BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 28.04.2022
CORAM
THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition (MD)Nos.12062 of 2014, 13544 of 2015 and 18745 of 2021
and
M.P.(MD)Nos.2 of 2014, 1 of 2015 and 15529 & 15530 of 2021

W.P.(MD)No.12062 of 2014:-

1.M.Venkateswaran, S/o.D.Mayandi
2.Amutha, W/o.D.M.Venkateswaran
3.Jeya, D/o.Mayandi .. Petitioners

Versus

1.The Commissioner,
Madurai City Municipal Corporation,
Arignar Anna Malaigai,
Madurai.

2.The Assistant Commissioner (Region I),
Madurai City Municipal Corporation,
Arignar Anna Malaigai,
Madurai. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent in connection with the impugned notice dated 08.07.2014 in respect of the petitioners building at Door No.75D, Bye Pass Road, Madurai, and the consequential order of the second respondent, dated 09.07.2014, quash the same and direct the respondents to pass an order of assessment in accordance with the provisions of Madurai City Municipal Corporation Act, regarding property tax after holding an enquiry and making an inspection and considering the objections / representations of the petitioners, dated 19.05.2014 and 08.07.2014.

For Petitioners	:	Mr.Niranjan S.Kumar
For Respondents	:	Mr.B.Saravanan Standing Counsel

W.P.(MD)No.13544 of 2015:-

M.Venkateswaran, S/o.D.Mayandi .. Petitioner

Versus

1.The Commissioner,
Madurai City Municipal Corporation,
Arignar Anna Malaigai,
Madurai.

2.The Assistant Commissioner (Region I),
Madurai City Municipal Corporation,
Arignar Anna Malaigai,
Madurai. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the second respondent in connection with the impugned demand notice signed on 23.07.2015 in respect of the petitioner's building at Door No.75D, Bye Pass Road, Madurai, and quash the same.

For Petitioner : Mr.Niranjan S.Kumar
For Respondents : Mr.R.Murali
Standing Counsel

W.P.(MD)No.18745 of 2021:-

M.Venkateswaran, S/o.D.Mayandi .. Petitioner

Versus

1.The Commissioner,
Madurai City Municipal Corporation,
Arignar Anna Malaigai,
Madurai.

2.The Assistant Commissioner (Region I),
Madurai City Municipal Corporation,
Arignar Anna Malaigai,
Madurai. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the second respondent vide Ref.No.மள1/003965/2014, dated 05.10.2021 and quash the same.

For Petitioner : Mr.Niranjan S.Kumar
For Respondents : Mr.B.Saravanan
Standing Counsel

COMMON ORDER

By this common order, these Writ Petitions are being disposed of.

2.Apart from these three Writ Petitions, the petitioners had earlier filed W.P.(MD)No.12757 of 2012, challenging the property tax working sheet issued by the respondent Corporation on 29.08.2012.

The said writ petition was entertained by this Court and an order came to be passed on 23.04.2014. The relevant portion from the said order reads as under:-

''4.Having regard to the above position, since the impugned tax demand notice has been issued, without giving due opportunity to the petitioners, this Court is of the view that the impugned tax demand notice, dated 29.08.2012, issued by the respondent, may be treated as show cause notice and the petitioners may be permitted to submit their objections for the same.

5.Accordingly, the writ petition is ordered and the petitioners are directed to treat the impugned tax demand notice dated 29.08.2012 as show cause notice and the petitioners are permitted to file their objections on or before 15.05.2014 and on such filing of objections, the respondent is directed to consider the same and pass appropriate orders thereon, within a period of four weeks, thereafter. However, before passing the order, it is open to the respondent to inspect the property, take measurement and accordingly, decide the quantum of tax to be levied. Consequently, the connected miscellaneous petitions are closed. No costs.''

3.Pursuant to the above, the petitioners appear to have sent certain representations, which were eventually culminated in a property tax working sheet, dated 08.07.2014, that has been impugned in W.P.(MD)No.12062 of 2014. This Court, while entertaining the above Writ Petition, *i.e.,* W.P.(MD)No.12062 of 2014, has granted an order of interim stay on 23.07.2014, considering the fact that during the period *i.e.,* 2012-2013 and 2013-2014, the petitioners have approximately paid a sum of Rs.36,00,000/-. Thereafter, pending disposal of W.P.(MD)No.12062 of 2014, another notice of demand came to be issued on 23.07.2015, wherein the petitioners were asked to pay arrears of Rs.45,20,784/-, being the arrears of property tax for the first and second half of 2014-2015 and 2015-2016, which is impugned in W.P.(MD)No.13544 of 2015.

4.The petitioners thereafter received another demand notice dated 05.10.2021, which is impugned in W.P.(MD)No.18745 of 2021. While so, the interim order granted by this Court earlier in W.P.(MD)Nos.12062 of 2014 and 13544 of 2015 was vacated on 04.10.2021. The petitioners are unable to explain as to why they had not preferred statutory appeal under the provisions of the Madurai City Municipal Corporation Act, 1971, particularly, in terms of Schedule - II, which contemplates/prescribes the Taxation Rules.

5.It appears that the interim order, dated 04.10.2021, vacating the interim injunction granted on an earlier occasion, was also appealed before a Division Bench of this Court in W.A.(MD)No.1954 of 2021, which was dismissed on 22.10.2021, by directing the first petitioner to work out remedy before this Court in W.P.(MD)Nos.12062 of 2014 and 13544 of 2015.

6.The main contention of the petitioners in these Writ Petitions is that there is a procedural infraction of the provisions of the Madurai City Municipal Corporation Act, 1971. It is specifically stated that Section 121 of the above said Act has not been followed by the respondent Corporation right from 2012. It is submitted that at the time when the petitioners approached the respondent for property tax assessment, the property merely consisted of two basements and three floors, though there was a provision for three more floors. It is submitted that if the procedure prescribed under the Taxation Rules was followed, the property tax would not have been so high as has been demanded.

7.That apart, it is submitted that periodical demands have been made on the exaggerated amount by including the common plinth area. It is the case of the petitioner that the law on this aspect has been settled by the Allahabad High Court in **Shiv Sewak Singh and others vs. State of U.P. and others** reported in 2012 Supreme (All) 1416 and as far as calculation of the property tax under the similar enactments, it is applicable in the State of Tamil Nadu.

8.In support of his submissions, the learned counsel for the petitioners relied on the following decisions:-

(i) **Sanjai Gupta vs. The Commissioner, Corporation of Chennai and another** reported in 2009 (2) CTC 465

(ii) **Tamil Nadu Warehousing, Rep. by its Chairman-cum-Managing Director vs. The Commissioner, Panruti Municipality and another** reported in CDJ 2008 MHC 1653

(iii) **S.Nagarajan and others vs. The Assistant Commissioner, Corporation of Madurai and others** reported in CDJ 2010 MHC 941

(iv) **Kottar Elankadai Musliem Samudhaya Trust, Rep. by the President and others vs. Commissioner, Nagercoil, Kanyakumari District** reported in **2017 (1) MLJ 48**

(v) **State Trade Corporation of India Limited vs. New Delhi Municipal Council** reported in 2003 Supreme (Del.) 387

9.That apart, the learned counsel for the petitioners submits that from the inception *i.e.,* from 2012, the petitioners have approximately paid a sum of Rs.1,67,00,000/- as against Rs.1,82,00,000/-. The petitioners however are unable to confirm the same. The learned counsel for the petitioners therefore submits that these are the fit cases for interference, as there is a procedural infraction in the assessments and therefore, prays for allowing the Writ Petitions.

10.Opposing the prayer, the learned Standing Counsels for the respondent Corporation have submitted that there is no procedural infraction. It is submitted that all the procedural safeguards under the Act have been taken care of by the respondent Corporation in terms of Section 121 of the Madurai City Municipal Corporation Act, 1971 read with Schedule – II of the Act, which deals with the Taxation Rules.

11.It is submitted that the assessments are based on the returns that were filed and in these cases, the petitioners have filed returns in the year 2012 and therefore, the assessment was made based on the returns filed by petitioners. It is further submitted that after the returns were filed, the respondent Corporation had also inspected the property and based on the inspection carried out by them, assessment of tax was made. The learned Standing Counsels for the respondent Corporation further submit that subsequent to the development in 2012, the petitioners have put up additional constructions. Therefore, tax has been demanded on the additional construction also. It is further submitted that the petitioners have alternate remedy before the Tribunal as per Schedule – II, Taxation Rules, Part-V of the Madurai City Municipal Corporation Act, 1971.

12.The learned Standing Counsels for the respondent Corporation further submits that as of now after adjusting the amounts paid by the petitioners, the tax due from the petitioners is approximately Rs.87,01,960/-. The learned Standing Counsels for the respondent Corporation further submit that there is no merit in the Writ Petitions, as there is no procedural irregularity committed by the Commissioner while assessing the property tax under the provisions of the Madurai City Municipal Corporation Act, 1971.

13.I have considered the arguments advanced by the learned counsel for the petitioners and the respective learned Standing Counsels for the respondent Corporation.

14.There is no merit in the present Writ Petitions. The petitioners have alternate remedy before the Tribunal. In fact, the Tribunals are specifically constituted to deal with such type of issues as they involve not only legal aspect, but also technical aspect as to the nature of property and the kinds of construction. The High Court, at best, can intervene after the Tribunal has passed an order under Article 226 of the Constitution of India in terms of the decision of the Hon'ble Supreme Court in **L.Chandrakumar vs. Union of India** reported in 1997 (92) ELT 318 (SC) : 1997 (2) SCR 1186, if there is no appeal mechanism under the Act.

15.Under these circumstances, liberty is given to the petitioners to work out their remedy against the respective assessments made, provided they file such appeals within a period of 30 days from the date of receipt of a copy of this order.

16.The petitioners appear to have paid a substantial amount as against the demands, which came to be challenged in the Writ Petitions, which includes the present three Writ Petitions. Clause 22 of Part - V to Schedule-II of the Madurai City Municipal Corporation Act, 1971, contemplates no appeal shall be entertained by the Tribunal unless the appellant deposits in the Corporation the existing tax and also fifty per cent of the difference between the existing tax and the tax as assessed by the Commissioner in the revision. Under these circumstances, liberty is given to the petitioners to file a statutory appeal within a period of 30 days from the date of receipt of a copy of this order. The Tribunal shall dispose of the appeal after considering all the available records, which may be produced by the petitioners and the respondent on merits and in accordance with law within a period of six months from the date of receipt a copy of this order. The petitioners are given liberty to file appropriate application for interim order against any coercive measures that the respondent Corporation may initiate. It is made clear that pending disposal of such appeal, no proceedings shall be initiated by the respondent to harass the petitioners by placing flex boards or placing dust bins in front of the Mall.

17.These Writ Petitions stand dismissed with the above observations. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Commissioner,
Madurai City Municipal Corporation,
Arignar Anna Malaigai, Madurai.

2.The Assistant Commissioner (Region I),
Madurai City Municipal Corporation,
Arignar Anna Malaigai, Madurai.

+1 CC to M/s.B.SARAVANAN, Advocate (SR-22882[F] dated 29/04/2022)

+1 CC to M/s.NIRANJAN S. KUMAR, Advocate (SR-23151[F] dated 02/05/2022)

+1cc to MR.R.MURALI,Advocate, SR.No. 22474 DATED:29.04.2022

Common order in
Writ Petition (MD)Nos.12062 of 2014, 13544 of 2015 and 18745 of 2021
28.04.2022

kmv(CO)SG(01.06.2022) 6P 6C