IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.08.2018

Delivered on : 20.09.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD).No.2396 of 2010
and M.P.No.1 of 2010

1.E. Sengottaiah (died)
2.Indirani
3.Santhadevi
4.Sampoornam
5.Tamilselvi ... Petitioners

Vs

Erode Municipality,
Erode Town rep. by Executive Authority,
The Commissioner,
Erode Municipal Office,
Brough Road,
Erode Town. ... Respondent

(Petitioners 2 to 5 brought on record as legal representatives of the deceased sole petitioner viz., E.Sengottaiah vide Court order dated 24.07.2018 made in C.M.P.Nos.10357 to 10359 of 2018 in C.R.P.(NPD).2396 of 2010 by PTAJ).

PRAYER : Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order passed in C.M.A.No.16 of 2006 dated 19.10.2009 on the file of the learned Principal District Judge, Erode, confirming the order in proceedings of the respondent in No.A3/8/2000/9/04-05, dated 11.04.2005.

For Petitioners : Mr.V.S. Kesavan

For Respondent : Mr.M.Rajamathivanan

ORDER

The above Civil Revision Petition is filed challenging the order of the learned Principal District Judge, Erode, dated 19.10.2009 in C.M.A.No.13 of 2006 in and by which the learned Judge had dismissed the Civil Miscellaneous Appeal as not maintainable for non deposit of the enhanced property tax at the time of the filing of the appeal.

2.The facts in a nutshell relevant for the disposal of this revision petition is as follows:

(a)The revision petitioner, who is the owner of D.No.144, Annamalai Street, Erode, was slapped with an enhanced half yearly tax of Rs.854/- by the Taxation Appeal Committee, Erode, commencing from 01.10.1993 and the second half of 1993-1994 in Appeal No.A3/8/2000/9/04-05, dated 11.04.2005.

(b)The revision petitioner challenged this order before the Principal District Court, Erode, by way of the impugned appeal. The revision petitioner had raised various grounds. One of which was the revision of the property tax was in violation of the decree that the revision petitioner had obtained against the respondent in O.S.No.284 of 1982 in and by which the respondent was restrained from revising the property tax demanded for the period 01.10.1981 to 31.03.1982 from Rs.118.55p to Rs.382/-. Since the respondent had issued the notice the revision petitioner had filed a writ petition before this Court in W.P.No.3950 of 1996 and this Court by its order dated 19.11.1999 had directed him to deposit half the enhanced property and file an appeal before the Taxation Appellate Committee, Municipal Council, Erode Municipality. In compliance of the orders of this Court, the revision petitioner had filed the appeal infringed in this Civil Revision Petition.

(c)The revision petitioner had questioned the very jurisdiction of the Taxation Appeal Committee. Contending that the Committee had been formed as per the Amendment Act 65 of 1997 but the said Act had not been notified and therefore, the order passed by the Committee was without jurisdiction.

(d)The learned District Judge, Erode, was however not inclined to agree with this submission as he was of the opinion that if the order was not valid the revision petitioner would have filed a suit and not filed a CMA and the learned Judge opined that the revision petitioner was estopped from questioning the jurisdiction of the Taxation Appeals Committee. However, the learned Judge had proceeded to dismiss the CMA as not maintainable on account of the failure on the part of the revision petitioner to comply with the mandatory provision of a pre-deposit envisaged under the Act. It is aggrieved by the order that the revision petitioner is before this Court.

Submissions of the revision petitioners:

3.Mr.V.S. Kesavan, learned counsel appearing on behalf of the revision petitioner would submit that the amending Act 65 of 1997 which was the basis upon which the demand had been made had not been notified by the Government and has therefore not come into effect. He produced the Judgments reported in

(a) 2008 (1) CTC 812 (DB)
Thanjavur District Marriage Hall Owners Welfare Association, Kumbakonam v. The Commissioner, Kumbakonam Municipality and others.

and

(b) 2008 (2) CTC 737
The Kuzhithurai Municipality rep. By its Commissioner v. The Secretary Kanyakumari Diocese (CSI), Nagercoil.

Discussion:

4.A perusal of above decision would clearly show that the order of the Taxation Appeals Committee, Erode, is without jurisdiction as the enhancement has been done invoking the Amending Act 65 of 1997 which had not been notified by the Govenrment.

5.The decision in the Kuzhithurai Municipality case supra, is akin to the instant case. The learned Judge therein had held that under Section 23-A, inserted by Act 16 of 1989, the Taxation Appeals Committee, remained in the statute although Act 65 of 1997 was not notified. The only issue which caused difficulty on account of the Act 65 of 1997 not being notified was the remedy available to a Tax Payer who is aggrieved by an order passed by the Committee. The learned Judge observed as follows:

> *"In view of the decision of the Hon'ble Supreme Court as above and the fact that the Amending Act 65 of 1997 as amended by Act 34 of 1998 had not been notified, the judgment and decree passed by the District Court in terms of Section 89 of the Amending Act 65 of 1997 will be without jurisdiction and therefore, such an invalid order cannot be sustained."*

6.The learned Judge held that the Appeal filed before the District Court was without jurisdiction and a nullity. The parties were directed to challenge the order before a proper forum and the Forum so approached was directed to consider the question of limitation keeping in mind the provisions of Section 14 of the Limitation Act.

7.This decision applies in all fours to the instant case. The learned District Judge, Erode, was not conferred with the jurisdiction to try the appeal filed pursuant to Section 89 of the Amending Act 65 of 1997.

In the result, this Civil Revision Petition is allowed and the order of the learned Principal District Judge, Erode, dated 19.10.2009 in C.M.A.No.16 of 2006 is set aside giving liberty to the revision petitioner to approach the proper forum so advised. On such a proceeding being initiated, the Forum before which the same is initiated shall consider the question of limitation keeping in mind the provisions of Section 14 of the Limitation Act. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

20.09.2018

Index : Yes/No

Internet : Yes/No
mps

To

1.The Principal District Judge,
Erode.

2.The Commissioner,
Executive Authority,
Erode Municipality,
Erode Municipal Office,
Brough Road, Erode.

P.T. ASHA, J,

mps

Pre-Delivery Order in
C.R.P.(NPD).No.2396 of 2010
and M.P.No.1 of 2010

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