BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.10.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD).No.4339 of 2016
and
W.M.P(MD) Nos.3856 of 2016 & 5929 of 2018

Paramasivam Pillai ... Petitioner

Vs.

The Commissioner,
Sankarankovil Municipality,
Tirunelveli District. ... Respondent

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned rejection order in Na.Ka.No.2926/2014/A1, dated 08.02.2016, by the respondent and quash the same and consequently issue a direction to the respondent to return the amount deposited by the petitioner as per the order of this Court in M.P.(MD)No.2 of 2014 in W.P.(MD) No.19590 of 2004 dated 03.07.2015.

For Petitioner : Mr.M.Ramu

For Respondent : Mr.R.Murugan,AGP

ORDER

This writ petition has been filed by the petitioner challenging the rejection order passed by the respondent dated 08.02.2016 and for a consequential direction to the respondent to return the amount deposited by the petitioner as per the order of this Court dated 03.07.2015 made in M.P.No.2 of 2014 in W.P.(MD) No.19590 of 2004.

2. According to the petitioner, he is a President of an Association and that Association owned buildings bearing Door Nos.3, 4 & 4-1, Sekkilar Street, Sankarankovil, Tirunelveli District and due to damage, they renovated Door No.3. The petitioner has been paying the taxes to the respondent regularly. While so, the respondent issued revised tax for the above door numbers and issued demand notices. Challenging the said notices, the petitioner had filed a suit in O.S.No.145 of 2008, but the same was subsequently dismissed for default. On 16.10.2014 and 05.11.2014 the respondent

again issued demand notices for the period of 2001-02 to 2014-15 demanding totally a sum of Rs.3,16,218/-. Challenging the said notices, the petitioner has filed a writ petition in W.P.(MD). No.19590 of 2014. This Court has granted an interim order of stay with a condition to deposit 75% of the demand amount and accordingly, the petitioner has deposited a sum of Rs.2,37,000/- and also paid a sum of Rs.16,506/-, totally Rs.2,53,506/-. Subsequently, the said writ petition was disposed of by this Court, by order dated 03.07.2015, with the following directions:

> "5.Admittedly, no such appeal has been filed by the petitioner. Hence, the petitioner is permitted to file an appeal within two weeks from today. On such filing of the appeal, the respondent is directed to entertain the same without raising any objection on limitation and consider the case of the petitioner on each and every aspect including retrospective levy and pass necessary orders, after affording due opportunity of hearing to the petitioner for placing all the material evidence. Such exercise shall be completed within a period of six weeks from the date of filing of the appeal."

Accordingly the petitioner has filed an appeal before the respondent. But, the respondent has simply rejected the claim of the petitioner by a non speaking order and without following the order passed in the writ petition in letter and spirit. Therefore, challenging the said order, the petitioner has come up with this writ petition.

3. The learned counsel for the petitioner would submit that he is ready to pay tax from the first half year period of 2001-02 to the first half year period of 2007-08 and that the said tax amount may be directed to be deducted from the amount deposited by the petitioner as per the direction of this Court in the earlier writ petition. The learned counsel appearing for the petitioner would further submit that the petitioner has done only renovation work and not new construction as alleged by the respondent and that though the petitioner raised various grounds, including the ground that G.O.Ms.No.110, dated 23.06.2008, cannot be applied retrospectively, the respondent without assigning any reason has simply rejected the same. He would further submit that the respondent has passed the impugned order without giving an opportunity of hearing and without following G.O.Ms.No.150, dated 12.11.2007, the resolution No.57 dated 09.07.2008 and also the order passed by this Court in the earlier writ petition. Therefore, the impugned order may be set aside and the same may be remitted back for fresh consideration with regard to the payment of taxes from the balance period. Thus, he prayed to allow this writ petition.

4. The learned counsel appearing for the respondent fairly conceded that the respondent has not passed the reasoned order and that the matter may be remitted back to the file of the respondent for fresh consideration.

5. Heard the learned counsel appearing for both sides and perused the records carefully.

6. A bare perusal of the impugned order shows that it is only a non speaking order and that it is also passed by the respondent without providing an opportunity of hearing and without following the order passed in the earlier writ petition and also the relevant proceedings of the respondent. Hence, this Court is inclined to set aside the impugned order dated 08.02.2016. Accordingly, the impugned order is set aside and the matter is remitted back to the file of the respondent. Since it is stated by the learned counsel for the petitioner that the petitioner is ready to pay the tax from the first half year period of 2001-02 to the first half year period of 2007-08, the respondent shall deduct the said amount from the deposit already made by the petitioner as per the direction of this Court in the earlier writ petition and shall adjust the balance amount after passing the final order.

7. For fixing payment of taxes for the balance period, the respondent shall issue notice to the petitioner and inspect property in dispute by his officials and fix the taxes to be paid by the petitioner in the light of the G.O.Ms.No.150, dated 12.11.2007, G.O.Ms.No.110, dated 23.06.2008 and Resolution No.57, dated 09.07.2008 and issue demand notice to the petitioner. On receipt of the same, the petitioner shall file his objections. Thereafter, after affording an opportunity of personal hearing to the petitioner, the respondent shall pass appropriate orders on merits and in accordance with law. The above said exercise shall be completed within a period of three months from the date of receipt of a copy of this order. It is needless to state that the petitioner shall cooperate with the respondent. If the petitioner does not cooperate with the respondent, the respondent is at liberty to pass orders on merits and in accordance with law based on the available records.

8. This Writ Petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The Commissioner,
Sankarankovil Municipality,
Tirunelveli District.

gcg
SS/PM/SAR 3/17.12.2018/4P/2C

Order made in
W.P(MD).No.4339 of 2016
05.10.2018