IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16/12/2022

C O R A M

THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

Writ Petition No.12898 of 2014

N. Suresh Kumar ... Petitioner

Vs

The Commissioner
Pollachi Municipality
Coimbatore District. ... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the impugned order in Na.Ka.No.1756/2005/A4 dated 7/3/2014 passed by the respondent and consequently direct the respondent to follow the direction issued in the judgment and decree dated 10/7/2007 made in C.M.A.No.9 of 2005 passed by the learned I Additional District Court, Coimbatore.

For Petitioners ... Mr.N. Manokaran

For respondent ... Mr.G. Sankaran

O R D E R

This writ petition has been filed praying to quash the order dated 7/3/2014, made in Na.Ka.No.1756/2005/A4 passed by the respondent and consequently direct the respondent to follow the direction issued in the judgment and decree dated 10/7/2007 made in C.M.A.No.9 of 2005 passed by the learned I Additional District Court, Coimbatore.

2. The case of the petitioner is that the petitioner's father was the owner of a marriage hall, measuring an extent of 5450 sq.feet, bearing Door Nos.64 to 66, Market Road, Pollachi and necessary planning permission was obtained by the Local Planning Authority.

3. The property was originally located in Zone - D, as per the list of streets maintained by the respondent. Therefore, the respondent has to levy property tax, at the rate of 35 paise per sq.ft., for the properties located in Zone - D, whereas the respondent levied the property tax, at the rate of Rs.2.75 per sq.ft., and thereby, demanded the property tax of Rs.96,692/-, for the year 2001 - 2002.

4. Aggrieved against the same, appeal has been filed by the writ petitioner, which has been confirmed by the original authority. Challenging the same, he has filed an appeal before the District Court, in C.M.A.No.9 of 2005, before the District Court, Coimbatore, to set aside the order of the respondent, dated 10/7/2007, directing the respondent to assess and refix the tax of the property, which is situate in Zone - D. However, once again, the property tax fixed at the rate of 2.75 per sq.feet, for the period between 2001 and 2014, thereby demanded the property tax at Rs.26,58,583/-. Being aggrieved, the petitioner has come forward with the instant writ petition praying for the relief as stated therein.

5. In the counter, it is stated that in the plan it is stated that the property is located at D.Nos.64 to 66 at Meenkarai Road. But in the tax receipts appended along with the application, it has been stated that the property is located at Market Road. Further, he sought permission to put up a godown. But he cheated the Municipality and stated in his petition that the property is situated in Meenkarai Road. Therefore, as per the Municipal records, property is situated in Market Road and the property falls in 'A' Zone and hence the tax has been levied at Rs.2.75 sq.feet. After the construction was completed, property was given only one Door Number, i.e.,

64 and Property Tax Assessment No.29239 and the tax was fixed at Rs.96,692/- for half yearly. It is further stated that now the Municipality got three Zones, viz., A, B and C and since the property falls in Zone - A, tax is levied accordingly.

6. Heard Mr.N.Manokaran, learned counsel for the petitioner and Mr,G.Sankaran, learned Standing counsel for the respondent.

7. The learned counsel appearing for the petitioner submitted that the order impugned is passed as against the dead person. Original owner died in the year 2012. After three years, order has been passed against the dead person. On this sole ground, the impugned order cannot be sustained.

8. It is not disputed that originally, the tax has been assessed at the rate of 2.75 sq.feet as per Zone - A, which was confirmed by the appellate authority. As against, appeal was filed in C.M.A.No.9 of 2005. Considering the various documents filed, the District Court, by its order, dated 10/7/2007 has set aside the order and remanded back the matter for fresh assessment by the respondent.

9. The main contention of the learned counsel appearing for the petitioner is that even in the plan sanctioned by the respondent, it is clearly mentioned that the property situate in Meenkarai road and the same falls within the category, viz., Zone - D.

10. It is the contention of the learned counsel appearing for the respondent that Zone - D though was in existence prior to 1993, in general revision in the year 1998, only A, B and C alone were in existence. In Resolution, dated 31/7/2008 certain areas have been again classified as Zone - D.

11. It is his further contention that the petitioner's property does not fall within Zone - D and in fact, it is situate in the market road and clearly falls within Zone - A. Therefore, assessment is proper.

12. The very location of the property is in dispute, though the document filed by the petitioner including the plan show that the property situate in Meenakarai Road.

13. Be that as it may. As the dispute is with regard to location of the property, the same has to be properly identified by the respondent to find out whether the petitioner's property situate in Zone – A, i.e., in the market road, particularly in between the junction of Venkitaraman road and Theppakulam Street upto the junction of Railway Station road or not.

14. That apart, the impugned order has been passed against the dead person. Mr.Manokaran, learned counsel appearing for the petitioner also produced the copy of the Death Certificate. On a perusal of the same, it is clear that impugned order was passed much later as against the dead person. Any order passed against the dead person is nullity in the eye of law.

15. Accordingly, this writ petition is allowed and the order impugned in Na.Ka.No.1756/2005/A4 dated 7/3/2014 passed by the respondent is set aside and the matter is remanded to the respondent.

16. It is now stated by the petitioner counsel that the property in dispute was already gifted to the two sons of Narayanasamy on 25/7/2011. In such a view of the matter, respondent shall issue notice to the present owners of the property and reassess the entire assessment after identifying

place where the building is situate and arrive at a finding as to whether the building falls within Zone - A or beyond that. After arriving such a finding, reassessment to be made and pass an order on merits after giving opportunity to the present owners.

No costs. Consequently, the connected Miscellaneous Petition is closed.

16/12/2022

Index : Yes / No
Internet: Yes
Speaking/non speaking order

mvs.

To

The Commissioner
Pollachi Municipality
Coimbatore District.

N. SATHISH KUMAR, J

mvs.

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