BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.08.2018
CORAM
THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.(MD)No.18427 of 2018
and
W.M.P(MD)No.16304 of 2018

T.V.Viswanathan ... Petitioner

Vs.

1.The Commissioner,
Corporation of Madurai,
Aringnar Annamaligai,
Madurai - 2.

2.The Assistant Commissioner,
Corporation of Madurai,
Zone - 3, Mahal,
C.M.R. Road,
Madurai.

3.M.N.Kumaresh Babu,
D.No.5045/05, E.E. Road,
C.M.R. Road,
Madurai - 9. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents 1 and 2 to collect the property Tax, Drainage Maintenance Charges, Water Charges from the petitioner for the period of 2018-2019 and also for the future periods.

For Petitioner : Mr.M.S.Sureshkumar
For Respondents : Mr.J.Gunaseelan Muthiah
Addl. Govt. Pleader

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O R D E R

The petitioner seeks for a direction to the respondents 1 and 2 to collect charges such as property Tax, Drainage Maintenance Charges and Water Charges from him for the period of 2018-2019 and also for the future periods.

2.The petitioner's father P.K.Varathachari died in the year 1955 and the his mother T.V.Saratha Ammal being an young widow with four small children was living with her father M.A.N.Kuppusamy Iyer at Door No.41 A Mahal Vadampokki Street, Madurai - 1. According to the petitioner, the family was living in the said property from

1955. The said house property was given as a preexisting right of maintenance to T.V.Saratha Ammal. The petitioner's maternal grandfather Kuppusamy Iyer executed a Will in 1975, wherein the petitioner's mother was given a right of life interest and thereafter, in favour of the grandson, namely, the third respondent. The petitioner's mother, after the death of her father, filed O.S.No.36 of 2018 before the Fast Track Court-II, Madurai, to declare that the property given in lieu of preexisting right of maintenance before 1955 and limited estate given by the Will shall enlarge into absolute estate after the advent of Hindu Succession Act, 1956. It appears that the suit has been dismissed and as against that, first appeal in A.S.No.60 of 2010 was filed before this Court and the same is pending finalization.

3.While so, after the death of the petitioner's mother on 27.04.2008, the second respondent has changed the assessee of the property tax in respect of the said house property in the name of the third respondent behind the back of the petitioner. Therefore, a representation was given to the respondents 1 and 2 on 26.07.2008. Since there was no response, the petitioner is before this Court for issuance of a Writ of Mandamus.

4.Considering the averments as disclosed in the affidavit filed in support of the writ petition, it appears that there is a civil proceedings between the petitioner as well as the third respondent in A.S.No.60 of 2010 before this Court and this Court is not aware of under what circumstances the house tax has been changed in favour of the third respondent in respect of the subject property. In any case, when a civil proceedings is pending before the competent civil Court between the petitioner and the third respondent, it is not open to the petitioner to seek remedy before this Court in a collateral proceedings by invoking its extraordinary jurisdiction under Article 226 of the Constitution of India. It is always open to the petitioner to approach this Court in the pending civil proceedings in order to establish his claim as against the third respondent for any change in the property tax payable to the subject property.

5.For the above said reasons, this Court does not feel that the above said writ petition can be entertained, when a civil proceedings is pending and therefore, the writ petition is dismissed as not maintainable. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/
Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar (CS-I)

+1cc to Mr.M.S.SURESHKUMAR, Advocate, SR.No.79985
+1cc to Mr.J.GUNASEELAN MUTHAIAH, Advocate, SR.No. 80002

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