

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01-02-2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.4217 OF 2013

K.S.Govindaraj

... Petitioner

-Vs-

1. The Commissioner,
Dharapuram Municipality,
Dharapuram,
Tiruppur District.

2. T.K.Panneerselvam ... Respondents
(R-2 impleaded as per Order of this
Court dated 20.03.2013 in M.P.2/13
in W.P.4217 of 2013)

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari, to call for the records pertaining to the impugned order of the first respondent, dated 03.01.2013, in Na.Ka.No.951/2008/A3, and quash the same as illegal, incompetent and without jurisdiction.

For petitioner : Mr.V.Raghavachari

For respondent 1 : Mr.P.Srinivas

For respondent 2 : Mr.K.Sudhakar

ORDER

Petitioner has filed this Writ Petition, challenging the notice issued by the first respondent, alleging that the petitioner, who is an elected Vice-President of the Municipal Corporation, has suffered a disqualification, on the ground, that he has failed to pay arrears, due and payable to the Municipality. In this regard, a reference has been made to Section 50 (hh) of the Tamil Nadu District Municipalities Act, 1920, in short, "the Act".

2. The facts, which are necessary for disposal of this Writ Petition, are; that the petitioner was stated to be

a defaulter to the Municipality, on the ground that dues were payable by him in respect of a licence granted to him, for collection of fee from the Weekly Market; and that the said amount was supposed to have been paid by the petitioner during the year 2002-2003. It is admitted, that the period of licence was from 01.04.2005 to 31.03.2006.

3. According to the petitioner, initially, No Due Certificate was issued to him by the first respondent on 26.09.2006; based on the same, he filed nomination for contesting the election; when there was an attempt to prevent the petitioner from contesting the election, he has moved this Court, by filing W.P.No.22169 of 2011; and, after an interim order was granted in the said Writ Petition, he has contested the election and was elected; and, subsequently, he has withdrawn the said Writ Petition.

4. Learned counsel for the petitioner submits, that the said Writ Petition was withdrawn with proper endorsement. It is submitted, that the petitioner had made an endorsement in the Writ Petition, that he contested the election as per the interim order and was declared successful; and, therefore, he prayed this Court to record the same and pass suitable orders. The said endorsement was placed on record and the said Writ Petition was dismissed, as withdrawn.

5. Though the above circumstance may be a very relevant factor to consider as to whether the petitioner could resist the impugned notice on account of certain other developments, this issue has become academic.

6. The impugned notice has been issued, alleging that the petitioner suffers disqualification, as he has to pay dues to the extent of Rs.4.00 lakhs to the Municipality. Eventhough it is stated that the said dues are payable during the year 2002-2003, even as per the counter affidavit, the first demand was made only on 19.11.2008, and the last of the demands was said to have been made on 05.12.2012, and, therefore, it is to be seen, whether Section 50 (hh) of the Act would stand attracted? Before that, what is to be decided is, whether the petitioner is in arrears to the Municipality?

7. It is to be pointed out, that the first respondent has filed a suit in O.S.No.92 of 2013 on the file of District Munsif Court, Dharapuram, setting out all the facts, which have been placed in the counter affidavit, filed in this Writ Petition; and, stating that the petitioner is due and payable of a sum of Rs.4.00 lakhs to the Municipality. The petitioner has filed a written statement, contending, inter alia, that the total amount payable by him, namely, Rs.7,29,225/- has been settled by him on 25.09.2006 and

26.09.2006, and, only thereafter, he has been issued No Objection Certificate.

8. In view of the above stand taken by the plaintiff-municipality and the defendant-petitioner, the Civil Court has to adjudicate, as to, whether the petitioner is a defaulter ? Prior to such adjudication being done by the Civil Court, the first respondent cannot be permitted to proceed on the disqualification of the petitioner, as the issue is pending before the Civil Court. Therefore, if the Civil Court conclusively declares the petitioner as a defaulter, then alone, the first respondent-municipality is entitled to proceed further with the impugned notice, and, until then, the matter has to be kept in abeyance.

9. In the light of what is stated above, this Writ Petition is disposed of, directing the first respondent to keep in abeyance the impugned notice, dated 03.01.2013, till the conclusion of the proceedings, pending before the Civil Court; and, further action, pursuant to the impugned notice shall be taken, based upon the decree, that is to be passed by the Civil Court. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

dixit

To

The Commissioner,
Dharapuram Municipality,
Dharapuram,
Tiruppur District.

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.6579
+1cc to Mr.G.B.Saravanabhavan, Advocate, S.R.No.6679
+1cc to Mr.P.Srinivas, Advocate, S.R.No.6584

W.P.No.4217 OF 2013

CA(CO)
CA(12/02/2016)