IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.29625 of 2015

A.N.F.Mohamed Iqbal ... Petitioner

Vs.

1.The Assistant Revenue Officer,
Revenue Department, Zone-VI,
No.2, Dr.Besant Road,
Ice House, Triplicane,
Chennai - 5.

2.The Special Tahsildar,
Revenue Recovery,
Area V, CMWSSB Board,
No.1, MC.Road, Anna Poonga,
Chennai - 600 021. ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of certiorari to call for the records on the file of the second respondent in attachment Notice No.352, dated 04.08.2015 and quash the same.

For Petitioner : Mr.M.I.Javid Nazeem

For R1 : Mr.T.C.Gopalakrishnan
For R2 : Mr.M.Jothikumar

ORDER

Heard Mr.M.I.Javid Nazeem, learned counsel for the petitioner and Mr.T.C.Gopalakrishnan, learned standing counsel for the first respondent and Mr.M.Jothikumar, learned counsel for the second respondent and with the consent of counsel appearing on either side, the writ petition itself is taken up for disposal.

2. The petitioner has filed this writ petition seeking issuance of a writ of certiorari to quash the order passed by the second respondent dated 04.08.2015, which is an attachment notice seeking to attach the petitioner's property for arrears of water and sewerage tax.

3. The petitioner's contention is that though initially there were was a building, it had collapsed due to the fury of nature and after the building had collapsed, no construction is been put up and the property is a vacant property. In 2011, when there was a threat from the Corporation officials and when demand was issued demanding the property tax, the petitioner filed a suit against the Corporation of Chennai in O.S.No.5199 of 2011 on the file of the City Civil Court, Chennai, and the Civil Court, by judgment dated 30.08.2012, decreed the suit as prayed for and held that the proceeding of the Corporation of Chennai demanding the property tax is illegal and null and void and not binding. The Civil Court, while granting such a decree, has recorded the following findings:

> "But as far as the case of the plaintiff is concerned, it is clear that the plaintiff issued a notice on 08.10.2009 by intimating that the building was fallen down due to heavy rainfall and the same has been acknowledged by the first defendant and the same has been proved by the plaintiff by producing the Ex.A2. Therefore, it is clear that on the date of assessment of the property tax, the part of the building was not available for assessing the property tax for the financial year 1/2009-2010 to 1/2011-2012. When there is no such building available for assessment, the assessment given by the defendants is nothing but against the truth."

4. The above findings recorded by the Civil Court have become final. In such circumstances, no property tax can be demanded by the Corporation of Chennai. If that is the position, the second respondent cannot demand any water and sewerage tax from the petitioner as there is no building and the existing superstructure had fallen down in 2009 itself. The impugned distraint proceeding initiated by the respondent is admittedly for the period after the 1999 when the building had fallen down, that is from 1999-2000 to 2015-2016.

5. In the light of the above, the writ petition is allowed and the impugned attachment notice is quashed. However, as and when the petitioner builds any superstructure on the property, it is open to the respondents to proceed in accordance with law. No Costs. M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Assistant Revenue Officer,
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Ice House, Triplicane,
Chennai - 5.

2.The Special Tahsildar,
Revenue Recovery,
Area V, CMWSSB Board,
No.1, MC.Road, Anna Poonga,
Chennai - 600 021.

+1cc to Mr.M.I.Javid Nazeem, Advocate Sr.44337
+1cc to T.C.Gopalakrishnan, Advocate Sr.44321

W.P.No.29625 of 2015

nm[co]
srg 23/08/2016