BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **25.01.2022**

CORAM

THE HON'BLE MR. JUSTICE M.SUNDAR

W.P(MD)No.517 of 2022

and W.M.P.(MD)No.398 of 2022

Dr.Premkumar ... Petitioner

Vs.

The Commissioner,
Colachel Municipality,
Colachel,Kanyakumari District. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 27.05.2021 made in Ref.No.Na.Ka.No.147/2021/A1 passed by the respondent, quash the same and consequently direct the respondent to collect the amount fixed by the Appellate Committee of the respondent.

For Petitioner : Mr.C.Robert Bruze
For Respondent : Mr.P.Arun Jayatram
for Mr.P.Athimoola Pandian,
Standing Counsel.

O R D E R

In the captioned matter, Mr.C.Robert Bruze, learned counsel for the writ petitioner and Mr.P.Arun Jayatram, learned counsel representing Mr.P.Athimoolapandian, learned Standing Counsel for the sole respondent are before this Court, with the consent of learned counsel on both sides, main writ petition was taken up and heard out.

2. As the main writ petition was heard out, earlier proceedings made in the previous listing on 12.01.2022 in the main writ petition and in the captioned WMP become relevant and they are as follows:

'Proceeding in the captioned main writ petition:

In the captioned matter, Mr.C.Robert Bruze learned Counsel for writ petitioner who is before this virtual Court submits that the writ petitioner is a medical doctor by profession, he is running a hospital at Colachel in the name and style 'James Hospital'. It is also submitted that the writ petitioner has constructed a small hall near the hospital and above the hall he has constructed three single men's quarters for the doctors and staff to stay on the campus.

2.*The point is, it is submitted that this construction was assessed to property tax by* *respondent, the writ petitioner found the assessment to be high and therefore carried it to the Appeal Committee. Learned Counsel submits that Appeal Committee reduced the enhancement and tax is being paid regularly as per the rate fixed by the Appeal Committee. According to learned Counsel for writ petitioner this is in vogue from first half year of 2005-2006 [I/2005-06] which means from 01.04.2005. It is his further say that almost 16 years later without any prior notice and without any prior intimation the writ petitioner was slapped with a notice dated 27.05.2021 bearing reference Na.Ka.No.147/2021/A1 [hereinafter 'impugned notice' for the sake of convenience and clarity] which is as follows:*

நகராட்சி அலுவலகம்,
குளச்சல்
நாள் 27.05.2021

ந.க.எண்.147/2021/அ1

அறிவிப்பு

பொருள்: சொத்து வரி – குளச்சல் நகராட்சி – கதவு எண்.2–98/2,3,4,5–க்கு சொத்துவரி மேல்முறையீட்டு (Appeal Committee) குழுவில் வரி தொகை குறைவு செய்யப்பட்டது – தணிக்கை தடையில் சுட்டி காட்டியபடி சொத்து வரி மறு நிர்ணயம் செய்தது – நிலுவைத் தொகை செலுத்த கோருதல் – தொடர்பாக.

பார்வை:
1. வருவாய் உதவியாளர் மற்றும் உள்ளாட்சி நிதி தணிக்கை அறிக்கை 2005–2006 பத்தி எண்.24
2. சொத்து வரி கேட்பு மறு நிர்ணயம் செய்த விவர பட்டியல் நாள் 20.04.2021.

குளச்சல் நகராட்சி சொத்துவரி விதிப்பு எண்.148/002/00562,563,564,565–ன்படி, கதவு எண்.2–98/2,3,4,5–க்கு 2005–2006 I அரையாண்டு சொத்து வரியாக ரூ.5988/– , ரூ.1397/–, ரூ.1397/–, ரூ.1397/– ஆக நிர்ணயம் செய்து வரி செலுத்தப்பட்டு வந்தது. பின்னர் வரி மேல்முறையீட்டு குழுவில் (Appeal Committee) மேற்படி கட்டிடத்திற்கு அரையாண்டு சொத்துவரியாக ரூ.2200/– , ரூ.375/–, ரூ.375/–, ரூ.375/–ஆக குறைவு செய்யப்பட்டு வரி செலுத்தப்பட்டுள்ளது. பார்வை (1)–ல் கண்டுள்ள உள்ளாட்சி நிதி தணிக்கை அறிக்கையில் மேல் முறையீட்டு குழுவில் வரி அபரிதமாக குறைவு செய்ததை சுட்டி காட்டப்பட்டு தடை எழுப்பப்பட்டுள்ளதன் அடிப்படையில், பார்வை (2)–ல் கண்டுள்ள வரி மறு நிர்ணயம் செய்த விவர பட்டியலின்படி, தங்களது கட்டிடத்திற்கு 2005–2006 I ஆம் அரையாண்டு முதல் வரி உயர்வு செய்யப்பட்டுள்ளது. எனவே 2005–2006 I ஆம் அரையாண்டு முதல் 2021–2021 I ஆம் அரையாண்டு வரை சொத்துவரி நிலுவைத்தொகையினை செலுத்துமாறு இதன் மூலம் தெரிவிக்கப்படுகிறது.

இணைப்பு : சொத்து வரி மறு நிர்ணயம் செய்யப்பட்ட விவரப்பட்டியல்.

27/5/2021
ஆணையர்(பொ),
குளச்சல் நகராட்சி

பெறுநர்
டாக்டர். பிரேம்குமார்,
2–98/2,3,4,5, அண்ணாசிலை சமீபம்,
ஜேம்ஸ் மருத்துவமனை,
குளச்சல் அஞ்சல்.

__3.__The pivotal argument is, the above action of respondent is in complete violation of the procedure prescribed qua property tax under the Tamil Nadu District Municipalities Act, 1920, more particularly Section 82 thereat and Schedule IV of the Act captioned 'Taxation and Finance Rules' {hereinafter 'said Act' and 'said Rules' for the sake of convenience and clarity}.

__4.__Mr.P.Athimoolapandian, learned Standing Counsel who joined the virtual hearing accepts notice on behalf of lone respondent and requests for a short accommodation to get instructions and revert to this Court. Learned Counsel for writ petitioner to favour the learned Standing Counsel for Municipality (who has accepted notice) with one set of papers forthwith.

__5.__In the light of the narrative thus far and the trajectory the matter has taken there shall be an order of interim stay as prayed for in captioned WMP till the next listing. Registry to show the name of learned standing Counsel for respondent [Mr.P.Athimoolapandian] in and from the next listing. List under the caption 'Notice Regarding Admission' in the next listing.

__6.__List on __25.01.2022.__

Proceedings in the captioned WMP:

Captioned Writ Miscellaneous Petition [hereinafter 'WMP' for the sake of convenience and clarity] has been filed with a prayer to dispense with production of original of the impugned order dated 27.05.2021 bearing reference Na.Ka.No.147/2021/A1.

__2.__Learned Counsel for writ petitioner submits that writ petitioner is not readily able to lay his hands on the original of the impugned order but a photocopy of the same has been filed. Learned Counsel undertakes to produce the original by ferreting out the same if it becomes necessary and if called upon to produce the same.

__3.__Owing to the facts and circumstances of the case on hand, the reason is accepted in the instant case. Consequently, captioned Writ Miscellaneous Petition is ordered as prayed for.'

3. The above proceedings set out the factual matrix, issue i.e., bone of contention in a nutshell and it has also captured the trajectory the matter has taken thus far. Therefore, it is not

necessary to dilate any further on facts or the lis. Suffice to say that the aforementioned proceedings (extracted and reproduced supra) shall be read as an integral part and parcel of this order. Before proceeding further, it is made clear that the short forms and short references used in the aforementioned earlier proceedings made in the previous listing will continue to be used in the instant order also.

4. Adverting to the earlier proceedings, learned counsel representing the Standing Counsel for Respondent Municipality Corporation submits on instructions that no notice was given to the writ petitioner prior to enhancement of property tax *inter alia* by proceedings dated 20.04.2021 (cited as reference No.2 in the impugned notice).

5. From the narrative thus far it becomes clear that the enhancement of property tax (in the case on hand) has not been done in accordance with the procedure prescribed qua said Act and said Rules resulting *inter alia* in infraction of NJP {Natural Justice Principles}

6. Therefore, the following order is passed:

a) impugned notice i.e, notice dated 27.05.2021 bearing reference Na.Ka.No.147/2021/A1 issued by the sole respondent is set aside;

b) impugned notice is set aside solely on the ground that the procedure prescribed under said Act and said Rules have not been followed more particularly Section 82 of said Act resulting in infraction of NJP;

c) to be noted the above is owing to the stated position of the respondent that no notice was issued to the writ petitioner before enhancement of property tax;

d) in continuation of the aforesaid three limbs though obvious it is made clear that this Court has not expressed any view or opinion on the merits of the matter;

e) it is open to the respondent Municipality to embark upon the exercise of revision of property tax by adhering to the procedure and parameters set out in the said Act and said Rules. If the respondent Municipality embarks upon such an exercise, this order will neither impede the process nor serve as impetus for either party.

7. Captioned main writ petition is disposed of with the aforementioned directives. Consequently captioned WMP thereat is disposed of as closed. There shall be no order as to costs.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsm

To

The Commissioner,
Colachel Municipality,
Colachel,
Kanyakumari District.

+1 CC to M/s.F.DEEPAK, Advocate (SR-2650[F] dated 27/01/2022)

W.P(MD) No.517 of 2022
and W.M.P.(MD)No.398 of 2022
25.01.2022

nsn(CO)
TR(10.02.2022) 5P 3C