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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD) No.9732 of 2021

in

Cr.M.P(MD)No.4976 & 4977 of 2021

Sakunthala

...Petitioner/Accused

Vs.

1. The Executive Officer,
Vadamadurai Special Village Panchayat,
Dindigul District. ...1st Respondent/Complainant
2. The Assistant Director of Town Panchayat,
O/o.the Assistant Director of Town Panchayat,
District Collector's Office Campus,
Dindigul Town.
3. The Director of Town Panchayat,
O/o. The Director of Town Panchayat,
Kuralagam Buildings,
Opp. To Law College,
Chennai - 600 108 ...Respondents 2&3/
Respondents 2&3

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying this Court to call for the records relating to the proceedings of charge sheet in S.T.C.No.481 of 2021 on the file of the Judicial Magistrate Court, Vendasandur and quash the same.

For Petitioner : Mr.N.S.Ponnaiah

For R1 to R3 : Mr.B.Thanga Aravindh
Government Advocate(Crl.Side)

ORDER

The petitioner herein is owning property that fall within jurisdictional limits of the first respondent local body. The first respondent issued notices calling upon the petitioner herein to pay property tax at the revised rates. According to the petitioner, the tax demanded by the local body is exorbitant. The local body issued notice after notice, calling upon the petitioner to remit the demanded amount. Since, the demands of the local body were not



complied with, the impugned prosecutions were initiated. Private complaint was filed by the Executive officer of the local body.

2.The learned Trial Magistrate took cognizance of the offences under Section 124 read with Schedule IV, Rule 30(2) and 36(1) of the Tamil Nadu District Municipalities Act, Rules 30(2) and 36(1), 1920. To quash the same, this Criminal Original Petition has been filed.

3.Heard the learned counsel on either side.

4.It is not in dispute that the local body is entitled to prosecute the assessee if the amount due on account of any tax is not paid. But then, the local body cannot straightway take recourse to criminal prosecution.

5.Rule-30 of Schedule-4 of Tamil Nadu District Municipalities Act, 1920 reads as follows:

"30.(1) If the amount due on account of any tax is not paid within fifteen days from the service of the notice, or bail, or the giving of the direction referred to in Section 95 and 102 and Rules 13 and 29 or within three days from the service of the notice referred to in Section 108, and if the person from whom the tax is due has not shown cause to the satisfaction of the executive authority why it should not be paid, the executive authority may recover by distraint under his warrant and sale of the movable property of the defaulter, the amount due on account of the tax together with the warrant fee and the distraint fee, and with such further sum as will satisfy the probable charges that will be incurred in connexion with the detention and sale of the property so distrained:

Provided always that movable property described in the proviso to section 60 of the Code of Civil Procedure, 1908 (Central Act V of 1908), shall not be liable to distraint.

(2)If for any reason the distraint, or a sufficient distraint, of the defaulter's property is impracticable, the executive authority may prosecute the defaulter before a magistrate."

6.It can be seen from the above that the local body must first initiate distraint process. If distraint or a sufficient distraint, of the property is impracticable, then the executive authority may prosecute before the Magistrate. The plain text clearly shows that prosecution cannot be the first option. In this case, the impugned complaint filed by the Executive Officer is in stereo typed form. It does not indicate that any notice for distraint process was initiated. There is no averment in the complaint that distraint or sufficient distraint was impracticable. Therefore, on this sole ground, the impugned proceedings stand quashed. The Criminal Original Petition is allowed. Consequently, connected miscellaneous



petitions are closed. However, the first respondent is at liberty to proceed against the petitioner in accordance with law.

Sd/-

Assistant Registrar (CS I)

// True Copy //

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Sub Assistant Registrar(CS)

lr

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Executive Officer,
Vadamadurai Special Village Panchayat,
Dindigul District.
2. The Assistant Director of Town Panchayat,
O/o.the Assistant Director of Town Panchayat,
District Collector's Office Campus,
Dindigul Town.
3. The Director of Town Panchayat,
O/o. The Director of Town Panchayat,
Kuralagam Buildings,
Opp. To Law College,
Chennai - 600 108
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

CrI.O.P.(MD) No.9732 of 2021

08.03.2022

MGJ(24.03.2022) 3P 5C