THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.01.2024**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.145 of 2021
and
C.M.P.(MD)Nos.2163 and 3080 of 2021

Thankamani ... Appellant

/Vs./

Kadayanaloor Municipality,
represented by its Commissioner,
Kadayanaloor,
Tenkasi Taluk, Tenkasi District. ...Respondent

PRAYER**:** Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree in A.S.No.80 of 2016, dated 03.06.2020, on the file of the Additional Subordinate Judge, Tenkasi, reversing the judgment and decree in O.S.No.380 of 2010, dated 14.11.2014, on the file of the Principal District Munsif Court, Tenkasi.

For Appellant : Mr.V.Jeyapragash
For Respondent : Mr.M.Rajarajan
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JUDGMENT

The suit was filed challenging the special notice, dated nil and the suit was allowed. Aggrieved over the same, the respondent Municipality has preferred First Appeal. In the First Appeal, the Appellate Court has rendered a finding that the suit is not maintainable, since the plaintiff is having alternative remedy before the Taxation Appeals Committee. Aggrieved over the same, the plaintiff has preferred the present second appeal.

2. The contention of the plaintiff is that the special notice, dated nil, was issued and the plaintiff has submitted an objection to the special notice and the same was not considered by the respondent Municipality. Instead of considering the same, the defendant Municipality has issued a demand notice directing him to pay the tax for the assessment year 2008-2009. The specific contention of the plaintiff is that without considering the objection to the special notice, the Municipality is not empowered to impose tax and to issue demand notice. The plaintiff had relied on the judgment rendered in S.A.(MD) Nos.287 and 288 of 2019

in the case of ***K.A.Arokkiam Vs. The Dindigul Municipality,*** reported in ***2010 (2) CTC 51*** and submitted that the suit is maintainable.

3. The issue whether the suit is maintainable is left open. However, this Court is of the considered opinion that when objection is filed for the special notice, then the respondents are bound to pass an order in the said objection. Before considering the objection, the respondents cannot issue demand notice demanding increased property tax. Therefore, the plaintiff is right in stating that without considering the objection submitted to the special notice and without passing any order, the Municipality is not empowered to issue demand notice directly. In the present case, the Commissioner is bound to consider the objections filed by the plaintiff. If any order is passed by the Commissioner, then the plaintiff would get an opportunity to challenge the order before the Taxation Appeals Committee. Thereafter, the plaintiff would get another opportunity to file an appeal before the District Court. Therefore, the demand notice is set aside.

4. Since the objections was filed in the year 2008, the appellant / plaintiff is directed to file fresh objections to the special notice within a period of four weeks from the date of receipt of a copy of this judgment. Thereafter, the respondent / Municipality shall consider the objections and pass an order within a period of eight weeks from the date of receipt of a copy of the objections.

5. Therefore, the second appeal is disposed of on above terms. No costs. Consequently, connected miscellaneous petitions are closed.

30.01.2024

Index : Yes / No
NCC : Yes / No

Tmg

TO:

1. Additional Subordinate Judge, Tenkasi.

2. Principal District Munsif Court, Tenkasi.

3. The Section Officer,
   VR Section,
   Madurai Bench of Madras High Court,
   Madurai.

S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.145 of 2021

Dated:
30.01.2024