IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.02.2022

PRONOUNCED ON : 07.06.2022

CORAM

THE HON'BLE MRS.JUSTICE J.NISHA BANU

SECOND APPEAL Nos.1350 and 1351 of 2007
and M.P.Nos.2 and 2 of 2007
and C.M.P.Nos.12970 and 12971 of 2021

The Commissioner
Mettur Municipality
Mettur Dam, Mettur Taluk
Salem District ..Appellant in both appeals /Respondent/defendant.

Vs

1.The Mettur Spinning Mills Ltd.,
Mettur Dam
rep. By its Managing Director
Balakrishnan
Mettur Spinning Mills Compound
Mettur Dam-1
Mettur Taluk
Salem District .. Respondent No.1 in both appeals/Respondent/Plaintiff

2.The Official Liquidator
High Court, Madras
Corporate Bhavan, 2nd floor
No.29, Rajaji Salai, Chennai-600 001
[R2 impleaded vide order of court dated 17/10/2019 made in CMP.No.22312 of 2019]
&
CMP.No.22313/2019 in Second Appeal.No.1350 & 1351/2007 ..Respondent No.2 in both Appeals

[vide order dated 11.08.2021,in S.A.1350 & 1351/07 this court recorded that the Official Liquidator has filed a report dated 05.07.2021 stating that the first respondent company has not been wound up and it is only M/s.Mettur Textiles

Industries Ltd., has been wound up. The first respondent has not been wound up, the presence of the Official Liquidator in this Second Appeal is dispensed with. Registry is directed to delete the name of the Official Liquidator as one of the respondents in these Second Appeals]

Prayer in S.A.1350 of 2007: Second Appeal filed under Section 100 of CPC., against the decree and judgment passed in A.S.No.50 of 2004 dated 10.01.2006 on the file of Sub-Court, Mettur, reversing the judgment and decree passed in O.S.No.54 of 2001 dated 23.01.2003 on the file of District Munsif Court, Mettur.
Prayer in S.A.1351 of 2007: Second Appeal filed under Section 100 of CPC., against the decree and judgment passed in A.S.No.49 of 2004 dated 10.01.2006 on the file of Sub-Court, Mettur, reversing the judgment and decree passed in O.S.No.374 of 1999 dated 23.01.2003 on the file of District Munsif Court, Mettur.

For Appellant
in both Second Appeals : Mr.L.P.Maurya

For respondents
in both Second Appeals : Mr.K.S.Navin Balaji for R1

Mr.S.Gopalakrishnan for R2

COMMON JUDGMENT

The above Second Appeals are filed by the defendant in O.S.No.54 of 2001 and 374 of 1999 against the decree and judgment passed in A.S.Nos.50 of 2004 and 49 of 2004 dated 10.01.2006 on the file of Sub-Court, Mettur, reversing the judgment and decree passed in O.S.No.54 of 2001 and O.S.No.374 of 1999 dated 23.01.2003 on the file of District Munsif Court, Mettur.

2. At the time of admission of the above Second Appeals, the following substantial question of law was framed by this court:-

> "Whether the lower appellate court has the jurisdiction to entertain the appeal, when its jurisdiction is impliedly by barred by the provisions of section 89 of the District Municipalities Act ?"

3. The suit in O.S.No.54 of 2001 was filed by the Plaintiff/respondent for permanent injunction restraining the defendant from in any way collecting the property tax for the

assessment year 1999-2000 II half, 2000-2001 I half and 2000-2001 II half, till the order passed in the appeal proceedings by the defendant and also to restrain defendant and his subordinates from in any way disconnecting the essential water connection to the suit property in connection with the enhanced property tax.

4. The suit in O.S.No.374 of 1999 was filed by the Plaintiff/respondent-Mettur Spinning Mills for permanent injunction against the defendant-The Commissioner, Mettur Municipality and his officers from in any way collecting the property tax till the order passed in the appeal proceedings for the assessment year 1998-1999 II half and also by due process of law for 1999-2000 and for an order of permanent injunction restraining the defendant and his office bearers from in any way disconnecting the essential water connection to the suit property permanently in-connection with the property tax proceedings.

5. The Plaintiff-Mettur Spinning Mills is a Limited Company. The defendant issued notice for the assessment numbers 19401, 19402, 19403 and 19674. The plaintiff paid the tax under protest. Since there was an economic crisis from 1995, the plaintiff company suffered heavily and filed O.S.No.374 of 1999 for permanent injunction from collecting the property tax and the plaintiff obtained an order of ad-interim injunction in I.A.No.1271/99. According to the plaintiff, they are questioning demand notice and not the amounts mentioned in it. The plaintiff sought for permanent injunction in both the suits.

6. The defendant-The Commissioner, Mettur Municipality, filed written statement submitting that as per Rule 26-B of the Tamil Nadu District Municipalities Act, 1920, any appeal against the decision on the Taxation Appeal Committee has to be filed before the District Court and the suit is filed without exhausting the remedies provided under the Act, 1920. The defendant Mettur Municipality further submitted that since the suit property was assessed to a new property tax vide assessment No.19674 from 01.10.1998 i.e., 1990-2000 II, the suit in O.S.No.374/99 is not all connected with the suit in O.S.No.54 of 2001. It is a separate suit and no one prevented the plaintiff to add the suit property in O.S.No.54 of 2001 in O.S.No.374/99. The interim order in O.S.No.374/99 is only regarding the assessment Nos.19401, 19402 and 19403 and it is not at all binding the defendant. There is no cause of action for the suit.

7. Upon suit pleadings and written statement, the trial court framed appropriate issues in both the suits separately and concluded that once a specific court is mentioned in a Statute wherein the parties are directed to get redressal for their grievance, then certainly the ordinary civil court's jurisdiction to take cognizance of the matter is impliedly barred. Hence, it is obvious that if at all if the plaintiff is aggrieved by the levy of revised tax, they can very well approach the Taxation Appeals Committee constituted under the Tamil Nadu District Municipalities Act and further if the plaintiff is aggrieved by the order passed by the Taxation Appeals Committee, the plaintiff can very well approach the District Court for redressal. By applying the principles laid down in the decision reported in AIR 1969, SC 68 [Dulabhai Vs State of Maharashtra] and the guidelines given by Honourable Supreme Court in the decision reported in 2002(4) CTC 629, the trial court decided that it has no jurisdiction to try the suit which is exclusively within the purview of the Taxation Appeals Committee and the District Court.

8. The trial court further concluded that the plaint to be returned to the plaintiff so that the same can be presented in the proper forum.

9. On the same view and findings, suit in O.S.No.374 of 1999 has also been returned to the plaintiff.

10. As against the above return of plaint, A.S.Nos.49 and 50 of 2004 was filed by the plaintiff-Spinning Mills. The lower appellate court, by judgment and decree dated 10.01.2006 reversed the judgment of the trial court and reassessed the property imposed on the plaintiff as follows:-

A.S.No.49 of 2004 :-

Assessment Nos. 19402 and 19403

Assessment Years 1999 to 2005

Property tax fixed by the defendant : 498361, 47092

50% increase by Lower Appellate Court : 523278 70638

Total amount : 10,17,744/- for both assessment numbers 19402 and 19403 for 1999 to 2005.

11. The lower appellate court granted permanent injunction to the plaintiff and further added 10% increase in the assessment for the tax from the year 2006. The lower appellate court in A.S.No.50 of 2004, held that the plaintiff has to pay Rs.6,86,370/- to the Commissioner, Mettur Municipality for the assessment years upto 2005 and also directed the Mettur Municipality to increase the rate of tax by 10% from 2006 to the demand of Rs.68637/- and fix the demand to the plaintiff Limited company. The lower appellate court granted permanent injunction in both the Appeal suits restraining the defendant Municipality from disconnecting the Water service.

12. Aggrieved by the judgment of the lower appellate court passed in A.S.Nos.49 and 50 of 2004, the appellant-The Commissioner, Mettur Municipality preferred the above Second Appeals before this court.

13. The learned counsel for the appellant/defendant-The Commissioner, Mettur Municipality contended that the suit property bearing Assessment No.19674 is a new building with an extent of 2,597.513 m^2 area and was assessed for property tax for the first time in the assessment year 1999-2000 I half which is to the tune of Rs.68,637/-. The first respondent-Mettur Spinning Mills has also paid the property tax for the assessment year 1999-2000 I Half. However, the plaintiff refused to pay the property tax for the subsequent assessment years i.e.1999-2000 II half, 2000-2001 I half, 2000-2001 II half, on the premise that the plaintiff got an order of interim injunction in the earlier suit in O.S.No.374 of 1999 in I.A.No.271/1999. Therefore, the appellant Municipality issued demand notice for the Assessment No.19674 on 30.03.2000 for the period 1999-2000 II half, 2000-2001 I Half, 2000-2001 II half demanding to pay a sum of Rs.2,05,911/-. The plaintiff/respondent not preferred revision before the appellant nor appealed before the Taxation Appeal Committee with respect to Assessment No.19764.

14. The learned counsel for the appellant raised the foremost contention that the assessment orders passed by the appellant are in consonance with the Tamil Nadu District Municipalities Act, 1920. It is submitted that based on the instructions given by the Commissioner of Municipal Administration through a Circular Vide Roc.No.60572/98/R1 dated 23.10.1998 property tax was fixed for the Assessment No.19674. Thus the appellant followed G.Os and guidelines issued by the

Government and Commissioner of Municipal Administration.

15. It is further submitted that the rate of property tax fixed by the Appellant Municipality is by following the Resolution No.616(6) dated 27.11.1990 which included 16.5% -Annual Rental value, 14% General Purpose, 2.5% education tax and 10% general cess. Further the tax arrived by working out the land value per square feet at Rs.3/-, deduction of 10% depreciation and it was determined based on the provisions of Tamil Nadu Buildings (Lease & Control) Act, 1960.

16. The learned counsel submitted that the appellant Municipality adhered to all the rules and instructions while fixing the property tax. The appellant Municipality as provided in Rule 9 of Schedule IV of Act 1920 issued Newspaper notice, Dhandora Notice and also displayed the notice on the notice board.

17. The second contention raised by the learned counsel for the appellant is that the jurisdiction of Civil Court to entertain the suit filed by the plaintiff-Mills is barred under Rule 26-B of the Schedule IV of the Tamil Nadu District Municipalities Act, 1920. Rule 26-B of the Schedule IV of the Tamil Nadu District Municipalities Act, 1920 was included by G.O.Ms.No.127 Municipal Administration and Water Supply dated 27.05.1999. The learned counsel would submit that it is a well settled principle of law that the special statute must provide for an efficacious alternative remedy. Tamil Nadu District Municipalities Act, 1920 itself is a self-contained Act. Any person aggrieved by the assessment and imposition of taxes can submit a revision petition within 30 days from the date of special notice to the executive authority i.e, Municipal Commissioner and the same was also stipulated in the Special Notices dated 08.02.1999 issued to the respondent/plaintiff for all the assessment numbers. Rule 28 stipulates that the assessment or demand of any tax, when no appeal is made and when such an appeal is made, the adjudication of the council thereon shall be final. That apart, it is well settled principle of law that if the assessment in question has been fixed in consonance or in substantial compliance with the provisions of the Tamil Nadu district Municipalities Act, 1920, no Civil Court is having jurisdiction to entertain a suit.

18. On the issue of whether the suit is maintainable or not in view of the bar of the civil court jurisdiction under the concerned Municipality Act, the learned counsel relied on the following decisions.

1) T.R.Krishnamoorthy & another Vs. The Madurai City Municipal Corporation, W.P.Nos.20852 and 30324 of 2000.

2) Srikant Kashi Nath Jituri and others Vs. Corporation of the City of Belgaum [(1994) 6 SCC 572]

3) NDMC Vs. Satish Chand [(2003) 10 SCC 38]

4) Dr.Jagan and 3 others Vs. The Commissioner, Pollachi Municipality [S.A.No.2067 of 2003]

The learned counsel submitted that in the catena of judgments and as per Rule 26-B of Schedule IV of the Tamil Nadu District Municipalities Act, the Civil Court's jurisdiction is ousted. The Honourable Supreme Court and this court has held that under Section 9 of the Code of Civil Procedure, Court has power to try the civil disputes of the civil nature unless barred either expressly or impliedly. If at all other forum is created to entertain and try any civil dispute, then the suit is to be tried by that special forum. The learned counsel submitted that the special forum happens to be Taxation Appeal Committee.

19. The learned counsel also contended that when the plaint is returned by the trial court, the plaintiff filed appeal before the lower appellate court. But the lower appellate court reversed the judgment and decree of the trial court without considering the fact that the suit itself is not maintainable before the Civil Court and reassessed the tax which is contrary to the decisions of the Honourable Supreme Court and High Court. The aggrieved person can submit a revision petition to the executive authority as provided in the special notice issued to him within 30 days. The learned counsel thus prayed that the judgment and decree of the lower appellate court has to be set aside.

20. The appellant Municipality filed common additional typed set of papers submitting that from the financial years 2001-2002 to 2021-2022, after adjusting the amounts paid by the respondent, for assessment numbers 19401, 19402, 19403 and 19674, in toto, the property tax due for all the assessment numbers works out to Rs.3,35,99,599/-.

21. Per contra, the learned counsel for the respondent submitted that Act No.65 of 1997 was not notified and it was repealed by Act No.15 of 2009. It is submitted that the entire assessment procedure as carried out by the appellant is in violation of natural justice and due process of law. The appellant Municipality did not indicate the fair valuation as per Rent Control Act. The learned counsel in support of his submissions relied on decision of this Court reported in A.Thangammal Vs. The Commissioner, Dindigul Municipality MANU/TN/0927/2018 and submitted that in case of assessment and demand of Property Tax made in violation of principles of natural justice, there is no bar of jurisdiction of the civil court. The learned counsel also relied on the following decisions on the same lines.

1.Jayachandran and Bros. Vs. Nagapattinam Municipality [MANU/TN/2926/2013]

2.K.R.Abirami Vs. Kumbakonam Municipality [2008 (1) CTC 791]

3.K.A.Arokkiam Vs. The Dindigul Municipality MANU/TN/3714/2009

4. Kairasi Vs. Thanjavur Municipality MANU/TN/7873/2007

5.Mangayarkarasi Vs. The Kumbakonam Municipality MANU/TN/4147/2009.

6.Shanmugha Nadar Vs. The Corporation of Madurai, MANU/TN/0530/1978.

22. The respondent-Plaintiff’s contention is that the appellant-Mettur Municipality has failed to follow the procedure as contemplated under Tamil Nadu District Municipalities Act read with Tamil Nadu Buildings Lease and Rent Control Act, hence, the suits filed and therefore, the suits are maintainable before the civil court. The lower appellate court had rightly reversed the findings of the trial court and the therefore, the appeals are liable to be dismissed.

23. The respondent/plaintiff further submitted that the company is a sick company and there is no business activities since 2006 and so filed a memo praying to waive the interest part. The plaintiff in the memo given the calculation of Property Tax amount based on judgment and decree in A.S.Nos.49 and 50 of 2004 in respect of assessment years from 1999 to 2021 for the Assessment Numbers 19401, 19402, 19403 and 19674. The total property tax calculation as per the lower appellate court

order is Rs.81,26,699/-. Advance amount paid as per the curt order is Rs.15,00,000/-. The Balance amount due as per lower appellate court order is Rs.66,26,699/-. The cumulative interest calculated at 6% till 2022 is Rs.39,19,513/-.

24. The learned counsel for the respondent/plaintiff also relied on the decision of this court reported in 2014 (2) MWN (Civil) 421 [Jayachandran and Bros. Vs. Nagapattinam Municpality] and submitted that this court under similar circumstances, held that even though it is stated in Section 23-A of the Act that the parties aggrieved should prefer an Appeal before the Taxation Appeal Committee, the Amending Act including Section 23-A was not notified. In the absence of the said Committee, the aggrieved Plaintiff had filed the suit before the civil court and the suit is maintainable. It is also held that if the Municipality has not followed the provisions of the Municipalities Act or if the levy of tax is higher, it is open to the Civil Courts to declare; hence, the suit is very well maintainable before the Civil Court.

25. I have heard the learned counsel for the appellant and the learned counsel for the respondent/Plaintiff.

26. The case of the appellant-Municipality is that enhancement of property tax is only a quinquennial revision of property tax which is taking place once in 5 years. While revising the property tax, the appellant followed the G.O. and guidelines of the Government and Commissioner of Municipal Administration. The enhancement of property tax to the assessment numbers relevant to the suit properties of the plaintiff company is enhanced by 150% in addition to existing tax is in order.

27. The plaintiff has challenged the revision of property tax by seeking a relief of injunction restraining the Appellant Municipality from any way collecting the property tax for the assessment years 1999-2000 second half, 2000-2001 first half and 2000-2001 second half in O.S.No.54 of 2001. O.S.No.374 of 1999 was filed for permanent injunction against the defendant-The Commissioner, Mettur Municipality and his officers from in any way collecting the property tax till the order passed in the appeal proceedings for the assessment year 1998-1999 II half and also by due process of law for 1999-2000 and for an order of

permanent injunction restraining the defendant and his office bearers from in any way disconnecting the essential water connection to the suit property permanently in-connection with the property tax proceedings. The trial court returned the plaint with a direction to present it before the proper forum. However, aggrieved by the said return of plaint, the plaintiff filed A.S.Nos.49 and 50 of 2004. The lower appellate court granted permanent injunction and reassessed the property tax and directed the plaintiff to make the payment of property tax. Against the said reassessment of property tax by the lower appellate court, the Commissioner, Mettur Municipality has come with the present Second Appeals.

28. Before this court, the appellant has categorically stated that as per the calculation given in the common additional typed set of papers, for assessment numbers 19401, 19402, 19403 and 19674, in total, the property tax due for all the assessment numbers works out to Rs.3,35,99,599/-. Since the revision of property tax done by the Appellant Municipality is in order and the G.O. Ms.No.73, Municipal Administration and Water Supply (MA IV) Department, dated 19.07.2018, makes it clear that the Government have issued orders that the General revision of Property Tax in all the Municipal Corporation / Municipalities shall be taken up with effect from the current half year as per the existing provisions in the relevant Urban Local Bodies Acts.

29. On the other hand, the learned counsel for the respondent/plaintiff filed a memo stating that the plaintiff Mettur Spinning Mills Ltd., is a sick company and there is no business activity since 2006 and so prayed to waive the interest part. The balance amount due as per appellate court order comes to Rs.66,26,699/- and the cumulative interest working @ 6% till 2021 is Rs.1,05,46,212/-.

30. On going through the entire facts of the case and the submissions made on either side, it must be necessary to decide the substantial question of law for just and proper decision of the case. The substantial question of law framed is with reference to jurisdiction of the civil court to entertain the dispute regarding tax which is imposed by the Municipal Authorities. Section 9 of the Code of Civil Procedure prescribes the jurisdiction of the civil court which reads as under:-

" The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

1[Explanation I].- A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

2[Explanation ll].- For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.]."

As per Section 9 CPC, the Civil Court would have jurisdiction in respect of all suits of civil nature except where the cognizance is expressly barred or impliedly barred. No doubt, the District Municipalities Act did not express bar the jurisdiction of civil court with reference to decision regarding imposition of tax. Therefore, the issue to be decided is whether there is an implied bar regarding that. In order to appreciate how to infer the implied bar, it would be appropriate to refer the decision reported in 1994 6 SCC 572 [Srikanth Kasinath Jithuri and others Vs. Corporation of the City of Belgaum] where under Dhulabhai Vs. State of M.P. (1968) 3 SCR 662 : AIR 1969 SC 78 : 22 STC 416 was also referred to. Relevant paragraph 9 reads as under:-

" 9. Applying the above principles, it must be held that the present suit, on the allegations contained in the plaint itself – let alone the findings of the court – is not maintainable in a civil court. None of the grounds on which an assessment made under the Karnataka Act can be challenged in a civil court, is even alleged in the plaint, as pointed out hereinbefore. In other words, none of the grounds indicated in Dhulabahai case, upon which such an assessment can be questioned is alleged in the plaint. All that is complained of is that the enhancement is excessive. That by itself is not enough. Similarly, the allegation that enhancement is arbitrary or unreasonable is per se not sufficient to override the express statutory

> bar. The High Court was, therefore, right in holding that the said suit is not maintainable in civil court. "

31. The remedy to the plaintiff who is aggrieved over the demand notice issued by the Municipality is provided under Section 23-A of the District Municipalities Act [As amended by Section 89 of the Tamil Nadu District Municipalities Act] and the said section provides for formation of the Taxation Appeals Committee.

Section 89 reads as follows:-

> " Taxation Appeals Committee - (1) There shall be a Taxation Appeals Committee for hearing and disposing of an appeal preferred by any person who is not satisfied with the assessment order made by the executive authority under this Act other than the orders relating to the duty on transfer of property:-
>
> (3) An appeal against the decision of the Taxation Appeals Committee may be filed within thirty days from the date of the order to the District Judge. "

As per Section 89 (3), any appeal against the decision of the Taxation Appeals Committee may be filed within thirty days from the date of the order to the District Judge.

32. Pointing out these provisions, the learned counsel for the appellant would submit that the jurisdiction of the civil court is impliedly barred as the District Municipalities Act provides for inbuilt remedy for the aggrieved under the District Municipalities Act itself. When the remedy is provided for comprehensively in the enactment itself, the remedy open to the aggrieved is to utilise the machineries provided under the Act and not to move the civil court. Only when the enactment did not provide for the remedy to the aggrieved, then it is open to the aggrieved person to move the civil court for appropriate remedy.

33. Even though it is alleged by the plaintiff that no taxation appeal committee was formed, this allegation does not appear to be correct as in the plaint itself, it is stated that in respect of earlier assessment, the defendant has preferred appeal before the Municipality and the Council.

34. It is specifically mentioned by the Municipality, in the written statement filed [paragraph 12] that the plaintiff preferred revision petition before the Municipality for reduction of tax and there was an order confirming the tax. It is also stated that within 15 days of the order of revision, the plaintiff did not prefer any appeal before the appeal committee. Cumulatively considering these allegations, the only inference is that the plaintiff have utilised the remedy provided under the District Municipalities Act partly and not completely. Suppressing these facts, the plaintiff has chosen to invoke the jurisdiction of the civil court which is impliedly barred.

35. So far as the order of the First Appellate Court with regard to jurisdiction is concerned, the Lower Appellate Court seems to have been carried away by the observation made by this court when the plaintiff moved the writ petition before the High Court. In the writ petition, the High Court has passed the following order:-

> "Civil Revision petitions and writ petitions are not maintainable.........appealable under Order 43 Rule 1 a of the Code of Civil Procedure"

The issue that has been answered by this court is when an issue is whether a particular order is appealable or revisable, the answer by the High Court was that it was not revisable but appealable. The issue involved in the suit is not with regard to either appeal or revision. It is with regard to original jurisdiction of the civil court to entertain the suit itself. The jurisdiction regarding the maintainability of the suit is exclusively governed by Section 9 of the Code of Civil Procedure. The First Appellate Court is unconsciously carried away by the observation of this court may be out of fear or out of respect. However, it is the duty of this court to point out that the First Appellate Court has committed a mistake while relying upon the orders passed by the High Court. The factual and legal aspect have been considered by the trial court extensively and comprehensively and the trial court has come to a correct conclusion that the civil court has no jurisdiction to entertain the suit, which this court is expected to take care of.

36. Under the circumstances, the substantial question of law is answered holding that the jurisdiction of the civil court is impliedly barred under Section 89 of the District Municipalities Act. Hence the Second Appeals are allowed, reversing the judgment of the First Appellate Court and upholding the judgment of the trial court. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IX)

// True Copy //

Sub Assistant Registrar

nvsri
To

1. The Subordinate Judge, Mettur,

2.The District Munsif Mettur.

Copy to:

The Section Officer,
VR Section, High Court, Madras.

+2 cc to Mr.L.P.Maurya, Advocate sr32497

SECOND APPEAL Nos.1350 and 1351 of 2007

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