IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.6316 of 2017
and
W.M.P.No.6809 of 2017

M/s.Arunachalapuram Rama Nadar
Kumarar Santhana Nadar Vaarisukal Nalasangam,
Madathu Street, Majaraa Arunachalapuram,
Ariyanayagapuram Village,
Sankarankoil Taluk,
Tirunelveli District,
rep.by its President, K.Gurusamy .. Petitioner

Vs

1.The Commissioner,
Thiruvannamalai Municipality,
O/o.Thiruvannamalai Municipality,
Thiruvannamalai District.

2.R.Thirunavukkarasu

3.S.Pichandi .. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the entire records of the first respondent pertaining to the impugned order dated 16.11.2016 made in Na.Ka.No.2051/2015/A2 on her file and quash the same and direct the first respondent to consider the representation dated 15.04.2015.

For Petitioner : Mr.G.Jayachandran

For Respondents : Mr.A.S.Thambuswamy for R1
No appearance for R2
Mr.Kingsly Solomon for R3

ORDER

Heard Mr.G.Jayachandran, learned counsel for the petitioner, Mr.A.S.Thambuswamy, learned counsel for the first respondent and Mr.Kingsly Solomon, learned counsel for the third respondent.

2.This is the second time the petitioner has approached this Court pertaining to the same issue. Earlier, the petitioner filed W.P.No.18259 of 2015 praying for issuance of a Writ of Mandamus directing the first respondent Municipality to release the demand draft dated 27.03.2015 towards the property tax for the building in question for the period 2015-2016. A controversy arose on account of the rival claim made by the third respondent herein, viz. S.Pichandi. The writ petitioner claims to have succeeded before the Civil Court by obtaining a judgment and decree in O.S.No.248 of 2001 on the file of the Additional District Munsif Court, Sankarankoil, declaring that Mariappa Nadar and 83 others are alone the legal heirs of Santhanam Nadar. The counsel for the third respondent has contended that the suit filed by the petitioner has been dismissed. However, it is the contention of the petitioner that it is another suit which was filed before the District Munsif Court, Thiruvannamalai which was dismissed and not O.S.No.248 of 2001. After noting this, this Court pointed out that disputed questions of fact cannot be agitated in a writ petition and since the first respondent Municipality had called upon the parties to produce the documents and they had also produced the same, the Court directed the first respondent to issue notice of enquiry, hear the parties in person and pass a reasoned order. This exercise has been completed and an order dated 16.11.2016 has been passed which is impugned in this writ petition.

3.The effect of the impugned order is that the petitioner was entitled to pay the property tax for the first half year and the third respondent was entitled to pay the property tax for the second half year. The petitioner's challenge to the impugned order is on the ground that the first respondent has virtually decided the title of the property and his decision is contrary to the decree obtained by them before the Civil Court. Admittedly, in the civil proceedings, the first respondent Municipality is not a party. Therefore, the decree obtained by the petitioner would not bind the first respondent. That apart, the petitioner is stated to have initiated eviction proceedings against the second respondent in R.C.O.P.No.10 of 2014 on the file of the Principal District Munsif cum Rent Controller at Thiruvannamalai and the same is also pending.

4.Considering the peculiar facts and circumstances of the case, this Court is of the view that the parties, viz., the petitioner and the third respondent should approach the Civil Court seeking declaration of right over the property and in the said suit, the first respondent should be impleaded as a defendant. It is only the Civil Court which should decide the title and consequently enable the first respondent to make assessment of the property tax.

5.However, considering the fact that it may take some time for the Civil Court to decide the controversy and in the mean time, the interest of the revenue also has to be protected and ultimately the respondent Municipality should not be left without being able to recover the property tax from either one of the parties, viz.the petitioner or the third respondent, this Court is inclined to dispose of this writ petition by issuing the following order:

(a)The petitioner as well as the third respondent are directed to approach the Civil Court for appropriate declaratory relief within a period of fifteen days from the date of receipt of a copy of this order. The Civil Court shall decide the suit / suits uninfluenced by any of the observations made in the impugned order dated 16.11.2016 and shall decide the rights of parties based on oral and documentary evidence placed before it.

(b)Pending disposal of the civil suit, the petitioner as well as the third respondent shall continue to remit the property tax, which shall be kept in a separate suspense account and the first respondent Municipality shall issue receipt only for the amount received without mentioning the name of the assessee, but referring to the address of the property for which it is collected. The calculation shall be subject to the ultimate result of the civil suit.

6.It is made clear that the petitioner or the third respondent cannot seek to advance their case before the Civil Court on the strength of the remittance of property tax made to the first respondent in respect of the subject property.

7.The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

The Commissioner,
Thiruvannamalai Municipality,
O/o.Thiruvannamalai Municipality,
Thiruvannamalai District.

+ 1 cc to M/s.G.Jayachandran Advocate,SR.53558

+ 1 cc to M/s.A.S.Thambuswamy, Advocate,SR.53430

+ 1 cc to M/s.Kingsly Solomon, Advocate, SR.53472

W.P.No.6316 of 2017
and
W.M.P.No.6809 of 2017

KGK(CO)
NR 09/08/2017