BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 07.11.2016
CORAM
THE HONOURABLE **MR.JUSTICE M.V.MURALIDARAN**
W.P(MD).No.3725 of 2013
and
M.P.(MD)No.1 of 2013

V.Gurusamy ... Petitioner

Vs.

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

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondent from taking any coercive steps for non-payment of arrears of property tax based on the Notice dated 01.02.2010 and consequential notice dated 02.02.2013 issued on behalf of the respondent.

For Petitioner : Mr.J.Anandkumar

For Respondent : Mr.K.Guru
Additional Government Pleader

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O R D E R

The issue involved in the writ petition is pertaining to the notice issued by the respondent dated 01.02.2010 and 02.02.3013 in respect of the payment of arrears of property tax. Though the respondent issued notice dated 01.02.2010, subsequently, the respondent through their Counsel sent another notice of demand to make payment of arrears of property tax. The assessment number for the property of the petitioner is 4110 and the notice of demand is issued for the period from October, 2006 to March, 2013/-.

2.The property tax notice was issued by the respondent for a sum of Rs. 2,78,225/- on 01.02.2010, thereafter through their Counsel issued another demand notice on 02.03.2013/- for a sum of Rs.3,25,611/- for the 2nd time.

3.The brief facts of the case are as follows. The petitioner is the Proprietor of a marriage hall namely T.v.G.Thirumana Mahal at Karambakudi Village, Pudukottai district and the property tax was assessed for the building under assessment No. 4110. The grievance of the petitioner is that the respondent, without any consideration of the existing property tax for the other marriage halls in the locality, assessed the tax at a sum of Rs.50094/-.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.

4.Though the Petitioner approached the respondent in person and requested him to revise the assessment, but the same was not considered in accordance with law. However, without considering the representation of the petitioner, the respondent has issued a notice dated 02.02.2013 through their Counsel by enclosing the demand notice dated 18.10.2012 for the payment of arrears of the property tax.

5.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. 3,25,611/- within a week, otherwise the property will be attached and brought for auction. Though the petitioner after receiving the order sent a reply but that 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 5000 square feet and open space in 2000 square feet and 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 petitioner and Mr.K.Guru, learned Additional Government Pleader appearing for the respondent. All the materials available on record are perused.

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; the writ petition is liable to be dismissed. It is also pointed out by the Counsel for the respondent that the petitioner’s remedy is misconceived as he has not challenged the order of levying of property tax. His further arguments would be that without challenging the same, he cannot maintain the writ petition as the respondent is duty bound to collect taxes from the property owners as per law. Further, the petitioner without making payment of the arrears of property tax cannot found fault with the respondent and hence he prays for the dismissal of the writ petition.

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

(1)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.

(2)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 for 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 Municipal 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 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 notice does not specify the arrears of water tax in spite of the fact that there is a mention in the payment of water tax. All these would show that the notices are bad in law. For the foregoing reasons, I have decided that the notices of the respondent are liable to be set-aside. Hence, the respondent is directed not to pursue any action based on the notices 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 petitioner has not stated that their marriage hall is not functioning. On the other hand, it is his case that the commercial use of the building has not fetched a sizeable income, he is under the compelling necessity to challenge the impugned notice.

14.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.

15.In the result, with the above direction the writ petition is allowed and the respondent shall not proceed with any coercive steps to collect the property tax from the petitioner. However, once again it is made it clear that the respondent is at liberty to take legal action as per the provisions of the Tamil Nadu District Municipalities Act, 1920 to collect property tax from the petitioner without any arrears. With this direction the writ petition is ordered and there is no order as to cost. Consequently, connected miscellaneous petition is 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.

+1cc to M/S.J.ANAND KUMAR, Advocate SR.No.67068

vs/skn
MAS/SKN-RSK/SAR3:06.07.2017:5P-3C

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and
M.P.(MD) No.1 of 2013
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(2/2)