IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.11.2017

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition Nos. 17988 to 18008 of 2015
and
M.P.Nos.1 of 2015
and
M.P.No.2 of 2015

K. Thangavelu ...1st Petitioner in W.Ps 17988 to 17990,17992 to 17994,17996 & 18002/2015.

A. Duraisamy
..2nd Petitioner in W.P. 17988 to 17990 & 17994/2015
..1st Petitioner in W.P.17991,17995,18004 & 18008/15

K. Thangammal
..3rd Petitioner in W.P.17988 to 17990 & 17994/2015.
..1st Petitioner in W.P.17998,17999,18001,18003 & 18005/15.

P. Chinnasamy ..2nd Petitioner in W.P.17991 & 17995/2015.
..1st Petitioner in W.P.18006 & 18007/2015.

P. Paramasivanathan
..2nd Petitioner in W.P.17992,17993 & 17996/15
..1st Petitioner in W.P.17997 & 18000/2015.

Vs.

The Commissioner,
Namakkal Municipality,
Namakkal - 637 001. ...Respondent in all W.Ps

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records, relating to the proceedings in R.C.No.9453/2014/A1, dated 05.02.2015, on the file of the respondent herein, and to quash the same, and direct the respondent to revise the property tax for the building, bearing Door No.3/2, Salem Road, Namakkal - 637 001, under Assessment No.2,130/98, Mariamman Koil West Street, Namakkal 637 001 under Assessment No 20590, 130/2/103 E Mariamman Koil West street, Namakkal 637 001, under Assessment No 20600, 5/3 Salem Road Namakkal 637 001 under Assessment No 3, 139/103 Mariamman Koil West street, Namakkal 637 001 under Assessment No 20595,

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138/1/103 G, Mariamman Koil West Street, Namakkal 637 001 under Assessment No 20602, 1/1 Salem Road, Namakkal 637 001 under Assessment No 1,5/1/7C Salem Road, Namakkal 637 001 under Assessment No 10, 138/102 Mariamman Koil West Street, Namakkal 637 001 under Assessment No 20594, 9/5 Salem Road, Namakkal 637 001 under Assessment No 5, 136/2/103 F, Mariamman Koil West Street, Namakkal 637 001 under Assessment No 20601, 136/101 Mariamman Koil West street, Namakkal 637 001 under Assessment No 20593, 5/1/7A(old Nos 9/5 & 5/1), Salem Road, Namakkal 637 001 under Assessment No 8,7/4 Salem Road, Namakkal 637 001 under Assessment No 4, 132/99 Mariamman Koil West Street, Namakkal 637 001 under assessment No 20591, 7/1/7B, Salem Road, Namakkal 637 001, under Assessment No 9, 134/100 Mariamman Koil West Street , Namakkal 637 001 under Assessment No 20592, 136/1/103 A, Mariamman Koil West Street Namakkal 637 001 under Assessment No 20596, 11/1/7 Salem Road, Namakkal 637 001 under Assessment No 7, 11/6 Salem Road, Namakkal 637 001 under Assessment No 6, 134/2/103 D, Mariamman Koil West Street, Namakkal 637 001 under Assessment No 20599 respectively determining the tax by applying the formula of fair rent, pertaining to the building with effect from the year 2007-2008, within a time frame.

For Petitioners: in all W.Ps	Mr. S. Subbiah, Senior Counsel for Mr. P.Raja
For Respondent : in all W.Ps	Mr. M. Raja Mathivanan Standing Counsel

COMMON ORDER

Heard Mr. S. Subbiah, the learned Senior Counsel appearing for the petitioner and Mr. M. Raja Mathivanan, the learned Standing Counsel for the respondent/Municipality.

2. The petitioners are aggrieved by the proceedings issued by the respondent, dated 05.02.2015, calling upon them to pay the revised property tax, which, they are in arrears from 2007-2008 onwards.

3. Since the issue involved in these Writ Petitions is one and the same, they were taken up together and disposed of by this common order.

4. The petitioners herein had filed six suits before the Trial Court, in respect of one of the two properties owned by them, in O.S.Nos.693 of 2006, 276, 277 and 280, 281, 285 of 2007, for declaration that the revision of property tax is illegal and for consequential permanent injunction. The suits were dismissed, by judgments and decrees, dated 29.11.2008 and 30.09.2009 respectively. Aggrieved by the same, two of the

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petitioners, viz., Mrs.K.Thangammal and Mr.K.Thangavelu had preferred Appeals before the Lower Appellate Court, Namakkal, in A.S.No.90 of 2009 and A.S.No.11 of 2010, and those Appeals were allowed, by judgments and decrees, dated 25.11.2011 and 30.09.2011 respectively.

5. The case of the petitioners is that, those decisions have attained finality, and the respondent/Municipality did not prefer any further Appeal. Therefore, the petitioners submitted representations in respect of other properties to revise the property tax assessment, as per the provisions contained under Section 4 of the Rent Control Act, after giving an opportunity to them, and taking note of precedent laid down by this Court and the Hon'ble Supreme Court, in the matter of determination of property tax. In response to the said representation, impugned orders have been passed, wherein, the respondent/Municipality excluding the buildings, which were covered in the civil proceedings, has called upon the petitioners to pay the property tax at the enhanced rate.

6. What is interesting to note is that, during the pendency of these Writ Petitions, and much earlier, the petitioners have failed to remit even the property tax at the pre-revised rate (i.e. old rate), and the petitioners are in arrears of the property tax payable till date. In this regard, the learned Standing Counsel for the respondent/Municipality has produced a tabulated statement, which contains only a seal of the Commissioner, Namakkal Municipality, without his signature. In the common counter affidavit filed by the respondent/Municipality, it is stated that, after the general revision, which was effected on 01.10.1998, the petitioners had been paying the revised property tax, without any demur till I half of the year 2005-06, and after the suits were filed, and the plaintiffs have succeeded before the Lower Appellate Court, they stopped paying even the tax at the old rate, and, as on date, as per the revised property tax, the total arrears payable is Rs.23,49,186/-.

7. After hearing the learned counsel for the parties for a considerable length of time, this Court is inclined to observe that the petitioners cannot remain without paying any property tax under the pretext that, they are questioning the revision of property tax. This is more so, because, the revised property tax was paid by the petitioners upto first half of 2005-06. Merely because, the suits were decreed by the Lower Appellate Court, is no reason to refuse to remit the property tax. The petitioners are aggrieved largely, because, no assessments were done in respect of their properties owned by them, and arbitrarily, the tax has been increased.

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8. In light of the above facts and circumstances, this Court is inclined to issue appropriate direction, so that the interest of the respondent/Municipality is safeguarded and at the same time, the petitioners also gets an adequate opportunity to contest the matter with regard to the revision of property tax. At this juncture, this Court would like to point out, as to why, the respondent/Municipality did not prefer any Appeal against the judgments and decrees passed by the Lower Appellate Court, in the First Appeals, and allowed the same to attain finality. This Court would be fully justified in presuming that, for reasons best known to them, the respondent/Municipality did not prefer Second Appeal before this Court against the judgments passed by the Lower Appellate Court.

9. Be that, as it may, this Court is inclined to protect the interest of the revenue of the Municipality. Therefore, issues the following directions:-

i) The petitioners are directed to remit the pre-revised property tax from 2005-06 onwards to till date and the entire arrears should be paid within a period of four weeks from the date of receipt of a copy of this order.

ii) After the entire arrears are cleared, the respondent/Municipality shall issue pre-assessment notice for all the petitioners, upon which, the petitioners are entitled to submit their objections and after considering the objections, the respondent/Municipality shall pass final assessment orders and demand the revised property tax. Such revised property tax shall be paid within the time, that may be stipulated by the respondent/Municipality.

10. In the result, all the Writ Petitions are disposed of on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

msm/sd

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To

The Commissioner,
Namakkal Municipality,
Namakkal - 637 001.

+6 Ccs to Mr.M. Rajamathivanan, Advocate sr 81292 to 81297
+21 Ccs to Ms. Elizabeth Ravi, Advocate sr 81261.

Writ Petition Nos. 17988
to 18008 of 2015

RV(CO)
SP(21/12/2017)

HIGH COURT OF JUDICATURE MADRAS
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