IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 28027 of 2013
and
M.P. No. 1 of 2013

1. R.Jeyaramakrishnan(died)

2. J.Govindaraj

3. J.Ganesh Bairava Muthukumar

4. J.Dhanalakshmi
(P2 to P4 are substituted vide order dated
15.06.2022 in W.M.P. No.4845 of 2022) … Petitioners

-vs-

1. The Commissioner
Pollachi Municipality
Palakkat Road
Pollachi
Coimbatore District.

2. The Taxation Appeal Committee
by its Chairman, Pollachi Municipality
Pallakkat Road
Pollachi Town
Coimbatore District. ...
Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order Na.Ka. No. 1834/2001/A1 dated

19.09.2013 of First Respondent quash the same and consequentially directing the Second Respondent to consider the appeals dated 10.09.2008 received on 11.09.2008 of the Petitioner in respect of Assessment No.17476, 17477, 17478 and 17479 for the buildings bearing Door Nos. 84, 84/1, 84/2 and 85, Venkataramanan Street, Pollachi Town, Coimbatore District.

For Petitioner	:	Mr. R.Kannan
For Respondents	:	Mr. R.Vijayakumar

O R D E R

Heard Mr. R.Kannan, Learned Counsel for the Petitioner and Mr. R.Vijayakumar, Learned Counsel for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The First Petitioner, viz., R.Jeyaramakrishnan, had preferred an appeal dated 10.09.2008 before the Second Respondent relating to the payment for property tax to his property situated at Door Nos. 84, 84/1, 84/2 and 85, Venkataramanan Street, Ward No. 8, Pollachi. It was informed to the First Petitioner that the said appeal was rejected by proceedings in Na. Ka. No. 1834/ 2001/A1 dated 19.09.2013 since he had not paid the property tax amount as

required, the appeal could not be entertained and the arrears of Rs. 3,53,988/- is due as on that date and thereafter, he was called upon to pay the arrears of tax for the said property. The said order is challenged in the Writ Petition with a consequential direction to the Second Respondent to pass orders on the said appeal.

3. Since the First Petitioner died on 30.07.2018 after the filing of the Writ Petition, his sons and daughter, viz., J.Govindaraj, J.Ganesh Bairava Muthukumar and J.Dhanalakshmi, have been substituted as the Second to Fourth Petitioners in the Writ Petition in his place by order dated 15.06.2022 in W.M.P. No. 4845 of 2022 passed by the Court.

4. It is the contention of the Second Respondent that as per proviso (b) of Rule 26 of Schedule IV of the Tamil Nadu District Municipalities Act, 1920, the full tax amount would have to be remitted as a condition for entertaining the appeal, but as the same has not been made, the appeal could not be heard by the Second Respondent.

5. In this context, reference must be made to the decision of the Hon'ble Supreme Court of India in ***Shyam Kishore -vs- Municipal Corporation Of***

Delhi [(1993) 1 SCC 22], where the law relating to prescribing pre-deposit as condition for entertaining an appeal under a statute has been explained in the following words:-

> *"44. It seems to us the words of Section 170(b) are capable of a broader interpretation. A perusal of Section 170 shows that the section uses three different expressions "heard or determined", "brought" and "admitted" in relation to an appeal and some significance is to be attached to the use of the expression "heard or determined". In like situations, other statutes such as the one considered by this Court in* ***Lakshmiratan Engineering Works Ltd -vs- Assistant CST*** *(AIR 1968 SC 488) and those contained in certain other enactments like the Bombay and Calcutta Municipal Acts specifically prohibit the very entertainment of the appeal if the tax is not paid. When the D.M.C. Act has carefully avoided the use of that word, we must give full effect to the differential wording. Also, the absence of a language in clause (b) of the proviso similar to that in clause (a) — which indicates that an appeal filed beyond the period of limitation will not stand admitted unless the delay is condoned — also warrants an*

inference that the payment of disputed tax is not a condition precedent to the entertainment or admission of the appeal. In the present statutory context, it sounds plausible to say that such an appeal can be admitted or entertained but only cannot be heard or disposed of without pre-deposit of the disputed tax. Such an interpretation will provide some much-needed relief from the harshness of the provision. These are not days in which the calculation of the property tax is simple and uncomplicated; the determination of the annual value of the property, except when based on the actual rent received from the property, involves various subjective factors and, not unoften, there is a wide gulf between the tax admitted to be due and the tax demanded. Sometimes, to compel the assessee to pay up the demanded tax for several years in succession might very well cripple him altogether. This apart, an assessee may not be able to deposit the tax while filing the appeal but may be able to pay it up within a short time, or at any rate, before the appeal comes on for hearing in the normal course. There is no reason to construe the provision so rigidly as to disable him from doing this. Again, when an *appeal comes on for hearing, the appellate judge, in appropriate cases, where he feels there is some great hardship or injustice involved, may be inclined to adjourn the appeal for some time to enable the assessee to pay up the tax. Though it will not be expedient or proper to encourage adjournment of an appeal, where it is ripe for hearing otherwise, only on this ground and as a matter of course, an interpretation which leaves some room for the exercise of a judicial discretion in this regard, where the equities of the case deserve it, may not be inappropriate. The appellate judge's incidental and ancillary powers should not be curtailed except to the extent specifically precluded by the statute. We see nothing wrong in interpreting the provision as permitting the appellate authority to adjourn the hearing of the appeal thus giving time to the assessee to pay the tax or even specifically granting time or instalments to enable the assessee to deposit the disputed tax where the case merits it, so long as it does not unduly interfere with the appellate court's calendar of hearings. His powers, however, should stop short of staying the recovery of the tax till the disposal of the appeal. We say this because it is* *one thing for the judge to adjourn the hearing leaving it to the assessee to pay up the tax before the adjourned date or permitting the assessee to pay up the tax, if he can, in accordance with his directions before the appeal is heard. In doing so, he does not and cannot injunct the department from recovering the tax, if they wish to do so. He is only giving a chance to the assessee to pay up the tax if he wants the appeal to be heard. It is, however, a totally different thing for the judge to stay the recovery till the disposal of the appeal; that would result in modifying the language of the proviso to read: "no appeal shall be disposed of until the tax is paid". Short of this, however, there is no reason to restrict the powers unduly; all he has to do is to ensure that the entire tax in dispute is paid up by the time the appeal is actually heard on its merits. We would, therefore, read clause (b) of Section 170 only as a bar to the hearing of the appeal and its disposal on merits and not as a bar to the entertainment of the appeal itself.*

45. If the provision is interpreted in the manner above *suggested, one can steer clear of all problems of constitutional validity. The contention on behalf of the Corporation to read the provision rigidly and seek to soften the rigour by reference to the availability of recourse to the High Courts by way of a petition under Articles 226 and 227 in certain situations and the departmental instructions referred to earlier does not appear to be a satisfactory solution. The departmental instructions may not always be followed and the resort to Articles 226 and 227 should be discouraged when there is an alternative remedy. A more satisfactory solution is available on the terms of the statute itself. The construction of the section approved by us above vests in the appellate authority a power to deal with the appeal otherwise than by way of final disposal even if the disputed tax is not paid. It enables the authority to exercise a judicial discretion to allow the payment of the disputed tax even after the appeal is filed but, no doubt, before the appeal is taken up for actual hearing. The interpretation will greatly ameliorate the genuine grievances of, and hardships faced by, the assessee in the payment of the tax as determined. Though an assessee may not be able to acquire an* *absolute stay of the recovery of the tax until the dispute is resolved, he will certainly be able to get breathing time to pay up the same where his case deserves it. If this interpretation is placed on the provision, no question of unconstitutionality can at all arise."*

It is informed that in furtherance to the order passed on 09.10.2013 at the time of admission, the First Petitioner has on 05.11.2013 remitted Rs. 2,00,000/- with the Respondents. As such, it shall be incumbent upon the Second to Fourth Petitioners to deposit the remaining amount of the tax due after deducting the said amount of Rs. 2,00,000/- in order to hear the appeal. The Respondents shall furnish the calculation showing the amount remaining due at the time of filing the appeal after deduction of the said amount of Rs. 2,00,000/-, and after the Second to Fourth Petitioners make payment of that amount, the appeal shall be taken up for hearing by the Second Respondent and due notice shall be issued to the concerned parties in that regard. It is needless to add here that in the event of failure of the Second to Fourth Petitioners to make payment of the remaining amount of property tax due, the Respondents are not precluded from taking necessary action for recovery following the prescribed procedure in accordance with law.

6. In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

15.11.2022

Maya

Index: Yes/No

Note: Issue order copy by 03.01.2023.

To

1. The Commissioner
   Pollachi Municipality
   Palakkat Road
   Pollachi
   Coimbatore District.

2. The Taxation Appeal Committee
   by its Chairman, Pollachi Municipality
   Pallakkat Road
   Pollachi Town
   Coimbatore District.

P.D. AUDIKESAVALU, J.

Maya

W.P. No. 28027 of 2013

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