IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.10.2019

Coram

The Honourable Mr.Justice D.KRISHNAKUMAR

W.P.No.36930 of 2007
and W.P.M.P.Nos.2 to 4 of 2007

S.Palaniandi Mudaliar Memorial Hospital Trust,
No.29, Cuddalore Road North Extension,
Ammapet, Salem - 636 003.
Rep. by its Trustee Mr.Devarajan
...Petitioner

Versus

1.The Corporation of Salem,
Rep. by its Commissioner,
Salem - 636 001.

2.The Assistant Commissioner,
Corporation of Salem,
Ammapet Ward Office,
Salem - 636 003.
...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records comprised in the notice of the first respondent dated 21.10.2007 issued in Na.Ka.No.L/2007 and quash the same as being arbitrary and illegal and without application of mind and consequently, issue a Mandamus forbearing the respondents, their officers, employees, subordinates, agents or any other person(s) claiming or acting under them from in any manner disconnecting the water supply, sewerage and electricity connections in respect of the petitioner's property situate at No.29, Cuddalore Main Road North Extension, Ammapet, Salem - 636 003 in as much as the entire property tax payments till the date of filing of the writ petitioner have been made.

For Petitioner	:	Ms.Akohaya for Mr.Ramadurai
For Respondents	:	Mrs.K.Bhuvaneshwari Standing Counsel

O R D E R

With the consent of both sides, this Writ Petition is taken up for final disposal.

2. This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus to call for the records comprised in the notice of the first respondent dated 21.10.2007 issued in Na.Ka.No.L/2007 and quash the same as being arbitrary and illegal and passed without application of mind and consequently, issue a Mandamus forbearing the respondents, their officers, employees, subordinates, agents or any other person(s) claiming or acting under them from in any manner disconnecting the water supply, sewerage and electricity connections in respect of the petitioner's property situate at No.29, Cuddalore Main Road North Extension, Ammapet, Salem - 636 003, inasmuch as the entire property tax payments till the date of filing of the writ petitioner have been made.

3. The case of the petitioner is that the petitioner is a registered Trust running in the name of S.Palaniandi Mudaliar Memorial Hospital Trust at No.29, Cuddalore Road North Extension, Ammapet, Salem - 636 003. The second respondent Corporation has issued a prosecution notice dated 21.10.2007 in Na.Ka.No.L/2007 launching a criminal prosecution against the petitioner for non-payment of the property tax for the period from 2001-2002 to 2007-2008, amounting to a total sum of Rs.2,56,880/- and consequently, the respondents disconnected the water supply connection to the petitioner's Trust.

4. After the receipt of the prosecution notice dated 21.10.2007, the petitioner sent a Letter dated 28.11.2007 to the second respondent clearly stating that there were no amounts due and payable by them as alleged in the aforesaid prosecution notice dated 21.10.2007. Even after the receipt of the said letter from the petitioner-Trust, the second respondent issued a receipt dated 29.11.2007 to the petitioner indicating that the property tax payment made by them on 23.10.2007 in respect of the period from 01.04.2007 to 30.09.2007 stood appropriated towards alleged property tax dues for the years 2001-2002 and 2002-2003. So the petitioner sent yet another letter dated 30.11.2007 to the second respondent once again reiterating that no amount is due and payable by them. Subsequent to the letter dated 30.11.2007, the petitioner also issued a legal notice dated 01.12.2007 to the first respondent stating that they had paid the entire property tax dues till 31.03.2007, for which, the first respondent issued necessary receipts and that no amount is due and payable by the petitioner-Trust towards

alleged property tax arrears. On 05.12.2007, the officials of the respondents visited the petitioner-Trust and disconnected the water supply connection to the petitioner-Trust. Therefore, left with no other alternative, the petitioner filed the present writ petition for the relief stated supra.

5. The learned counsel for the petitioner submitted that upon receiving the prosecution notice dated 21.10.2007, the petitioner sent communications to the second respondent informing that no amount is due and payable by them till 31.03.2007, however, the same were not considered by the second respondent. She further submitted that without furnishing any details regarding the aforesaid letters, the respondents' officials disconnected the water supply connection to the petitioner-Trust.

6. The respondents herein filed their counter affidavit, wherein, they have stated as follows:

(i) The prosecution notice was issued to the petitioner since the petitioner was in arrears of tax for the year 2005-06, 2006-07 and 2007-08 of a sum of Rs.7,040/-, Rs.7,800/- and Rs.7,800/- respectively. The said notice was issued for the non-payment of enhanced tax in the General Revision as per Government order only.

(ii) The petitioner's statement and the details of payment from 2001-02 to 2006-07 only relates to the property tax paid as per the old tax. Therefore, the petitioner has to pay the arrears of tax as per the revised enhanced tax and the aforesaid prosecution notice is only a Show Cause Notice.

7. It is seen that upon receiving the prosecution notice dated 21.10.2007 from the second respondent, the petitioner sent two letters dated 28.11.2007 and 30.11.2007 respectively, to the second respondent, stating that they had paid the entire property tax dues till 31.03.2007 and no amount is due and payable by them. Also, the petitioner sent a legal notice dated 01.12.2007 to the first respondent, requesting to withdraw the prosecution notice dated 21.10.2007. However, without considering the letters and legal notice sent by the petitioner, the respondents' officials disconnected the water supply connection from the petitioner-Trust. Hence, the petitioner has come before this Court. After a clear analysis, this Court is of the view that had the petitioner made a representation before the second respondent, they could have obtained a proper remedy. But without doing so, the petitioner approached this Court by filing the present writ petition at the premature stage itself.

8. Considering the facts and circumstances of the case, in the interest of justice, this Court issues the following directions:

(i) The second respondent is directed to consider the letters dated 28.11.2007 and 30.11.2007 sent by the petitioner and pass appropriate orders on merits and in accordance with law, as expeditiously as possible, within a period of eight weeks from the date of receipt of a copy of this order.

(ii) The petitioner is directed to make their further representation, if any, before the second respondent, on or before 04.11.2019 and the same shall also be considered by the second respondent.

(iii) In the meantime, the respondent-Corporation shall not take any coercive action against the petitioner-Trust till such appropriate orders are passed by the second respondent on the above said representations.

9. This Writ Petition is disposed of with the above directions. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(InspCell)

//True copy//

Sub Assistant Registrar

mrr

To

1.The Commissioner,
Corporation of Salem,
Salem - 636 001.

2.The Assistant Commissioner,
Corporation of Salem,
Ammapet Ward Office,
Salem - 636 003.

W.P.No.36930 of 2007

RSK(CO)
GMY(30/10/2019)