BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.07.2020
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.18664 of 2015
and
W.M.P.(MD)No.1 of 2015

S.Kalanidhi ... Petitioner

Vs.

The Commissioner,
Corporation of Madurai,
Aringar Anna Maligai,
Madurai - 625 002. ... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, call for the records pertaining to the impugned demand notice for attachment in Assessment No.66788 property tax fixed by the respondent and to quash the same and consequently, direct the respondent to issue no due certificate upto 2015-2 half year with law after giving opportunity of hearing.

For Petitioner : Mr.T.R.Subramanian
For Respondent : Mr.T.S.Mohammed Mohideen

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondent/Corporation.

2.The subject matter of the writ petition pertains to the building bearing Door No.13/B Kothavalchavadi East Street, Madurai Town, Madurai. It was assessed to property tax by the respondent/corporation. The property was purchased several decades ago and appears to have been used only as a residential building. It fell to the share of the petitioner vide partition deed dated 30.08.2010. The corporation raised the impugned demand in November 2014 by bringing it under the commercial category. This revised demand has been put to challenge by the petitioner herein by contending that it is barred by limitation.

3.The petitioner's counsel submitted that it is not open to the corporation to raise a demand after the expiry of three years.

4. I am not in a position to accept the said submission of the petitioner's counsel. As rightly pointed out by the learned Standing Counsel for the respondent/Corporation, the corporation has the power to assess the case on hand. Section 168 of Madurai City Municipal Corporation Act reads as follows:

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 or 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 or 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 on 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 rules 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."

5.According to the Corporation, the building in question has been put to commercial use right from the year 2010 and that within six years, the corporation has raised the present demand.

6.This assertion made by the corporation is controverted by the petitioner's counsel. The petitioner's counsel claimed that the building in question is used partly as residential building and it has been let out partly for commercial purposes. According to the petitioner's counsel, part of the building was let out for commercial purposes only from the year 2012.

7.As rightly pointed out by the learned Standing Counsel for the corporation, after raising of the demand, the corporation will have 12 years to recover the dues. Section 483 of the Act was amended in the year 2008 and limitation of 6 years has been extended to 12 years. Section 483 of the Act reads as follows:

"483. Limitations for recovery of dues:

No distraint shall be made, no suit shall be instituted and no prosecution shall be commenced in respect of any sum due to the corporation under this Act after the expiration of a period of [twelve years] from the last day of the period in respect of which such sum is claimed, or in case the same is not claimed in respect of any specific period, from the last day of the year in which the claim arose."

8.It is not the case of the corporation that the revised demand was made after issuing notice to the petitioner herein. Therefore, I find that the matter requires interference for two reasons.

(i) It is not clear as to when the part of the building became a godown. While the corporation would claim that it is from the year 2008, the petitioner would claim that it is from the year 2012. It is a matter for enquiry.

(ii) Secondly, The petitioner was not put on notice before passing the impugned order.

9. Therefore, on these two grounds, I quash the impugned order and allow the Writ Petition. The matter is remitted to the file of the respondent to pass orders afresh in accordance with law. I make it clear that in respect of the contention on limitation, I have found in favour of the Corporation. The petitioner can canvass on two aspects; Whether only the part of the building was let out for commercial purpose and in which year it was let out for commercial purpose. This will enable the respondents to arrive at a factual finding in the matter.

10.The petitioner of course has to pay the admitted statutory dues and if any alienation is made, in the meanwhile, it will be open to the respondent to proceed against the property for recovery of the dues.

11.The Writ Petition is allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note : 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.

+1 CC to M/s.T.S. MOHAMMED MOHIDHEEN, Advocate (SR-13294[F] dated 28/07/2020)

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