

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2022

CORAM

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

W.P. No. 19009 of 2017

Sekar

...Petitioner

-vs-

1. The Commissioner,
Panruti Municipality,
Panruti.

2. The Commissioner,
Municipal Administration,
Chepauk,
Chennai - 600 005.

...Respondents

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for impugned order passed by the Second Respondent in Na. Ka. No. 299/2016/C1 dated 18.02.2017 and quash the same consequently direct the Second Respondent to refund the amount paid of Rs.41,692/- on 17.06.2016 as time barred arrears of taxes for the year 2004-2005 of Panruti Municipality.

For Petitioner : Mr. M.S.Soundararajan

For Respondents : Mrs. C.Sangamithirai,
Special Government Pleader

O R D E R

Heard Mr. M.S.Soundararajan, Learned Counsel for the Petitioner and Mrs. C.Sangamithirai, Learned Special Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who was working as Revenue Assistant (Bill Collector), had retired from the services of the Respondents on 30.06.2016 when he attained the age of superannuation. At that relevant point of time, the Petitioner was held to be accountable for his failure to recover property tax of Rs. 19,544/- and water tax of Rs. 22,148/- from the concerned owners of properties and according to the Petitioner, he had paid the said amounts on 20.06.2016 as the Respondents have imposed it as condition for release of his terminal benefits. This Court by order dated 25.10.2015 in W.P. No. 35479 of 2016 filed by the Petitioner had permitted

him to make a representation to refund that recovered amounts and the First Respondent was required to pass orders thereon. The Petitioner made such representation on 13.01.2017 contending that a time barred debt has been illegally recovered from him, but it has been rejected by Order in Na. Ka. No. 299/2016/C1 dated 18.02.2017 passed by the First Respondent, which is impeached in this Writ Petition.

3. Learned Counsel for the Petitioner refers to the decision of this Court in T.Jayaraman -vs- Commissioner of Municipal Administration (Order dated 14.03.2012 in W.P. No. 37070 of 2007) to contend that the time barred tax arrears could not be recovered from the employee concerned, like the Petitioner in this case. It is not possible to countenance such submission as it is now established that the rules of limitation do not extinguish the debt, but only bar the remedy of filing suit and the Hon'ble Supreme Court of India in Khadi Gram Udyog Trust -vs- Ram Chandraji Virajman Mandir [(1978) 1 SCC 44] has held in this regard as follows:-

"4. ...There is ample authority for the proposition that though a debt is time-barred, it will be a debt due though not recoverable, the relief being barred by limitation. In Halsbury's Laws of England (Third Edn.) Vol. 24 at p. 205, Article 369, it is stated "except in the cases previously mentioned, the Limitation Act, 1939 only takes away the remedies by action or by set-off; it leaves the right otherwise untouched and if a creditor whose debt is statute-barred has any means of enforcing his claim other than by action or set-off, the Act does not prevent him from recovering by those means". The Court of appeal in Curwen vs. Milburn [(1889) 42 Ch D 424] Cotton, LJ said:

"Statute-barred debts are dues, though payment of them cannot be enforced by action."

The same view was expressed by the Supreme Court in Bombay Dyeing and Manufacturing Co. Ltd. v. State of Bombay [AIR 1958 SC 328 : 1958 SCR 1122 : (1958) 1 Lab LJ 778] where it held that the statute limitation only bars the remedy but does not extinguish the debt, except in cases provided for by Section 28 of the Limitation Act, which does not apply to a debt. Under Section 25(3) of the Contract Act a barred debt is good consideration for a fresh promise to pay the amount. Section 60 of the Contract Act provides that when a debtor makes a payment without any direction as to how it is to be appropriated, the creditor has the right to appropriate it towards a barred debt. In a Full Bench decision of the Patna High Court – Ram Nandan Sharma v. Maya Devi [AIR 1975 Pat 283] , Untwalia, C.J. as he then was, has stated "There is a catena

Chand, J. in First National Bank v. Sant Lal [AIR 1959 Punj 328, 330 (para 12)] that the Limitation Act with regard to personal actions, bars the remedy without extinguishing the right". The law is well settled that though the remedy is barred the debt is not extinguished...."

Inasmuch as the divergent view has been expressed in the decision cited by the Learned Counsel for the Petitioner without following the dictum laid down in the authoritative pronouncement of the Hon'ble Supreme Court of India, it cannot be treated as good law. Having due regard to the aforesaid legal position coupled with the voluntary payment made by the Petitioner to the Respondents without any demur accepting his pre-existing liability so as to avoid any impediment for receiving his terminal benefits, he cannot resile therefrom seeking refund by projecting as if what had been paid was a time barred debt. At the same time, it is made clear that in terms of Section 69 of the Indian Contract Act, 1872, the Petitioner is not precluded from working out his remedies for reimbursement from the concerned persons, who had defaulted the payment of taxes and whose liability has been paid to the Respondents, before the proper forum in accordance with law.

4. In such circumstances, this Court does not find any justification to interfere with the impugned order passed by the First Respondent in the exercise of discretionary powers of judicial review of the decision-making process under Article 226 of the Constitution of India.

In the result, the Writ Petition is dismissed with the aforesaid observations. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

dm

To

1.The Commissioner, Panruti Municipality, Panruti.

2.The Commissioner,
Municipal Administration,
Chepauk, Chennai - 600 005.

+1cc to Government Pleader SR. No.11548

+1cc to Mr.M.S.Soundara Rajan, Advocate SR. No.10655

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