552 of 1989 (Collector of Central Excise, Kanpur Vs. Flock (India) Limited, C-7, Panki Industrial Area, Kanpur), dated 04.08.2020 had held as follows:-

"Coming to the question that is raised there is little scope for doubt that in a case where an adjudicating authority has passed an order which is appealable under the statute and the party aggrieved did not choose to exercise the statutory right of filing an appeal, it is not open to the party to question the correctness of the order of the adjudicating authority subsequently by filing a claim for refund on the ground that the adjudicating authority had committed an error in passing his order. If this position is accepted then the provisions for adjudication in the Act and the Rules, the provision for appeal in the Act and the Rules will lose their relevance and the entire exercise will be rendered redundant. This position, in our view, will run counter to the scheme of the Act and will introduce an element of uncertainty in the entire process of levy and collection of excise duty. Such a position cannot be countenanced. The view taken by us also gain support from the provision in sub-rule (3) of Rule 11 wherein it is laid down that where as a result of any order passed in appeal or revision under the Act, refund of any duty becomes due to any person, the proper officer, may refund the amount to such person without his having to make any claim in that behalf. The provision indicates the importance attached to an order of the appellate or revisional authority under the Act. Therefore, an order which is appealable under the Act is not challenged then the order is not liable to be questioned and the matter is not to be reopened in a proceeding for refund which, if we may term it so, is in the nature of execution of a decree/order."

9.The learned counsel for the appellant would attempt to distinguish the said decision by pointing out that the said decision arose out of quasi judicial proceedings and that the same may not have any application to the case on hand. I am not able to accept this contention of the learned counsel for the appellant. The very same principle can be extended and applied to the case on hand also.

10.That apart, I find that the appellant had not at all disclosed the rent actually collected by him from the fire services department. It is well known that the determination of property tax is based on the annual rental value. In this case, it is admitted by both sides that the suit schedule building was rented to fire services department. If the plaintiff had disclosed the monthly or annual rent received from the department, it is child's play to compute the property tax payable. It is a matter of regret that neither the plaintiff nor the defendant had come forward with the relevant particulars in that regard. Be that as it may, the appellant, who was the plaintiff in the suit must bear the burden. Since the appellant had not placed all the relevant particulars before the Court below and since he did not challenge the validity of the levy, the suit was not maintainable. The Trial Court erred in decreeing the suit. The judgment of the First Appellate Court is hardly satisfactory. Even the points for determination have not been framed. Since, it came to the correct conclusion that the suit is not maintainable, no interference is called for. The other substantial questions of law are answered against the appellant. The dismissal of this second appeal will not come in the way of the appellant from challenging the validity of the levy or determination of the quantum of property tax in the manner known to law.

11.With this liberty to the appellant, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1.The Additional District Judge,
Fast Track Court No.1,
Thoothukudi.

2.The Principal District Munsif,
Tuticorin.

Copy to:
The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2c)

+1 CC to M/s.R.J.KARTHICK, Advocate (SR-17282[F] dated 23/04/2021)

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KK(15.06.2021) 5P 6C