

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2010

CORAM

THE HONOURABLE MR.JUSTICE D.MURUGESAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

W.A.No.1601 of 2000

1. K.Manmatha Raja
2. K.Seetharaman
3. K.Mohanram
4. K.Rajendran ... Appellants/Petitioners

-Vs-

1. The Commissioner
Land Reforms
Ezhilagam
Chennai-5
2. The District Revenue Officer
Office of the District Collector
Tiruvallur
3. The Assistant Commissioner
Urban Land Tax
Ponnamallee
No.5, Sannathi Street
Ponnamallee
Chennai 600 056 ... Respondents/Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 19.6.2000 made in W.P.No.7965 of 2000. Petition filed under Article 226 of constitution of India for issue of writ of Certiorarified mandamus, calling for the records relating to the proceedings in RC No.24241/99/M2 dated 29.9.99 on the file of the 2nd Respondent herein and also the consequent proceedings pertaining to urban land the case No.10B/85 dated 10.9.1982 on the file of the 3rd Respondent herein and quash the same.

For Appellants :: Mr.K.Hariharan

For Respondent :: Mr.Haja Naziruddin
Special Government Pleader (T)

JUDGMENT

(Judgment of the Court was delivered by D.MURUGESAN, J.)

This writ appeal is directed against the order dismissing the writ petition. The appellants are the sons of one late Krishnamurthi Naidu. There was a partition suit laid in respect of the division of the ancestral properties among Krishnamurthi Naidu and his brothers

situate at Sivaboortham Village, Vanagaram Post, Chennai, which was ultimately decreed and an arrangement was made for division of the properties into three shares between the brothers and that the appellants' father was given his share. This share is now being enjoyed by the appellants, as they are the legal heirs of late Krishnamurthi Naidu. Even during the life time of their father, the property was assessed to urban land tax under Section 11(2) and Section 11(3) of the Tamil Nadu Urban Land Tax Act, 1966 (hereinafter referred to as "the Act"). That order was carried on appeal to the Sub Court, Chenglepet and the same was later on transferred to the appellate authority, namely, the Urban Land Tax Tribunal. By order dated 29.9.99, the Tribunal rejected the appeal on the ground that it vested with powers under Section 20 of the Act only to entertain the appeals made to it under Sections 10 & 11 of the Act and not otherwise. With the said finding, the appeal was disposed of.

2. This order was put in issue in the writ petition. However, the writ petition was dismissed on the ground that the appellants would have the remedy of revision under Section 30 of the Act and therefore the order of the Tribunal in not entertaining the appeal cannot be found fault with. Questioning this order, the present appeal is filed.

3. In terms of Section 7, the owner of urban land is liable to submit returns for assessment of urban land tax. If the owner of urban land failed to furnish the returns under Section 7 and that the Assistant Commissioner obtained the necessary information under Section 9 of the Act, then he shall proceed with under Section 11 of the Act for determination of the market value. Of course under Section 11, the Assistant Commissioner is competent to only determine the market value. In such case, whether the assessee aggrieved by such order should prefer an appeal to the Tribunal under Section 20 or should prefer a revision petition under Section 30 of the Act is the question to be decided in this appeal.

4. It is true that in terms of sub-section (1) of Section 20, the Tribunal is competent to entertain appeal if filed within thirty days questioning the order of the Assistant Commissioner under Sections 10 and 11 of the Act. In case such an order is not passed under Sections 10 and 11 of the Act, the appeal cannot be entertained by the Tribunal. Nevertheless, the provisions of Section 20(1)(b) provides an appellate remedy in respect of any person denying his liability to be assessed under the Act. Though in the present case, the appellants are not invoking the provisions of Section 20(1)(a) questioning the determination of market value, they have questioned the decision of the Assistant Commissioner with regard to the share, as they are the sons of the deceased Krishnamurthi Naidu. That being the position, it would certainly fall under Section 20(1)(b) which includes a provision of appeal when there was a denial of liability to be assessed under the Act. Of course, under Section 30, a revisionary power is provided wherever there is no provision for appeal under Section 20, be it under sub-section (1)(a) or (b) is contemplated. In our opinion, the appellants cannot be relegated to approach the Commissioner of Land Reforms seeking for revision of the order of the Assistant Commissioner in terms of Section 30 of the Act, as that provision excludes the Commissioner of Land Reforms to

entertain revision in cases where the appeal is provided under Section 20 of the Act. Inasmuch as a provision of appeal is available to the appellants under Section 20(1)(b), the finding in the writ petition that the appellants should exhaust the remedy of revision cannot be sustained. Accordingly, the appeal is allowed and the impugned order is set aside. The appellate authority, namely, the District Revenue Officer/Urban Land Tax Tribunal, Tiruvallur is directed to entertain the appeal in terms of Section 20(1)(b) of the Act and decide the same on its own merits and in accordance with law. Consequently, C.M.P.No.13719 of 2000 is closed. No costs.

Sd/-

Asst. Registrar

//true copy//

Sub Asst.Registrar

ss

To

1. The Commissioner of Land Reforms
Ezhilagam
Chennai-5
2. The District Revenue Officer/
Urban Land Tax Tribunal
Office of the District Collector
Tiruvallur
3. The Assistant Commissioner
Urban Land Tax
Ponnamallee
No.5, Sannathi Street
Ponnamallee
Chennai 600 056

1 cc to Mr.K.Hariharan, Advocate, Sr.No.5576

1 cc to Spl.Government Pleader, (Taxes) Sr.No.5282

W.A.No.1601 of 2000

GS {CO}
TP/5.2.2010.