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S.A(MD)No.1126 of 20



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.08.2024

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.1126 of 2005

Kulithalai Municipality,
Represented by its Commissioner,
Bazar Street,
Kulithalai,
Karur District. ... Appellant/Appellant/Defendant

Vs.

1.R.Jayalakshmi (died)
... 1st Respondent/1st Respondent/Plaintiff

2.S.Jayavel ... 2nd Respondent

(2nd respondent is brought on record as Lrs
of the deceased sole respondent vide order
dated 05.06.2024 made in C.M.P(MD)Nos.1742 to
1744 of 2024 in S.A(MD)No.1126 of 2005)

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 28.11.2003 passed in A.S.No.24 of 2003, on the file of the Sub Court, Kulithalai, confirming the judgment and decree dated 11.12.2002 passed in O.S.No.239 of 1999 on the file of the District Munsif Court, Kulithalai.

For Appellant : Mr.R.Posaladevan
for Mr.AN.Ramanathan

For Respondent No.2 : Mr.G.Manikandan



JUDGMENT

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The concurrent Judgments and decrees passed in O.S.No. 239 of 1999, dated 11.12.2002 on the file of the District Munsif Court, Kulithalai and in A.S.No.24 of 2003, dated 28.11.2003 on the file of the Sub Court, Kulithalai, are being challenged in the present Second Appeal.

2.Originally, one R.Jayalakshmi as the plaintiff, instituted a suit in O.S.No.239 of 1999, on the file of the trial Court as against the Kulithalai Municipality seeking for the relief of declaration that the increased assessment of property tax as per the notice dated 28.10.1999 is illegal, without jurisdiction, void non-est and unenforceable and for the consequential relief of permanent injunction restraining the defendant, its servant and agent from demanding and collecting the property tax in respect of the suit property at the enhanced rate.

3.Pending the Second Appeal, the first respondent/plaintiff died. Hence, the second respondent herein is brought on record as the



WEB COPY

S.A(MD)No.1126 of 20



legal representative of the deceased first respondent/plaintiff.

4.For the sake of convenience, the parties are referred to as, as described before the trial Court.

5.According to the plaintiff, the property belonged to her and the same is situated at Kulithalai Municipal limits. The original annual value for the purpose of assessment for the property tax was Rs.3,822/- and the amount of tax levied on that annual value was Rs. 568/- for half year assessed for the year 1994-95. As per the special notice dated 28.10.1999, the annual value and property tax have been increased to Rs.17,567/- and Rs.2,609/-. The reason for the increase in the notice was stated as 'on the basis of the rent estimated' and it is further stated that Kulithalai Urban Co-operative Bank is functioning in the building and the letter received by the Municipality from the Bank dated 21.07.1999 indicated that the actual rent paid by the Bank for the building is Rs.1,597/- and on that basis alone, the property tax was assessed with effect from 01.10.1999. Further, according to the plaintiff, the said procedure is illegal and the plaintiff did not apply its mind to the provisions of the Tamil Nadu District Municipalities Act, 1920 (in short hereinafter referred to as 'the Act, 1920') and to the



rules framed thereunder. Hence, the plaintiff has filed the suit for the abovestated relief.

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6.The defendant had filed a written statement stating that it is an admitted fact the property belongs to the plaintiff and the same was taxed on the annual value of Rs.3,822/- and the amount of tax was Rs.568/- for the year 1994-95. The annual value for 1994-95 was before revision ie., prior to October 1998. It is also an admitted fact that the annual value as per the special notice dated 28.10.1999 was increased to Rs.17,567/-. Admittedly, the suit property was a rental building and the rent was Rs.1,597/-. The defendant stated that the property tax was levied only on the basis of the above mentioned rent, as per the rules framed by the Government. All procedural aspects were correctly followed by the defendant. The averments made by the plaintiff that the Commissioner did not apply his mind to the provisions of the Act, 1920 and to the Rules are not correct. In fact, the suit property is situated at the heart of Kulithalai Municipality and the annual value may be more than the annual value fixed by the defendant. The provisions of lease and rent control will not be applicable for fixing the property tax. The Municipality has to follow the instructions given by the Government then and there in fixing property



tax. Only after deducting for depreciation value, the property tax is fixed. In fact, the assessment notice was served on 27.10.1999 and no revision petition nor appeal was preferred by the plaintiff, who prayed for dismissing the suit.

7.Before the trial Court, on the side of the plaintiff, she herself was examined as P.W.1 and Exs.A1 to A4 were marked. On the side of the defendant, one Balakrishnan was examined as D.W.1 and Exs.B.1 to B.7 were marked.

8.On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has decreed the suit.

9.The trial Court was of the view that the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 was not followed and decided the same, based on the Judgment of this Court in the ***R.C.Diocese of Madurai, through Procurator Rev.Fr.A.Vedamanickam Vs. Srivilliputtur Municipality, through***



its Commissioner reported in **2002 (1) MLJ 391**. Further, it has been stated when the defendant was not in a position to say what was the length and breadth of the said building and the type of the building and when the defendant was not in a position to sell the same, they have considered the aspect of the building as per the said Act and the same has been done without following the said Act. Hence, the same has not been properly assessed and the suit has been allowed as prayed for.

10. Aggrieved by the Judgment and decree passed by the trial Court, the defendant herein as appellant, had filed an Appeal Suit in A.S.No.24 of 2003 on the file of the first Appellate Court.

11. The first Appellate Court, after hearing both sides and upon reappraising the evidence available on record, has not applied its mind, but blindly followed the Judgment of the trial Court and dismissed the appeal suit.

12. Challenging the said concurrent judgments and decrees



passed by the Courts below, the present Second Appeal has been preferred at the instance of the defendant/Municipality as appellant.

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13.At the time of admitting the present second appeal, this Court had framed the following substantial questions of law for consideration:

'1) Are not the courts below committed an error in decreeing the suit, when the suit challenging the property tax is not maintainable as per the Tamil Nadu District Municipalities Act, 1920 and when the respondent has not filed any revision challenging the Tax? Vide AIR 1995 SC 288.

2) Whether in law the respondent can maintain the suit when there is no malafide or infirmity, illegality in the fixation of property tax?'

14.The learned counsel appearing for the appellant/defendant would submit that the courts below erred in granting a decree in favour of the plaintiff by declaring the property tax demand as void and in this aspect, the trial Court failed to see that the suit itself is not maintainable in law and if at all the plaintiff has any remedy, she has to move the appellate authority constituted under the



Act and without approaching the authority, the suit is not maintainable.

The Courts below failed to see that the property tax was fixed on the basis of the rent received for the said building. The Courts below failed to see that the application of the the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is not applicable for fixation of the value of the building. The Courts below failed to see that the value of the building is fixed as per Section 82(2) of the Act, 1920 and as such the defendant cannot have any grievance and the judgment and decree of the Courts below are substantially erroneous and liable to be set aside.

15.The learned counsel appearing for the respondent/plaintiff relied on the Judgment in ***R.C.Diocese of Madurai's case*** (cited supra), in which it is stated that the assessment made by the respondent Municipality in respect of the building of the appellant in question was not in accordance with the procedures contemplated in law to arrive at the annual rental value. On the contrary, the available evidence would be indicative of the fact that the fixation of the annual rental value by the respondent Municipality was only arbitrary and it has got to be necessarily set aside and the lower Appellate Court without proper appreciation of the evidence adduced and without following the correct settled proposition of law in that



regard has set aside the Judgment of the trial Court. Therefore, the judgment and decree of the lower Appellate Court were set aside and the suit was decreed declaring that the assessment in respect of the suit property, as found in the plaint is arbitrary and not in accordance with law.

16.A reading of the decision of the Supreme Court in the ***Guntur Municipal Council Vs. Guntur Town Rate Payers' Association*** reported in ***(1971) 2 MLJ SC 7***, would make it clear that the basis of assessment should only be fair rent worked out as provided in Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act. The mere fact that the Commissioner also took into consideration the provisions of the Rent Control Act while arriving at the annual value on the basis of actual rent received by the landlord from the tenant would not suffice. In the absence of evidence to indicate that the Municipality assessed the properties on the basis of fair rent worked out under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, the assessment cannot stand and it will be contrary to the dicta laid down by the Supreme Court in the decision referred to above.



WEB COPY

S.A(MD)No.1126 of 20



17.Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents and also perused the records carefully.

18.It is to be seen that in Chapter VI, Taxation and Finance wherein, under Section 78 of the Act, 1920, the enumeration of ordinary taxes and power of control of State Government that every municipal council may levy a property tax, a profession tax, a tax on carriages and animals and a tax on cars and others.

19.According to the said Act, a notification has to be issued while determining the basic property tax, additional basic property tax etc by the Municipal Council. The basic property tax, additional basic property tax and the concession, if any, with regard to the age, for every building or land shall be determined by the municipal council



subject to the minimum and maximum rates prescribed by the State Government.

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20.As per Section 79 of the Act, 1920, Special Taxation, with the previous sanction of the State Government and the Central Government; a tax on persons may be levied by the Council of any Municipality which is resorted to by pilgrims.

21.As per Section 80 of the Act, 1920, when a municipal council shall have determined subject to the provisions of Sections 78 and 79 to levy any tax for the first time or at a new rate, the Executive Authority shall forthwith publish a notification in the District Gazette and by beat of drum specifying the rate at which, the date from which and the period of levy, if any, for which such tax shall be levied.

22.As per Section 82 of the Act, 1920, the method of assessment of property.— (1) Every building shall be assessed together with its site and other adjacent premises occupied as an appurtenance thereto unless the owner of the building is a different person from the



owner of such site or premises. (2) The annual value of lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to let from month to month or from year to year less a deduction in the case of buildings, of ten per cent of that portion of such annual rent which is attributable to the buildings alone, apart from their sites and adjacent lands occupied as an appurtenance thereto; and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever: Provided that — (a) in the case of (i) any Government or railway building; or (ii) any building of a class not ordinarily let the gross annual rent of which cannot, in the opinion of the Executive Authority, be estimated, the annual value of the premises shall be deemed to be six per cent of the total of the estimated value of the land and the estimated present cost of erecting the building after deducting for depreciation a reasonable amount which shall in no case be less than ten per centum of such cost.

23.As per Section 23-A of the said Act, 1920, Taxation Appeals Committee, notwithstanding anything contained in this Act (1) for every municipality, there shall be a taxation appeals committee which shall consist of the Chairman of the municipal council who shall also be the chairman of the taxation appeals committee and four

12/16



councillors elected by the council and (2) the business of the taxation appeals committee shall be transacted in accordance with the rules made by the State Government in this behalf.

24. Accordingly, when the plaintiff is of the view that the said council has imposed more tax than what is to be required, the plaintiff ought to have approached the revision committee and not challenged the same directly before the Munsif Court, which has no authority to decide the same. Further, the Courts below had committed an error in decreeing the suit when the suit challenging the property tax is not maintainable as per the Tamil Nadu District Municipalities Act, 1920 and the revision ought to have been filed by her.

25. It is to be seen that the appellant Municipality has fixed the tax only as per the rent received by them which is a commercial property and only based on the rent received, they increased the tax as per the decision taken by the council and the plaintiff's claim that the building has not been assessed properly by not inspecting the same and the same has also been denied by the plaintiff and even though the same has been denied, this Court is of the view that both the trial Court as well as the Appellate Court had erred in decreeing the suit in toto and issued permanent injunction against the defendant from collecting any property tax which is erroneous and this Court is of the



S.A(MD)No.1126 of 20

view that the same has to be set aside. Since no proper assessment has taken place, this Court is inclined to leave the second question of law as open asking them to fix the property tax afresh.

26. Accordingly, this Second Appeal is partly allowed and the matter is remitted back to the defendant for assessing the property in question and the defendant is hereby directed to assess the building afresh based on the circulars pending as on date from the date of demand from 1995 and periodical revision to be taken into account and after giving an opportunity to the plaintiff and then pass appropriate orders on the demand to be made against the plaintiff and the plaintiff is hereby directed to follow the procedure and pay the said arrears of amount, within a period of four months from the date of receipt of a copy of this order. No costs.

14.08.2024

Index : Yes/No
Internet : Yes/No
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S.A(MD)No.1126 of 20

To

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1.The Sub Court,
Kulithalai.

2.The District Munsif Court,
Kulithalai.

3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A(MD)No.1126 of 20

V.BHAVANI SUBBAROYAN, J.

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Judgment made in
S.A(MD)No.1126 of 2005

14.08.2024