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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **01.11.2021**
CORAM
THE HON'BLE MR.JUSTICE R.SURESH KUMAR
W.P.(MD)No.19650 of 2021

V.Vasudevan ... Petitioner

Vs.

The Commissioner,
Office of the Municipal Commissioner.
Theni Allinagaram Municipality,
Theni, Theni District. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Order passed by the respondent vide his proceedings Na.Ka.No.2459/2021/A2 dated 01.10.2021, and quash the same and consequently directing the respondent herein to change the property tax and other taxes in the petitioner's name in the property situated at 6th ward, Compost yard street plot in Survey No.584/2, Theni Allinagaram, Theni District measuring 1296 sq ft.

For Petitioner : Mr.Mohamed Ayub

For Respondent : Mr.K.Hemakarthikeyan
Standing Counsel

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Order passed by the respondent vide his proceedings Na.Ka.No.2459/2021/A2 dated 01.10.2021, and quash the same and consequently directing the respondent herein to change the property tax and other taxes in the petitioner's name in the property situated at 6th ward, Compost yard street plot in Survey No.584/2, Theni Allinagaram, Theni District measuring 1296 sq. ft.

2.The property, to the extend of 1 acre 52 cents at survey No.584/2 in 6th ward, Compost yard street plot in Survey No.584/2, Theni Allinagaram, Municipality was purchased by the petitioner's mother, one Subbulakshmi, by a registered sale deed, dated 02.02.1995. Accordingly, the property was assessed for property tax by the respondent Municipality in the name of the mother of the petitioner, Subbulakshmi and tax was paid.

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3.Subsequently, on 25.08.2021, a portion of the property ie., 1296 sq. ft., alone as per the schedule given in the settlement deed, has been settled in favour of the petitioner, who is none other than the son of the said Subbulakshmi, on 25.08.2021 and the said settlement deed was registered duly in the concerned Registrar Office.

4.After having been bequeathed the property by the mother of the petitioner to the son ie., petitioner, he has approached the respondent Municipality to assess the said property ie., 1296 sq. ft., alone in the said survey number, as per the settlement deed referred to above for the purpose of property tax. However, the said request of the petitioner was rejected through the impugned communication dated 01.10.2021, of the respondent Municipality stating that unless the petitioner produces No Objection Certificate from all the legal heirs of the said Subbulakshmi, ie., the mother of the petitioner, the request of the petitioner cannot be considered. Aggrieved over the said order, this Writ Petition has been filed.

5.Mr.Mohamed Ayub, learned counsel appearing for the petitioner having reiterated the aforesaid, would submit that the petitioner has not inherited the property in question, as one of the legal heirs, from the mother of the petitioner. However, a portion of the property has been absolutely settled in favour of the petitioner, through the settlement deed dated 25.08.2021. Therefore, insofar as the property in question is concerned, other legal heirs of the mother of the petitioner may not have any say. Therefore, insistment of No Objection Certificate from the other legal heirs as has been stated in the impugned order may not hold good. Therefore, the said order is unsustainable. Hence, the learned counsel appearing for the petitioner seeks indulgence of this Court in this regard.

6.Mr.K.Hemakarthikeyan, learned standing counsel appearing for the respondent Municipality, on instructions, would submit that, since the property originally belongs to the mother of the petitioner, Subbulakshmi and she is having legal heirs other than the petitioner and the petitioner is one of the legal heirs, if at all any separate assessment has to be made in respect of the property in question, No Objection Certificate from the other legal heirs is required as has been stated in the impugned order. Therefore, the learned counsel seeks sustainment of the same.

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

8.As has been pointed out by the learned counsel appearing for

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the petitioner, the entire property belongs to the mother of the petitioner, Subbulakshmi, out of which, only a portion to the extent of 1296 sq. ft., alone has been bequeathed by way of the settlement deed dated 25.08.2021, to and in favour of the petitioner and the said settlement deed has been duly registered in the Register Office.

9.When that being so, the petitioner has become an absolute owner of the property in question ie., 1296 sq. ft., for which, the petitioner would be entitled to seek for assessment of property tax in his name. At this juncture, No Objection Certificate from other legal heirs may not be required. Insisting the same, if the respondent Municipality rejected the claim of the petitioner, this Court feels that the impugned order cannot be sustained.

10. In that view of the matter, this Court is inclined to pass the following orders:

> that the impugned order is quashed and the matter is remitted back to the respondent Municipality for re-consideration. While re-considering the same, it is open to the respondent municipality to verify the original settlement deed dated 25.08.2021 and any other supporting documents to be filed in this regard by the petitioner and after verifying the same, the property, which is covered under the settlement deed ie., 1296 sq. ft., alone can be considered for assessment of property tax and accordingly, the property tax can be assessed. The needful as indicated above shall be undertaken by the respondent within a period of four weeks from the date of receipt of a copy of this order.

11. With these directions, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

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.

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To

The Commissioner,
Office of the Municipal Commissioner.
Theni Allinagaram Municipality,
Theni, Theni District.

W.P.(MD)No.19650 of 2021
Dated:
01.11.2021

RK/JC(15/11/2021) 4P 2C

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