IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 27.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P. No.8179 of 2015
and
MP.No.1/2015

S.Gurunathan .. Petitioner

Vs.

The Commissioner
Panruti Municipality
Panruti
Cuddalore District ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus calling for the records of the respondent relating to the notice dated 25.02.2015 issued to the petitioner demanding tax for assesment Nos.16881 to 16885 for the petitioner's property in No.1, Indira Gandhi Salai and 83, Third street, Police Line, Panruti, quash the same and direct the respondent to assess the first floor of the petitioner's property for property tax as per the provisions of the Tamil Nadu District Municipalities Act, 1920.

For Petitioner : Mrs.Hema Sampath SC for M/s.R.Meenal

For Respondent : Ms.M.E.Rani Selvam, AGP

ORDER

The petitioner has come forward with the aforesaid prayer.

Petitioner put up seven shops in the first floor of his building. The respondent is demanding property tax for 16 shops when there are only 7, categorizing 6 shops to be in Zone B and in in Zone A and then changing its stance, holding that 5 are in Zone A while 1 is in Zone B, when all the shops are in the same building. Petitioner made several representations seeking for proper assessment of tax liablity failed, a lawyer notice was issued. Without response to that the respondent issued notice, which is challenged in this writ petition.

3. Petitioner has relied on Section 82 of The Tamil Nadu District Municipalities Act, 1920 which is extracted below:

> 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 excepted to let from month to month or from year to year Substituted by the Tamil Nadu City Municipal and District Municipalities (Amendment) Act, 1944 (Tamil Nadu Act III of 1944) [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 allowance 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 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

in the case of any building in 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 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.

Explanation " For the purposes of this clause, " Industrial estate" means any are selected and developed by the State Government or developed by any other authority under the control of the State Government and where any industry or a class of industry are accommodated, and]

(b) machinery shall be excluded from valuations under this section.

The [State] Government shall have power to make rules regarding the manner in which the person or persons by whom and the intervals at which, the value of the land, the present cost of erecting the building and the amount to be deducted for depreciation, shall be estimated or revised, in any case or class of cases to which clause (a) Inserted by Tamil Nadu Act XXI of 1974 [or clause (aa)] of the proviso to sub-section (2)] applies, and they may, by such rules, restrict or modify the application of the provisions contained in Schedule IV to such case or class of cases.]

Since it is assessed for the first time and even without giving an opportunity, without inspecting the premises in person of the petitioner, notice has been issued demanding payment failing which the property will be attached.

4. Learned counsel for petitioner submitted that the petitioner is willing to pay Rs.1,50,000/- in the amount demanded and let the respondent visit the premises inspect and thereafter fix the amount.

5. Learned Additional Government Pleader appearing for the respondent is unable to refute the contention of the petitioner. This has been done for the first time and no notice prior to that issued. Hence the impugned order passed by the respondent is set aside. Writ petition is allowed. No costs. Connected miscellaneous petition is closed.

6. The petitioner is directed to pay Rs.1,50,000/- as agreed and it is open to the respondent to issue fresh notice to the petitioner visit the site and assess the premises in person of the petitioner and thereafter fix the amount within four weeks from the date of receipt of a copy of this order. In case of non payment the respondent can proceed to pass orders.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

The Commissioner
Panruti Municipality
Panruti
Cuddalore District

pvr(co)
krd 22/4

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