IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 27.01.2017

DELIVERED ON: 10.02.2017

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

W.P.No.16552 of 2003 & WMP No.20728 of 2003

A.Kuberan .. Petitioner

Vs.

The Commissioner
Villupuram Municipality
Villupuram .. Respondent

Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent herein relating to the notice dated 15.5.2003 and the proceedings in Na.Ka.No.3988/2003/A2 dated 22.5.2003 relating to the property tax Assessment Nos.9421 to 9434 and 9471 and quash the same and forbear the respondent from demanding, collecting or seeking to enforce the demand for property tax which has become time-barred by operation of law.

For Petitioner	..	Mr.AR.L.Sundaresan, Senior Counsel for Mrs.A.L.Gandhimathi
For Respondent	..	Mr.V.Jayaprakash Narayanan Special Government Pleader

ORDER

Challenging the distraint proceedings initiated by Villupuram Municipality, this Writ Petition has been preferred.

2. The factual matrix of the case is as under:

a. A.Kuberan (petitioner herein) is the owner of a property, a residential building, bearing Door No.1, Chairman Govindaraj Street (line houses) in Villupuram falling within the limits of Villupuram Municipality. There are 14 distinct residential portions in the said building, which have been individually assessed to property tax. Each of the portions was given a distinct door number, viz., Door Nos.1/1, 1/2, 1/3, 1/4, 1/5, 1/6, 1/7, 1/8, 1/9, 1/10, 1/11, 1A and 2A. Apart from this building, Kuberan owns another property, bearing Door No.9, Chairman Rajamanickam Street. Since Kuberan had defaulted in payment of property tax in respect of the aforesaid door numbers, the Villupuram Municipality issued a distraint notice on 15.5.2003, calling upon him to pay a total sum of Rs.1,60,554/-, towards the arrears of property tax for the period from 1993-94 to 2002-03, i.e, for a period of 9 years. For each door number, in respect of Door Nos.1/1 to 1/11, Chairman Govindaraj Street, the arrear of property tax from 1993-94 to 2002-03 was determined at Rs.9686/- and in respect of Door No.1A and 2A, Chairman Govindaraj Street, the arrears of property tax for the said period was determined at Rs.15,917/- and Rs.19,520/- respectively. As regards the property at Door No.9. Chairman, Rajamanickam Street, the arrears of property tax for the period from 1993-94 to 2002-03 was determined as Rs.8,885/-. Hence, the total claim was quantified as Rs.1,60,554/-.

b. Kuberan received the distraint notice and gave a representation dated 21.5.2003 to the Municipality stating that the Municipality cannot claim arrears of tax for a period beyond three years and after saying so, he paid Rs.69,408/- for the period from 2000-2001, 2001-02 and 2002-03. The Municipality accepted the payment of Rs.69,408/- tendered by Kuberan, but reckoned it for the period from 1993-94, 1994-95 and 1995-96 and claimed the balance amount of Rs.91,146/- by the impugned order dated 22.5.2003, challenging which Kuberan is before this Court.

3. Heard Mr.AR.L.Sundaresan, learned senior counsel appearing for Mrs.A.L.Ganthimathi, learned counsel on record for the petitioner and Mr.V.Jayaprakash Narayanan, learned Special Government Pleader for the respondent.

4. Mr.AR.L.Sundaresan, learned senior counsel placed strong

reliance upon Section 345 of the Tamil Nadu District Municipalities Act as it stood in the year 2003 and submitted that the petitioner was liable to pay the property tax only for the period of three years, i.e., 2000-01, 2001-02 and 2002-03, which he has already paid on 21.5.2003 and the demand made by the Municipality is therefore illegal.

5. Mr.V. Jayaprakash Narayanan, learned Special Government Pleader controverted the above submissions.

6. 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 commenced 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)

7. 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. . . "

8. 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. . . . "

9. 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."

10. The learned Special Government Pleader 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.

11. 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 2000-2001 is hereby set aside. No costs. Connected W.P.M.P. is closed.

10.02.2017

ajr/cad

P.N.PRAKASH, J.

ajr/cad

To

The Commissioner
Villupuram Municipality
Villupuram

W.P.No.16552 of 2003

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