BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2019

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.(MD)No.1278 of 2014
and M.P.(MD)Nos.1 & 2 of 2014

D.Kathammal ... Petitioner

-Vs-

The Commissioner,
The Corporation of Madurai,
Arinanar Anna Maligai,
Madurai. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned demand notice for an assessment No.354764 tax fixed per half year Rs.58,562/- dated 18.09.2013 issued by the respondent, quash the same as illegal and direct the respondent to levy tax in accordance with law after giving opportunity of hearing.

For Petitioner : Mr.T.R.Subramanian
For Respondent : Mr.R.Murali

ORDER

The petitioner challenges a notice dated 18.09.2013 issued by the Commissioner, Madurai Corporation which is a property tax working sheet, imposing a half yearly tax of Rs.58,562/- for the Marriage Hall situated at 69/17D, Madurai Mandabam Main Road (in short 'property in question').

2.Submissions of Mr.T.R.Subramanian, learned counsel for the petitioner are as follows:-

The petitioner owns the property in question and is managing the same since 2004. Initially and admittedly, the property in question was situated within the jurisdiction of the Iravadanallur Panchayat. According to the petitioner, property tax has been paid regularly. On 18.09.2013, the respondent inspected the property giving rise to the present demand notice. An objection has been filed to the impugned notice on 22.11.2013, which is pending adjudication before the respondent.

3.Two main objections have been raised. The first objection is that the property in question ought to be assessed only by the Panchayat and not by the respondent / Corporation. The second objection is that the impugned communication seeks to levy tax for the prior periods and it is thus, not legally tenable.

4.The submissions of Mr.R.Murali, learned counsel for the Corporation are that the Iravadanallur Panchayat was merged with the Madurai Corporation in the year 2011 and all records relating to property tax assessments were handed over to the Corporation. Thus, as far as the first issue is concerned, there is no further deliberation required. The Panchayat having been merged with the Madurai Corporation with effect from 2011, all assessments would be made only by the Corporation thereafter.

5.As far as the validity of assessments for prior periods is concerned, attention of this Court is drawn to the provisions of Section 168 of the Madurai City Municipal Corporation Act, 1971 (in short 'Act') which empowers the authority to assess and to levy tax that has escaped assessment for periods upto six years prior to date of notice. According to Mr.Murali, the petitioner has been consistently negligent in payment of the statutory levy. However since the records have been handed over by the Panchayat to the Corporation, assessment records in relation to the property in question for the prior period are unavailable and the alleged lapses for the prior periods cannot really be established.

6.The provisions of Section 168 of the Act read thus:-

> '*168.Power to assess in case of escape from assessment._ Notwithstanding anything to the contrary contained in this Act or the rules made thereunder, if for any reason any person liable to pay any of the taxes or fees leviable under this Chapter has escaped assessment in any half-year or year has been assessed in any half-year or year at a rate lower than the rate at which he is assessable or in the case of property tax has not been duly assessed in any half-year consequent on the building or land concerned having escaped proper determination of its annual value, the Commissioner may at any time within (six years) from the date of which such person should have been assessed serve on such person a notice assessing him to the tax or fee due and demanding payment thereof within fifteen days from the date of such service; and the provisions of this Act and the rule made thereunder shall so far as may be apply as if the assessment was made in the half-year or year to which the tax or fee relates.*'

Clearly, power vests in the Corporation to assess those properties that have escaped assessment in terms of the provisions of the Act initiating proceedings within six years from the date when which such property ought to have been assessed.

7.Though, in line with the prescription contained in Section 168, the impugned notice dated 18.09.2013 could have levied tax from 2007/08 onwards, it seeks to re-open and levy tax only for the period from 2011, when the erstwhile Panchayat merged with the

Corporation. In the light of the categoric language of Section 168 of the Act, I find no legal anomaly in the issuance of the impugned communication for the period from 2011 onwards.

8.Coming to the computation of the tax itself, the Panchayat was levying only a paltry sum, in the range of Rs.2000/- as property tax. This, according to the respondent was based on gross undervaluation of the property by the petitioner. It is only after inspection conducted by the respondent that the true value of the property and the tax payable thereon, came to light.

9.Though the respondent alleges non-payment of property tax for the earlier years, my attention is drawn by the petitioner to two receipts issued by the respondent, for the periods 2011-2012(2) and 2012-13(1) where the respondent has received vacant site tax (VST) as well as property tax for the same period and in respect of the property in question. Thus, clearly, assessments are being framed mechanically.

10.The petitioner has rightly filed his objections to the impugned notice. Be that as it may, in the light of the elapse of nearly a decade from the period in question, this matter must be resolved in a time bound fashion. The petitioner is directed to appear before the authority on 22.07.2019 at 10.30 a.m. No further notice will be issued as this order is dictated in open court. After considering the objections filed and hearing the petitioner in person, orders shall be passed by the authority in regard to the property tax to be levied on the property in question within a period of two weeks from date of conclusion of personal hearing.

11.With these directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To
The Commissioner,
The Corporation of Madurai,
Arinanar Anna Maligai,Madurai.
+1 CC to M/s.T.R.SUBRAMANIAN, Advocate (SR-74310[F] dated 09/07/2019)
+1 CC to M/s.R.MURALI, Advocate (SR-74346[F] dated 10/07/2019)

W.P.(MD)No.1278 of 2014
09.07.2019

PS/SM
KK/SAR/24.07.2019/3P-4C