BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 25.10.2018
CORAM:
THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.(MD)No.21350 of 2018
and
W.M.P.(MD)No.19227 of 2018

1.H.Usha
2.N.Hariharamuthu .. Petitioners

Vs.

1.The Commissioner / Special Officer,
Palani Municipality,
Palani.

2.The Revenue Officer,
Palani Municipality,
Palani.

3.The Revenue Inspector,
Palani Municipality,
Palani. .. Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of CERTIORARI, calling for the records relating to the impugned notice dated 21.08.2018 vide Na.Ka.No.2163/2018/A2 issued by the first respondent in respect of the petitioner's property at Door No.167, 167/1, 167/2, 167/3 at Pattali Street, Ward No.31, Palani - 624 601, Dindigul District and quash the same.

For Petitioners : Mr.P.Thiyagarajan
For Respondents : Mr.P.Srinivas for R.1

ORDER

This writ petition is directed against the impugned proceedings of the first respondent in Na.Ka.No.2163/2018/A2 dated 21.08.2018, in and by which, the first respondent has revised the property tax assessment.

2. According to the petitioners, the subject property belongs to them and as such, they are regularly paying property tax, without any default. While so, on 18.06.2018, they received a notice under Schedule IV Rule 4(1) of Tamil Nadu District Municipalities Act, 1920, from the first respondent, citing some discrepancies with regard to the classification as well as property tax assessment, for which, the petitioners responded by way of a detailed reply cum objection. Thereafter, the first respondent has conducted an enquiry on 01.08.2018 and the petitioners appeared and made their

objections. Despite the same, the first respondent, without considering their objections, has passed the impugned order and therefore, the learned Counsel for the petitioners prayed for allowing the present writ petition.

3. Learned Counsel appearing for the first respondent would submit that objections were called for and received from the petitioners and after conducting personal enquiry, the impugned order has been passed and therefore, he prays for dismissing the present writ petition.

4. Heard the learned counsel appearing on either side and perused the record carefully.

5. Admittedly, the petitioners had given their objections and personal enquiry was also conducted. However, on a perusal of the impugned order, it is seen that the first respondent has simply stated that the objections of the petitioners were considered. It was not discussed and negatived, instead, he has simply confirmed the assessment made in the show cause notice dated 18.06.2018. In other words, without considering the objections raised by the petitioners, the first respondent has passed the impugned order. In similar circumstances, a learned Single Judge of this Court in an unreported decision in W.P.No.3427 of 2005 (M/s.Lakshmi Saw Mill Vs. The Commercial Tax Officer, Tiruchirapalli), dated 27.04.2005, has held as follows:

> "..... A perusal of the impugned order shows that the petitioner's objections were considered and overruled. Except the above, there is nothing to indicate whether in fact the said objections were considered or not. In the absence of any reasons for rejecting the objections in the impugned order, the effective statuary right of appeal would be defeated as the petitioner cannot have any ground to question the order before the appellate authority. The same issue came up for consideration before this Court in W.P.No.17201 of 2001 and by order dated 20.09.2001 for the very same reason the order of assessment impugned therein was set aside with a direction to the respondent to consider the objections of the dealer therein and pass fresh orders. Accordingly, in this writ petition also, the impugned order is set aside and the respondent is directed to consider the objections filed by the petitioner and pass fresh orders in accordance with law. It is made clear that if the respondent does not agree with the objections, he has to give reasons for the same. With the above direction, this writ petition is disposed of."

6. It is very unfortunate that though the show cause notice dated 18.06.2018 was elaborately discussed, the impugned final order dated 21.08.2018 does not speak anything. No reasons, whatsoever,

are recorded. The Hon'ble Supreme Court in the case of Mahabir Prasad Santosh Kumar vs. State of U.P., reported in (1970) 1 SCC 764 has held that merely giving an opportunity of hearing is not enough and further pointed out that where the order is subject to appeal, the necessity to record reason is even greater. Recording of reasons in support of a decision on a disputed claim ensure that the decision is not a result of caprice, whim or fancy, but was arrived at after considering the relevant law and that the decision was just, which is lacking in the present case on hand.

7. In view of the above, the impugned order passed by the first respondent in Na.Ka.No.2163/2018/A2 dated 21.08.2018 is liable to be set aside and the same is accordingly set aside. The matter is remitted back to the file of the first respondent for fresh consideration. Since the submission of reply cum objections is not in dispute, the first respondent is directed to fix a specific date for hearing, within a period of two weeks from the date of receipt of a copy of this order and communicate the same to the petitioners, in advance. On the said date, either of the petitioners or both of them shall appear before the first respondent and put forth their contentions and after hearing them, the first respondent shall pass appropriate reasoned orders, purely on merits, within a further period of four weeks thereafter. Needless to say that if the petitioners do not co-operate in the enquiry or do not avail personal hearing, the first respondent shall record the same and pass orders, in accordance with law.

8. The Writ Petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Commissioner / Special Officer,
Palani Municipality,
Palani.

+1CC to Mr.P.Thiyagarajan, Advocate, SR.No.92764
+1CC to Mr.P.Srinivas, Advocate, SR.No.92429

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