BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.06.2022

CORAM

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

S.A.(MD)No.471 of 2005

The Kumbakonam Municipality,
Represented by its Commissioner,
Kumbakonam.. ... Appellant/Appellant/Defendant

Vs.

R.Rengamani ... Respondent/Respondent/Plaintiff

PRAYER : Second Appeal filed under Section 100 of the Code of Civil Procedure against the Decree and Judgment dated 29.04.2004 passed in A.S.No.146 of 2003, on the file of the Additional Subordinate Court, Kumbakonam upholding the Decree and Judgment, dated 27.12.2002 passed in O.S.No.441 of 2000, on the file of the II Additional District Munsif Court, Kumbakonam.

For Appellant : Mr.D.Malaichamy
For Respondent : No appearance

J U D G M E N T

The Commissioner, Kumbakonam Municipality, the defendant in O.S.No.441 of 2000 on the file of the II Additional District Munsif Court, Kumbakonam, (the appellant in A.S.No.146 of 2003 on the file of the Additional Subordinate Court, Kumbakonam), has filed the present second appeal.

2. The respondent herein filed the suit in O.S.No.441 of 2000 for the following reliefs:

(i) for a declaration that the communication dated 06.03.1998 (Ex.A2) is null and void.

(ii) for a consequential relief of permanent injunction restraining the appellant / Kumbakonam Municipality from giving effect to the said notice.

(iii) for a declaration that the claim made by the Kumbakonam Municipality on the enhanced rate of tax for the year 1993-1994 and 2000-2001 are null and void.

(iv) for a consequential relief of permanent injunction restraining the Municipality from giving effect to those notices.

3. For the sake of convenience, the parties are referred to as per their ranking in the trial Court and at appropriate places, their rank in the present appeal would also be indicated, if necessary.

4. The case of the respondent / plaintiff in nutshell:

The suit property bearing Door No.34, Survey No.349/1 absolutely belonged to the plaintiff. It was assessed to tax by the Kumbakonam Municipality in Assessment No.12437. There were two shops in the suit property. One shop was let out by the plaintiff and the plaintiff was in possession of another shop. While so, the Municipality, all of a sudden, enhanced the property tax from Rs.56/- to Rs.356/- and thereafter, Rs.348/- to Rs.2400/-. Hence, the plaintiff filed the suit in O.S.No.365 of 1991 before the learned District Munsif, Kumbakonam. The said suit was decreed in favour of the plaintiff. However, on 06.03.1998, the Kumbakonam Municipality sent another communication to the plaintiff enhancing the property tax from Rs.4,867/- to Rs.9,734/- and also wrongly asserted that working sheet was enclosed with the said communication. The Municipality before enhancing the property tax did not follow the prescribed procedure. Hence, the enhancement of property tax made by the defendant is illegal and null and void and they must be injuncted from claiming any amount in pursuance of the notice issued by them.

5. The suit was resisted by the Kumbakonam Municipality on the following grounds:

(i) The suit building is a new construction and the plaintiff is getting huge amount of income by way of rent.

(ii) It is false to contend that the Municipality before fixing the property tax for the suit property did not follow the procedure laid down under the Tamil Nadu Buildings (Lease and Rent Control) Act and the Tamil Nadu District Municipalities Act.

(iii) The suit building was assessed to property tax long back and it was also very low.

(iv) Taking into account the rental income and also following proper procedure, the property tax for the building (2 shops) was enhanced.

6. On the basis of the above pleadings, the trial Court framed appropriate issues and after full contest, decreed the suit in favour of the plaintiff vide his Decree and Judgment dated 27.12.2002. Aggrieved over the same, the Kumbakonam Municipality filed an appeal in A.S.No.146 of 2003 before the Additional Subordinate Court, Kumbakonam. The learned Additional Subordinate Judge, after analyzing the oral and documentary evidence adduced on both sides, dismissed the appeal filed by the Kumbakonam Municipality vide his Decree and Judgment dated 29.04.2004.

7. Both the Courts below concurrently held that:

(i) The plaintiff did not make any renovation / addition in the suit property.

(ii) The earlier enhancement made by the Kumbakonam Municipality was held to be null and void.

(iii) The person, who took measurement of the suit property, has not been examined on the side of the plaintiff.

(iv) The plaintiff had specifically contended that one shop alone is let out and another shop is in his possession and the same has not been taken into consideration by the Kumbakonam Municipality.

(v) The Kumbakonam Municipality had not explained as to how they determined tax for the suit property as Rs.812/- for the year commencing from 2000-02.

(vi) Merely because the plaintiff did not file any appeal against the order passed by the Kumbakonam Municipality, the suit filed by the plaintiff cannot be said to be without jurisdiction.

(vii) In the notice dated 06.03.1998 (Ex.A2), the reason for enhancing the property tax has not been given by the Municipality. The defendant has also not proved the written statement by adducing acceptable evidence and in fact, no witness was examined on the side of the defendant.

8. At the time of admission, the following substantial questions of law were framed by this Court:

> (a) Whether the suit filed by the respondent is maintainable in law as there is alternative remedy available under the Tamil Nadu District Municipalities Act?
>
> (b) Whether the Courts below are justified in not considering that there is no proper and valid cause of action to file the present suit?
>
> (c) Whether the Courts below have correctly and properly applied the decision of this Hon'ble Court reported in 1994(2)L.W.page 715 to the facts of the present case?
>
> (d) Whether the Courts below are justified in not rejecting the evidence of PW1 who himself had admitted that he did not know what was the defect in Ex.A2 and also whether provisions of the Act were followed or not?

9. Though notice was served on the respondent, he did not appear before this Court and his name was printed in the cause list.

10. Mr.D.Malaichamy, learned counsel for the appellant / defendant contended that Rule 10 and 23 of Schedule IV (Taxation and Finance Rules) under the Tamil Nadu District Municipalities Act, 1920 provide an appeal remedy to a party aggrieved by the assessment and levy of tax. He also relied on the decision of this Court in the case of Chidambaram Co-operative Urban Bank Ltd., vs. Chidambaram Municipality reported in (2020) 2 CTC 69 and contended that there is an implied bar for a civil Court to entertain the suit when the statute provides a special remedy to an aggrieved party to file an appeal. He therefore contended that the civil Court's jurisdiction is ousted.

11. The present suit has been instituted mainly on the ground that the defendant, Kumbakonam Municipality, even without proper inspection of the suit property and without following the rules laid down under the Tamil Nadu District Municipalities Act and the Tamil Nadu Buildings (Lease and Rent Control) Act, had enhanced the property tax arbitrarily. It is pertinent to point out that no witness was examined on the side of the Kumbakonam Municipality. Though it is contended in the written statement that the tax for the suit property was enhanced after following due process of law, the same has not been substantiated by the defendant.

12. The main contention of the appellant is that the jurisdiction of the civil Court is ousted since the plaintiff has not exhausted the appeal remedy available under the Tamilnadu District Municipalities Act (Tamil Nadu Act V of 1920).

13. In ***Dhulabhai v. State of Madhya Pradesh*** *reported in* ***(1969) AIR(SC)78***, the Hon'ble Apex Court has culled out the following principles regarding the exclusion of jurisdiction of civil Court;

> *(1) Where the statute gives a finality to the orders of the special Tribunals, the civil Courts' jurisdiction must be held to be excluded if there is adequate remedy available. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with.*
>
> *(2) When there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant, but is not decisive to sustain the jurisdiction of the civil Court.*
>
> *Where there is no express exclusion, the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for*

the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.

14. In ***K.R.Abirami v. The Kumbakonam Municipality, represented by its Executive Authorities, Commissioner, Kumbakonam Town*** reported in ***2008 (3) MLJ 649***, this Court has held that non-compliance in substance and in effect with the Tamilnadu District Municipalities Act and the Tamil Nadu Buildings (Lease and Rent Control) Act, a suit challenging assessment is maintainable in a civil forum.

15. In ***R.Govindarajan v. The Madurai Corporation*** reported in ***AIR 1984 Madras 90,*** this Court has held that the annual value for levy of tax ought to be fixed with reference to fair rent under the Rent Control Act.

16. In ***Koothanallur Town Panchayat v. Mariam Beevi Ammal*** reported in ***AIR 1985 Madras 50,*** it was held by this Court that where the basis of the levy itself is wrong or there is no basis at all for the levy in the sense that there was no substantial

compliance with the provisions of the Act, it is open to the civil Court to declare the levy illegal and in fact it is the duty of the Court to do so.

17. From the cumulative reading of the decisions referred to above it can be seen that,

a) assessment of house tax should be made in accordance with the provisions of Tamil Nadu District Municipalities Act (Tamil Nadu Act V of 1920).

b) annual rental value of the building in question should be fixed on the basis of the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

c) if the assessment in question has been fixed in consonance or in substantial consonance with the provisions of the Tamil Nadu District Municipalities Act, no civil Court has jurisdiction to entertain the suit.

d) if assessment in question has not been made in accordance with the provisions of the Tamil Nadu District Municipalities Act (Tamil Nadu Act V of 1920) or the same has not been made in substantial compliance with the said Act, the civil Court certainly has jurisdiction so as to declare that the assessment in question is illegal.

18. In the instant case, absolutely there is no evidence to show that the concerned authorities of the Kumbakonam Municipality inspected the suit property before enhancing the property tax. In fact, the defendant did not explain as to how the property tax was enhanced. As already observed no witness was examined on the side of the defendant. Though in the written statement, it is contended that the property tax was enhanced by following the provisions of the Tamil Nadu District Municipalities Act and the Tamil Nadu Buildings (Lease and Rent Control) Act and the same has not been proved by adducing acceptable evidence.

19. In the decision of ***Chidambaram Co-operative Urban Bank Ltd., vs. Chidambaram Municipality*** (cited supra), relied on by the learned counsel for the appellant, there was no pleading in the plaint that the defendant had violated the statutory provisions and it was also found that the property tax was enhanced after following due process of law. In such circumstances, it was held that the civil Court's jurisdiction is ousted. Hence, the above ruling may not be applicable to the facts of the present case.

20. In view of the reasons stated above, the substantial questions of law are answered against the appellant.

21. In the result,

(i) The second appeal is dismissed. No costs.

(ii) The decree and judgment dated 29.04.2004 passed in A.S.No.146 of 2003, on the file of the Additional Subordinate Judge, Kumbakonam, and the decree and judgment dated 27.12.2002 passed in O.S.No.441 of 2000, on the file of the II Additional District Munsif, Kumbakonam, are upheld.

(iii) The appellant / Kumbakonam Municipality is at liberty to enhance the tax for the suit property after giving due notice to the respondent and after following necessary rules and regulations.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

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To

1. The Additional Subordinate Judge,
   Kumbakonam.

2. The II Additional District Munsif,
   Kumbakonam.

COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.V. RAGUPATHI, Advocate (SR-25594[F] dated 14/06/2022)

S.A.(MD)No.471 of 2005
14.06.2022

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