

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Crl.OP No.16954 of 2011

P.C.Dhakshinamoorthi

.. Petitioner

Vs.

The Executive Officer,
Kilampadi Town Panchayat,
Vattakkal Valasu,
Erode District.

.. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in S.T.C.No.150 of 2011 on the file of the learned District Munsif cum Judicial Magistrate, Kodumudi and to quash the same.

For Petitioner :Mr.N.Manokaran

For Respondent :Mr.M.Guruprasad

ORDER

The brief facts of the case is that the petitioner, who was in arrears of property tax was served with a demand notice dated 15.03.2011 and subsequently, a complaint in STC.No.150 of 2011 was filed before the learned District Munsif cum Judicial Magistrate, Kodumudi for criminal prosecution under Sections 124, Schedule IV r/w.Rules 30, 30(2), 31 32, 33, 36(2) of the Tamil Nadu District Municipalities Act.

2.The petitioner has challenged the said proceedings in the present petition.

3.Mr.N.Manokaran, learned counsel appearing for the petitioner vehemently argued that all the rules of the Tamil Nadu District Municipalities Act referred to does not

contemplate criminal prosecution and that the respondent herein should establish that the distinct proceedings to be initiated is impracticable before opting to file a criminal proceedings before the learned District Munsif cum Judicial Magistrate, Kodumudi. The learned counsel also submitted that he has already filed a suit for declaration to declare that the property tax demand is arbitrary and that the said issue is now pending in S.A.No.685 of 2011 before this Court and therefore, submitted that the respondent is not entitled to maintain the criminal proceedings pending second appeal.

4.The learned counsel for the respondent on the other hand submitted that the petitioner has been in arrears of the property tax for a very long period and that its earlier suit as well as the first appeal filed by him to declare the demand of property tax as illegal have been dismissed. According to the learned standing counsel for the respondent, the demand notice was properly made and complaint in STC.No.150 of 2011 is legally sustainable.

5.I have careful consideration to the submissions made by both the learned counsels.

6.Rule 30(2) of the rules prescribed under Section 124 of the Tamil Nadu District Municipalities Act states that if for any reason the distraint, or a sufficient distraint, of the defaulter's property is impracticable, the Executive Authority can initiate criminal proceedings before the Magistrate.

7.It is the argument of the learned counsel for the respondent that the respondent has to first establish the distraint proceedings was impracticable before initiating criminal proceedings before the learned District Munsif cum Judicial Magistrate, Kodumudi. On a bare reading of Rule 30(2) of the Tamil Nadu District Municipalities Act, it is seen that it is not mandatory that the executive authority has to establish to the defaulter that distraint proceedings was impracticable before initiating any criminal proceedings. As such, it is not a pre-condition on the complainant to establish to the defaulter that the distraint proceedings against the defaulter's property was impracticable before initiating criminal proceedings.

8.It is needless to point out that the issue as to whether distraint proceedings was impracticable or not, can be established during the course of trial and this Court exercising its power under Section 482 of the Cr.P.C., would not be justified in interfering with the criminal proceedings at this stage.

9.As such, the petitioner has not made out a valid case for this Court to interfere with the criminal proceedings. Accordingly, the Criminal Original Petition stands dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

DP

To

1.The District Munsif cum Judicial Magistrate Court,
Kodumudi.

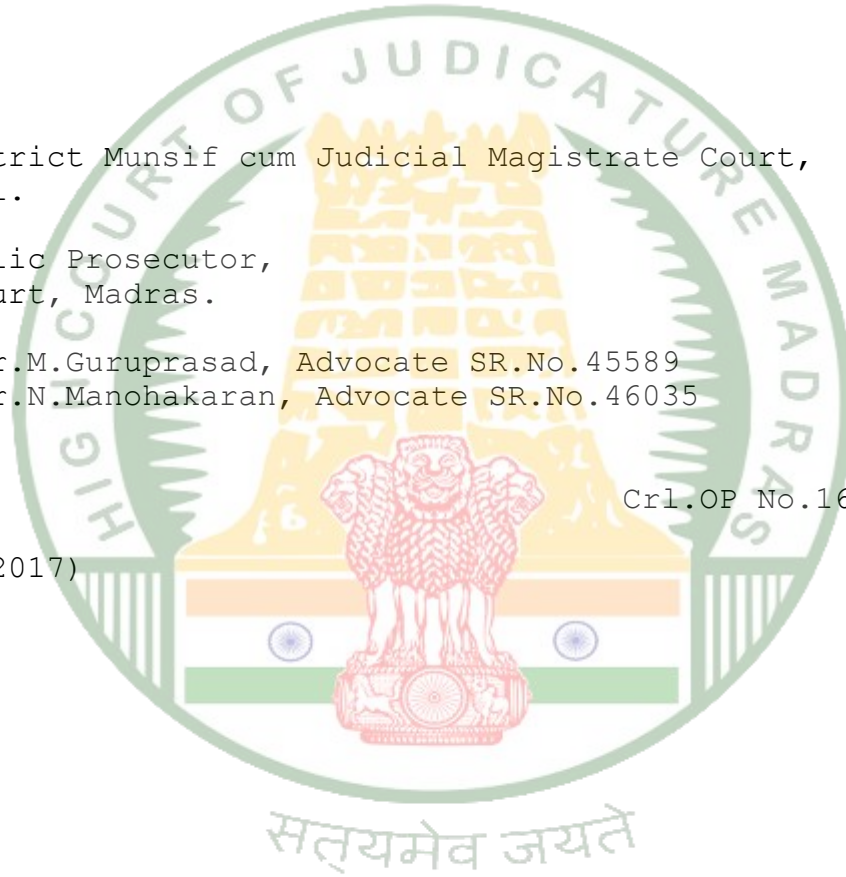
2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Guruprasad, Advocate SR.No.45589

+1cc to Mr.N.Manohakaran, Advocate SR.No.46035

Crl.OP No.16954 of 2011

GN(14/07/2017)



WEB COPY