BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 10.03.2017

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P(MD)No.4298 of 2011
and
M.P(MD)No.1 of 2011

N.Manonmani ..Petitioner

.vs.

1.The Commissioner,
Virudhunagar Municipality,
Virudhunagar.

2.The Municipal Chairman,
Virudhunagar Municipality,
Virudhunagar. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned notice issued under Schedule IV Rule 29 of the Tamil Nadu District Municipalities Act, 1920 by the first respondent, dated 16.3.2011 to the Petitioner that was received by her on 25.3.2011 and to quash the same and further to direct the respondents to fix property tax of the Petitioner's house taking as one unit and by adopting the contemplated procedures under the Tamil Nadu District Municipalities Act, 1920 and Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act.

For Petitioner : M/s.S.Natarajan

For Respondent-2 : Mr.S.Kumar
Addl..Govt.Pleader
For Respondent-1 : M/s.M.Muthugeethaiyan

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned notice issued under Schedule IV Rule 29 of the Tamil Nadu District Municipalities Act, 1920 by the first respondent, dated 16.3.2011 to the Petitioner that was received by her on 25.3.2011 and to quash the same and further to direct the respondents to fix property tax of the Petitioner's house taking as one unit and by adopting the contemplated procedures under the Tamil Nadu District Municipalities Act, 1920 and Section 4 of the Tamil Nadu Buildings (lease and Rent Control) Act.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.The Petitioner has challenged the demand notice issued by the respondents/Municipality for arrears of property tax, dated 16.3.2011. According to the Petitioner, the said notice has been issued without following the procedure prescribed under the District Municipalities Act for assessment of the property tax. The following facts are not in dispute.

4.The Petitioner had a old house in the land in question. The said house was assessed at Rs.446/- as half-yearly tax. During the year 1998-99, the Petitioner demolished the old house and put up a new construction. The Engineer who had constructed the house had submitted the Completion Report to the Commissioner, Virudhunagar Municipality on 10.11.1999, Thereupon, the Municipality re-assessed the Petitioner's building with two door numbers and the ground floor was assessed tax at Rs.1,406/- per year and i.e., at Rs.703/- per half year. The first floor was assessed with tax at Rs.1,830/- ie. at Rs.915/- per half-year and the total tax payable was fixed at Rs.3,236/- per year. It appears that the Petitioner had accepted the said assessment and had paid the tax till 2007-08. In the general revision made in the year 2008, the property tax was enhanced by 20% of the existing tax which resulted in the tax for the ground floor being enhanced to Rs.1,688 from Rs.1,406/- and the tax for the first floor was enhanced to Rs.2,196/- from Rs.1,830/-.The total tax payable was Rs.3,884/-after its enhancement. The petitioner addressed a letter to the first respondent on 29.12.2008 objecting to the said enhancement. It should be pointed out at this juncture that there is nothing on record to show that the Petitioner questioned the fixation at Rs.703/- per half-year for the ground floor and at Rs.915/- per half-year for the first floor, during the year 2001-02. It is very clear from the letter, dated 29.12.2008 addressed by the Petitioner to the first respondent, that she has admitted that the assessment was made in the year 2001-02 and she also paid the tax upto 2008. The said request. Only, after the enhancement was made during the general revision during 2008, she woke up and started objecting to the enhancement. She had requested for reduction of tax on 29.12.2008. The said request was rejected by the Commissioner and after hearing the Petitioner. An order of rejection was passed on 19.01.2009. It is stated that as against the said order of rejection, dated 19.1.2009, the Petitioner has preferred an appeal to the Taxation Appeal Committee, consisting of a Chairman of the Municipality and one council member, dated 21.02.2009.

5.The learned counsel for the Municipality would state that the appeal is not accompanied by mandatory pre-deposit required under Rule 26(b) Schedule IV of the District Municipalities Act, 1920. Thus, it is clear that the Petitioner has not challenged the original assessment for the year 2001-02. The present demand notice issued is only seeking to recovery of tax that has been enhanced during the general revision, wherein, the tax has been enhanced by 20% of the old tax. The Petitioner has not questioned the assessment made in the year 2001-2002, wherein, the tax was fixed afresh. I do not think the Petitioner can now question the assessment made in the year 2001-2002. It is not shown by the Petitioner that the assessment made in the year 2001-02 was ever questioned by her. The letter, dated 29.12.2008 clearly states that upon her request only, the tax was reduced by some percentage. Therefore in my considered opinion, the Petitioner has accepted the assessment made during the year 2001-02. She cannot now contend that there was no assessment and therefore the general revision cannot take place based on a non-existent assessment. It is open to the Petitioner to prosecute the appeal filed by her before the Taxation Appellate Committee under Clause 25 Schedule IV of the District Municipalities Act, 1920. I Find no merit in the Writ Petition and thus the Writ Petition fails.

6.Accordingly, the Writ Petition stands dismissed. Consequently, connected Miscellaneous Petition is dismissed. No costs.

Sd/-
Assistant Registrar(Co)

/True copy/

Sub Assistant Registrar

To

1.The Commissioner,
Virudhunagar Municipality,
Virudhunagar.

2.The Municipal Chairman,
Virudhunagar Municipality,
Virudhunagar.

+1 cc to Mr.S.Natarajan, Advocate in SR.No. 13904
+1 cc to Mr.M.Muthugeethayan , Advocate in SR.No. 13831
+1 cc to Special Government Pleader, SR.No:14070

vsn
JS/SKN/28.03.2017/3P/6C

W.P(MD)No.4298 of 2011
and

M.P(MD)No.1 of 2011
10.03.2017