IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2018

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.31807 of 2006
and
M.P.No.1 of 2006

B.N.Sridharan (died)

1. Satish Raj
2. Sumanth Raj
3. Saran Raj ... Petitioners

(Petitioners 1 to 3 are impleaded as a petitioners instead of deceased B.N.Sridharan vide order dt. 02.11.2017)

Vs.

1. The Commissioner,
Gudiyatham Municipality,
Gudiyatham, Vellore District.

2. The Revenue Inspector (Attachment)
Gudiyatham Municipality,
Gudiyatham, Vellore District. ...Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the records pertaining to the impugned Final notice/distraint warrant and sale notice No.34094 dated 01.08.2006 pertaining to Door No.43, Goodanagam Road, Gudiyatham issued by the 1st respondent and quash the same as illegal void ultravires and arbitrary.

For Petitioner : Mr.D.Rajagopal

For Respondents : Mr.K.Ravikumar
AGP

O R D E R

This writ petition has been filed by the petitioner, challenging the impugned Final notice/distraint warrant and sale notice No.34094 dated 01.08.2006 pertaining to Door No.43, Goodanagam Road, Gudiyatham issued by the 1st respondent and to quash the same as illegal void, ultravires and arbitrary.

2.The petitioner is the owner of the house property bearing Door No.43, Goodnagam Road, Gudiyatham and has been paying the property tax regularly. During the assessment year 1993 - 1994, for 1st half a sum of Rs.629/- was paid by the petitioner and a sum of Rs.940/- was paid on 31.03.1994. For the assessment period 1993-1994 2nd half and the petitioner was paying the property tax regularly till 1998-1999 1st half.

3.Thereafter, the petitioner did not receive any demand or any notice in respect of the Municipal House Tax Assessment. Whenever the Bill Collector collects the tax from the petitioner necessary receipts were issued for the same.

4.When that being so, the petitioner was surprised to receive a notice dated 01.08.2006 from the respondents and the same was served on the petitioner on 05.08.2006, wherein the petitioner was called upon to pay the house tax arrears of Rs.25,590/- for the period from 1994-1995 to 2006-2007 1st half for 16 years within three days from the date of receipt of the said notice. Challenging the same, the present petition has been filed.

5.The learned counsel for the petitioner would submit that as per Rule 9 of Taxation and Finance Rules of Tamil Nadu District Municipalities Act and Rule 29 of the said Act also imposes a condition before pending property tax, there must be wide circulation in the locality calling for objection before enhancing the property tax. Without following the said rules, imposing a demand notice against the petitioner is also unsustainable one.

6.Accordingly, he relied upon an unreported decision of this Court dated 26.04.2013 in W.P.Nos.9537 and 9538 of 2006.

7.Per contra, Mr.K.Ravikumar, the learned Additional Government Pleader would submit that the impugned demand is not a general assessment of the property tax, present demand is a periodical enhancement of the property tax need not be issued public notice. Hence, there is no need for any general notice.

8.The learned counsel for the Respondent would further submit that though the petitioner has filed the present writ petition challenging the order of the first respondent, admittedly, there is an appeal remedy under Section 23(A) of District Municipality Act, before the Taxation Appeal Committee. Without filing the appeal before the Appellate Authority, the petitioner has filed this present writ petition which is unsustainable one.

9.Heard the learned counsel appearing for the petitioners as well as the respondents.

10.The impugned property tax arrears was passed by the first respondent for a period of 1994-1995 to 2006-2007. Wherein, the petitioner was called upon to pay the house tax arrears of Rs.25,590/- and the petitioner sent a demand draft for a sum of Rs.7,050/- and the balance amount was not yet paid.

11.However, this Court while deciding W.P.Nos.9537 and 9538 of 2006, directed the petitioner to deposit 50% of the enhanced tax. No material was placed before this Court as to whether the condition was complied with or not.

12.Be that as it may, the property tax demand notice was passed by the first respondent against non-payment of property tax. Admittedly, the first respondent has not passed any order for fresh property tax. It is only the arrears of property tax and this demand has not been passed on the general revision. It is only a periodical demand made from the year 1994-1995 to 2006-2007, wherein, the petitioner has not paid arrears of the property tax from the year 1994-1995 to 2006-2007.

13.The petitioner filed this, Writ Petition without exhausting the appeal remedy available under Section 23(A) of Tamil Nadu District Municipalities Act, hence, this Writ petition is unsustainable one.

14.Accordingly, this writ petition is disposed of with liberty to the petitioner to file an appeal before the Taxation Appeal Committee, after depositing 50% of the property tax demand including conditional amount. The conditional amount shall be calculated by verifying the records available with the Municipality. Thereafter, the Appeal Committee shall pass appropriate orders within six weeks.

15.With the above direction, this writ appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

+1cc to Mr.D.Rajagopal, Advocate, S.R.No.38079
+1cc to the Government Pleader, S.R.No.38281

W.P.No.31807 of 2006
and
M.P.No.1 of 2006

BS(CO)
CS/19/07/18