IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. No. 31002 of 2015
and
M.P. No. 1 of 2015

P.L.Karupayee ... Petitioner

-vs-

1. The Commissioner,
Municipal Office,
Gobichettipalayam,
Erode.

2. The Chairman,
Gobichettipalayam Municipality,
Erode. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the order dated 06.02.2015 in Na.Ka.No.203/2015/A1 of the first respondent herein, quash the same and consequently direct the first respondent herein to forthwith assess vacant land tax assessment vacant land tax of the property of an extent of 900 sq.ft. in Survey No.15, T.S. No. 73, Block No.23, Veerappanpatti Village, Erode Municipality, Erode.

For Petitioner : Mrs.A.L.Ganthimathi

For Respondents : No appearance

O R D E R

The relief sought for in the present Writ Petition is to call for the records pursuant to the order passed by the first respondent in proceedings dated 06.02.2015 and to quash the same and to direct the first respondent to assess the vacant land tax assessment in respect of the property stated by the petitioner.

2. The petitioner states that the property to an extent of

3.05 acres in Survey No.14b, an extent of 7.9 acres in Survey No.15 and an extent of 53 cents in Survey No.16A originally belonged to one Deivanaiammal under a Deed of partition dated 11.11.1959. Subsequent to the death of the said Deivanaiammal, the property vests absolutely on the legal heirs of the Deivanaiammal viz., Balasaraswathi and Rajalakshmi. Later, the said Balasaraswathi and Rajalakshmi sold an extent of 50 cents out of the total extent of 11.51 acres in the aforesaid survey numbers to one Vellappan under registered sale dated dated 15.02.1989. From the date of purchase, Vellappan was in absolute possession and enjoyment of the property.

3. Thereafter, the petitioner purchased an extent of 900 sq.ft. in Survey No.15, Block No.23 from the said Vellappan by way of a registered sale deed dated 02.12.2010. The petitioner states that he is in peaceful possession and enjoyment of the subject property. He submitted an application to the first respondent for assessment of tax in his favour in respect of the said property. However, the respondents have replied that, the said property is earmarked as open space and has been handed over to the Municipality and therefore, the tax cannot be assessed in favour of the petitioner. Again, the petitioner made a representation and filed W.P. No.31942 of 2007 and this Court passed an order directing the authorities to consider the representation. Pursuant to the order, the impugned order has been passed stating that, the subject property is earmarked as open space and has been handed over to the Municipality and therefore, the tax cannot be assessed.

4. The learned counsel for the petitioner relied on the orders passed by the Tahsildar where the patta has been transferred in the name of the petitioner. Further, the petitioner relied on the information provided by the Public Information Officer under the Right to Information Act. Relying on the said documents, the learned counsel for the petitioner reiterated that the petitioner is entitled for the property tax assessment and therefore, the authorities ought to have considered the case of the writ petitioner.

5. This Court is of the considered opinion that the order impugned states that the subject property is earmarked as open space and as per the respondents, it was handed over to the Municipality already for the public usage. Under these circumstances, the reliance placed on by the petitioner regarding the transfer of patta by the Tahsildar alone cannot be taken into consideration. Patta is granted based on the application submitted by the writ petitioner and therefore, an elaborate enquiry is required to find out whether the subject property is earmarked as open space for the public usage and handed over to the Municipality. Such an enquiry requires

adjudication by providing an opportunity to all the parties including the Municipality as well as the petitioner. In the event of identifying that, the subject property was earmarked as open space and handed over to the Municipality, then the claim of the petitioner cannot be considered.

6. However, if subject property falls within the approved area, then appropriate actions are to be taken. This being the principles to be followed. The first respondent is directed to conduct an inspection on the said property, verify the revenue records and to conduct an enquiry on merits and in accordance with law and by affording an opportunity to the writ petitioner and take a decision as expeditiously as possible. If the subject property falls within the earmarked area for open space and handed over to the Municipality, then the petitioner is not entitled for any other relief.

7. With these clarifications, the Writ Petition stands disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

vji

To

1. The Commissioner,
   Municipal Office,
   Gobichettipalayam,
   Erode.

2. The Chairman,
   Gobichettipalayam Municipality,
   Erode.

+1cc to Ms.AL.Ganthimathi, Advocate, S.R.No.39549

W.P. No. 31002 of 2015
and
W.M.P. No. 1 of 2015

GJ(CO)
SU(08/09/2021)