BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.03.2022
CORAM:
THE HONOURABLE MR.JUSTICE B.PUGALENDHI
W.P.(MD)No.10794 of 2009
and
M.P.(MD)No.1 of 2009

The Pennington Committee,
Rep. by its Secretary,
K.Kumaravel
No.9, Library Street,
Srivilliputhur ... Petitioner

versus

The Commissioner,
Srivilliputhur Municipality,
Srivilliputhur. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari, to quash the order dated 23.07.2009 relating to Assessment No.21253 in respect of the petitioner's property bearing Door No.66 (Ground Floor) in Netaji Road, Srivilliputhur and the consequential order 1-43/2009-10 dated 16.09.2009, insofar as it related to Assessment No.21253 bearing Door No.66 (Ground Floor) of Netaji Road, Srivilliputhur, as illegal and contrary to the provision of the Tamil Nadu District Municipalities Act, 1920.

For Petitioner : Mr.V.Radhakrishnan
Senior Counsel
for M/s.S.Kadarkarai

For Respondent : Mr.P.Srinivas

ORDER

This writ petition is filed against the order of assessment dated 23.07.2009 in respect of the property bearing Door No. 66 (Ground Floor) in Netaji Road, Srivilliputhur and the consequential order dated 16.09.2009.

2. The petitioner Pennington Committee was established in the year 1875 and registered under the Societies Registration Act 1860 and running a library at Srivilliputhur. Apart from this, the petitioner Pennington Committee also owns 188 shops located on both sides of Rajaji Road and in order to provide parking space for the public, they opened a cycle stand in T.S.No.453/part and 454 in one of the lands belonging to the petitioner Committee. The cycle stand was also constructed with pucca building, after obtaining planning

permission from the Deputy Director of Town and Country Planning, Madurai Region and from the Srivilliputhur Municipality. The respondent assessed the property tax in respect of the cycle stand for the assessment year 2009-2010 and issued an assessment order informing that the annual value has been fixed at Rs.7,40,877/- and based on that amount, levied the property tax Rs.1,19,281/- per half year. Aggrieved by the same, the petitioner Committee preferred an appeal before the respondent for reduction of property tax in respect of the cycle stand stating that the petitioner is getting an income of Rs.31,000/- to Rs.32,000/- per month and the petitioner will be incurring Rs.50,100/- to maintain the cycle stand which includes payment of property tax now fixed. However, the respondent, by a non-speaking order dated 16.09.2009, rejected the appeal confirming the assessment made by order dated 23.07.2009. Challenging the same, the present writ petition has been filed.

3. The learned Senior Counsel appearing for the petitioner submits that that the respondent, without assigning any reason, made the assessment, by fixing the quantum of Rs.7,40,877/- as annual income derived from the property. The petitioner has also submitted a representation on 16.09.2009, stating that the entire total space of the cycle stand is only 10300 sq. ft. and the maximum of 500 cycles and 300 motor cycles alone can be parked and they are also charging very marginal amount of Rs.1/- per cycle and Rs.2/- per motorcycle for 24 hrs. and they are getting a revenue of Rs.31,240/- per year. Whereas they spent more than that amount for maintaining the cycle stand and therefore, requested to reassess the assessment made to the cycle stand. However, the respondents have not considered the same. Therefore, the petitioner has filed the present writ petition. The learned Senior Counsel appearing for the petitioner further submits that since the petitioner has filed this writ petition, the cycle stand was also closed by the respondent for a period of more than five years.

4. The learned Senior Counsel for the petitioner relied on the provisions of Rule 12 Schedule IV of the Tamil Nadu District Municipalities Act, 1920, which mandates the authority to provide an opportunity before passing orders under Rule 13. By relying upon the said provision, the learned Senior Counsel submits that the respondent, without following Rule 12 and Rule 13, passed the assessment order and without assigning any reason and therefore, the respondent has violated the provisions of the Tamil Nadu District Municipalities Act, 1920. Hence, he prayed for allowing the writ petition.

5. Mr.Srinivas, learned counsel appearing for the respondent/Municipality submits that the assessment has been made in accordance with law and there is no violation of any procedure as contemplated under the Act and Rules of the Tamil Nadu District Municipalities Act, 1920. Therefore, he prayed for dismissing the writ petition.

6. This Court considered the rival submissions made and perused the materials available on record.

7. The petitioner Pennington Committee is having some shops at Srivilliputhur and was also running a library at Srivilliputhur and in order to provide parking facility for the public, who are visiting the shops and library, they had arranged for a parking slot with space of 10300 sq. ft., after obtaining necessary permission from the Deputy Director of Town and Country Planning, Madurai Region and from the Srivilliputhur Municipality. The respondent assessed the property tax assuming that there is a income derived from the cycle stand to an extent of Rs.7,40,877/- and based on the said amount, levied the property tax Rs.1,19,281/- per half year. The petitioner filed appeal to the respondent stating that the revenue is only Rs.32,000/- and the expenses are more than that amount and the parking facility is provided only for the convenience of people who are visiting the market. The respondent, without considering the same, rejected the appeal, by order dated 16.09.2009.

8. Rule 12 and 13 of Schedule IV of the Tamil Nadu District Municipalities Act, 1920 is extracted as under:.

> 12. No petition under rule [9 or 10] or 11 shall be disposed of unless the petitioner has been given a reasonable opportunity to appear either in person or by authorised agent and to represent his case.
>
> 13. Immediately after the disposal of a revision petition, the Executive Authority shall inform the petitioner or his authorised agent, either orally or in writing, of the orders passed thereon, shall direct him to pay the amount fixed on revision within fifteen days [after the date of receipt of such intimation], or if the amount is not yet due, within fifteen days from the date on which it becomes due, and shall, if necessary, cause the assessment books to be corrected.

9. From the perusal of the record, it appears that in this case, the petitioner was heard. However, the order passed by the respondent under Rule 13 is not a speaking order, without assigning any reason for rejecting the request of the petitioner. As against the order passed by the respondent under Rule 13, a remedy is also available to the petitioner for filing an appeal before the Taxation Appeals Committee under Rule 23. As per Rule 25, any such appeal shall be made in writing and shall set forth concisely and under distinct heads the grounds of objection to the decision or other proceedings appealed against.

10. As rightly pointed out by the learned Senior Counsel for the petitioner, the order dated 16.09.2009 passed by the respondent under Rule 13 is not a speaking order. Therefore, this Court is inclined to set aside the order dated 16.09.2009 and remit the matter back to the respondent for a fresh consideration.

11. Accordingly, the writ petition is allowed and the order dated 16.09.2009 passed by the respondent is set aside and the matter is remitted back to the respondent for a fresh consideration.

12. The petitioner is at liberty to file a fresh application setting out its objection and the present situation, within a period of three weeks from the date of receipt of a copy of this order. On receipt of such application, the respondent shall conduct a detailed enquiry by providing an opportunity of hearing to the petitioner as contemplated under Rule 12 and pass a reasoned order within a period of twelve weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

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To
The Commissioner,
Srivilliputhur Municipality,
Srivilliputhur.

+1 CC to M/s.S.KADARKARAI, Advocate (SR-15749[F] dated 31/03/2022)

+1 CC to M/s.P.SRINIVAS, Advocate (SR-15764[F] dated 31/03/2022)

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