BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **20.07.2020**
CORAM :
THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P.(MD).No.7515 of 2020
and
W.M.P.(MD).No.6998 of 2020

N.Rasu ... Petitioner

Vs.

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The Block Development Officer,
Ilayangudi Union,
Sivagangai District.

3.S.Jeyakumar ... Respondents

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the third respondent in his undated proceedings against the petitioner for stoppage of collecting house tax from the petitioner and quash the same as illegal and consequently direct the third respondent to collect the house tax due amount from the petitioner in accordance with law.

For Petitioner : Mr.N.Anandakumar
For R1 & R2 : Mr.VR.Shanmuganathan,
Special Government Pleader

O R D E R
(Order of the Court was made by **M.SATHYANARAYANAN,J.**)

The petitioner is the resident of Old Door No.229, New Door No.4/6, Vaaniyakudi Village, Poolangudi Panchayat, Ilaiyangudi Union, Sivagangai District and according to him, he is an agriculturist and belongs to middle class family and the sale deed was registered bearing Document No.88/2013, dated 30.01.2013, on the file of the Sub Registrar Office, Rajasingamangalam, Sivagangai District. He has purchased 200 square meters of land in Patta No.1133, Survey No.165/9 of Vaaniyakudi Village, Poolangudi Panchayat, Ilaiyangudi Union, Sivagangai District and also put up a superstructure and it has been given electricity connection bearing S.C.No.05-442-001-283.

2. The petitioner would further state that after the said purchase, sub division was effected as Survey No.165/9B and the Patta has also been issued to him and he along with his family residing in the superstructure put up on the said land. The petitioner would further aver that the third respondent, on account of the personal animosity and in order to wreck vengeance, had prevailed upon him to initiate action for the alleged encroachment.

3. The second respondent, vide notice dated 04.11.2019, has informed the petitioner that he had encroached upon the 'Kanmai Land' (water body) in Survey No.145 ad-measuring to an extent of 17 square meters and also put up a superstructure and called upon him to remove the said encroachment within seven days from the receipt of the notice.

4. It is the claim of the petitioner that apart from the land purchased by him through the above said registered sale deed, he has not encroached upon any land situated in Survey No.145 of Vaaniyakudi Village and in terms of his response dated 15.11.2019, the second respondent did not initiate any further action. However, to the shock and surprise of the petitioner, the third respondent in his capacity as the President of Poolangudi Village Panchayat had issued the impugned notice dated 15.06.2020, stating that since the petitioner had constructed the house on the Government Poramboke and on account of the pending litigation before the Court, the collection of house tax is temporarily halted and challenging the legality of the same, the petitioner has come forward to file the writ petition.

5. The writ petition was listed for admission on 13.07.2020 and Mr.VR.Shanmuganathan, learned Special Government Pleader accepts notice on behalf of the respondents 1 and 2 and this Court has also put a query as to the power of the third respondent in issuing the impugned notice / proceedings. The case is listed today for further hearing.

6. The learned Special Government Pleader drawn the attention of this Court to certain provisions of the Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules 1999, as well as Section 2(11) of the Tamil Nadu Panchayat Act, 1994, made the following submissions:

(i) Sub Section 11 of Section 2 of the Tamil Nadu Panchayats Act, 1994, defines Executive Authority, which means, a person notified as such by the Government under Section 83 of the Act, in G.O.(Ms).No.225, Rural Development (C-1) Department, dated 15.10.1996, the Government had notified that the President of the Panchayat, can act as the Executive Authority and in the light of the fact, the third respondent also would come within the ambit the definition 'Executive Authority'.

(ii) The learned Special Government Pleader elaborating the argument would submit that Rule 3 of Tamil Nadu Village Panchayats

(Assessment and Collection of Taxes) Rules 1999, speaks about the Determination of Tax, the executive authority shall, save as otherwise provided in these rules, it has been vested with the said power.

(iii) Rule No.12 speaks about the Revision petition against assessment, and it pertains to annual rental value or capital value or on the plinth area of the superstructure, in respect of which the tax is imposed, has decreased since the assessment of the house was last made or revised.

(iv) Rule 24 provides for Appeal against the imposition of taxes to the Inspector of Town Panchayat (the Collector of the respective District).

(v) Rule 26 Speaks about the Power of a Panchayat to cancel or modify the orders of the executive authority and it also speaks about reducing or remitting a tax.

(vi) Rule 27 speaks about the Correction of assessment book and refund of house tax on appeal.

7. The learned Special Government Pleader after drawing the attention of this Court to the relevant Rules would fairly submit that the impugned order / the proceedings of the third respondent, halting the collection of the tax is sustainable for the reason that there is no statutory packing either in the Principal Act or in the Subordinate Rules viz., the Rules. Therefore, prays for appropriate orders.

8. The Court head the submission of the learned counsel for the petitioner, who would submit that in the absence of any statutory Rules or Packing, the third respondent is not vested with any power to halt the collection of house tax.

9. This Court has carefully considered the rival submissions and also perused the materials available on record.

10. In the case on hand, the third respondent being the Executive Authority has passed the impugned order / proceedings, halting the collection of house tax from the petitioner on the ground that he had encroached upon the Government Poramboke and put up a superstructure and on account of the pendency of the litigation before the Court.

11. As rightly pointed out by the learned Special Government Pleader as well as the learned counsel for the petitioner that in the absence of statutory packing, the third respondent is not vested with any power to issue such a kind of impugned order/ proceedings. Of course, the third respondent finds that somebody had encroached upon the land belonging to the local body, he is always entitled to exercise powers under Section 131 of the Tamil Nadu Panchayats Act, 1994, but in the case on hand, it is not so.

12. In the light of the reasons assigned above, the impugned order / proceedings issued by the third respondent warrants interference.

13. In the result, the writ petition is allowed and the proceedings of the third respondent, dated 15.06.2020 are quashed and the third respondent, without prejudice to the other rights, by invoking the provision under Tamil Nadu Panchayat Act, 1994 and Rules framed thereunder, shall collect the house tax from the petitioner and it is also expected that the petitioner is also under obligation to pay the house tax under statutory Rules on time. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Akv/Ns

<u>Note :</u> In view of the present lock down owing to COVID -19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The Block Development Officer,
Ilayangudi Union,
Sivagangai District.

3.Thiru.S.Jeyakumar,
The President, Poolangudi Village Panchayat,
Sivagangai District.

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