BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 07.11.2016
CORAM :
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.(MD).Nos.3723 and 3724 of 2013
and
M.P(MD)Nos.1 and 1 of 2013

M.Kaliaperumal .. Petitioner in WP(MD)No.3723 of 2013

S.Paramasivam .. Petitioner in WP(MD)No.3724 of 2013

.Vs.

The Executive Officer,
Karambakudi Selection Grade Town Panchayat,
Karambakudi Town and Taluk,
Pudukkottai District. ... Respondents in both the WPs

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records pertaining to the impugned order of the respondent dated 18.10.2012 and quash the same as illegal.

For Petitioners : Mr.J.Anandkumar

For Respondent : Mr.K.Guru
Additional Government Pleader

O R D E R

The issue involved in both the writ petitions is pertaining to the notice issued by the respondent dated 18.10.2012 in respect of the payment of arrears of property tax. Though the impugned notices specified that the petitioners are also liable to pay the arrears of water tax, they have not been specified the arrears of the water tax.

2.As far as the W.P.No.3723 of 2013 is, the property tax demand notice was issued by the respondents, for a sum of Rs. 2,87,832/- for the period between 2006-2007 to 2012-2013. Further, the W.P.No.3724 of 2013 is concerned, it is pertaining to the notice of the respondent dated 18.10.2012 pertaining to the payment of arrears of property tax for the period from 2009-2010 to 2012-2013 for a sum of Rs 63,600/- vide assessment No. 3873-F. Since the issue involved in the 2 writ petitions are similar with each other, both Writ Petitions, with the consent of the Counsels on either side clubbed together and have taken up for final hearing.

3.The brief facts of the case in W.P.No.3723 of 2013 are as follows:

The petitioner is the Proprietor of a marriage hall namely M.K.S.Thirumana Mahal at Karambakudi Village, Pudukottai District and the property tax was assessed for the building under assessment No.3785. The grievance of the petitioner is that the respondent, without any considering the existing property tax for the other marriage hall in the locality, assessed the tax at a sum of Rs.33,976/. The further case of the Petitioner is that the tax levied upon the property of the Petitioner is highly disproportionate to the income derived from the Mandabam and also to the value of the property.

4.Though the Petitioner approached the respondent in person and requested him to revise the assessment by way of a written request on 24.12.2007, that was not considered in accordance with law. However, without considering the representation of the petitioner, the respondent has issued the impugned notice for the payment of arrears of the property tax.

5.The brief facts of the case in W.P.No.3724 of 2014 are as follows:

The petitioner is the Proprietor of a marriage hall namely Arasamarathu Thirumana Mahal at Karambakudi Village Pudukottai district and the property tax was assessed for the building under assessment No.3871-F, 3873 and 3872-E. The grievance of the petitioner is that the respondent without any consideration of the existing properties tax for the other marriage hall, in the locality assessed the tax at a sum of Rs.19,780/- for the assessment No.3871 Rs.15,900/- for assessment No.3873 and Rs.14,560/- for assessment No.3872-E. The further case of the Petitioner is that the tax levied upon the property of the Petitioner is highly disproportionate to the income derived from the Mandapam and also to the value of the property.

6.Though the Petitioner approached the respondent, it did not fetch any good thing. However, the Counsel for the respondent, issued a notice dated 02.02.2013 enclosing the impugned order dated 18.10.2012 directing the petitioner to pay the arrears of the tax amount of Rs.2,15,520/- within one week, otherwise the property will be attached and brought for auction. Though the petitioner after receiving the impugned order, sent a reply dated 15.12.2013, but the same was not considered.

7.The further case of the petitioner is that Schedule 4 of the Tamil Nadu District Municipality Act, 1920 certain procedures have been contemplated, but the respondent without adhering any procedures under the Act levied disproportionate property tax. Further, the exercise of the levying of the property tax is against the provisions as per section 83 and 84 of the aforesaid act. Further, it is stated in the affidavit of the writ petition that the building is located in a remote place out of the Town limit. Moreover, the constructed area is 2000 square feet and open space in 1000 square feet but without considering the same, the fixation of tax by the respondent is against the act and thereby the assessment is liable to be set-aside.

8.I heard Mr.J.Anandkumar, learned counsel appearing for the petitioners and Mr.K.Guru, learned Additional Government Pleader appearing for the respondent in both the Writ Petitions and perused all the materials available on record.

9.The grievance of the petitioners in both the Writ Petition is that the property tax was assessed by the respondent is against the provisions of Tamil Nadu District and Municipalities Act, 1970 and the exercise of the levying property tax is without considering the constructed area and the open place. The learned counsel for the Petitioner would submit that the levying of property tax by the respondent is against Section 84 of the Tamil Nadu District and Municipalities Act, 1970 as the property tax was assessed without following uniformity but in an arbitrary manner. Hence, prayer is sought for the quashment of the impugned notice of respondent dated 18.10.2012.

10.Per contra, the learned counsel appearing for the respondent would submit that the levying of the property tax is as per the provisions contemplated under the Tamil Nadu District and Municipalities Act, 1970. He would further submit that the respondent has not followed uniformity in levying the property tax by considering the constructed area as well as the open place. Since, the levying of property tax is totally in accordance with law, these writ petitions are liable to be dismissed.

11.For the useful reference, section 84 of the Tamil Nadu District and Municipalities Act is extracted here under:

The rate of any class of property tax on lands when levied on their annual value (under section 81, sub-section (2) may be lower that the rate of the same class of property tax on buildings but either rate shall be uniform throughout the municipal area on all buildings or on all lands liable to be taxed on their annual value, as the case may be:

Provided that the aggregate property tax leviable in the case of light houses, piers , wharves, jetties and passenger sheds, latrines, cart-stands, retiring rooms and platform belonging to a railway administration shall not exceed 4 percent of their annual value.

(1)The rate of any class of property tax shall be uniform throughout the municipal area on all lands liable to be taxed on their capital value.

12.As far as keeping uniformity in levying tax is concerned, it shall be in equal throughout the municipal area liable on all lands and which are to be taxed on their capital value. This has been ascertained under section 84 of the District Municipalities Act. When the impugned notice of the respondent is perused, it does not speak about the classification of the building in respect of the portion constructed and portion left as vacant land. The notice simply specified the tax amount and the year of pending arrears of property tax. Further, through the impugned order, the respondent came to say that legal action will be initiated unless the petitioner failed to make the payment specified in the impugned notice. Further, there is no reference as to whether; the respondent had any occasion to consider the representation of the petitioners as per section 84 of the Municipality Act.

13.It shall not be in dispute that the respondent while levying property tax has to keep in mind to follow uniformity by considering all the relevant factors pertaining to the property in question. Further, the impugned notice does not say anything about as to how the tax amount was calculated and on what basis the amount was arrived. That apart the impugned notice does not specify the arrears of water tax inspite of the fact that there is a mention in the payment of water tax. All these would show that the impugned notices are bad in law. For the foregoing reasons, I have decided that the impugned notices of the respondent are liable to be set-aside. Hence, the impugned notices here by quashed as the same are issued not in accordance with the Tamil Nadu District Municipalities Act, 1920. At the same time as for the levying of tax is concerned, it is one of the important criterions to generate income to the Municipality. Further, the petitioners have not stated that their marriage halls are not functioning. On the other hand, it is their case that the commercial use of the buildings have not fetched a sizeable income, hence they are under the compelling necessity to challenge the impugned notice. Therefore, the respondent is at liberty to proceed with further to collect the property and other taxes strictly as per the provisions of the aforesaid Act.

14.In the result:

(a) both the writ petitions are allowed and the impugned orders of the respondent dated 18.10.2012 are quashed;

(b) the respondent is at liberty to proceed with further to collect the property and other taxes strictly as per the provisions of the District Municipalities Act. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/ True Copy /

Sub Assistant Registrar(C.S.)

To

The Executive Officer,
Karambakudi Selection Grade Town Panchayat,
Karambakudi Town and Taluk,
Pudukkottai District.

+2cc to M/S.J.ANAND KUMAR, Advocate SR.No.67066&67067

+1cc to Special Government Pleader, SR.No. 67041

vs/skn
MAS/SKN-RSK/SAR2:05.07.2017:5P-5C

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and
M.P(MD)Nos.1 and 1 of 2013
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(1/2)