IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.8046 of 2013

Elumalaiyan Industrial Training Institute
rep.by its Correspondent Thiru K.Ravi
Kumbakonam Main Road
Moovalur & Post
Mayiladuthurai 609 806
Nagapattinam District .. Petitioner

-vs-

1. The Assistant Director of Panchayats
Nagapattinam, Nagapattinam District

2. The Block Development Officer (Panchayats)
Mayiladuthurai Panchayat Union
Mayiladuthurai,Nagapattinam District

3. The President
Moovalur Village Panchayat
Mayiladuthurai Panchayat Union
Nagapattinam District .. Respondents

Petition under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records pertaining to the property tax demand made by the first respondent in Na.Ka.No.2210/A4/Oo.E.(Panchayats)/2012 dated 5.1.2013 and quash the same in so far as the petitioner is concerned.

For Petitioner :: Mr.S.Kamadevan
For Respondents :: Mrs.P.Rajalakshmi
Additional Government Pleader for R1
Mrs.P.Kavitha
Standing Counsel for R2 & 3

ORDER

Elumalaiyan Industrial Training Institute represented by its Correspondent Mr.K.Ravi, questioning the impugned communication bearing Na.Ka.No.2210/A4/ Oo.E.(Panchayats)/2013 dated 5.1.2013 issued by the first respondent, has filed the writ petition to quash the same insofar as the petitioner is concerned in respect of collection of enhanced property tax.

2. Mr.S.Kamadevan, learned counsel for the petitioner submitted that the petitioner owns the buildings constructed for the purpose of running the industrial training institute and the said buildings are assessed for the payment of property tax. Originally the buildings were having three assessments. But from 2007-08 onwards, they have four assessments, namely, Assessment Nos.161, 175, 177 & 182 and totally a sum of Rs.7,590/- is collected annually and that was also paid without any protest till 2011-12. When the buildings are used for educational purpose only, the petitioner is entitled to get exemption under the provisions of the Tamil Nadu Panchayats Act, 1994. But the petitioner has remitted the property tax without any protest. While so, suddenly the President of Moovalur Village Panchayat, Nagapattinam District issued a notice dated 5.10.2012 demanding property tax retrospectively from 2007-08 at the rate of Rs.68,451/- with a further direction to pay the arrears immediately. The petitioner submitted his detailed objection on 9.11.2012 taking a stand that the property tax was already paid for the year 2007-08 as demanded by the third respondent, therefore, the third respondent, without issuing any notice and without following the procedure required under Rule 11 of the Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules, 1999, ought not to have enhanced the property tax from Rs.7,590/- to Rs.68,451/-. But in spite of the objection raised by the petitioner, the third respondent issued a second notice dated 3.12.2012 directing the payment as demanded earlier within fifteen days and the same was also objected by the petitioner. Finally the Assistant Director of Panchayats, Nagapattinam District, the first respondent herein, who has no authority whatsoever, issued the impugned communication dated 5.1.2013, referring to the orders of the Supreme Court dated 5.5.2012, directing the collection of property tax from 2012-13 at the rate of Rs.68,451/-. When the petitioner has been paying the property tax at the rate of Rs.7,590/- per year upto the year 2011-12, if the respondents intended to enhance the demand, the same could be done only after amending the assessment which was in existence. Even as per Rule 4 of the Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules 1999, if the executive authority viz., the President intends to amend the assessment, a reasonable opportunity of hearing should be given to the aggrieved person. But in the present case, the respondents have enhanced the property tax without following the above procedure and without providing any opportunity. Again referring to Rule 11(3) of the Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules, he submitted that in every case the Executive Authority, namely, the President shall issue a special notice to the owner or occupier of each house and any objection

or representation against such levy or increase in tax received shall be considered by the Executive Authority if it reaches the office of the Village Panchayat within sixty days from the date of service of such notice in the case of the Government, a Railway Administration or a Company and within thirty days in other cases. As against such order, the petitioner is also provided with a right of revision under Rule 12. Since the respondents have not complied with Rule 11(3), the petitioner may not be able to avail the remedy of revision provided under Rule 12 of the Rules. The learned counsel also submitted that when the petitioner came to this Court alleging violation of Rule 11(3) of the Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules, this Court, appreciating the case of the petitioner that no notice whatsoever was issued to the petitioner, passed a conditional order directing the petitioner to pay 50% of the amount demanded and the petitioner, as per the conditional order, during the pendency of the writ petition, has been paying the 50% of the demand made by the respondents. Therefore, the impugned communication issued by the first respondent, who has no authority, is liable to go.

3. The learned standing counsel for the respondents 2 & 3 submitted that it is true that the first respondent has no authority for collection of property tax and when it is only an internal communication between the first respondent and the third respondent, this cannot be treated as a notice directing the petitioner to pay the enhanced property tax. But in any event, the petitioner has already submitted his detailed objection to the notice issued by the erstwhile third respondent. As the same has not been till date considered by passing a final order, a direction be issued to the second respondent to consider and pass order on merit as per law.

4. In view thereof, recording the same, the second respondent is hereby directed to consider the objection/representation dated 9.11.2012 given by the petitioner to the notice dated 5.10.2012 issued by the erstwhile third respondent, in the light of Rule 11(3) of the Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules, 1999. Till such an exercise is completed, the petitioner shall continue to pay 50% of the amount demanded as directed by this Court in its order dated 1.4.2013. With this direction, the writ petition stands disposed of. Consequently, M.P.No.2 of 2013 stands closed. No costs.

Sd/-

Assistant Registrar (JJ Act)

//True Copy//

Sub Assistant Registrar

ss

To

1. The Assistant Director of Panchayats
   Nagapattinam
   Nagapattinam District

2. The Block Development Officer (Panchayats)
   Mayiladuthurai Panchayat Union
   Mayiladuthurai
   Nagapattinam District

3. The President
   Moovalur Village Panchayat
   Mayiladuthurai Panchayat Union
   Nagapattinam District

+1cc to Mr.S.Kamadevan, Advocate, S.R.No. 91054
+1cc to the Government Pleader, S.R.No. 91768

W.P.No.8046 of 2013

PVS(CO)
GN(20/02/2020)