IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.11581 of 2003
and
W.P.M.P.No.14560 of 2003 and W.V.M.P.No.1316 of 2003

1.Thirumalai Gounder (Deceased)
2.T.Marappan
(Petitioner substituted in the place of 1st deceased sole petitioner as per order of Court dated 28.01.2004 in W.P.MP.No.26894/03) .. Petitioner

Versus

The Commissioiner,
Thiruchengode Municipality,
Thiruchengode. .. Respondent

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records pertaining to the impugned order of the Respondent passed in Na.Ka.No.5076/2002/A3, dated 07.03.2003 and to quash the same.

For Petitioner : Mr.V.Bharathidasan

For Respondent : Mr.R.Rajeswaran,
Spl.Govt.Pleader

ORDER

The petitioner seeks for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order of the respondent passed in Na.Ka.No.5076/2002/A3, dated 07.03.2003 and to quash the same.

2. Heard Mr.V.Bharathidasan, learned counsel appearing for the petitioner; Mr.R.Rajeswaran, learned Special Government Pleader appearing for the respondent and by their consent, this Writ Petition is taken up for final disposal.

3. The petitioner has challenged the proceedings issued by the respondent dated 07.03.2003, by which the property tax payable in respect of the petitioner's property has been revised with effect from the assessment year 1994-1995 to 2002-2003. Though several grounds have been raised, firstly the learned counsel for the petitioner contended that the impugned proceedings are not sustainable in law, as the authority while revising the annual rental value and consequently fixing the property tax failed to follow the formula adopted while fixing fair rent under the Rent Control Act.

4. Further, it is submitted that Section 117(A) of District Municipalities Act empowers the respondent to demand only for a maximum period of six months on expiry of the assessment, beyond which, they do not have any power to make the demand and since the impugned demand is for a period of 10 years, the same is bad in law. Further, it is submitted that though in the impugned order, it is stated that inspection was conducted, no inspection was conducted in the petitioner's presence and it is incorrect to state that the property is used for non-residential purpose or any industrial purpose.

5. Further, it is submitted that before passing the impugned order, no opportunity was afforded to the petitioner and without conducting any enquiry and without affording an opportunity of personal hearing, the impugned order came to be passed.

6. Counter affidavit has been filed by the respondent contending that the respondent was not able to assess to tax the building of the petitioner, due to the pendency of Writ Petition No.17647 of 1994 and only after the disposal of the Writ Petition, the respondent was able to asses the building to tax. Further, it is submitted that in terms of under Section 117(A) of the Act, the Commissioner, may at any time within six years from the date on which such person should have been assessed, serve on such person a notice assessing him to tax or fee due and demanding payment thereof within 15 days from the date of service of the notice.

7. Thus, it is submitted that the respondent Municipality is empowered by law to asses the tax i.e., for 12 half- yearly tax or fee due to the Municipality. It is stated that since the Writ petition was pending, the period during which the earlier Writ Petition was pending has to be excluded. Further, it is submitted that if the petitioner is aggrieved by the impugned order, he has to prefer an appeal before the taxation Appeal Committee and as against the

decision of the appeal committee, if aggrieved, the petitioner has a remedy of appeal before the District Court in terms of Section 26(B) of the Act. On the above grounds, the respondent seeks for dismissal of the Writ Petition.

8. After considering the case of both parties and on perusing the material placed on record, it is seen that the respondent in their counter would admit that the property could not be assessed to tax earlier and they have done so, only after the Writ Petition in Writ petition No.17647 of 1994 was disposed of by this court on 09.07.2001. Further, it is submitted that the period during which the said Writ Petition was pending has to be excluded for the purpose of computation of limitation.

9. It is seen that the petitioner had filed the earlier Writ Petition, when an attempt was made by the respondent / Municipality to demolish the property. The demolition notice was based on the proposal to acquire the petitioner's property, pursuant to the notification issued under Section 4(1) of the Land Acquisition Act dated 16.12.1982. The petitioner contended that the Land Acquisition proceedings did not proceed further and no declaration under Section 6 was issued. Ultimately, the said Writ Petition was allowed and the notice for demolition was set aside. At the time when the Writ Petition was allowed, the first respondent did not make any request to the Court to exclude the period from 1994 to 2001 for the purpose of computation of the limitation for assessing the property to tax. For the first time in the counter affidavit filed in this Writ Petition such a plea is raised. Furthermore, if the respondent Municipality has not assessed the petitioner's property to tax from 1991 to till 2003, on the ground that the earlier Writ Petition was pending, it is on their own volition and not by operation of law or on account of any Court order preventing them from assessing the property. Therefore, the respondent Municipality took the risk of not assessing the property to tax on the presumption that the lands would be acquired and the construction would be demolished. However, the demolition notice was quashed by this Court vide its order dated 09.07.2001 passed in the earlier Writ Petition. As the respondent had not taken up the matter in appeal, the said order had attained finality. Under such circumstances now the respondent Municipality proposes to asses the property to tax, which cannot be for the anterior period prior to 09.07.2001. In the light of the factual situation which has been set out in the preceding paragraphs, this Court is of the opinion that the impugned demand is illegal and without jurisdiction.

10. In the result, the Writ Petition is partly allowed and the demand for property tax prior to 09.07.2001 is set aside. Consequently, connected Miscellaneous Petitions are closed. No costs. The respondent is directed to redo the entire exercise after issuing notice and after an opportunity of hearing to the petitioner for assessment of the property to tax with effect from August 2001 onwards. It is submitted by the learned counsel for the petitioner that in terms of interim order granted on 16.04.2003, the petitioner has effected payment and thus complied with the direction issued by this Court.

11. In the light of the above orders, holding that the respondent- Municipality cannot demand property tax prior to 09.07.2001, whatever payments which have been made by the petitioner shall be adjusted towards the payments to be made by the petitioner after the property is assessed to tax from August 2001.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To:

The Commissioiner,
Thiruchengode Municipality,
Thiruchengode.

1 cc to Mr.V. Bharathidasan, Advocate, Sr. 67887

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