IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 11.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. NOS.46463 AND 46464 OF 2002

A.J.S.Paul (dead)

2.Celine Paul
3.Ajit Jose Sylvester
(petitioners 2 and 3 are substituted as legal representatives of deceased 1st petitioner as per order dated:28.8.2018 made in WMP.17423/2018) ...Petitioners

Vs

1.The Assistant Commissioner,
Thatchanallur Ward Office,
Tirunelveli Municipal Corporation,
Karunanidhi Maligai,
Madurai Road.
Tirunelveli 627 001

2.The Commissioner,
Tirunelveli Municipal Corporation,
Rajaji Maligai,
S.N.High Road,
Tirunelveli 627 001 ...Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to issue a Writ of Certiorarified Mandamus calling for the records relating to RC.No.A4/606/2002 dated 16.8.2002 on the file of the Assistant Commissioner Thatchanallur Ward Office Tirunelveli Municipal Corporation Tirunelveli the 1st respondent herein and quash the same and forbear the respondents from in any way proceeding against the petitioner for the recovery of the property tax bearing D.No.54, 54-A to 54-H, 54/2 to 54/24 at S.N.High Road, Tirunelveli 627 001 for the recovery of the property tax for the assessment years 1992-93 and 1998-1/2002 by invoking rules 29 and 30 of Schedule II of Tirunelveli Municiapl Corporation Act, 1994.

W.P.No.46464 of 2002

E.S.V.Paul ...Petitioner

Vs

1.The Assistant Commissioner,
Thatchanallur Ward Office,
Tirunelveli Municipal Corporation,
Karunanidhi Maligai,
Madurai Road.
Tirunelveli 627 001

2.Commissioner,
Tirunelveli Municipal Corporation,
Rajaji Maligai,
S.N.High Road,
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For petitioner : Ms.Elizabeth Ravi

For respondents: Mr.V.Jayaprakash Narayanan, Government Pleader

COMMON ORDER

The notice issued by the first respondent dated 16.08.2002 is under challenge in the present writ petition.

2. The impugned notice 16.08.2002 states that the petitioners have to pay the arrears of property tax as detailed in the notice, and in the event of non payment, action will be

initiated under commercial law and steps would be taken to disconnect water connection and other facilities. The details of arrears of property tax to be paid also has been enclosed along with the impugned notice. The writ petitioners filed these writ petitions for a direction to the 2nd respondent Corporation not to recover the property tax demanded by them.

3. The learned counsel appearing for the writ petitioners vehemently contended that revised assessment has not been done in respect of the premises belonging to the writ petitioners and they were paying the property tax as per the original assessment made and therefore, the impugned notice is liable to be scrapped. It is stated in the affidavit filed in support of the writ petitions that questioning the correctness of the assessment, a civil suit was filed in O.S.No.834 of 1994, on the file of the I Additional District Munsif Court, Tirunelveli, to declare that the enhancement of the property tax by the second respondent was against law, and for permanent injunction against the said respondent from collecting the property tax on the basis of the assessment made. The grievances of the writ petitioners is that the property belonging to them was not annually valued for the purpose of imposing the property tax, with reference to the principles of fixation and other provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 18/1960, as amended by Act 23 of 1973 and Act 1/1980. Relying on the judgment and decree passed in the civil suit in O.S.No.834 of 1994, the petitioners continued to pay the property tax assessed long back. The petitioners also filed E.P.Nos.89 of 1999 and 149 of 1999 to punish the second respondent and sought permission to proceed against the Assistant Commissioner of Tirunelveli Municipal Corporation. By way of common order dated 31.1.2000, the District Munsif held that the second respondent and other officers of the Tirunelveli Municipal Corporation had committed an act of disobedience of the decree passed by the Court and ordered the second respondent to pay a fine of Rs.3,000/- and similar order was passed against the Assistant Commissioner of Tirunelveli Municipal Corporation.

4. The learned counsel for the petitioners states that no proper re-assessment was made in respect of the premises and therefore, the demand made by the respondent corporation in the impugned notice is not in accord with the provisions of law.

5. It is admitted that the second respondent corporation filed C.R.P.Nos.660 and 661 of 2000, challenging the order dated 31.1.2000, and this court allowed the revision petitions by order dated 13.11.2001. Special Leave Petitions filed by the writ petitioners as against the order of the High Court were dismissed and the order passed in revision petitions was confirmed.

6. The main grievance of the writ petitioners is that the second respondent corporation had not conducted any inspection nor assessed the property in accordance with the rules in force. Thus, the petitioners were not in a position to pay the arrears of property tax in respect of the subsequent years. Under these circumstances, the petitioners were constrained to file the present writ petitions.

7. The learned Government Pleader appearing on behalf of the respondents disputed the entire contentions of the petitioners and submitted that on account of the fact that the writ petitions are pending for about 16 years, the petitioners are paying only the tax assessed earlier.

8. The officials have not raised the demand in respect of the subsequent assessment years and that is also a default on the part of the second respondent corporation. However, the fact remains that the challenge made in the present writ petitions is with reference to the demand notice issued during the year 2002 and in respect of the subsequent years, no demand notice was issued, nor revised property tax on par with other assessees had been recovered from the writ petitioners. The writ petitioners have also not shown any sensitiveness in respect of payment of property tax to the corporation. It is the duty of every citizen to ensure that they pay property tax and other taxes promptly to the state, enabling the State to provide infrastructure and other facilities to the citizen and for their usage.

9. Tax is a revenue for the State. Property tax is being collected from the citizens by the corporation, in order to provide infrastructure facilities and implement welfare schemes for the benefit of the people residing in that locality. Water connection, laying of roads and implementing various schemes of the Government are all paramount importance as far as corporation (local authority) is concerned. In the event of non payment of property tax by citizens, development activities in the corporation will be hampered. It is mandatory on the part of the authorities to ensure that property tax and other charges are collected as per law from all concerned. In the event of negligence, lapses or dereliction of duty in respect of collection of taxes or the arrears, the higher authorities are bound to initiate appropriate prosecution and disciplinary proceedings against the officials concerned. Without collection of property tax and other charges, the corporation may not be in a position to provide facilities and undertake developmental activities.

10. When large number of assessees are paying the property tax punctually and promptly to the corporation, non payment of property tax by a few individuals would infringe the rights of all other citizens. Therefore, the authorities concerned must be sensitive towards collection of tax from the assessees promptly.

There cannot be any leniency or otherwise in respect of collection of taxes.

11. This court on hearing the writ petitioners on earlier occasions, directed the second respondent to collects facts and submit a report. Accordingly, a compliance report was filed by the second respondent. As per the compliance report, property tax is yet to be collected in respect of certain cases and this court is of the opinion that the second respondent has to seriously pursue all these cases and ensure collection of property tax and other charges from the assessees without causing any undue delay. In respect of negligence, lapses and dereliction of duty, the learned Government Pleader informed this court that suitable disciplinary proceedings were initiated against the officials concerned and charge memos were also issued and the authorities will proceed with the matter in accordance with law.

12. The present writ petitions are filed in connection with the demand notice issued on 16.08.2002. In respect of the subsequent years, the assessment is to be made in accordance with the rules and on par with other similarly placed assesses in that locality and the entire tax is to be collected.

13. The learned counsel for the writ petitioners made a submission that the petitioners are ready and willing to pay the property tax in the event of reassessment, by conducting inspection in respect of the premises.

14. When the learned counsel for the petitioners herself stated that the petitioners are ready and willing to pay the property tax as per law and further urged this court that the second respondent has to conduct inspection and revise the property tax as per law, this court has no hesitation in holding that the property belonging to the petitioners is to be inspected, and revised assessment order is to be passed and the arrears of tax due to the corporation is to be collected without any further lapse of time. Considering the facts and circumstances of the case, the following orders are passed:-

(i) The relief as such sought for in the writ petition stands rejected;

(ii) The writ petitioners are directed to pay the arrears of property tax of Rs.33,74721/-. The learned counsel for the petitioner submits that the Writ Petitioners have already paid certain amount of tax. Therefore, deducting the said amount, the writ petitioners are directed to pay the arrears of property tax amount of Rs.30,22,804/- within a period of six weeks from the date of receipt of a copy of this order. In the event of non payment of arrears of property tax within the period stipulated, the 2nd respondent corporation is directed to initiate immediate action for recovery of the said amount by attaching the property belonging to the petitioners and by following the procedures contemplated under law.

(iii) In the event of payment of arrears of property tax by the petitioners within a period of six weeks, the respondent corporation shall inspect the premises belonging to the petitioners within a period of two weeks thereafter, and measure the entire property and pass reassessment order, considering the nature of the building, age of the building and by following other criteria. The revised assessment order is to be passed within a period of four weeks from the date of inspection and inspection is to be conducted during the presence of the writ petitioners or their authorized representative. On receipt of the revised assessment order, the writ petitioners shall pay the balance arrears of property tax and in the event of any other grievance, the petitioners shall approach the appellate authorities by filing appeal for the purpose of redressing their grievances, in accordance with law.

(iv) There is no order as to costs. Connected miscellaneous petitions, W.P.M.P.Nos.67573 of 2002 and 67574 of 2002 are closed.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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+1cc to Mr.V.Jayaprakash Narayanan, Advocate, S.R.No.3392/19.
+2cc to Mr.Elizabeth Ravi, Advocate, S.R.No.356/19

W.P. Nos.46463 & 46464/2002

kak(05/03/2019)