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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2021

CORAM :
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.34124 of 2016
and
W.M.P.No.29444 of 2016

Thiru.M.R. Govindan

... Petitioner

Vs.

The Sub- Collector,
Kancheepuram District,
Kancheepuram.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the respondent's impugned proceedings bearing Na.Ka.375/2016/A1, dated Nil-09-2016, quash the same.

For Petitioner : M/s.K. Ramakrishna Reddy
For Respondent : Mr.C.Selvaraj
Additional Government Pleader

O R D E R

The Demand Notice dated September 2016 was issued by the Sub-Collector, Kancheepuram District, is under challenge in the present writ petition.

2. Admittedly, the petitioner was granted stone quarrying lease in respect of petitioner's patta lands, measuring of 3.56.5 Hectares, comprised in Survey S.F.Nos.3/1A, 1B, 3/2, 5/2 & 86/1, 86/2 & 87/1 (Part), situated in Sirumayilur and Chittlapakkam villages, Uthiramerur Taluk, Kanchipuram District.

3. The lease was granted for a period of five years from 08.07.2010 to 07.07.2015 and it is admitted that period of lease expired in the year 2015.

4. The grievances of the writ petitioner is that after the expiry of the lease period in the year 2015, more so, after a lapse of one year, the impugned demand notice was issued by the respondent in September 2016 without issuing any show cause notice.



5. The learned counsel for the petitioner reiterated that the petitioner was not provided with an opportunity to submit his explanations before passing the impugned demand notice and therefore, the order impugned is in violation of the principles of natural justice.

6. The learned counsel for the petitioner contends that the period of lease expired on 07.07.2015 and the impugned demand notice is dated September 2016, after a lapse of one year and therefore, the order impugned is liable to be quashed.

7. This Court is of the considered opinion that "Show Cause Notice" and "Demand Notice" are incomparable. Show cause notice is different from the demand notice. Show cause notices are issued, seeking explanation from the person to submit their stand in respect of the allegations to be stated in the show cause notice or the facts narrated in the show cause notice. As far as the demand notices are concerned, it is issued based on certain provisions. The authorities competent are forming an opinion and determining the charges, issues or otherwise and thereafter, communicating the proposed decision by way of demand, asking them to comply with the same and therefore, the demand notice, which is issued on determination on certain issues in accordance with law cannot be said to be infirm. In the absence of any such calculation or determination, the aggrieved person would not be in a position to submit their explanation or otherwise. Therefore, such determination with reference to the provisions of the Statute or Rules is necessary for the purpose of issuing a demand notice. However, no such determination may not be required in respect of certain allegations, wherein show cause notices are issued, seeking explanation so as to clarify, whether there is any prima facie case against the person or not. Thus, there is a distinction between the show cause notice and demand notice.

8. For example, property tax assessments are made by the local body under the provision of the District Municipalities Act, Municipal Corporation Act etc., The property tax is to be calculated in the manner provided under law and calculated and determined the property tax alone should be communicated to the owner of the property, asking them to pay the property tax. Such a demand notice cannot be construed as if the decision is taken before consulting the aggrieved person as such determination is already contemplated with the provisions of the Statutes or Rules. Therefore, the determination of certain charges, tax, issues by invoking the provisions of the Statute, only demand notice arises and the demand notice is the first notice to be



issued and thereafter, the aggrieved person will get an opportunity to respond to the demand notice or to comply with the demand notice or to file an appeal before the Appellate authority as the case may be.

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9. In the present case, even in the impugned order, the respondent has clearly stated that the petitioner is at liberty to file his objections, if any, within a period of 30 days before the Kancheepuram District Collector. Therefore, an opportunity is already contemplated under the impugned demand notice itself. The petitioner ought to have preferred or filed any such objections within a period of 30 days. Contrarily, the petitioner has chosen to file the writ petition on the ground that no show cause notice was issued. Thus, the ground raised regarding the violation of principles of natural justice is misconceived as there is a difference between show cause notice and demand notice.

10. In the present case, the calculation regarding the amount to be collected is determined by the respondent based on the provisions of the Statute and it was communicated to the petitioner by providing an opportunity to submit his objections before the District Collector and thus, the order impugned cannot be construed as violation of principles of natural justice.

11. However, the writ petition is pending for the past about five years. Thus, the petitioner is at liberty to submit his objections to the Kancheepuram District Collector, if any, within a period of 30 days from the date of receipt of a copy of this order and in the event of submitting any such objection, the same may be considered on merits and in accordance with law as expeditiously as possible.

12. With this liberty, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Jeni/Kak



To

1.The Collector,
Kancheepuram District,
Kancheepuram.

2.The Sub- Collector,
Kancheepuram District,
Kancheepuram.

+1cc to Mr.K.Ramakrishna Reddy, Advocate SR.No.59719

W.P.No.34124 of 2016

KG(CO)
GN(30/11/2021)