IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.12.2017

CORAM

THE HON'BLE MR.JUSTICE T.SIVAGNANAM

W.P.No.26194 of 2017
and
WM.P.Nos.27842 and 27843 of 2017

M/s.Thangavelu Textile Mills Limited
Rep.by its Joint Managing Director
T.Senthilnathan
Old No.111/1, New No.AK 68-16
Thathampatti
K.N.Colony, Salem 636 014. ...Petitioner

Vs.

1.The Commissioner
Salem City Municipal Corporation
Salem.

2.The Assistant Commissioner
Ammapet Ward Office No.III
Salem City Municipal Corporation
Salem – 636 003. ... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the prosecution notice issued by the first respondent to the petitioner through ePost on 25.03.2017 and quash the same.

For Petitioner : Mr.P.Mani

For Respondents : Ms.K.Bhuvaneswari
Standing Counsel

ORDER

Heard Mr.P.Mani, learned counsel for the petitioner and Ms.K.Bhuvaneswari, learned Standing Counsel for the respondents. With the consent on either side, the writ petition is taken up for disposal.

2.The petitioner challenges the prosecution notice issued by the first respondent dated 25.03.2017, by which the respondents have demanded arrears of property tax, failing which informed the petitioner that prosecution will be launched against the petitioner. The petitioner has challenged the impugned prosecution notice primarily on the ground that the petitioner had earlier filed in O.S.No.908 of 2001 on the file of the Additional District Munsif Court, Salem and O.S.No.287 of 2013 on the file of the Principal District Munsif Court, Salem challenging the prosecution notices issued for the earlier periods. The period for which the demands were made was from 2004-2005 to 2012-2013. The half year property tax initially fixed for the petitioner building was Rs.4,262/- which was increased to 25,575/- in 2004-2005 and further increased Rs.40,920/- with effect from 2008-2009. The respondent Corporation would contend that the revision was justified as it was in accordance with the prevailing

Government Orders. However, one predicament which the respondent corporation has been put to on account of the finality of the decisions of the Civil Court passed in the aforementioned two suits, by those decrees the enhancement and collection of property tax as proposed by the respondent corporation was held to be not valid. Therefore, a situation has come where the corporation cannot levy and collect any property tax from the petitioner as the decree of the Court is to the said effect. It is not known as to why the respondent corporation has not preferred any first appeal against the said decisions though it is seen from the judgment that in the both suits the corporation had contested the very maintainability of the suits.

3. Be that as it may, the decree of a Civil Court cannot nullify a statutory provision, namely, the enactment which governs the respondent corporation. In terms of the Salem City Municipal Corporation Act, the respondent corporation is empowered to assess, levy and collect property tax in respect of all buildings falling within its territorial jurisdiction. At best, the Courts have found fault with the manner and method of assessment, but cannot permanent by injunct the respondent corporation from assessing a property to tax for the reasons set out by the petitioner/plaintiff. Therefore in my considered

view, at best, the decrees can be read to mean that the enhancement, levy and collection as proposed in the respective notices were not sustainable. If such interpretation is held to be proper interpretation, then obviously the respondent corporation should be granted permission to re-assess the property in accordance with law. However, such direction has not been given by the Civil Court. Therefore, the Court suggested to the learned counsels on either side that a via media has to be struck in the matter as the petitioner is bound to pay property tax for the building owned by them and the respondent was also legally bound to collect correct rate of tax and there shall not be any abnormal fixation of property tax.

4.With that view of the matter, certain suggestions were made to the learned counsels on either side and Mr.A.M.Kumar, Assistant Revenue Officer of the respondent corporation is present today before this Court along with the original files. Thus, to give a quietus to the entire matter, this Court is of the view that the following order would meets the ends of justice and it will not only protect the interest of revenue but also protect the interest of the writ petitioner. In the light of the above, the impugned notice is set aside with the following directions:

1. The petitioner shall pay property tax at the rate of Rs.10,000/- per half year from the assessment year I/2004-2005 to II/2007-2008.
2. The petitioner shall pay property tax at the rate of Rs.15,000/- per half year from the assessment years I/2008-2009 to II/2011-2012.
3. The petitioner shall pay property tax at the rate of Rs.20,000/- per half year from the assessment years I/2012-2013 to II/2014-2015.
4. The petitioner shall pay property tax at the rate of Rs.25,000/- per half year from the assessment years I/2015-2016 to II/2017-2018.

5.The respondent corporation is directed to workout the amount of tax payable by the petitioner in accordance with the above order and serve a demand notice on the petitioner. Further, while issuing a demand notice, the respondents should give credit to the tax already remitted. On receipt of the demand notice, the petitioner is granted six months time to clear the arrears, but shall clear the property tax for the current year, namely, 2016-2017 and 2017-2018, within a period of six weeks from the date on which the demand notice is received. It is made clear that this order shall not be treated as precedent and it has been passed in the peculiar circumstances of the case, more particularly, because the respondent corporation has not been diligent enough to prosecute the matter before the Civil Court nor filed any appeal against the decrees obtained by the petitioner. In a way, the above order will also protect the petitioner as the property would be now properly taxed. It is also made clear that if the petitioner complies with the above order, the respondent shall not initiate any coercive action or prosecution against the petitioner.

6. In the result, the writ petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

18.12.2017

Index : Yes/No

Internet : Yes/No

dna/cse

To

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T.S.SIVAGNANAM, J.

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