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S.A.No.2014 of 20



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2024

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

**S.A.No.2014 of 2003
and
C.M.P.No.18399 of 2003**

1.D.Rajappa
2.R.Jeyalakshmi ... Appellants/Appellants/Plaintiffs

Vs.

The Commissioner,
Kovilpatti Municipality,
Kovilpatti. ... Respondent/Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 01.08.2003 made in A.S.No.60 of 2002, on the file of the Sub Court, Kovilpatti, confirming the judgment and decree dated 24.06.2003 made in O.S.No.173 of 1999 on the file of the District Munsif Court, Kovilpatti.

For Appellants : Mr.R.Murali

For Respondent : No appearance



JUDGMENT

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The Judgments and decrees passed in O.S.No.173 of 1999 on the file of the District Munsif Court, Kovilpatti and in A.S.No.60 of 2002, on the file of the Sub Court, Kovilpatti, are being challenged in the present Second Appeal.

2.The appellants herein as plaintiffs instituted a suit in O.S.No.173 of 1999 on the file of the trial Court against the defendant/Municipality for declaration declaring that the enhancement of property tax assessed by the defendant dated 01.07.1999 is null and void and consequential relief of permanent injunction not to collect the said tax.

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

4.According to the plaintiffs, they are the owners of the suit properties bearing Door Nos.132 and 133 Main Road, Kovilpatti and



S.A.No.2014 of 20

they were assessed to property tax at Rs.5,375/- and Rs.1,727/- respectively under assessment Nos.4815 & 4814. The suit properties were less than 5 years old. While so, the defendant issued a notice dated 23.04.1999 enhancing the property tax to Rs.3,454/- for Door No.133 and another notice dated 06.05.1999 enhancing the property tax to Rs.10,749/- for Door No.132 under Rules 9 & 10 of the Schedule IV of the Tamil Nadu District Municipalities Act, 1920. Challenging the said notices, the plaintiffs filed a revision petition before the defendant on 10.05.1999. By order dated 01.07.1999, the defendant disposed of the revision petition by confirming the enhanced assessment. According to the plaintiffs, the defendant, without giving any opportunity to the plaintiffs, had disposed of the revision petition and the defendant has not followed the provisions of the Tamil Nadu District Municipalities Act, 1920 and also the principles laid down in the Tamil Nadu Buildings (Lease and Rent Control) Act, for fixing the rent and calculated on the basis of annual rent and fixed the property tax. Hence, the plaintiffs have filed the said suit for the abovestated relief.

5.The defendant had filed a written statement stating that it is an admitted fact that Door No.132, Main Road, Kovilpatti belonged to the plaintiffs and were assessed to the property tax at the rate of

3/19



S.A.No.2014 of 20

Rs.5,375/- per half year and for Door No.133, Main Road, Kovilpatti, the assessment of property tax was Rs.1,727/- per half year prior to 01.10.1998. The buildings were completed in the year 1996. There cannot be any revision for an enhancement of tax for the second time within 5 years and the age of the schedule buildings is less than five years. The Kovilpatti Municipality, as per the provisions of the Tamil Nadu Urban Local Bodies Act, 1988, has enhanced the property taxes for all the buildings situated within the Kovilpatti Municipality limits by General revision of taxes, as per the provisions of Section 86 of the Tamil Nadu Act, 9 of 1999 on and from 01.10.1998 under G.O.No.169 M.A & W.S Department dated 02.09.1998 and also as per the Circular of the office of the Commissioner of the Municipality, dated 31.12.1998. The plaintiffs were served with special notices about the enhancement of property tax on 20.04.1999. Aggrieved over the enhancement of taxes, the plaintiffs filed a revision petition. The enquiry was scheduled to be conducted on 29.06.1999 and the enquiry notice was sent to the plaintiffs on 17.06.1999. Since the plaintiffs have not appeared for enquiry, the Kovilpatty Municipality, confirmed the same, by order dated 29.06.1999. The plaintiffs have not preferred any appeal against the order passed in the revision before the Taxation Appeal Committee within the prescribed time. As such, the assessment



S.A.No.2014 of 20

of tax for the plaint schedule building on and from 01.10.1998 has become final. By general revision of tax for all the buildings situated within the limits of the defendant Municipality, the tax was enhanced to Rs.14,303/- per half year, on and from 01.10.1998 to 30.09.2003 for the plaint schedule commercial buildings. The above enhancement of tax is fixed as per the Rules and Regulations of the Tamil Nadu District Municipalities Act, 1920, G.O, Circulars and guidelines prescribed by the Director of Municipal Administration. As such, the plaintiffs are legally barred from questioning the validity of the enhancement of tax and prayed for dismissal of the suit.

6.Before the trial Court, on the side of the plaintiffs, one Ravichandran was examined as P.W.1 and Exs.A1 to A3 were marked. On the side of the defendant, one Gurusamy was examined as D.W.1 and Exs.B.1 to B.6 were marked.

7.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 dismissed the suit stating that the defendant enhanced the rent as per the law and the provisions.



S.A.No.2014 of 20

8. Aggrieved by the Judgment and decree passed by the trial Court, the plaintiffs herein as appellants, had filed an Appeal Suit in A.S.No.60 of 2002 on the file of the first Appellate Court.

9. The first Appellate Court, after hearing both sides and upon reappraising the evidence available on record, has dismissed the appeal and confirmed the Judgment and decree passed by the trial Court.

10. Challenging the said Judgments and decrees passed by the Courts below, the present Second Appeal has been preferred at the instance of the plaintiffs as appellants.

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

'1) Whether the enhanced tax confirmed by the defendant/respondent in the review petition without following the principles of natural justice is valid?



WEB COPY

S.A.No.2014 of 20



2) Whether the provisions of Section 82 of the Tamil Nadu District Municipalities Act is applicable to the present case or not?

3) Whether the property tax enhanced by the defendant/respondent Municipality is legally valid when the building was assessed to tax only two years ago and when the statute requires and permits a revision only once every 5 years?'

12.The learned counsel appearing for the appellants/plaintiffs would submit that the Courts below erred that the tax was not assessed on the basis of the Tamil Nadu Buildings (Lease and Rent Control) Act; the Courts below erred in holding that the defendant Municipality has not given proper opportunity to the plaintiffs to place the objections in the review petition; the Courts below ought to have considered the fact that the revision of assessment is made only for every 5 year and in this case, the building was only constructed in the year 1996, whereas the present revision was made in the year 1999; the Courts below failed to consider that the provisions of Section 82 of the Tamil Nadu District Municipalities Act, 1920 was not followed by the defendant Municipality and the Courts below have not properly considered that the first assessment



was made in the year 1996 and within two years, the present assessment was made by the Municipality and the same was against the provisions of the Tamil Nadu District Municipalities Act, 1920.

13.No representation for the respondent.

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

15.According to the plaintiffs, it is an admitted fact that they are the owners of the suit properties bearing Door Nos.132 and 133 Main Road, Kovilpatti and they were assessed to property tax at Rs.5,375/- and Rs.1,727/- respectively under assessment Nos.4815 & 4814. The suit properties were less than 5 years old. While so, the defendant issued a notice dated 23.04.1999 enhancing the property tax to Rs.3,454/- for Door No.133 and another notice dated 06.05.1999 enhancing the property tax to Rs.10,749/- for Door No.132 under Rules 9 & 10 of the Schedule IV of the Tamil Nadu District Municipalities Act, 1920. Challenging the said notices, the plaintiffs filed



S.A.No.2014 of 20

a revision petition before the defendant on 10.05.1999. The defendant, by order dated 01.07.1999, disposed of the revision petition by confirming the enhanced assessment. According to the plaintiffs, the defendant, without giving any opportunity to the plaintiffs, had disposed of the revision petition and the defendant has not followed the provisions of the Tamil Nadu District Municipalities Act, 1920 and also the principles laid down in the Tamil Nadu Buildings (Lease and Rent Control) Act, for fixing the rent and calculated on the basis of annual rent and fixed the property tax.

16.Further, according to the plaintiffs, the method mentioned in Schedule IV of the Tamil Nadu District Municipalities Act, 1920, was deliberately omitted to be followed by the defendant in disposing of the revision petition. The fixation of the enhanced property tax cannot be conclusive without giving a reasonable opportunity to the plaintiffs. The enhancement in the G.O. says that the increase should not exceed 100 per cent, but the G.O. does not say that it should be 100 per cent and as such, this increase was done without following the rules.



S.A.No.2014 of 20

17. According to the defendant, the suit properties are situated in the main road of the Town and there are Banks, Schools, Hospitals, Insurance Companies, Central Excise Department offices etc., near those buildings. In Door No.132, the plaintiffs are running a lodge by the name 'Kavitha Lodge' and the said lodge fetches daily income for the plaintiffs. The plaintiffs have to prove the age of the buildings. The property tax was enhanced under the provisions of the Tamil Nadu District Municipalities Act, 1920. The enhancement was made under the provisions of the Tamil Nadu Act 9 of 1999 and also followed the G.Os.159 and 170. The special notice was sent to the plaintiffs on 20.04.1999 and after receiving the notice, the plaintiffs filed a revision petition and it was received on 13.05.1999. The enquiry was conducted and the enquiry notice was sent to the plaintiffs. Since the plaintiffs were not present, on 29.06.1999, the defendant passed orders on the revision petition. The plaintiffs had not filed any appeal against that order. The defendant Municipality is enhancing the property tax for every five years.

18. On a perusal of the materials available on record, it is seen that no documents were filed on behalf of the plaintiffs to show that what was the extent of the building constructed and what was the



measurement taken at the time of the first assessment and that amount has not been questioned and it has been paid, but subsequent revision alone has been challenged by them without even giving the exact extent of the land or constructed place. Further, it is seen that the buildings are in a commercial area which has been let out as a lodge, the plaintiffs cannot claim that the Tamil Nadu District Municipalities Act will not apply to them, only the Tamil Nadu Buildings (Lease and Rent Control) Act will be applicable to the present case is not accepted and it is rejected.

19.The plaintiffs have filed only a revision petition, which was confirmed and the plaintiffs have not preferred any statutory appeal before the Taxation Appeal Committee. The plaintiffs cannot claim that no opportunity was given to them and the defendant has not taken any measurements. Since measurements have already been taken in the newly assessed building, there need not be any such measurement to be taken and no principles of natural justice is violated and this question also goes against the plaintiffs.



20.Section 82 of the Tamil Nadu District Municipalities Act,
1920 reads as follows:

WEB COPY

*'82.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;

(aa) in the case of any building in any industrial estate wherein essential amenities including water-supply, drainage and lighting are not provided by the Municipality but provided by the Industries Department of the State Government or by any other authority under the control of the State Government, the annual value of such building shall be deemed to be four per cent of its capital value:

Provided that if any question arises whether for the purposes of this clause, essential amenities are provided by the Industries Department or other authority, it shall be decided by such authority as may be prescribed.'

21.In the case on hand, whether the plaintiffs' building of a class not ordinarily let the gross annual rent of which cannot in the opinion of the executive authority be estimated, as it is seen that the plaintiffs' building was not a residential building and it is a commercial complex which runs as a lodge and every day's rent collected would



S.A.No.2014 of 20

not be assessed. Hence, the estimated value from the original assessment to the circular wherein 100% value is the policy decision taken by the Government, this Court is not inclined to interfere with the same. The Tamil Nadu District Municipalities, 1920 applies to the present case and the suit property was used for a commercial purpose and the executive authority may not be in a position to assess the profit and the income derived from the suit property, since the suit property was let out to various third parties and hence, this provision will be applicable to the present case.

22.However, it is to be seen that the plaintiffs have followed the rules properly. As it is seen that the plaintiffs have filed a revision petition and a revision order was passed on 01.07.1999 and the plaintiffs have an appellate remedy available before the Taxation of Appellate Committee and they have not approached the assessment authority, when the assessment has been made by the Municipality and assessment was within the jurisdiction of Municipality and if the plaintiffs aggrieved over the same, they can seek their remedy of review under the appropriate provisions of the Tamil Nadu District Municipalities Act, 1920 and again they can seek redressal before the Municipal Assessment Tribunal and the civil Court remedy is barred.

14/19



S.A.No.2014 of 20

Since the plaintiffs have not approached the Municipal Assessment Tribunal and they have filed the suit immediately without exhausting the remedy available to them, this Court is of the view that the third question of law is held against the plaintiffs.

23.Further, it is to be seen that there was a finding before the Courts below that the revision was done only as per the Government policy decision and accordingly 100% tax can be revised and on that basis, the Municipality has revised the tax and the plaintiffs have not chosen to challenge the said G.O or circular passed for an increase in the rent by 100%.

24.Further, Schedule – IV Section 8, Taxation and Finance Rules, Part – 1 – Taxation Rules of the Tamil Nadu District Municipalities Act, 1920 reads as follows:

'8.(2) The Executive Authority may amend the assessment books at any time between one general revision and another by inserting therein or removing therefrom any property or by altering the valuation of any



WEB COPY

S.A.No.2014 of 20



property or the amount of tax 5 or subject to any rules which the State Government may make in this behalf, by substituting therein for the name of the owner of any property, the name of any other person who has succeeded by transfer or otherwise to the ownership of the property. Such amendment shall be deemed to have taken effect on the first day of the half-year in which it is made:

Provided that when the amendment is made in any half-year after the demand notice for that half-year has been issued, it shall have effect only from the succeeding half-year except where the fair rent of a building together with land appurtenant to it has been determined by the Controller under the Tamil Nadu Buildings (Lease and. Rent Control) Act, 1946:

Provided further that the decision of the Executive Authority in any disputed case of transfer of ownership of a property shall not give the transferee a legal title to the property.'

25.It is seen that Section 8(2) only talks about the guidelines for assessing the market value provided by the Tamil Nadu Buildings (Lease and Rent Control) Act could be applied under Section



S.A.No.2014 of 20

82 of the Tamil Nadu District Municipalities Act, 1920, but it should be applied on appropriate case and not in this case as the plaintiffs have paid the assessment and only the subsequent revision, he has challenged.

26.From the above, this Court is of the view that the Judgments and Decrees of the Courts below are accompanied with sufficient reasons, in which, this Court does not want to make any interference. Accordingly, the substantial questions of law framed are ordered as against the plaintiffs and in favour of the defendant.

27.At this juncture, the learned counsel appearing for the plaintiffs seeks indulgence of this Court to approach the authority concerned to redress their grievances. Initially, on 22.12.2003, an interim injunction was granted and subsequently, it was extended on 28.01.2004 for a period of three weeks. Subsequently, the said interim order was not extended. Further, it is seen that the demand was of the year 1999 and this Court is of the view that there has been further revision regarding the suit property.



S.A.No.2014 of 20

28.In the result, the Second Appeal stands dismissed.

However, it is left open to the plaintiffs to approach the authority concerned to redress their grievances, if any exists, in the manner known to law. No costs. Consequently, connected Miscellaneous Petition is closed.

28.08.2024

Index : Yes/No
Internet : Yes/No
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To

1.The Sub Court,
Kovilpatti.

2.The District Munsif Court,
Kovilpatti.

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



WEB COPY



S.A.No.2014 of 20

V.BHAVANI SUBBAROYAN, J.

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Judgment made in
S.A.No.2014 of 2003

28.08.2024