BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.11.2022**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.5414 of 2014
and
M.P(MD)Nos.1 to 3 of 2014

KR.Krishnan ... Petitioner

Vs.

The Commissioner,
Karaikudi Municipality,
Karaikudi. ... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned order of the respondent bearing Proceedings No.Na.Ka.3360/2002/A2, dated 05.03.2014 along with enclosed similarly dated consequential demand notices bearing Assessment Nos.14213 and 14214, 14597 and 14598 and quash the same and direct the respondent to act as per the order made in W.A.No.355 of 2003, dated 19.02.2003 by this Court and pass such further or other order as this Court.

For Petitioner : M/s.K.K.Senthil
For Respondent : M/s.D.Venkatesh

ORDER

The present Writ Petition has been filed challenging the order passed by the respondent herein, under which, they have created four assessments and enhanced the property tax.

2. According to the learned Counsel for the petitioner, he is the owner of a lodging house and a shopping complex. Originally the said building was having two assessment orders. Thereafter, the respondent authorities have increased the assessment to nine. The said order was challenged before this Court in W.P.No.41369 of 2002. The writ petition was partly allowed on 18.11.2002. Challenging the same, the consumer had filed W.A.No.355 of 2003. The Hon'ble Division Bench was pleased to allow the writ appeal on 19.02.2003 with the following direction. Paragraph No.5 of W.A.No.355 of 2003 is extracted as follows:

> *"5. In the circumstances, we set at naught the reply notice issued by the respondent through its lawyer on 09.12.2002, and direct the respondent to start from the show cause notice afresh, directing the appellant to file an explanation as to why the old assessment could not be cancelled. While doing so, the respondent is obliged to state the*

reasons very clearly and specifically so as to conform to the principles of fair play, enabling the appellant to give an effective reply. This process now shall be done by the respondent afresh, without sticking to its stand revealed in its reply through its lawyer's notice dated 09.12.2002. We make it clear that the appellant shall be liable to pay only the old assessed property tax until the decision afresh is taken pursuant to this order."

3. In view of the above said Hon'ble Division Bench judgment, the respondent herein was directed to issue a show cause notice to the consumer why these two assessment orders were cancelled and why it was increased to nine. After rejecting the objection received from the consumer, the respondent was directed to proceed further. The Hon'ble Division Bench has further directed that till such time, the old assessed property tax shall be paid by the consumer.

4. The learned Counsel for the petitioner further submitted that without issuing any show cause notice, suddenly, they increased the assessments to eleven. This was challenged by the petitioner in W.P(MD)Nos.13863 to 13873 of 2010. This Court by an order, dated

08.12.2010 allowed all the writ petitions and directed the respondent to comply with the order of the Hon'ble Division Bench and to pass fresh assessment orders in respect of the petitioner's property and till such fresh assessment orders are passed, as per the Hon'ble Division Bench of this Court, the impugned demand notices shall be kept in abeyance. Thereafter, the respondent has chosen to issue a notice on 11.04.2012 for the purpose of inspecting the property to carry out measurements of the building. The petitioner has co-operated for the same and measurements were taken on 27.04.2012. Thereafter, the respondent herein had proceeded to pass the impugned order creating four assessments for the entire building and has also enhanced the property tax. This order states that it is in compliance with the orders passed by this Court. This order, dated 05.03.2014, is under challenge in the present writ petition.

5. According to the learned Counsel for the petitioner, the order of the Hon'ble Division Bench, dated 19.02.2003, has not been complied with by the respondents. No show cause notice has ever been issued to the writ petitioner seeking explanation why the old assessment orders should be cancelled and new assessment orders should be issued. The

notice that was issued on 11.04.2012 is only for the purpose of inspecting the property and it was not a show cause notice as directed by the Hon'ble Division Bench. Hence, in view of the above said facts, the petitioner sought for quashing the impugned order.

6. Per contra, the learned Counsel for the respondent had contended that the order of the Hon'ble Division Bench has been complied with and only based upon the measurements taken, the present impugned order has been passed and hence, the said order may be sustained. He further contended that the petitioner continues to pay the old assessment even though there is enhancement of property tax with regard to the other residents of the same locality. Hence, he prayed for sustaining the impugned order.

7. I have carefully considered the submissions made on either side.

8. No records have been placed before this Court to the effect that any show cause notice was issued to the writ petitioner in compliance with the Hon'ble Division Bench order, why the old assessment order

should be cancelled. In fact the learned Single Judge of this Court in W.P(MD)Nos.13863 to 13873 of 2010 by an order, dated 08.12.2010, has again directed the respondent authorities to comply with the Hon'ble Division Bench order. Even thereafter, the respondents have not chosen to comply with the Hon'ble Division Bench order and have proceeded to issue the impugned order wherein, for a single building, four assessments have been issued. So far no show cause notice has been issued, why the old two assessments have to be cancelled.

9. The narration of the above said facts, will clearly indicate that the order impugned in the writ petition, dated 05.03.2014, is clearly is in violation of the Hon'ble Division Bench cited supra. In view of the above said facts, the order impugned in the writ petition is set aside. The matter is remitted back to the file of the first respondent herein to issue a show cause notice to the writ petitioner as directed by the Hon'ble Division Bench in W.A.No.355 of 2003. After obtaining the explanation from the writ petitioner, the respondents are entitled to proceed further in fixing the property tax. Any deviation in this regard will be strictly viewed.

10. With the above said observation, the writ petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

30.11.2022

Index : Yes / No
Internet : Yes / No
btr

To

The Commissioner,
Karaikudi Municipality,
Karaikudi.

R.VIJAYAKUMAR, J.

btr

Order made in
W.P(MD)No.5414 of 2014

30.11.2022