IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.04.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.24074 of 2006

S. Selvaraj

... Petitioner

Vs.

1.The Municipal Commissioner,
Tiruchengode,
Namakkal District.

2. The Municipal Commissioner,
Namakkal. ...Respondents

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent relating to the order in Pro.Na.Ka.No.A2/1155/2005 dated 25.05.2006, quash the same and issue consequential directions to refund the amount recovered, if any.

For Petitioner : Mr.M.Ravi
For Respondents : Mr. R. Govindasamy
Special Government Pleader for R1

For R2 : No appearance

O R D E R

The petitioner has filed the present writ petition against the order of the first respondent dated 25.05.2006, directing recovery of a total sum of Rs.15,541/- from his pay in 15 monthly instalments, making him responsible for non-collection of time barred tax arrears.

2. The facts leading to the filing of the writ petition are as follows:

The petitioner joined the service in the year 1977 as Market Watchman. Thereafter, he was promoted as Record Clerk and Revenue Assistant. While he was serving as a Revenue Assistant in Tiruchengode Municipality, the first respondent herein, on 30.12.2002, has issued directions to him to take charge of functions in Ward Nos.27,28, 29 and 31 and to discharge his duties and therefore, he was thereafter transferred to Rasipuram Municipality and Namakkal Municipality. While he was serving as Revenue Assistant in Namakkal Municipality, the first respondent passed an impugned order dated 25.05.2006 directing the petitioner to pay a sum of Rs.15,541/- from his pay in 15 monthly instalments stating that he failed to collect the time-barred tax arrears due to Tiruchengode Municipality.

3. Perused the materials available on record.

4. The recovery order passed by the first respondent is not sustainable, in view of the Judgment of this Court reported in W.P. No.91 of 1982, V.Nagarajan Vs. Commissioner, Salem Municipality, Salem on 21st January, 1988, the relevant portions of which are extracted hereunder:

> "Having regard to these provisions, I find it rather impossible to appreciate the stand of the Municipality as to how a Bill Collector could cause pecuniary loss to the Municipality by his failure to collect the taxes. Firstly, it does not lie within his powers to allow the recovery of taxes to become time barred. The very elaborate procedure relating to collection of taxes mentioned in paragraph 65 of Municipal Volume I would clearly indicate that it is the duty of the Executive Officer to have periodic verification of the arrears. If he had failed to do the duty and thereby the arrears of tax had become time barred for recovery, that liability cannot be passed on to the Bill Collector."

3. The Judgment of this Court cited supra squarely covers the present case on hand. Accordingly, I am inclined to grant the relief to the petitioner and the impugned order passed by the first respondent Municipal Commissioner on 25.05.2006 is set aside. The writ petition is allowed. No Costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

gv

To

1.The Municipal Commissioner,
Tiruchengode,
Namakkal District.

2. The Municipal Commissioner,
Namakkal.

+1 CC to Mr.M. Ravi, Advocate sr 25393.

W.P.No.24074 of 2006

CNR(CO)
SP(23/04/2018)