IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.01.2017

Pronounced on : 10 .02.2017

Coram

The Hon'ble Mr. JUSTICE P.N.PRAKASH

Writ Petition No. 7357 of 2003
and W.P.M.P.No.9486 of 2003

Jayaramaiah ...Petitioner

-Vs-

The Commissioner
Hosur Municipality
Hosur ...Respondent

Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorarified mandamus to call for the records on the file of the respondent and his proceedings No.Nil and dated 10.02.2003 and quash the same as illegal, incompetent and without jurisdiction to further direct respondent to assess the building situated at Door No.27, Old Bus Stand, Hosur, in accordance with the Tamil Nadu District Municipalities Act, 1920.

For Petitioner : Mr.P.Subbareddy

For Respondent : Mr. V.Jayaprakash Narayanan
Spl. Government Pleader

O R D E R

Challenging the distraint proceedings initiated by Hosur Municipality, this writ petition has been preferred.

2. The petitioner is the owner of the building bearing Door No.27 Old Bus stand, Hosur and is liable to pay property Tax to the Hosur Municipality as required under the Tamil Nadu District Municipalities Act, 1920. The Municipality demanded property tax from the petitioner to the tune of Rs.1,70,097/- for the period commencing from 1988-1989 to 2002-2003. The Municipality also issued distraint notice dated 11.01.2001 for the period from 1988-1989 to 2000-2001 (second half year).

3. The petitioner gave a representation dated 16.01.2001 to the Commissioner Hosur Municipality, in which, he has stated that he is liable to pay tax only for 3 years namely 1998-1999 to 2000-2001 and that he need not have to pay the property tax for the period prior to 1998-1999. The Commissioner, Hosur Municipality, by order dated 27.02.2001, considered the contention raised by the petitioner and has negatived the same by relying upon G.O.Ms.No.43 dated 12.02.1996, according to which, the limitation period is said to have been increased from 3 years to 6 years. Thereafter, there has been exchange of communications between the petitioner and the Municipality and a further demand notice dated 10.02.2003 was issued, challenging which, the petitioner has filed the present writ petition and obtained an interim injunction on 07.03.2003, which was subsequently made absolute on 20.04.2010 restraining the Municipality from proceeding with the distraint proceedings relating to the distraint notice dated 10.02.2003. Thereafter, the petitioner appears to have paid Rs.75,000/- by cheque dated 13.02.2003 to the Municipality towards the arrears of property tax. The Commissioner of Municipality, by his communication dated 18.02.2003, has acknowledged the receipt of the cheque for Rs.75,000/-, but has insisted upon the petitioner to pay the balance amount of Rs.89,836/-. In the communication dated 18.02.2003, sent by the Commissioner of Hosur Municipality, he has also determined the total tax payable by the petitioner at Rs.1,70,097/- commencing from 1993-1994 to 2002-2003 (11 years).

4. It is the contention of Mr.P.Subbareddy, learned counsel for the petitioner that the Municipality cannot claim tax for 11 years and that under Section 345 of the District Municipalities Act, as it stood in the year 2003, the tax can be claimed only for a period of 3 years.

5. Mr. N. Subbarayalu, learned counsel for the respondent produced G.O.Ms.No.43 Municipal Administration and Water Supply Department dated 12.02.1996 and submitted that the limitation period has been extended to 6 years. It may be relevant to extract paragraph No.2 of the Government Order.

> "2. After careful examination, the Government have agreed to the proposal of the Director of Municipal Administration and decided to enhance the 3 years limitation period described in Section 345 of the Tamil Nadu District Municipalities Act to 6 years as provided in Tamil Nadu Panchayat Act, 1994 and the Madurai City Municipal Corporation Act, 1971."

6. This Court gave its anxious consideration to the rival submissions.

7. To appreciate the rival contentions, it may be necessary to extract Section 345 of the Tamil Nadu District Municipalities Act, 1920 as it stood in the year 2003, and it reads as follows:

> "345. Limitation for recovery of dues:- No distraint shall be made, no suit shall be instituted and no prosecution shall be commended in respect of any sum due to the municipal council under this Act, after the expiration of a period of three years from the date on which distraint might first have been made, a suit might first have been instituted, or prosecution might first have been commenced, as the case may be, in respect of such sum."
> (emphasis supplied)

8. On a reading of the above provisions, it is crystal clear that any distraint proceedings should be initiated within three years from the date on which it might have first been commenced. The provisions of Section 345 of the Tamil Nadu District Municipalities Act, came up for consideration in Municipal Council of Trichinopoly vs. Ratnam Pillai (deceased) and others [1935 LW 457], wherein, it was held as under:

> "The lower Courts held that S.345 of the District Muncipalities Act provides the period of limitation applicable for this class of cases and as the suit has been admittedly instituted beyond three years from the date of the cause of action the suit was barred. The learned counsel's argument is that, with respect to the property tax, since a charge has been declared by the Act itself, S.345 does not apply and the general provision contained in Ar.132 applies, and S.345 could apply only when personal remedy is sought to be enforced against the owner of the property. Having regard to the words of the section, I do not think the distinction made by the learned counsel can be accepted. There can be no doubt that the sum claimed is due from the defendants to the Municipal Council and the suit is therefore in respect of the sum due to the municipal Council under the Act. Having regard to the words of S.345, the suit falls clearly within its scope. . . "

9. Subsequently, in Roshan Chinna Minulla Hussain Sahib vs. the Municipal Council, Adoni by its Commissioner A. Raghava Reddi [1945 LW 612], it was held as under:

> "Two questions have been argued by Mr. Srinivasa

> Rao in this Revision Petition: (1) Whether the claim for assessment by the Municipal Council for the year 1930-31 is barred by limitation and (2) whether the claim for the subsequent years 1931-32 and 1932-33 is illegal on the ground that the land is agricultural land. The lower Court held that the claim was not barred by limitation on the ground that notice of demand was served on the 18th March 1931 and the suit was instituted within three years from the said date. The learned Judge took the view that under S.345, the period of three years runs from the date on which distraint might first have been made. It seems to me that this view is unsound. Under S.86 of the District Municipalities Act which governs this case, the property tax shall be paid by the owner of the assessed premises within 30 days after the commencement of the half year. So under this section, the petitioner should have paid the amount due for the first half year within the 1st May 1930 and the amount due for the second half year within the 1st November 1930. Under S.345 the period of limitation for a suit to recover the said sum is three years from the date when a suit might first have been instituted. In this case, a suit might first have been instituted on the 1st May 1930 or 1st November 1930 and three years having elapsed from that date, the claim is admittedly barred by limitation. . . ."

10. In K.R. Santharam vs. The Commissioner, Madurai City Municipal Corporation [2000 (I) CTC 518], Section 483 of the Madurai City Municipal Corporation Act which is in pari materia with Section 345 of the District Municipalities Act, with a slight variation, viz., that the period fixed in Section 483 is 6 years, came up for consideration, wherein, it was held as under:

> "7. . . . A reading of the above provisions makes it clear that if the tax payable is determined and due, it is open to the respondent to recover the same within a period of six years and after expiry of such period, it is not open to the respondent to recover the said due. This is clear from Section 483 of the Act."

11. The learned counsel for the respondent relied upon G.O.Ms. 43, Municipal Administration and Water Supply Department dated 12.02.1996 and contended that the period of 3 years has been extended to 6 years.

12. On a close scrutiny of the said Government Order, it is seen that the Government had made a recommendation to the Legislature to extend the period in Section 345 from 3 years to 6 years. But, the same was not accepted by the Legislature then, as could be seen from the Tamil Nadu Municipal Laws (Third Amendment) Act 2008 (Tamil Nadu Act 36 of 2008), which came into effect from 25.06.2008 vide G.O. Ms.No.116, Municipal Administration and Water Supply Department. The Third Amendment Act did not amend Section 345. Only subsequently, in the year 2008, Section 345 was amended and the period of 3 years was extended to 12 years.

In the result, this writ petition is allowed and the claim of the respondent municipality of property tax prior to 1998-1999 is hereby set aside. No costs. Connected W.P.M.P. is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi/cad

To

The Commissioner
Hosur Municipality
Hosur

+1cc to Mr.Subba Reddy, Advocate, S.R.No.5519
+1cc to Mr.Jayaprakash Narayanan, Advocate, S.R.No.5255

PK(CO)
RS(23/02/2017)