BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD)No.20259 of 2015
and
M.P(MD)No.1 of 2015

M.Sahila Banu ... Petitioner

Vs.

1.The Commissioner,
Thoothukudi Municipal Corporation,
Thoothukudi.

2.Integrated Child Development Project Officer,
ICDS Project,
Thoothukudi-3. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling the Impugned Order passed by the first respondent in Na.Ka.No.A1/2254/Mae.Ma, dated 29.10.2015, served on 02.11.2015 and to quash the same as illegal and consequently restore the assessment in the name of the petitioner in Assessment No.938001, in respect of T.S.No.3739, Doovipuram 5th Street, Thoothukudi.

For Petitioner : Mr.A.Selvendran
For R1 : Mr.S.Saji Bino

******

O R D E R

This writ petition has been filed, seeking to quash the impugned order dated 29.10.2015, passed by the first respondent, served on 02.11.2015 with consequential direction to restore the assessment in the name of the petitioner in Assessment No.938001, in respect of T.S.No.3739, Doovipuram 5th Street, Thoothukudi.

2. The case of the petitioner is that the vendor of the petitioner had already paid the entire tax in respect of the land in S.No.3739, which was accepted by the first respondent Municipality and the first respondent had also received the cheque given by the vendor of the petitioner dated 05.11.2002 to the tune of Rs.28,188/- and made entry in the Cheque Register of the Municipality, which itself would prove the title of the petitioner. Subsequently, the petitioner submitted an application

before the first respondent to give tax assessment over the property in Survey No.3739, to the extent of 10.266 cents, purchased by a virtue of sale deed dated 04.12.2001. After thorough enquiry, though the first respondent had initially given assessment for the property in S.No.3729 vide Assessment No.938001 and the petitioner also paid tax for the land upto the Assessment year 2015-2016, the first respondent, without issuing any notice, based on the complaint given by the Councilor of the first respondent municipality and relying upon the order in W.P.(MD). No.15746 of 2012 passed the impugned order cancelling the assessment issued in the name of the petitioner. Aggrieved by the same, the petitioner is before this Court, challenging the correctness of the impugned order in this writ petition.

3. Heard the learned counsel appearing for both parties and perused the records available carefully.

4. Though several points have been urged by the petitioner in the affidavit filed in support of this petition to challenge the impugned order, the main ground canvassed by the petitioner is that the impugned order has been passed without giving an opportunity of hearing to the petitioner, thereby there is violation of principles of natural justice and therefore, on that sole ground, the impugned order is liable to be set aside.

5. The learned Standing Counsel appearing for the first respondent is not in a position to refute the aforesaid submission.

6. It is needless to state here that before passing an order, the principle of *audi alteram partem* should be applied, even though there are no positive words in the Statute, requiring that the party should be heard, as the principles of natural justice are in-built in quasi judicial proceedings. It is also not the case of the 1st respondent that the petitioner has been given due notice before issuance of the impugned order and therefore, on this sole ground, the impugned order is liable to be set aside.

7. In the result, this writ petition is allowed. The impugned order dated 29.10.2015 passed by the first respondent is set aside and the matter is remitted to the first respondent for fresh consideration and it is open to the first respondent to pass orders afresh with regard to assessment, if so advised, after affording an opportunity of hearing to the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To:

The Commissioner,
Thoothukudi Municipal Corporation,
Thoothukudi.

+One cc to M/s.S.Saji Bino, Advocate, SR.No.80220

rm
RL/3C/2P/SV/MMS/SAR2/6/10/2017

W.P(MD)No.20259 of 2015

21/09/2017