BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.07.2024

Pronounced on : 26.09.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A.Nos.570 and 575 of 2001 & S.A.No.1590 of 2002
and
M.P(MD)No.1 of 2012
in
S.A.No.1590 of 2002

S.A.No.570 of 2001

J.Jayathilakar ... Appellant/Respondent/Plaintiff

Vs.

The Commissioner,
Kodaikanal Municipality,
Kodaikanal. ... Respondent/Appellant/Defendant

PRAYER in S.A.No.570 of 2001:-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the Subordinate Judge, Palani, dated 29.09.2000 made in A.S.No.34 of 1997, reversing the judgment and decree of the District Munsif-cum-Judicial Magistrate, Kodaikanal, dated 31.03.1997 made in O.S.No.186 of 1995.

S.A.No.575 of 2001

1. M.K.Mustafa
2. M.K.Sultan
3. M.K.Ismail
4. M.K.Siraj ... Appellants/Respondents/Plaintiffs

Vs.

The Commissioner,
Kodaikanal Municipality,
Kodaikanal. ... Respondent/Appellant/Defendant

PRAYER in S.A.No.575 of 2001:-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the Subordinate Judge, Palani, dated 29.09.2000 made in A.S.No.32 of 1997, reversing the judgment and decree of the District Munsif-cum-Judicial Magistrate, Kodaikanal, dated 31.03.1997 made in O.S.No.217 of 1995.

S.A.No.1590 of 2002

1. M.K.Mustafa
2. M.K.Sultan
3. M.K.Ismail
4. M.K.Siraj ... Appellants/Respondents/Plaintiffs

Vs.

The Commissioner,
Kodaikanal Municipality,
Kodaikanal ... Respondent/Appellant/Defendant

PRAYER in S.A.No.1590 of 2002:-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the Sub-Court, Palani, dated 28.06.2002 made in A.S.No.48 of 1997, reversing the judgment and decree of the District Munsif-cum-Judicial Magistrate, Kodaikanal, dated 31.03.1997 made in O.S.No.216 of 1995.

For A1	: Mr. D.Kirubakaran in all Appeals
For A2 to A4	: Mr. Krishnappan Senior Counsel for Mr.S.Sethuraman in all Appeals
For Respondent	: Mr.P.Srinivas in S.A.Nos.570 & 575 of 2001
For Respondent	: Mr.S.Kadarkarai in S.A.No.1590 of 2002

COMMON JUDGMENT

The Second Appeal in S.A(MD)No.570 of 2001 is preferred against the judgment and decree, dated 29.09.2000 passed in A.S.No.34 of 1997 on the file of the Sub Court, Palani, reversing the judgment and decree, dated 31.03.1997 in O.S.No.186 of 1995 on the file of the District Munsif-cum-Judicial Magistrate, Kodaikanal.

2. The Second Appeal in S.A.No.575 of 2001 is preferred against the judgment and decree, dated 29.09.2000 passed in A.S.No.32 of 1997 on the file of the Sub Court, Palani, reversing the judgment and decree, dated

31.03.1997 in O.S.No.217 of 1995 on the file of the District Munsif-cum-Judicial Magistrate Court, Kodaikanal.

3. The Second Appeal in S.A.No.1590 of 2002 is preferred against the judgment and decree, dated 28.06.2002 passed in A.S.No.48 of 1997 on the file of the Sub Court, Palani, reversing the judgment and decree, dated 31.03.1997 in O.S.No.216 of 1995 on the file of the District Munsif-cum-Judicial Magistrate Court, Kodaikanal.

4. In all the appeals, the appellants are the plaintiffs and the respondent is the defendant in O.S.Nos.186 of 1995, 217 of 1995 and 216 of 1995 on the file of the District Munsif-cum-Judicial Magistrate Court, Kodaikanal respectively. The appellants/plaintiffs filed their respective suits for declaration that the notice, dated 31.08.1995 enhancing the property tax for the schedule of property mentioned in the respective suits, is null and void and consequently restraining the respondent/defendant from collecting the enhanced property tax.

5. For the sake of convenience, the parties referred as plaintiffs and defendant as arrayed in O.S.Nos.186 of 1995, 217 of 1995 and 216 of 1995 on the file of the District Munsif-cum-Judicial Magistrate Court, Kodaikanal.

6. **Case of the plaintiffs:**

The suit property mentioned in the respective suits belonged to the plaintiffs.

(i) The plaintiffs in O.S.No.216 of 1995 are running a hotel in the name of Hotel Siraj. The old property tax was Rs.3,360/-. The defendant issued a notice in January 1994, enhancing the property tax as Rs.10,080/- from 01.10.1993.

(ii) The plaintiffs in O.S.No.217 of 1995 are running a hotel in the name Hotel Palace. The old property tax was Rs.7,240/-. The defendant issued a notice in January, 1994 enhancing the property tax as Rs.21,720/- from 01.10.1993.

(iii) The plaintiff in O.S.No.186 of 1995 is running a hotel in the name Hill Top Tower. The old property tax was Rs.18,910/-. The defendant issued a notice in January, 1994 enhancing the property tax as Rs.56,730/- from 01.10.1993.

(iv) The defendant has not stated any proper reason for enhancing the property tax. The tax has been enhanced without adopting the legal procedures and basis. So, the plaintiffs filed the Writ Petition challenging the notice as illegal. The High Court disposed of the Writ Petitions directing the plaintiffs to pay 50% of the tax and directed the defendant to conduct an enquiry and to issue a special notice.

(v) After the direction of the High Court, the defendant issued a special notice, dated 31.08.1995, enhancing 200% of annual rental income. There is no development made in the suit property and there has been no increase in property value in the locality. The plaintiffs filed a revision before the defendant and the same was dismissed as it was belatedly filed and beyond the specified limit of 30 days and thereby confirmed the property tax. The defendant has not furnished details as to on what basis the annual rental value were arrived. The defendant has not sought for any explanation before revising the tax. The defendant has not followed the principles for arriving a fair rent or standard rent as contemplated in the Tamil Nadu Buildings (Lease and Rent Control) Act. Therefore, the plaintiffs laid their respective suits.

7. Case of the Defendant:

The last revision of property tax in terms of the rules was in the year 1987 - 1988. Since then, no general revision was undertaken and property tax was enhanced only if there is an alteration or addition or change in construction as per rules. The general revision was taken up in terms of Part.III, Chapter IV Sections 81 and 82 r/w Sch.IV of the Tamil Nadu District Municipalities Act 1920, in Kodaikanal. The suit property is used for commercial purposes. The defendant is a public institution under the control of the Government and it has to obey the order of the Government. As per the guidelines issued by the Commissioner of Municipal Administration, Madras in Roc.No.4314/R1/92, dated 14.05.1993, property tax was enhanced by 200%. Accordingly, the impugned notice was issued to the plaintiffs. As per the order passed in the Writ Petition, the plaintiffs have required to pay 50% of the enhanced tax and the defendant was directed to issue a notice under Rule 9, giving reasons for the enhancement. As per directions of the High Court, the defendant issued a special notice, dated 31.01.1995, giving reasons and a working sheet, stating that the tax was enhanced as per guidelines for enhancement of tax in General Revision (Quin-quennial). During the period from 1987 - 1988, the value of the property in Kodaikanal was raised manifold. The suit properties are situated in the heart of the city. After considering the land value, the tax was revised. Hence, the suits are liable to be dismissed.

8. <u>The Trial Court framed the following issues:</u>

> "*(1) Whether the plaintiffs are entitled to the relief of declaration as sought in the plaint?*
>
> *(2) Whether the plaintiffs are entitled to the relief of permanent injunction?*
>
> *(3) To what other relief the plaintiffs are entitled to?"*

9. During the trial, on the plaintiffs' side, P.W.1 was examined and marked 10 exhibits as Ex.A.1 to Ex.A.10. On the defendant's side, D.W.1 was examined and Ex.B.1 & Ex.B.2 were marked.

10. After hearing both sides, the learned District Munsif-cum-Judicial Magistrate, Kodaikanal concluded that the plaintiffs were entitled to the relief of declaration and injunction and accordingly decreed the suit by passing judgment and decree, dated 31.03.1997.

11. Aggrieved by the judgment and decree in O.S.Nos.186 of 1995, 217 of 1995 and 216 of 1995 on the file of the District Munsif-cum-Judicial Magistrate Court, Kodaikanal, the defendant preferred the Civil Appeals in A.S.Nos.34 of 1997, 32 of 1997 and 48 of 1997 before the Subordinate Court, Palani. The first Appellate Court after hearing both and after perusing records, held that the defendant issued a special notice assigning reasons as per the order of the High Court passed in the Writ Petition and as per the Tamil Nadu Buildings (Lease and Rent Control) Act, fair rent was arrived for the suit property and on that basis property tax was revised and thereby set aside the judgment and decree of the trial Court and dismissed the suits by passing judgment, dated 29.09.2000 and 28.06.2002.

12. Challenging the judgments and decree of the First Appellate Court passed in A.S.Nos.34 of 1997, 32 of 1997 and 48 of 1997, the plaintiffs in respective suits preferred these Second Appeals and the same have been admitted on 20.09.2002 by framing the following substantial questions of law:-

> *"(1) Whether the property tax can be levied on the basis of the guidelines issued by the*

Government would be a substantial question of law requires to be determined by this Court?

*(2) Whether the Commissioner of the Municipality alone has to determine the property tax or on the basis of the Rent Control Provision or directions issued by the Municipal Authorities in respect of the property as held by the Supreme Court in **AIR 2001 SC 2046** would be a substantial question of law requiring determination of this Honourable Court?"*

13. Heard both sides and perused the records in these Second Appeals.

14. The learned counsel for the appellants/plaintiffs has mainly submitted that the Commissioner of Municipality alone is entitled to assess the property tax under the provisions of the District Municipalities Act and not by applying the principles stated in the guidelines issued by the Government. There was no personal inspection conducted by the defendant authorities in the suit property before determining the market value. After the direction of the High Court in the Writ Petition, the defendant has to issue a notice with reasons and a working sheet. The special notice issued by the respondent has not contained the reasons with regard to the market value

of the land and building, and the expenditure involved in the construction of the building of the plaintiffs. Further, there are no particulars regarding how the annual rental value was arrived at. The respondent has revised the property tax without following the procedures contemplated under the Tamil Nadu District Municipalities Act and the provisions contained in the Tamil Nadu Buildings (Lease and Rent Control) Act. The defendant has not considered the revision preferred by the plaintiff. The annual value of the property was not arrived either on the basis of fair rent or standard rent, as contemplated under the Act. The notice issued under Rule 9 and 10 of the Rules, fixing the annual value not on the basis of provisions of the Tamil Nadu District Municipalities Act and the Tamil Nadu Buildings (Lease and Rent Control) Act and fixed the basic value without any basis and hence, the notices are arbitrary in nature. The defendant has not followed the fair rent formula as per Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act.

15. The learned counsel further submitted that as per the order of the Writ Court, the plaintiffs submitted the revision to the defendant authorities for consideration and passing appropriate orders. However, without

considering the same, the defendant issued the impugned notice. Further, in determining the annual rental value the commissioner might resort to the plinth area method so as to serve him as a basis and the assessee can contest the annual rental value. The commissioner is mandatorily required to follow the fair rent fixed by the authority under the Rent Control Act. The property tax cannot be influenced by the subsequent government as the same was bad. Therefore, the plaintiffs filed the original suit and adduced evidences. The trial Court has correctly appreciated the evidences and decreed the suit. But, the first Appellate Court without appreciating the evidences, set aside the judgment of the trial Court and allowed the appeal. Further, the first Appellate Court in some other appeals of the same kind, directed the defendant to reconsider the revision of property tax. The first Appellate Court has not adopted a uniform procedure in all connected cases. Further, in some other connected appeals, the defendant agreed to reduce the tax by 50% of levied tax before the Lok Adalat held in Dindigul. Further, in these appeals, this Court has also directed the defendant to consider the applications submitted by the plaintiffs. The subsequent development is 100% as the defendant agreed to reduce 50% before the Lok Adalat. Therefore, the Second Appeal may be allowed. In support of his argument, the learned counsel for the appellants/plaintiffs relied on the following citations:

> ***"(i) AIR 1966 SC 1366 (Cumbum Roadways (P) Ltd., /v/ Somu Transport (P) Ltd., and Ors.)***
>
> ***(ii) (1991) 4 Supreme Court Cases 224 (State of Tamil Nadu and Anr. /v/ A.Mohammed Yousef and Ors.)"***

16. Per contra, the learned counsel for the respondent/defendant has submitted that the other owners have paid the property tax as levied and some others paid the tax upon settlement arrived at before the Lok Adalat. Those properties are situated in some other areas. The properties of the appellants/plaintiffs are situated in the heart of the town and so, the subsequent developments as argued by the plaintiffs are not applicable to the present cases of the appellants/plaintiffs. The tax levied in the years 1993 - 1994 and still the appellants/plaintiffs have been dragging without paying the tax. The appellants/plaintiffs have not challenged the Circular issued by the Government. Without challenging the circular, the suit is not maintainable. The plaintiffs have to agitate before the appropriate Tribunal, but filed the suit. Further, the other taxpayers challenged the circular and the

same was dismissed. As directed by this Court, the representation presented by the plaintiffs has been considered and the same was not accepted as the property tax levied in the year 1993 - 1994 was based on building's plinth area and based on their classification of land and area. Further, the tax has been revised four times based on the said plinth area. Hence, the tax was not levied contra to the rules and the same was levied based on rules. There is no possibility of reducing the taxes. In support of his contention, the learned counsel for the respondent/defendant relied on the citation as follows:

> ***"(i) (2009) 1 MLJ 42 (Razeena Begum & Anr. /v/ Pudukottai Municipality, rep. by its Commissioner, Pudukottai District and Anr.)***
>
> ***(ii) (2008) 1 MLJ 111 (M.L.Krishnamurthy (Died) and Anr. /v/ Government of Tamil Nadu rep. by Secretary to Government, Municipal Administration and Water Supply Department, Madras and Anr.)***
>
> ***(iii) Order passed by the High Court of Madras in batch of W.P.Nos.18534 of 2022 and connected WPs dated 23.12.2022."***

17. On hearing both and on perusal of records it is clear that the properties of the appellants/plaintiffs are used for commercial purposes. The suit properties are situated in the heart of the town, (in Kodaikanal). Based on the previous notices issued by the respondent/defendant revising the tax and aggrieved by the same, as the notice does not bear reasons, the appellants/plaintiffs filed the Writ Petitions before the High Court of Madras and as per the direction passed in those Writ Petitions, the respondent/defendant issued the impugned special notice levying tax enhancing 200% of existing property tax. It is the case of the defendant that the general revision was taken up in terms of Part - III, Chapter IV Sections 81 and 82 r/w Schedule IV of the Tamil Nadu District Municipalities Act, 1920 in Kodaikanal and that the defendant being a public institution under the control of Government, it has obeyed the order of Government and hence, as per the guidelines issued by the Commissioner of Municipal Administration, Madras in Roc.No.4314/R1/92, dated 14.05.1993, property tax was enhanced by 200%. On perusal of records, it is clear that the appellants/plaintiffs have not challenged the circular of the government as contended by the respondent/defendant.

18. This Court in ***Dindigul Anna District Tax Payers Sangam rep. by its President M.V.R.A.Soundararajan, No.116, Big Bazaar Street, Dindigul v. Government of Tamil Nadu represented by its Secretary to Government, Municipal Administration and Water Supply Department, Madras – 9 and Others*** reported in ***1994-Writ L.R. 805,*** has clearly observed and held as follows:

> "15. *It is clear from the above decision of the Apex Court that when the Rent Controller has not fixed the fair rent for a building the municipal authorities will have to arrive at their own figure of fair rent in accordance with the principles laid down in the Rent Control Act. It is also clear from the preamble portion of the guidelines dated 14.5.1993 that the said guidelines were issued only to enable the municipal authorities to arrive at their own figure of fair rent of the buildings in accordance with the principles laid down under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act and Section 82(2) of the Act and to ensure objectivity and avoid arbitrariness in the determination of the annual value of the buildings for the purpose of revision of property tax. It is seen from the counter affidavits filed on behalf of the municipal authorities, in these three writ petitions that after a study of the property tax pattern, the increase in the price of land, cost of construction and depreciations to be allowed in terms of the provisions of the Rent Control Act, a standard process was evolved and the guidelines referred to above were issued with a view to avoid hardship to individual assessees. It is further pointed out in the counter affidavit filed by the municipal authorities that in that view a committee was constituted and a standard/fair*

rent was arrived at in respect of similarly situated areas depending upon the locality, its importance, the market rate of the land and other amenities which is called 'basic value'. The basic value was arrived at after taking into consideration of the relevant materials. From the basic value further deduction is being allowed depending upon the nature of construction, age of the construction and other materials as seen from the assessment work sheets produced by the municipal authorities in the typed set of papers. A perusal of the assessment work sheets produced in the typed set of papers will go to show that but for the standardised process and the determination of the annual value on the basis of the guidelines issued, the revision made on the basis of fair rent formula alone might have resulted in ten fold increase of tax in respect of almost all the premises either residential or non-residential or factory premises. Further, under the guidelines a ceiling is fixed for enhancement of property tax consequent on the general revision of the property tax as follows:

Residential Buildings (owner occupied) Enhancement should not exceed 50% of pre-revision tax.

Residential buildings (rented) Enhancement should not exceed 100% of the Pre-revision tax.

For commercial buildings Enhancement should not exceed 200% of pre-revision tax.

Again, in the said guidelines standard deductions as permissible under the Act were also allowed in conformity with Section 82(2) of the Act.

16. On a careful examination of the guidelines dated 14.5.1993 issued by the Commissioner of Municipal Administration to the Municipal authorities, extracted above we are of the view that the said guidelines have been issued only in conformity with the provisions contained in Section 82 of the Act and Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act. Further, there is nothing wrong in the municipal authorities fixing different basic value for different zones depending upon the importance of the locality, the market rate of the land and the other amenities available in that zone, for the purpose of the fixation of the annual rental value of the buildings provided they are in conformity with the fair rent formula and the provisions of the Act. We are inclined to hold that the said guidelines issued by the Government will certainly avoid arbitrariness and ensure uniformity and objectivity in the determination of the annual rental value of the buildings. On a consideration of the assessment worksheets produced by the Municipal authorities and the other materials available on record, we are clearly of the view that the annual value of the premises have been arrived at by the Municipal authorities in these cases on the basis of the principles laid down in Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act and Section 82 of the Act. For all the reasons stated above, it has to be held that the guidelines dated 14.5.1993 issued by the Commissioner of Municipal Administration to the various municipal authorities are not liable to be declared as illegal and unenforceable and that the municipal authorities are justified in following the said guidelines in determining the annual value of the buildings."

19. From the above observations, this Court has already held that the guidelines issued by the Commissioner of Municipal Administration, Madras, in Roc.No.4314/R1/92, dated 14.05.1993 to the various municipal authorities are enforceable and the same has not been declared as illegal and the municipal authorities are justified in adopting the guidelines in determining the annual value of the building. The appellants/plaintiffs side has not placed any contra material or any citation before this Court against the aforesaid decision of this Court. Thus, the above decision remains unchallenged. It is not in dispute that the respondent/defendant issued the impugned notice following the guidelines, dated 14.05.1993 by enhancing 200% of pre-revision tax for commercial buildings. The defendant has further stated that after revision of tax in the year 1994 as per the guidelines, dated 14.05.1993, again the property tax was revised four more times and the plaintiffs have also paid the same. The plaintiffs have not raised any objections to the above contentions. On perusal of the judgment of the first Appellate Court, it is clear that the value of the property in Kodaikanal was raised manifold from the year 1987-1988. This cannot be disputed by the plaintiffs as the value of immovable property is increasing day by day.

20. On perusal of records, it is also not in dispute that the suit properties are situated in the heart of the city and some other owners like the plaintiffs have paid their revised tax. Admittedly, some of the owners and the respondent/defendant have settled the tax dispute before the Lok Adalat. The defendant said that some other tax payers whose properties not situated in the heart of the city were permitted to settle before the Lok Adalat, considering the long pendency of litigation. On perusal of records it is clear that the appellants/plaintiffs were given an opportunity for settlement before the Lok Adalat, but they have not chosen to approach the Lok Adalat for settlement. The settlement arrived at before the Lok Adalat cannot be relied upon by the litigants as a ruling in their case, as it was settled between the parties and the settlement order was not passed on merits. Admittedly, the settlement at 'Lok Adalat' were mainly on the consensus arrived between the parties and not based upon any legal principles. Further, the appellants/plaintiffs have been permitted to submit a fresh representation before the respondent/defendant, who would consider the same and pass an appropriate order on merits. On perusal of records, it is seen that the appellants/plaintiffs submitted their representation to the respondent/defendant. The respondent/defendant has also considered the

same and passed the orders, demanding the property tax as levied as the litigations continue from the year 1993. This Court has also taken note of these affairs.

21. The learned counsel for the respondent/defendant submitted that recently, this Court in a batch of Writ Petitions in W.P.Nos.18534 of 2022 observed and held in paragraph Nos.139, 144, 155, 171 and 172 as follows and therefore prayed the questions of law have to be answered against the appellant:

> "*139.This judgment is dated 13.10.1969. The principles set out therein are however applicable even today and hence there could be no quarrel with the proposition, in general, that ideally, assessment of property tax has to be made annually. However, it would, in my view, be impossible for there to be annual orders of assessment to be passed on the individualistic basis in respect of every property in the respondent Corporation.*
>
> *144. Vide these bye-laws, there had been a change introduced in the earlier regime of determining rateable value for the purpose of levying property tax. The earlier system proceeded on the basis of annual rent that the land/building may reasonably be expected to fetch from year to year and a percentage was prescribed on that basis, for the purpose of computation of property tax.*

> *155. Thus, there was a complete scheme of assessment of tax that is inbuilt in the Statute and in the Rules. Neither the Act nor the Rules provide for a fair rent under the Rent Control Act to be binding upon the Commissioner and the Court lauded this discretion, since they noted that determination of annual rental value depended on several criteria that may expand beyond the criteria set out under the Rent Control Act.*
>
> *171. The submissions of the petitioners to the effect that it is only rental value as computed under Rent Control Act that can form the basis of determination of ALV (Average Letting Value) is, in my view, unacceptable. The 1919 Act only requires the determination of annual value to be based on ALV and there is no dispute that this is the procedure that is perpetrated now.*
>
> *172. Admittedly, there is no restriction on the methodology as to how ALV is to be determined and thus there is substantial play in the joints that has been afforded to the respondents in this regard."*

On perusal of the above rulings, the argument of the respondent/defendant is acceptable.

22. Keeping in mind of the above rulings and facts, issuance of notice of revised tax based on Ex.A.2 - Circular, Writ Petitions were filed and as per direction of the Writ Petitions, the respondent/defendant was asked to reissue the revised notice with reasons and calculation sheet for rental value. Accordingly, the respondent/defendant issued Ex.P.7 and Ex.P.8, in which,

there is a clear explanation and reason as to how the revision of tax was made. The first Appellate Court has correctly discussed these facts and set aside the finding of the trial Court. Further, the first Appellate Court has correctly observed that if the appellants/plaintiffs if aggrieved by the Ex.P5 – Notice, only to approach the Commissioner by way of revision within 30 days as provided in the Tamil Nadu Municipalities Act. They could have sought a remedy for tax reduction through revision. But, ignoring that remedy, the filing of the present suit is against the provisions of the Tamil Nadu Municipalities Act, as rightly contended by the respondent/defendant by relying on the citations **(2008) 1 MLJ 111 and (2009) 1 MLJ 42 (supra)**.

23. On perusal of records, it is clear that the plaintiffs have not pleaded in the plaint as to why the statutory right of appeal available under the Tamil Nadu District Municipalities Act, 1920, was not availed of by the plaintiffs. The plaintiffs will have to avail the statutory right first and only then, they can file a civil suit challenging an assessment order. A party to the case who chooses to approach the civil Court in spite of the existence of a statutory appeal available under the Tamil Nadu District Municipalities Act, 1920 has to necessarily plead in the plaint that the defendant has violated the statutory

provisions. In these cases, the plaintiffs have not pleaded anything in the plaint. The object of the Tamil Nadu District Municipalities Act, 1920 will be defeated if these kinds of suits are entertained while the plaintiffs have challenged indirectly only the quantum of property tax.

24. Section 354 of the Tamil Nadu District Municipalities Act, 1920 reads as follows:

> "*354. Assessments, etc., not to be impeached._*
>
> *(1) No assessment or demand made, and no charge imposed, under the authority of this Act shall be impeached or affected by reason of any clerical error or by reason of any mistake (a) in respect of the name, residence, place of business or occupation of any person or (b) in the description of any property or thing, or (c) in respect of the amount assessed, demanded or charged; provided that the provisions of this Act have been, in substance and effect, complied with. And no proceedings under this Act shall for defect in form, be quashed or set aside by any Court of Justice.*
>
> *(2) No suit shall be brought in any Court to recover any sum of money collected under the authority of this Act or to recover damages on account of any assessment, or collection of money made under the said authority: Provided that the provisions of this Act have been, in effect, complied with.*

3) No distraint or sale under this Act shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any error, defect or want of form in the bill, notice, schedule, form, summons, notice of demand, warrant of distraint, inventory, or other proceeding relating thereto if the provisions of this Act, the rules and by-laws have in substance and effect been complied with: Provided that every person aggrieved by any irregularity may recover satisfaction for any special damage sustained by him."

As per this Section, property tax assessment cannot be impeached by any Court of Justice, when the provisions of the Act have been in substance and effect complied with.

25. On perusal of records, it is clear that the defendant has followed the method of assessment as per the guidelines issued by the Commissioner of Municipalities as per provisions of the Tamil Nadu District Municipalities Act, 1920 by taking into consideration all the prerequisites while assessing the property tax for residential and commercial buildings. The objections raised by the plaintiffs in respect of wrong fixation of (a) guideline value, (b) annual rental value and (c) market value of the site are purely questions

involving figures and do not involve any violation of any statutory requirements as prescribed under Section 82 of the Tamil Nadu District Municipalities Act, 1920. Only in cases where there is total disregard of statutory requirements, the aggrieved party can approach the civil Court for rescue. A careful perusal of the material records and evidences adduced by both sides, reveals that the plaintiffs have not taken such pleadings in these cases. In this case, the working sheet was furnished by the defendant to the plaintiff while issuing notice for revision of tax after the direction of this Court, passed in the Writ Petitions filed by the plaintiffs.

26. The Hon'ble Supreme Court in the case of ***NDMC & Satish Chand (Deceased) by LRs.*** reported in ***2003 (10) SCC 38*** held that Sections 84 and 86 of the Punjab Municipal Act, 1911 bars the jurisdiction of the civil Court, where the grievance relates to the assessment or the principle of assessment by necessary implication. Rule 23 under Schedule IV (Taxation and Finance Rules) of the Tamil Nadu District Municipalities Act, 1920 provides a complete remedy to a party aggrieved by the assessment and levy of tax. The Hon'ble Supreme Court has also followed the frequently cited decision of the Hon'ble Supreme Court in the case of **Dhulabhai vs. State of M.P**

reported in **AIR 1969 SC 78** as to when the civil Court jurisdiction is ousted and held that there is an implied bar for a civil Court to entertain a suit when the statute provides a special remedy to an aggrieved party to file an appeal. The first Lower Appellate Court rightly allowed the appeal filed by the defendant and dismissed the suits filed by the plaintiffs. Therefore, the substantial questions of law formulated by this Court in these Second Appeals are to be answered against the appellants.

27. Therefore, based on the above facts and circumstances, the first Appellate Court correctly appreciated the evidences adduced by both sides and correctly reversed the finding of the trial Court, which need not be interfered with by way of the Second Appeal. The citations relied on by the appellants/plaintiffs are not applicable to the facts of the case, whereas the citations relied on by the respondent/ defendant side are applicable to the facts of the case. Hence, the questions of law framed in these appeals are answered against the appellants/plaintiffs. Thus, these Second Appeals fail.

28. In the result, the Second Appeals are dismissed. The judgments and decree, dated 29.09.2000 passed in A.S.Nos.32 of 1997 & 34 of 1997 and

judgment and decree, dated 28.06.2002 passed in A.S.No.48 of 1997 on the file of the Sub Court, Palani, reversing the judgment and decree, dated 31.03.1997 passed in O.S.Nos.186 of 1995, 217 of 1995 and 216 of 1995 on the file of the District Munsif-cum-Judicial Magistrate Court, Kodaikanal are confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

26.09.2024

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
VSD

To

1.The Subordinate Judge,
Palani.

2.The District Munsif-cum-Judicial Magistrate,
Kodaikanal,

3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

P.VADAMALAI, J.

VSD

Pre-Delivery Judgment made in
S.A.Nos.570 and 575 of 2001
and
S.A.No.1590 of 2002

26.09.2024