BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2018

C O R A M

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.(MD)No.4304 of 2018
and
W.M.P.(MD)No.4407 and 4408 of 2018

Kottar Ilankadai Muslim Samuthaya Trust,
Rep. by its President,
Kottar, Vadiveeswaram Village,
Nagercoil, Kanyakumari District. ... Petitioner

Vs.

The Nagercoil Municipality,
Rep. by its Commissioner,
Nagercoil, Kanyakumari District. ... Respondent

Prayer: Writ Petition filed under Article 226 of the constitution of India, to issue a writ of Certiorari, calling for the records relating to the impugned proceedings of the respondent in Na.Ka.No.9745/A4/2002 dated 20.10.2017, quash the same as illegal in so far as the impugned order requires the petitioner to provide for an undertaking to pay any amount that may be claimed / demanded later, on audit objections is concerned.

For Petitioner : Mr.M.Mahaboob Athiff
For Respondent : Mr.P.Athimoola Pandian,
Standing Counsel

O R D E R

This Writ Petition has been filed challenging the notice issued by the respondent Municipality revising the property tax to the petitioner for the Marriage Hall and also directing the petitioner to file an undertaking affidavit that the petitioner will abide by any order passed by the Court of Law in future.

2.According to the petitioner, earlier, the respondent Municipality assessed the property tax of the Marriage Hall exorbitantly. Challenging the above assessment order the petitioner filed a suit in O.S.No.409 of 1996, on the file of the Principal District Munsif Court, Nagercoil. Earlier the suit was dismissed, and his appeal was also dismissed. Challenging the same, the petitioner filed S.A.No.1958 of 2001 before this Court and this Court, by judgment dated 25.10.2016, allowed the same and set aside the assessment notice and directing to conduct a fresh assessment after giving opportunity to the petitioner. Thereafter, no order has been passed. Hence, he filed W.P.(MD)No.15286 of 2017 before this Court and this Court, by an order dated 06.09.2017, directed the respondent to comply with the judgment passed in the Second Appeal within a period of two weeks from the date of receipt of a copy of that order and the petitioner was also directed to file his objections before the respondent.

3.Now, according to the petitioner, the second respondent, without conducting any enquiry and without giving an opportunity of hearing to the petitioner, as per the judgment of this Court, passed the impugned order and directed the petitioner to pay a sum of Rs.27,24,318/- and also directed the petitioner to file an undertaking affidavit stating that the petitioner will abide by any order passed by the Court of Law.

4.The grievance of the petitioner is not regarding the order of assessment made by the respondent Municipality, but, the respondent Municipality has no power to direct the petitioner to give an undertaking affidavit.

5.Per contra, the learned counsel for the respondent Municipality submitted that as per the judgement passed by this Court, the respondent has assessed the property tax. But, after the assessment of property tax, if local fund audit may raise any objections. In the above circumstances, the respondent municipality directed the petitioner to file an undertaking affidavit.

6.Perusal of judgment of this Court made in S.A.(MD)No.1958 of 2001 is very clear that the respondent has to assess the property tax after giving notice to the petitioner and also giving opportunity, thereafter another order in the writ petition was also passed directing the petitioner to follow the judgment passed in the second appeal and also directing the petitioner to raise his objections.

7.Despite the same, the respondent Municipality, without issuing notice and without conducting any enquiry, passed the order. However, the learned Senior counsel for the petitioner submitted that the petitioner has no grievance over the quantum fixed by the Municipality. He is willing to pay the tax as per the assessment made by the respondent. But, the only grievance of the petitioner is that the respondent Municipality had directed the petitioner to file an undertaking affidavit stating that the petitioner will abide by any order passed by the Court of Law.

8.Considering the above facts and circumstances of the case, the respondent Municipality has no power to issue a condition to the petitioner to file an undertaking affidavit after assessing the property and the petitioner also willing to pay the amount. Hence, the condition imposed by the respondent is liable to be set aside. The respondent Municipality is directed to issue a fresh assessment order to the petitioner and on issuing such assessment order, the petitioner is directed to pay the property tax as assessed by the respondents.

9.With the above directions, this Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

+3cc to M/S.Ajmal Associates, Advocate SR.No. 54224

W.P.(MD)No.4304 of 2018

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JM/SV MMS/SAR 4/02.04.2018/3P/4C