BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.08.2021**

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.15143 of 2021

(Through Video Conference)

A.Baskar Vincent .. Petitioner

-Vs-

The Commissioner,
Thoothukudi Municipal Corporation,
Thoothukudi. .. Respondent

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the Respondent to consider the petitioner's objections, dated 31.03.1997 and 22.04.1999 and the representation, dated 16.07.2021 and to withdraw the retrospective demand of property tax, without passing an Order under Rule 4 of Section 5 of the Tamilnadu District Municipalities Act, 1920.

For Petitioner : Mr.G.Prabhu Rajadurai
For Respondent : Mr.S.Saji Bino
Standing Counsel

ORDER

Prayer sought for herein is for a writ of mandamus, directing the Respondent to consider the petitioner's objections, dated 31.03.1997 and 22.04.1999 and the representation dated 16.07.2021 and to withdraw the retrospective demand of property tax, without passing an Order under Rule 4 of Section 5 of the Tamilnadu District Municipalities Act, 1920.

2.In respect of the property belongs to the petitioner at No.106J/50, Palai Road West, Millerpuram 2nd Street, Municipal Ward No.51 of the respondent Municipality, there has been a dispute with regard to the assessment and demand of the property tax between the petitioner and the respondent Municipality.

3.In this regard, as against the earlier revisions made by order dated 25.03.1997 with effect from 1993, objection had been raised by the petitioner on 31.03.1997. According to the petitioner, subsequently, unmindful of the same, further revision order was passed by way of special notice in the year 1999 and that was also objected on 25.03.1999, and without considering all these objections, since the respondent Municipality went on insisting to pay the revised tax, the petitioner was triggered to file a suit before the concerned Civil Court, and the matter has ultimately rushed in filing of Second Appeal in S.A(MD).No.960 of 2011, and that second appeal was disposed of on 21.04.2021, dismissing the same with the liberty to the petitioner herein, who was the appellant in the Second Appeal to file an appeal, challenging the validity of the levy and determination of the quantum of property tax, in the manner known to law. Pursuant to the said order passed by this Court in the said Second Appeal, the petitioner, in continuation of his earlier objection, had filed an appeal to the respondent Municipality on 14.07.2021, and the said appeal eventhough has not been decided, subsequent to the same, on 06.08.2021, there has been a further notice issued by the respondent Municipality to the petitioner stating that, if at all, the petitioner wants to make an appeal and to be heard by the respondent, the same shall be filed after paying the entire tax due payable by the petitioner and in this context, against the notice issued by the respondent Municipality, dated 06.08.2021, the petitioner has filed the present writ petition with the aforesaid prayer.

4.Heard Mr.G.Prabhu Rajadurai, learned counsel appearing for the petitioner, who would submit that, right from the year 1997, continuous objections had been made by the petitioner with regard to the alleged exorbitant revision of property tax, however, those objections had not been considered, ultimately, a civil suit filed by the petitioner has ended in the Second Appeal as stated supra by order dated 21.04.2021, where such a liberty was given to the petitioner to challenge the assessment as well as the demand made in this regard by the respondent Municipality. Therefore, when appeal was filed as referred to above dated 14.07.2021, the same has not been considered, instead, the respondent Municipality on 06.08.2021, issued a notice stating that the petitioner shall pay the entire tax due, then only the appeal would be considered.

5.Therefore, the learned counsel for the petitioner would submit that if at all any tax due payable by the petitioner at the pre-revised rate, certainly, the petitioner would be ready and willing to pay the same, ofcourse, without prejudice to the rights of the petitioner to raise all these points in the appeal, however, the respondent cannot demand the petitioner to pay the revised tax as condition precedent to consider even the appeal as the very subject matter of the appeal itself is only the challenge made against the revised tax. When that being so, seeking the demand of the entire arrears, as per the revised tax, would make the appeal ineffective and infructuous, therefore, without insisting such payment of revised tax due by allowing the petitioner to pay the pre-revised tax due, the appeal filed by the petitioner may be directed to be considered on merits within the time frame, he contended.

6.Heard Mr.Saji Bino, learned Standing Counsel appearing for the respondent Municipality, who on instructions, would submit that, the representation has been made long back, that is, in the year 1997, since then, one way or other, the petitioner had been making effort to thwart the attempt of the respondent Municipality to collect the revised property tax from the petitioner and his final attempt made by filing second appeal was also rejected, as the second appeal filed by the petitioner was dismissed on 21.04.2021, thereafter, if the petitioner wants to make an appeal, and if he made such an appeal as claimed by him, dated 14.07.2021, the same would be considered only after paying the tax due, since it is a condition precedent, such a notice dated 06.08.2021 was issued. Therefore, there is no flaw in the said notice, hence, the learned Standing Counsel for the respondent Municipality seeks sustainment of the said notice and also dismissal of this writ petition.

7.However, the learned Standing Counsel appearing for the respondent Municipality would submit that, if the petitioner come forward to make the tax due, as per the revised rate, as a condition precedent, certainly, the appeal filed by the petitioner, dated 14.07.2021, would be considered by the respondent Municipality, on merits, within the time frame.

8.I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

9.It is the case of the petitioner that, right from the beginning, as against the revised property tax, objections had been raised on the ground that no opportunity was given. Such objection was not considered, though it is the procedure, as has been contemplated under the relevant statute, to be followed by the respondent Municipality before making any revision to property tax. Ultimately, though the petitioner suffered with an order in the second appeal, as referred to above, dated 21.04.2021, liberty was given to the petitioner to challenge the validity of the levy or determination of the quantum on property tax and accordingly, the appeal has been filed on 14.01.2021. When such appeal has been filed, that should be considered on merits by the respondent Municipality by giving an opportunity of being heard to the petitioner and after considering the appeal, if the respondent Municipality comes to the conclusion that there must be some revision on the property tax and if any such order is passed, that would be faced by the petitioner in the manner known to law. However, without deciding the appeal filed by the petitioner, for which liberty was also given to the petitioner, as referred to above, the respondent Municipality cannot seek any payment of alleged arrears as per the revised rate of tax as a pre-requisite. The said submission made by the learned counsel for the petitioner is appealing because, once a revised rate of tax is collected by the respondent Municipality, then the very purpose of filing an appeal by the petitioner as against the very revision, which is in question, would become meaningless, and therefore, if at all, the respondent Municipality wants to get the arrears from the petitioner that arrears at the prerevised rate can very well be demanded from the petitioner as a pre-requisite to consider the appeal and not the revised rate of tax.

10.In that view of the matter, this Court is inclined to dispose of this writ petition with the following order:

> "that there shall be a direction to the respondent Municipality to consider the appeal of the petitioner dated 14.07.2021 with regard to the alleged revision of property tax for his property, and decide the same on merits and in accordance with law, ofcourse, after giving an opportunity of being heard to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order. Such consideration shall be made by the respondent Municipality on condition that the petitioner shall pay the pre-revised rate of property tax arrears, if any, till date, and on receipt of such arrears, the appeal of the petitioner, as indicated above, shall be considered and decided by the respondent Municipality."

11.With these directions, this writ petition is disposed of. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

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,
Thoothukudi Municipal Corporation,
Thoothukudi.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate(SR-27473[F] dated 26/08/2021)

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25.08.2021

RK(12.10.2021) 4P 3C