IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2019

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos.3895, 3896, 4085 & 4086 of 2009
and
M.P.Nos.1, 1, 1 and 1 of 2009

Namakkal Vatta Anaithu Vanigargal Sangam,
Regn. No.93/2001
Rep. by its Secretary,
S.Sankar
No.43, Kottai Main Road,
Namakkal. ... Petitioner in WP.No.3895 of 2009

Namakkal Mavatta Electrical Iron,
Paint Viyabarigal Nala Sangam,
Regn. No.8/2007
Rep. by its Secretary,
S.Sankar
No.43, Kottai Main Road,
Namakkal. ... Petitioner in WP.No.3896 of 2009

S.Kandasamy ... Petitioner in WP.No.4085 of 2009

C.Rangasamy ... Petitioner in WP.No.4086 of 2009

Vs.

1.The Commissioner,
Namakkal Municipality,
Namakkal.

2.The Chairman,
Namakkal Municipality/Appellate Committee,
Namakkal Municipality,
Namakkal. ... Respondents in all WPs

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, directing the 2nd respondent to accept the Appeals preferred U/s. 89 of Tamil Nadu District Municipality Act without depositing the enhanced property tax and dispose the same on merits.

(In all WPs)
For Petitioners : No Appearance

For Respondents : Mr.M.Rajamathivanan
Standing Counsel

COMMON ORDER

This batch of four writ petitions can be disposed by way of a common order, since the facts and legal position in regard to the matters is identical except for differences/variations in descriptions of property and value thereof.

2.No representation on behalf of the petitioners in all writ petitions.

3.The petitioners in W.P.Nos.3895 and 3896 of 2009 are Associations or Sangams and hence these writ petitions are challenged on the ground of maintainability apart from the merits itself. The common position in all four writ petitions is that the petitioners/members of the petitioners' Sangam have suffered orders of assessment passed by the Commissioner, Namakkal Municipality/respondent in terms of Rule 9 of Schedule IV of the Tamil Nadu District Municipalities Act, 1920 (in short 'Act').

4.Petitions for revision were filed by the petitioners before the Revisional Authority and came to be disposed as against which an appeal is provided for before the Taxation Appeals Committee (in short 'TAC'). The registry of the TAC has, vide the impugned order, returned the appeals calling upon the petitioner to remit the disputed tax by way of pre-deposit.

5.The petitioner has placed along with the typed set, a copy of a decision passed by this Court in WP.No.1725 of 2009 in the case of Namakkal Ennai Aalai Urimaiyalargal and Viyabarigal Sangam vs. The Commissioner, Namakkal Municipality, Namakkal and another, wherein this Court, upon consideration of Section 89 of the Act has noted that there is no condition such as pre-deposit for maintaining the appeal and has allowed the writ petition holding that imposition of a pre-condition is not in consonance with Section 89 of the Act.

6.There appears to be some discrepancies in the copies of the enactment (the Tamil Nadu District Municipalities Act, 1920) available in the Court in so far as the provisions of Section 89 contained therein vary from the text of Section 89 as extracted by the learned Single Judge in the aforesaid order. Both the provisions are extracted below for clarity.

7.Section 89 as per the enactment available in the Court as well as in the copies of the Acts procured from the library authored by Mr.S.Sambandham and Mr.V.S.Rajaram published by C.Sitaraman & Co. Pvt. Ltd. is extracted below:

> '89. Owner's obligation to give notice of construction, re-construction or demolition of building .—(1) (a) If any building in a

municipality is constructed or re-constructed, the owner shall give notice thereof to the [executive authority] within fifteen days from the date of completion or occupation of the building, whichever is earlier.

(b)If such date falls within the last two months of a half-year, the owner shall, subject to notice being given under clause (a), be entitled to a remission of the whole of the tax or enhanced tax, as the case may be, payable in respect of the building only for that half-year.

(c)If such date falls within the first four months of a half-year, the owner shall, subject to notice being given under clause (a), be entitled to a remission of so much not exceeding a half of the tax or enhanced tax, as the case may be, payable in respect of the building only, for that half-year, as is proportionate to the number of days in that half-year preceding such date.

(2) (a) If any building in a municipality is demolished or destroyed, the owner shall, until notice thereof is given to the [executive authority] be liable for the payment of the property tax which would have been leviable had the building not been demolished or destroyed.

(b)If such notice is given within the first two months of a half-year, the owner shall be entitled to a remission of the whole of the tax payable in respect of the building only for that half-year.

(c)If such notice is given within the last four months of a half-year, the owner shall be entitled to a remission of so much not exceeding a half of the tax payable in respect of the building only for that half-year as is proportionate to the number of days in that [half-year succeeding the demolition)] or destruction, as the case may be.'

8.Section 89 has set out the order dated 17.02.2009 passed by the learned Single Judge in WP.No.1725 of 2009 reads as follows:

''Section 89. Taxation Appeals Committee.-

(1) There shall be a Taxation Appeals Committee for hearing and disposing of an appeal preferred by any person who is not satisfied with the assessment order made by the executive authority under this Act other than the orders relating to the duty on transfer of property.-

(i)for every town panchayat consisting of the Chairman of the municipal council who shall be the Chairman of the Taxation Appeals Committee and such number of members as may be notified by the State Government from among the members of the Town Panchayat;

(ii) for every municipality, consisting of the Chairman of the municipal council who shall also be the Chairman of the Taxation Appeals Committee and four Councillors elected by the council.

(2) The business of the Taxation Appeals Committee shall be transacted in accordance with the rules made by the State Government in this behalf.

(3) An appeal against the decision of the Taxation Appeals Committee may be filed within thirty days from the date of the order to the District Judge.

(4) No appeal shall be entertained by the District Judge, unless the appellant deposits with the town panchayat or, municipality, as the case may be, the entire amount of tax as decided by the Taxation Appeals Committee [and the appellant shall continue to deposit the property tax with the town panchayat or, municipality, as the case may be, as decided by the Taxation Appeal Committee with the disposal of the appeal by the District Judge].

(5) Where as a result of any order passed in an appeal any amount already deposited is in excess of the tax due, the difference, after deducting the tax due, shall be adjusted towards the tax, and fine due in respect of any other period, by the municipality.'

9. The copy of the enactment as published by the Madras Law Journal office contains two provisions, Section 23A and Section 89, both dealing with "Taxation Appeals Committee".

10. There is no appearance for the petitioners despite name of the counsel being printed in the cause list and at this distance of time, I see no reason to keep these matters pending any longer. Hence, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Commissioner,
Namakkal Municipality,
Namakkal.

2.The Chairman,
Namakkal Municipality/Appellate Committee,
Namakkal Municipality,
Namakkal.

+4cc to Mr.M.Rajamathivanan, Advocate SR.91456, 91457, 91458, 91459.

W.P.Nos.3895, 3896, 4085 & 4086 of 2009
and
M.P.Nos.1, 1, 1 and 1 of 2009

BR(CO)
CB(04/02/2020)