IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2017

CORAM:

The Hon'ble Mr. Justice S.VAIDYANATHAN

Writ Petition No.26268 of 2003
and
W.P.M.P.No.32160 of 2003

S.A.Rajan
Proprietor,
National Publicities &
National Out Doors,
228, Nehtaji Road,
III Floor, Madurai 625 001. ... Petitioner

Vs.

1. The District Collector,
Dindigul District,
Dindigul.

2. The Commissioner,
Dindigul Municipality,
Dindigul.

3. The Assistant Director of Panchayats,
Dindigul District at Dindigul. ... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying this Court for issuance of Writ of Certiorarified Mandamus to call for the records of the first respondent in ROC No.5640/02/B1, dated 15.06.2003 quash the same and direct the respondents to consider the representation of the petitioner for payment of taxes for the hoardings mentioned in the representation through telegram dated 05.04.2003 as ordered by this Court in W.P.No.10845 of 2003 and W.P.M.P.No.13668 of 2003 dated 22.04.2003.

For Petitioner : Mr.A.Sasidharan

For Respondents : Mr.K.V.Dhanapalan,
Special Government Pleader
for R.1 and R.3
Mr.P.Srinivas for R.2

ORDER

The petitioner has come forward with the writ petition challenging the order passed by the first respondent in ROC No.5640/02/B1, dated 15.06.2003, to quash the same and direct the respondents to consider the representation of the petitioner for payment of taxes for the hoardings mentioned in the representation through telegram dated 05.04.2003 as ordered by this Court in W.P.No.10845 of 2003 and W.P.M.P.No.13668 of 2003 dated 22.04.2003.

2. The brief facts of the case are as follows:

The petitioner was engaged in the business of Outdoor advertisements for more than twenty years. He had put up nearly 200 hoardings in the Districts of Madurai, Ramnad, Thirunelveli, Tuticorin and Kanyakumari District through which, he has given employment for nearly 25 persons, namely for the work of carpenters, atrists and for erection of the hoardings. He has also paid the tax to the State Exchequer for the hoardings put up by him. He had erected hoardings only in patta land after entering into necessary Lease-cum-Rental Agreement with the concerned owners of the land, where such hoardings are erected and he is paying taxes as and when any demand of tax has been raised by the respective local bodies. Though necessary taxes have been paid by the petitioner, the third respondent issued a notice in Na.Ka.No.5648/02 B1, dated 25.08.2003 to him informing him to remove 54 hoardings i.e, 7 hoardings in Municipal areas and 47 hoardings in rural areas, which have been erected before 31.08.2003. Hence, the petitioner filed W.P.No.10845 of 2003 and the same was disposed of on 22.04.2003 directing the respondents to consider the objections and the representation of the petitioner. But, the respondents without considering his representation, passed an impugned order dated 15.06.2003. Hence, the petitioner has come forward with this petition.

3. Mr.A.Sasidharan, learned counsel for the petitioner submitted that the petitioner had erected number of advertisement hoardings in Dindigul and other Districts and such hoardings are in existence for more than 18 months at Genguwarpatti Panchayat area and for more than three years in other areas. The petitioner erected all the hoardings only in the patta lands of private individuals on annual Lease-cum-Rental basis. The petitioner invested huge amount of money in erecting the hoardings and the hoardings erected by him are neither hazardous nor a disturbance to safe traffic movements and none of his hoardings in any area has adversely affected free and safe flow of traffic.

4. The learned counsel for the petitioner further submitted that the authorities concerned, without any justifying reason,

started disturbing the hoardings through the local authorities and the third respondent has also removed some of the hoardings without citing any reason and they were damaged beyond any repair. Due to such harsh and unjust action taken by the third respondent against the petitioner, the petitioner incurred heavy loss. Hence, he approached the first respondent to give necessary instructions to the respective panchayats to levy requisite tax and he has also submitted that he is willing to pay tax as and when demanded by the said panchayats.

5. Moreover, the learned counsel for the petitioner submitted that, in the meantime, the second and third respondents, through their subordinates, have taken action to remove the other hoardings. Hence, the petitioner sent a telegram on 05.04.2003 informing the removal of seven hoardings and also about the apprehension in respect of removal of 47 other hoardings. But, there is no response from the respondents 2 and 3 in this regard.

6. The learned counsel for the petitioner further submitted that the petitioner was informed of the removal of 54 hoardings, i.e., 7 hoardings in municipal areas and 47 other hoardings in rural areas before 31.08.2003 and after removing the said 54 hoardings, he can apply for necessary licence. Hence, the petitioner, left with no other option, filed W.P.No.10845 of 2003 for issuance of a writ of Mandamus forbearing the respondents from removing and interfering with the hoardings put up by the petitioner i.e., the National Publicities and National Outdoors in Dindigul District along with W.P.M.P.No.13668 of 2003 for interim injunction. This Court, after hearing both sides, passed the order on 05.04.2003 in W.P.M.P.No.13668 of 2003 in W.P.No.10845 of 2003 and the same is extracted hereunder:

> "The learned counsel for the petitioner submits that merely because the hoardings are visible from the public road does not necessarily mean it is hazardous and unless it is hazardous, the respondents shall not remove the hoardings put by the petitioner. Therefore, he submits that there is no material to show that the hoardings referred to in the writ petition were hazardous. But, the respondents have removed seven hoardings and threatened to remove the other hoardings mentioned in the writ petition.
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> 2.The learned Special Government Pleader submits that the hoarding are in the gut road and hence caused risk to the vehicle traffic and that is why they were removed.

3.Post on 22.04.2003 for filing counter. In the meantime, the hoardings mentioned in the telegram public representation dated 5.4.2003 shall not be removed. It is also open to the respondents to consider the telegram as representation made by the petitioner and to pass orders thereon and the pendency of the writ petition shall not stand in the way."

7. Again, when the said writ petition was posted on 22.04.2003, this Court passed the following order:

"The writ petition relates to hoardings belonging to the petitioner.

2.According to learned Special Government Pleader appearing for the respondents, the hoardings are on the "ghats" road and causes hazard to vehicular traffic. Learned counsel for the petitioner pointed out that merely because the hoardings are visible from public road, it does not necessarily mean they are hazardous and unless they are hazardous, the respondents shall not remove the hoardings put up by the petitioner.

3.The petitioner has also given a representation to the first respondent on 05.04.2003, stating the reasons as to why the hoardings belonging to the petitioner shall not be removed. The main objection is that the hoardings do not pose any hazard to traffic and also that the hoardings are all in private lands.

4.The respondents shall consider the objections and the said representation of the petitioner and pass orders, after giving an opportunity to the petitioner and take action thereafter. Until the respondents pass orders on the said representation given by the petitioner, the hoardings shall not be disturbed. Time for disposing of the said representation is six weeks from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. No costs. Consequently, W.P.M.P.No.13668 of 2003 is closed."

8. It is further submitted that pursuant to the orders of this Court mentioned supra, the first respondent herein sent a letter dated 20.05.2003 calling upon the petitioner and the Commissioner, Dindigul Municipality as also the second respondent to appear for an enquiry on 02.06.2003. Accordingly,

the petitioner appeared for the enquiry and submitted a written representation requesting the first respondent to grant permission to pay necessary taxes as applicable to the hoardings erected by him in Dindigul District. But, the first respondent, without considering the terms of the order passed in W.P.No.10845 of 2003, by his proceedings dated 15.06.2003, rejected the representation of the petitioner on the ground that the petitioner has not applied for licence along with necessary documents as per the existing Acts and Rules and only after issuance of such licence, the question of payment of taxes would arise. In the absence of licence, the petitioner should not have erected the hoardings and the hoardings erected by the petitioner are in violation of the existing Rules and hence, the first respondent advised the petitioner to remove all the existing hoardings erected without licence.

9. The learned counsel for the petitioner further submitted that though the order of rejection was passed by the first respondent, to show his bona-fides, the petitioner again approached him and submitted a formal application dated 15.07.2003 along with all relevant documents for granting permission to pay necessary taxes and to grant provisional permission to erect the hoardings in Dindigul District. But, the first respondent, by his proceedings dated 25.08.2003 informed the petitioner to remove 54 hoardings i.e., 7 hoardings in municipal area and 47 other hoardings in rural areas. Though the petitioner is willing to pay the necessary taxes by producing the documents, the first respondent passed the impugned order dated 15.06.2003 rejecting the request of the petitioner and the same is illegal and unwarranted. Hence, the petitioner, left with no other alternative remedy, has filed the present writ petition.

10. Per contra, the learned Special Government Pleader appearing for respondents 1 and 3 has submitted that the petitioner erected hoardings at Tiruchy Road and one at Spencer Compound, Dindigul. But, the petitioner has not made any application in Form No.I for obtaining provisional permission from Dindigul Municipality before erecting the hoardings as provided under Rule 3 of the Tamil Nadu Urban Local Bodies Licencing of Hoarding and Levy and collection of Advertisement Tax Rules. The petitioner has never paid any licence fees or furnished any plan of the hoardings to be put up indicating the height and other dimensions and the material proposed to be used as approved by a qualified Engineer and he has not obtained No Objection Certificate from the owner of the land where the hoardings are to be erected in a private Land. According to the respondents, the Municipal Administration and Water Supply Department, Chennai has issued a D.O. letter dated 15.06.2001, which reads as follows:

"The Government are examining the various Provisions of the Tamil Nadu Municipal Laws Amendment Act (Act 51 of 1998) and the Rules framed thereunder for grant of Licence to the Hoardings. Pending such examination all Commissioners of Corporations, Municipalities and Executive Officers of all Town Panchayats are directed to defer the consideration of the applications filed before them for grant of licence to the Hoardings until further orders."

11. Moreover, the petitioner has not made any application to the Dindigul Municipality for erecting the hoardings. From the above, it is clear that the petitioner has not applied for licence for erecting the hoardings within the Dindigul Municipal Limits and other places. Hence, the Dindigul Municipality has taken necessary legal steps for removal of the hoardings put up by the petitioner. As the petitioner erected the hoardings unlawfully, nothing needs to be looked into in this writ petition and the hoardings erected by the petitioner are illegal and the same were in existence for more than 18 months or two years. Hence, the erection of hoardings without getting proper licence, is in violation of the provisions. Therefore, the question of setting aside the demand for payment of tax, does not arise. Hence, the writ petition has to be dismissed.

12. This Court considered the submissions made by the learned counsel for the petitioner, the learned Special Government Pleader appearing for respondents 1 and 3 and the learned counsel appearing for the second respondent.

13. It is useful to extract the impugned order dated 15.06.2003 passed by the first respondent:

"As per the High Court directions, the petitioner and the respondents were called for to appear an enquiry on 02.06.2003 regarding removal of 47+7 hoardings erected in Rural and Municipal areas.

Accordingly, enquiry was conducted on 02.06.2003. The petitioner and respondents appeared for enquiry. The petitioner gave a representation requesting to give permission to pay taxes for 47 hoardings erected in Rural areas and 7 in Municipal areas.

But the petitioner has not applied for licence along with necessary documents as per, existing Acts and Rules. Only after licence is issued, the question of payment of taxes arise. In the absence of licence, the petitioner should not have erected hoardings and is in violation of existing rules.

Hence, the petitioner's request to levy taxes is rejected. The petitioner is advised to remove all the existing hoardings erected without licence."

14. On a perusal of the impugned order dated 15.06.2003, it is seen that the petitioner has violated the various provisions of the Tamil Nadu Municipal Laws Amendment Act (Act 51 of 1998) and Rule 3 of the Tamil Nadu Urban Local Bodies Licencing of Hoardings and Levy of collection of Advertisement Tax Rules. The petitioner wantonly evaded paying taxes for a period of more than 21 years. Though the interim order and final orders have been passed by this Court in W.P.No.10845 of 2003 and W.P.M.P.No.13668 of 2003, the petitioner has not come forward to pay the tax and he did not take any action to get licence for the erected hoardings for the past 14 years, but the petitioner enjoyed the benefit of the order. As there is no merit in the writ petition and as the petitioner has no case, this writ petition is liable to be dismissed. Accordingly, this writ petition is dismissed with costs. Consequently, connected W.P.M.P. is closed.

15. It is needless to state that the petitioner has clearly violated various provisions of the Tamil Nadu Municipal Laws Amendment Act (Act 51 of 1998) and Rule 3 of the Tamil Nadu Urban Local Bodies Licencing of Hoardings and Levy of collection of Advertisement Tax Rules and the petitioner is enjoying the benefit of the order passed in W.P.No.10845 of 2003 and W.P.M.P.No.13668 of 2003. Hence, the petitioner has to pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) as costs to Sivananda Gurukulam, Kattangulathur, Kancipuram.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

cla

To

1. The District Collector,
   Dindigul District,
   Dindigul.

2. The Commissioner,
   Dindigul Municipality,
   Dindigul.

3. The Assistant Director of Panchayats,
   Dindigul District at Dindigul.

Copy To

The Correspondence Seat,
Current Section,
High Court, Madras 104.

+1cc to Mr.P.Srinivas, Advocate, S.R.No.50863
+1cc to Mr.A.Sasidharan, Advocate, S.R.No.50404

W.P.No.26268 of 2003

CS V
CA(08/09/2017)