IN THE COURT OF THE II ADDITIONAL DISTRICT MUNSIF, NAGERCOIL.

Present : Selvi. V. Sivaranjani, B.A., L.L.B.,

II Additional District Munsif, Nagercoil.

Monday, on the 25th day of August, 2025.

I.A. No. 7 of 2025 in O.S. No.26 of 2022

CNR No.TNKK04-000035-2022

1. Dr. J. Subbiah
2. Rajaretnam ... Petitioners / Plaintiffs

-vs-

1. The Additional Chief Secretary to Government, Municipal Administration.
2. State of Tamil Nadu, rep. by the District Collector.
3. The Nagercoil Municipal Corporation, rep. by its commissioner

... Respondents / Defendants

This petition came before this court on 23.08.2025 for a final hearing in the presence of Mr. V. Kumaran Nair, Advocate for the Petitioners / Plaintiffs, and Mr. A. Samuel Edwin, for the 3rd Respondent / 3rd defendant and 1st and 2nd Respondents / 1st and 2nd Defendants were set exparte in the suit and upon hearing both sides, perusing the case records, and having stood over for consideration till this day, this court hereby delivers the following:

SIVARANJANI V

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Date: 2025.08.25 05:31:06 +0530

ORDER

The petitioners have filed the above petition under Order XXVI Rule 9 and 10 and Section 151 of the Code of Civil Procedure, seeking to appoint an advocate/commissioner to note the following points and to report the same.

Points to be noted by the Advocate-Commissioner:

1. To measure the plinth area of ground floor, 1st floor and 2nd floor of the schedule property.
2. To report the physical features of the ground floor, 1st floor and second floor.
3. To report about the nature of the plaint schedule building.
4. Such other points that needs to be recorded.

2) Gist of Averments in the Petitioners / Plaintiffs Petition:

The petitioner is the 2nd Plaintiff in this suit. The 1st plaintiff is petitioner's brother and this affidavit is filed on behalf of the 1st plaintiff too. The petitioners submit that our father, late S. Jeyachandran, was the owner of the property in R.S.No.D5/3 and D5/4 with an area of 6.5 cents and a three-storey building thereon with Door Nos.NMC 10/6-23, NMC 10/6-23A, NMC 10/6-23B, NMC 10/6-23C, NMC 10/6-24, NMC 10/6-24A and NMC 10/6-25 which are more fully described hereunder as the schedule property.

3. This suit is filed with regard to the assessment of property tax relating to Door Nos. NMC 10/6-23 and NMC 10/6-23C only. The plaintiff's father was paying property tax as per tax rates fixed by the Nagercoil

Municipality. During the two-year period of 1991-1992 II half to 1993-1994 II half, the Nagercoil Municipal Council increased property taxes in an arbitrary and exorbitant manner as mentioned below;

Year	Tax for NMC 10/6-23	Tax for NMC 10/6-23C
1991-92 – II Half	Rs.927/-	Rs.1,601/-
1992-93 – I Half	Rs.927/- (No increase)	Rs.1608/- (Increase of 4.9%)
1992-93 – II Half	Rs.933/- (Increase of 6.5%)	Rs.1,680/- (No increase)
1993-94 – I Half	Rs.1,201/- (Increase of 28.7%)	Rs.2,032/- (Increase of 21%)
1993-94 – II Half	Rs.3,492/- (Increase of 190.8%)	Rs.6,096/- (Increase of 300%)

4. Aggrieved by the arbitrary and exorbitant increase in tax, the plaintiff's father filed a suit as O.S.No.90/1995 before the District Munsif Court, Nagercoil. The Hon'ble District Munsif Court Nagercoil, by Judgment and Decree dated 21.12.1996, held that,

a. The Nagercoil Municipal Council did not follow the mandatory provision laid down by the law in assessing the property tax.

b. The plaintiff was entitled to get a declaratory relief and permanent injunction.

c. The court also held that the Nagercoil Municipal Council can issue a separate notice under "Municipality Rule 9 showing the reason for increase in taxes and if the plaintiff filed any objections to the increase in taxes, the Municipality should fix the tax taking into account the objections and issue the new assessment of tax within the stipulated time and collect the tax accordingly”.

5. Even after the decree of the court, the Nagercoil Muncipal Council has not complied the order of the court and continuously issued demand notices to the plaintiffs’ father as per the enhanced taxes. Without complying with the mandatory provisions of law and completely disregarding the decree of the court in O.S.No.90/1995, the Nagercoil Municipal Council increased the taxes once again to Rs.6,984// for Door No. NMC 10/6-23 and to Rs.12,192/- for Door No. NMC 10/6-23C for the period 1998-99- II Half.

6. Aggrieved again by the action of the Nagercoil Municipal Council, the plaintiffs father filed yet another suit as O.S.No.522/1999 before the District Munsif Court, Nagercoil and in its decree dated 20.07.2004, this Court decreed as follows,

a. The court had ordered and decreed that the enhanced assessment of tax of the building are illegal, void and unenforceable and hereby is declared.

b. That the defendant and his servants be and hereby are restrained by an order of injunction from collecting the tax at the enhanced rate on the basis of the demand notice from the plaintiff.

7. Even after the Decree in O.S.No.522/1999, the Nagercoil Municipal Council continued to ignore the Decree of the court and issued demand notice as per enhanced tax. This is a clear case of disrespect and contempt. The defendant

Municipality continues to disobey this Court orders and it has not done any re-assessment of taxes from the period 1991-92-II Half till date, even though this Court had given very specific order to reassess the tax in its judgment in O.S.No.90/1995. The defendant Municipality continues to demand tax as per enhanced tax rates which have been declared to be illegal, invalid and void in O.S.No.92/1995 and O.S.No.822/1999.

8. While the matter being thus, our father passed away in the year 2007 leaving a will deed [Doc.No.96/1990 dated 06.07.1990] bequeathing the schedule property to the three sons as below,

i. To the eldest son, Dr.J. Subbiah (First Plaintiff herein) - Second floor of the building with NMC Door No.23C.

ii) To the second son, Dr.J. Rajasekaran - First floor of the building with NMC Door No.23A and 23B.

iii) To the third son, Dr.J. Rajaretnam (Second Plaintiff herein) - Ground floor of the building with NMC Door No.23, NMC Door No.10/6-24, NMC Door No.10/6-24A and NMC Door No.10/6-25.

9. The petitioners were working outside Nagercoil and soon after our settlement at Nagercoil, we took charge of our respective portion of the schedule property and we approached the Nagercoil Municipal Council to change the assessment of the Door numbers in our respective names as per the covenants in the will deed. Whereas the Nagercoil Municipal Council denied to change the

assessment in our name and made pre-condition to pay the enhanced tax at first and then to apply for change of assessment.

10. The Nagercoil Municipal Council has scant respect for the court's decree and simply ignored the courts decree and demanded the enhanced tax in violation of the decree of the competent court. Aggrieved by the corecives steps of the Nagercoil Municipal Corporation we sent a legal notice to the Nagercoil Municipal Corporation dated 25.06.2019 and directed the Nagercoil Municipal Corporation to do the things in tune with the decrees of the court.

11. The Nagercoil Municipal Corporation ignored the legal notice and issued new demand notice as per the enhanced tax rates basing on general revision and thereby continued its disrespect to the court's order. Apart from all these, the Nagercoil Municipal Corporation has gone to the extent of threatening us, that the water supply to the building will be disconnected.

12. The Hon'ble District Munsif Court, Nagercoil in O.S.No.90/1995 and O.S.No.522/1999 specifically held to follow the mandatory provision prior to any enhancement of tax and not on the basic of general revision. But Nagercoil Municipal Corporation is violation the decrees of the court and is acting arbitarily and capriciously.

13. In view of the decree of the District Munsif Court, Nagercoil in O.S.No.90/1995 and O.S.No. 522/1999, the Nagercoil Municipality has to follow the mandate as ordered in the decision reported in 1994 [II] L.W. page

715. The matter has been averred specifically in the plaint and hence it is prayed to treat the plaint averments as part of this affidavit too.

14. The Nagercoil Municipal Corporation has not come forward to fix the fair rent as directed by the court, and continued to send demand notices. On the basis of general revision and fixed discriminatory taxes for the Door Numbers situated in the ground floor, 1st floor and 2nd floor of the same building. Since the nature of the construction and physical features of the ground floor, 1st floor and 2nd floor are one and same, the discriminatory taxes fixed by the Nagercoil Municipality is illegal. The DW1 in his cross examination has deposed that he has not measured the plinth area of ground floor, Ist floor and 2nd foor and he was not able to mention about the physical features of the Door Number. To have fair disposal of the case it is just proper to appoint an Advocate/Commissioner to note the points to be noted in the accompanying application. Hence, this petition is to be allowed.

15) Gist of the Averments in the 3rd Respondent / 3rd Defendant's Counter:

The 3rd Respondent/ 3rd defendant had filed counter stating that all the allegations in the affidavit in support of the commission application save those which are specifically admitted hereunder shall be deemed to be denied. It is humbly submitted that the suit itself is not maintainable and hence this petition and the commission application are not maintainable in law and the same are liable to be dismissed. The Nagercoil municipality in assessed the property tax only in accordance with the mandatory procedures, Government orders and the circular of its higher officials.

16. It is humbly submitted that the judgment and decree passed by this court was duly complied by this respondent, but the father of the plaintiffsf alone did not comply the Judgment and decree of this Honourable Court, and hence the averments in the 6th paragraph of the affidavit are not correct and the same is denied as false. It is submitted that the enhancement of tax is only inaccordance with law and there is no violation. The allegation in the 9th paragraph of the affidavit that the Nageroil Municipality continued to ignore the decree of the court and issued notice as per enhanced tax and this is a clear case of disrespect and contempt is not correct. It is most respectfully submitted that there is no ignorance, disrespect and contempt on the part of this respondent, and the further averments in the 10th paragraph that the respondent continues to disobey the Honourable Court orders is also denied as false. It is reiterated that this respondent never disobeyed the order of this Court.

17. The averments in the 12th paragraph of the affidavit that the respondent made precondition to pay the enhanced tax at first and then to apply for change of assessment is concerned it is submitted that it is the mandatory procedure for effecting name transfer in the property tax assessment and hence the petitioner are bound to pay the arrears to the Corporation. The averments in the 15th paragraph of the affidavit are concerned it is submitted that there is no

violation of the decree passed by this Court. It is most respectfully submitted that the respondent duly complained and followed the decision reported in 1994(II) L.W. page No.715, and the pleadings of this respondent in the written statement may kindly be considered as part of this counter. It is submitted that it is the duty of the petitioner to prove their case, but they are not competent to take advantage of the evidence of D.W.1, and hence appoint of the commission is totally immaterial so for as the nature of the plaintiff’s case is concerned, and the further averment that the report and rough plan of the commissioner would assist this Court to render justice is absolutely false because the plaint prayers are only challenging the enhancement of property tax and other reliefs. It is humbly submitted that the case is pending for argument and at this stage this application is not entertainable and is liable to be dismissed since there is merit in the petition. It is submitted that there is no bonafide allegation in the affidavit and hence the case may not be reopened for any purpose and already the plaintiff’s endorsed no further evidence on their side and hence this petition is liable to be dismissed.

18. The point for consideration is whether the above petition has to be allowed or not?

19. Point:

Heard both sides. Records perused. The petitioner herein is the 2nd plaintiff in the suit filed with regard to the assessment of property tax. The 3rd defendant, Nagercoil Municipal Corporation under an authorization given by the commissioner adduced evidence as DW1 with regard to the nature and character of the scheduled three storey building. The petitioners contention is that a annul rental value fixed for the door numbers in each floor and the tax per sq.ft with respect to each floor differs inspite of the plinth area, the nature and character of each floor are one and same. Also, DW1 had categorically deposed that he had not measure the property and do not know about the features of each floor.

20. The respondents contention is that it is the duty of the petitioner to prove their case and not competent to take advantage of the evidence adduced by the DW1. The cases already posted for arguments. Now, the petitioner has come up with this petition to appoint an advocate commissioner in order to just avoid future complications.

21. Considering the above facts, this court is of the considered view that even though the suit is only with regard to assessment of the property tax and the same can be adjudicated on the basis of the documentary evidences, DW1 evidence with regard to non measurement of each floor made a factual gap

which may affect that accuracy of the tax assessment. Accurate measurement of floor wise plinth area is material in order to resolve the tax dispute. In the light of above facts this court is inclined to allow this petition.

As a result, this petition is allowed, Advocate Tmt T. Saranya M.S.No.1984/2019 is an appointed as Advocate Commissioner in this petition and her remuneration is fixed as Rs.8,000/- (Rupees Eight Thousand only), the same shall be paid by the petitioners on or before 04.09.2025. The Advocate Commissioner is directed to visit the plaint schedule three storey building after due notice to both sides in order to inspect, note the plinth area of each floor and submit the detailed report and plan within one month without fail. The Commissioner shall take assistance of Taluk Surveyor. Call on 04.09.2025.

Dictated to the Steno-Typist, and typed by her directly in the Computer, corrected and pronounced by me, in open court this, the 25th day of August 2025.

SIVARANJANI V

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Date: 2025.08.25 05:33:02 +0530

II Additional District Munsif
Nagercoil.

Petitioner side witnesses and documents : Nil.
Respondent side witnesses and documents : Nil.

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II Additional District Munsif
Nagercoil.

Draft/Fair Order
I.A.No. 7/2025 in
O.S.No.26/2022
Date: 25.08.2025.
II ADM Court, Nagercoil.