BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 23.06.2021
CORAM:
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A.[MD]No.633 of 2020
and
C.M.P.[MD]Nos.3981 & 5877 of 2020

The Executive Officer,
Arulmighu Koppudayamman Thirukoil,
Karaikudi,
Sivagangai District. : Appellant/Writ Petitioner

Vs.

The Karaikudi Municipality,
Rep. by its Commissioner,
Karaikudi,
Sivagangai District. : Respondent/Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order dated 05.08.2020, in W.P.[MD] No.17050 of 2018.
Prayer in WP(MD). 17050/ 2018 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari for the impugned demand final notice dated 19.07.2018 in Na.Ka.No.7599/2017/A1 issued by the respondent Municipality to the petitioner temple and quash the same.

For Appellant : Mr.VR.Shanmuganathan
For Respondent : Mr.P.Mahendran
Standing Counsel

JUDGMENT

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[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.]**

We have heard Mr.VR.Shanmuganathan, learned Counsel appearing for the appellant and Mr.P.Mahendran, learned Standing Counsel for the respondent Municipality.

2.This Writ Appeal by the writ petitioner Arulmighu Koppudayamman Thirukoil is directed against the order dated 05.08.2020 in W.P.[MD]No.17050 of 2018.

3.The said writ petition was filed challenging the final demand notice dated 19.07.2018, issued by the respondent Karaikudi Municipality ['Municipality', for brevity), revising the vacant land tax in respect of the land owned by the appellant temple with retrospective effect based upon the amendment brought about by the Tamil Nadu Municipal Laws (Amendment) Act, 2009 and the Tamil Nadu Town Panchayats, Third Grade Municipalities, Municipalities and Municipal Corporations (Levy of Property Tax on Vacant Land) Rules, 2009 r/w. the table giving the rates of assessment.

4.The appellant temple questioned the impugned order on the ground of violation of principles of natural justice, no notice was issued prior to issuing the demand, there was no assessment of property tax done and straightaway, demand has been issued and apart from that the respondent Municipality does not have jurisdiction to revise the property tax retrospectively, based upon an amended law which has not been subsequently given retrospective effect.

5.The respondent Municipality resisted the prayer sought for in the writ petition by filing the counter affidavit and referred to Section 117-A of the Tamil Nadu District Municipalities Act, to justify the retrospective revision of the vacant land tax act. Apart from that they also referred to other Government Orders and submitted that the Municipality is required to adopt the table of assessment under the Rules and sought to justify the demand.

6.The learned Writ Court considered the submissions and found that the impugned demand was in violation of the principles of natural justice and being satisfied on the said ground, allowed the writ petition and quashed the demand, however, gave liberty to the Municipality to issue fresh notice. Aggrieved by the same, the appellant is before us. At the time when the appeal was entertained, an interim order was passed dated 26.08.2020, granting stay of the retrospective demand with a direction to the appellant temple to continue to pay the revised tax prospectively.

7.We are informed by the respondent Municipality that the appellant has been complying with the said order and has been paying the enhanced vacant land tax, prospectively. The moot question would be whether the Municipality can fall back on Section 117-A & 345 to justify their retrospective demand. The issue would be whether the 2009 Rules could operate retrospectively and whether the table under the Rules gives a discretion to the assessing authority to assess the property tax at a minimum and maximum rate, can the respondent Municipality issue a demand without undertaking a process of assessment.

8.In our considered view, the issue relating to jurisdiction should be decided after opportunity to the appellant and only then, the appellant will have an opportunity to challenge the stand taken by the respondent Municipality but seek to justify their power of retrospective revision. Since, the learned Single Bench has granted liberty to issue a fresh notice, we are of the view that the said direction can be slightly modified, so that not only the interest of the appellant temple is protected but the interest of the respondent Municipality is also safeguarded.

9.For the above reasons, the Writ Appeal is allowed in part and the order and direction issued by the learned Single Bench is modified by directing the respondent Municipality to issue show cause notice to the appellant temple, specifically stating as to how they are justified in invoking their power of retrospective revision of property tax. The appellant temple is at liberty to submit their objections. Thereafter, the respondent Municipality, after affording an opportunity of hearing to the Executive Officer of the appellant temple, pass a reasoned order on merits and in accordance with law. Till final order is passed, the appellant temple shall continue to pay the vacant land tax in terms of the interim order passed in this appeal. It goes without saying that remittances made by the appellant temple with regard to the revised vacant land tax shall be without prejudice to the rights of the appellant temple since the demand has been quashed. Therefore, the appellant temple would not only be entitled to question the retrospective revision but also the prospective revision. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MR

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.

To

The Commissioner,
Karaikudi Municipality,
Karaikudi,
Sivagangai District.

+1 CC to M/s.VR.SHANMUGANATHAN, Advocate (SR-20119[F] dated 24/06/2021)

JUDGMENT MADE IN
W.A.[MD]No.633 of 2020

23.06.2021

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