BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 21.09.2022

ORDER PRONOUNCED ON : 28.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.1707 of 2015
and
MP(MD).No.2 of 2015

1.N.Ananthakrishnan

2.L.Rajendra Rao ... Petitioners

Vs.

The Commissioner,
Sengottai Municipality,
Sengottai,
Tirunelveli District. ..... Respondent

PRAYER: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Resolution No.302 of the Respondent Municipality dated 26.12.2012 and quash the same and direct the respondent Municipality to collect the correct Property Tax from the petitioners as per law.

For Petitioners : Mr.T.S.R.Venkat Ramana

For Respondent : Mr.P.Athimoola Pandian
Standing Counsel

ORDER

The present writ petition has been filed challenging a resolution passed by the respondent/Municipality and to direct the Municipality to collect the correct property tax from the petitioners as per law.

2. According to the petitioners, they are residents of the respondent/ Municipality and the Minicipality had attempted to enhance the property tax illegally by way of an impugned resolution. Hence, they have filed the present writ petition.

3. The contentions of the petitioners are as follows:

(i) A general revision of property tax was introduced in the second half of 1987-88, thereby enhancing the property tax manifold. The said revision was effected contrary to Tamil Nadu Act 35 of 1990, under which amendments were brought in the Tamil Nadu District Municipalities Act.

(ii) The petitioners have further contended that challenging the said illegal revision of property tax, they had filed O.S.No.48 of 1992 on the file of District Munsif Court, Sengottai for a declaration that the revision effected in the second half of 1987-88 is in violation of Tamil Nadu Act 35 of 1990 and based upon the same, the respondent/Municipality is not entitled to recover additional property tax from the plaintiffs. Apart from that, the plaintiffs have prayed that the defendant/Municipality should be directed to refund the illegally collected additional taxes from the second half year of 1987-88 along with 12% interest. The said suit was decreed as prayed for on 30.06.1993. The Sengottai Municipality filed A.S.No.76 of 1993 and A.S.No. 61 of 1996 before Sub Court, Tenkasi. The learned Sub Judge was pleased to confirm the judgment and decree of the trial Court.

(iii) The petitioners have further contended that in violation of the Civil Court decree, the respondent/Municipality had issued a demand notice. Hence, E.P.No.3 of 2004 was filed by the plaintiffs under Order 21 Rule 32 of Code of Civil Procedure. In the said execution proceedings, E.A.No.91 of 2004 was filed for production of certain documents. The said request was rejected by the Execution Court. Hence, a revision in C.R.P(MD)No.312 of 2005 was filed before this Court.

(iv) While the said revision was pending, the respondent/Municipality passed Resolution No.123, dated 31.05.2007. Since the said resolution was in favour of the revision petitioners/writ petitioners herein, recording the same, the revision petition was closed.

(v) However, on 26.12.2012, in Resolution No.302, the respondent/Municipality had recalled Resolution No.123 and proceeded to revise taxes from the second half of 1993-94 based upon the general revision directed by the State Government. This resolution is under challenge in the present writ petition.

(vi) The learned counsel for the petitioners had contended that under Tamil Nadu Act 35 of 1990, Rule 9-A was introduced in schedule IV, which governs the taxation and finance rules under the Tamil Nadu District Municipalities Act, 1920. According to the learned counsel for the petitioners, where there is an enhancement in the assessment of tax payable for the half year commencing from first October 1987 is concerned, if the buildings are constructed after first April 1982, but before first October 1987, the property tax shall not exceed 50% of the property tax payable immediately before the first October 1987. In case, if the buildings are used for residential purposes, the thatched building were completely exempted from any enhancement. As far as other type of buildings are concerned, the property tax shall not exceed 100% of the property tax payable immediately before the first October 1987, if the building is wholly or partly occupied by the owners. However, in case of leased out premises, the enhancement of property tax shall not exceed 200% of the property tax payable immediately before the first of October 1987. In case of non-residential buildings, the enhancement of property tax shall not exceed 300% of the property tax payable immediately before first of October 1987. Hence, according to the learned counsel for the petitioners, second half of 1987-88 was taken as the base year, from which percentages were calculated for enhancement of the property tax. This Section 9-A was introduced by way of Tamil Nadu Amendment Act 35 of 1990.

(vii) The learned counsel for the petitioners had further contended that the revision of tax was not effected by the respondent/Municipality in consonance with Rule 9-A. Hence, a civil suit was filed, which was decreed by the trial Court and confirmed by the first appellate Court. The revision arising out of execution proceedings was closed by this Court on the ground that the respondent/Municipality had accepted the judgment and decree of the Civil Court and has passed Resolution No.123.

(viii) The learned counsel for the petitioners had further contended that only based upon the representation made by the respondent/Municipality that they have already passed a resolution in consonance with the Civil Court decree, the revision petition has closed by this Court. Hence, it has to be construed that the said Resolution No.123 was approved by this Court. Five years thereafter, the present impugned resolution has been passed on 26.12.2012 in Resolution No.302, under which the earlier Resolution No.123, dated 31.05.2007 has been recalled. Hence, according to the learned counsel for the petitioners, once a resolution is placed before the Court and based upon the said resolution, an order has been passed by this Court, thereafter, the said resolution cannot be withdrawn or recalled by the respondent/Municipality.

(ix) The learned counsel for the petitioners had further contended that the resolution passed by the Municipality is said to be based upon legal opinion obtained from the standing counsel for the Municipality. Once a Civil Court has granted a decree as against the respondent/Municipality from levying any tax contrary to Tamil Nadu Act 35 of 1990 and the High Court has given its stamp of approval to the resolution no.123, thereafter, a contrary resolution cannot be passed by the respondent/Municipality. He further contended that once a resolution is passed by the Municipality, the same can be cancelled or modified or suspended only by the State Government as contemplated under Section 36 of the Tamil Nadu District Municipalities Act. The District Collector has got only emergency powers and he does not have any power to cancel or modify or suspend the resolution passed by the Municipal council. Hence, the respondent/Municipality has no power, whatsoever to recall a resolution, which was properly passed in the year 2007.

(x) The learned counsel for the petitioners had further contended that the petitioners are regularly paying the property tax, which is legally due. However, the Municipality is attempting to coerce the petitioners to pay illegally enhanced property tax based upon the impugned resolution. When the impugned resolution is clearly in violation of the Civil Court decree and Rule 9-A of schedule 4 of Tamil Nadu District Municipalities Act 1920, the resolution is bad in the eye of law and the same is liable to be set aside.

4. The contentions of the learned standing counsel for the respondent/Municipality are as follows:

(i) The learned standing counsel for the respondent had contend that the present writ petition challenging resolution passed by the Municipal Council is not maintainable in view of the Division Bench judgment of our High court reported in ***2015 (2)CWC 366 (Shantha Srinivasan Vs. The Secretary to Government, Housing and Urban Development Department and others)***.

(ii) The learned standing counsel further contended that in the impugned resolution had decided to collect taxes only from the second half of 1993-94. A perusal of Resolution No.123 (which is relied upon by the writ petitioner) will clearly indicate that the Municipal Council has passed a resolution that from the second half of 1993-94, the already effected revisions in the property tax have been confirmed. Even as per the Resolution No.123, the benefit was conferred upon certain individuals for the second half of 1987-88 only.

(iii) The learned standing counsel for the respondent had further contended that as per Section 84 of Tamil Nadu District Municipalities Act

1920, a taxation has to be uniform for all the buildings falling under the same class throughout the municipal area. Hence, the Resolution No.123, dated 31.05.2007, which conferred special benefits upon certain 33 individuals was objected to in the audit objection. Hence, the respondent council have chosen to recall the said resolution.

(iv) The learned standing counsel for the respondent had further contended that the Resolution No.123 related only to the second half of 1987-88. Even in the said resolution, it has been categorically stated that the general revisions effected in the year 1993-94 and the general revision effected in 1998-99 shall be confirmed. Hence, the petitioners cannot have any grievance, whatsoever in the recalling of G.O.Ms.No.123 and passing of G.O.Ms.No.302.

(v) The learned standing counsel for the respondent has further contended that the petitioners herein had filed W.P.No.5595 of 1994 challenging the general revision effected from the second half of 1993-94. The said writ petition was dismissed as non maintainable by the Principal Bench of our High Court on 13.06.2001. The association had filed W.A.No. 115 of 2002 and the same was also dismissed on 29.04.2002, granting liberty to the individuals to challenge the general revision, if they are aggrieved by the special notices. Hence, according to the learned standing counsel for the respondent/Municipality, none of the individuals have challenged the special notices issued to them. The petitioners were also issued with special notices from the second half of 1993-94. However, the petitioners have not chosen to challenge the same, but have filed the present writ petition, challenging the Resolution No.302.

(vi) The learned standing counsel had further contended that the petitioner association has given a representation to the respondent municipality on 09.03.2007 requesting to reduce the property tax for second half of 1987-88 till the first half of 1993-94. In the said letter, the association has agreed for the enhancement from the second half of 1993-94 and consequential enhancement from the half of 1998-99. Based upon the said representation given by the taxpayers association, a demand notice was issued to the writ petitioners, demanding property tax from the second half of 1993-94 till 2007-08.

(vii) The learned standing counsel had further contended that another notice was issued to the writ petitioners, demanding property tax from the second half of 2004-05 till the second half of 2014-15. For the said demand notice, the petitioners have issued a reply that if fresh demand notice is issued based upon Resolution No.123, they are ready to pay the property tax. The said request of the petitioners was rejected by an order passed by the respondent municipality on 24.12.2014. In the said proceedings, the respondent/Municipality has pointed that already Resolution No.302 has been passed recalling Resolution No.123 and hence, their request cannot be accepted. Though this proceeding was issued on 24.12.2014, this proceeding was not challenged by the writ petitioners.

(viii) The learned standing counsel for the respondent had further contended that a fresh demand notice was issued to the writ petitioners on 24.12.2014 and the same was also acknowledged by the writ petitioners. The learned standing counsel for the respondent had further contended that the first petitioner had given an undertaking affidavit to the Municipality that he is withdrawing himself from C.R.P.No.706 of 2005. Since he is intending to alienate the properties, whatever property tax demanded by the Municipality, he is ready to pay the same. In case, if any amount is enhanced during audit objection, he is ready to pay the same. In case, if the amount is reduced, the same may be treated as a deposit and it may be refunded to him. After paying the entire property tax, the first writ petitioner has alienated the property in favour of one Balakrishnan and hence, the present writ petition cannot be prosecuted by the first petitioner herein.

(ix) The learned standing counsel for the respondent had further contended that assessment no.861 stands in the name of the father of the second petitioner. A demand notice was issued to the second petitioner's father on 12.06.2007 only from the second half of 1993-94 till 2007-08. A notice was also sent to him on 20.11.2014 demanding property tax from the second half of 2004-05 till 2014-15. As on today, the second petitioner is having an arrears of Rs.8,85,034/- (Rupees Eight Lakhs Eighty Five Thousand and Thirty Four only) towards property tax assessment.

(x) The learned standing counsel further contended that except the writ petitioners, all others have accepted the revision of the property tax and they have paid it. The writ petitioners herein are relying upon the Civil Court decree to the effect that second half of 1987-88 should be the base year and only from the said year, all other revisions have to be effected. However, the general revision effected in the year 1993-94, 1998-99 have been accepted by the writ petitioners themselves in their representation, dated 09.03.2007. The resolution relied upon by the writ petitioners, namely Resolution No.123, dated 31.05.2007 itself points out that the reduction will be effected only between the second half of 1987-88 and first half of 1993-94. Hence, the contention of the writ petitioners that Resolution No.123 confers some special status upon the writ petitioners throughout their life time is not legally sustainable. Hence, he prayed for dismissal of the writ petition.

5. I have carefully considered the submissions made on either side and perused the records.

6. The present writ petition has been filed challenging Resolution No. 302, dated 26.12.2012 passed by the respondent/Municipality. Under the said resolution, they have cancelled the Resolution No.123, dated 31.05.2007. According to the petitioners, Resolution No.123 is in their favour and only based upon the said resolution, C.R.P.No.312 of 2005 was closed on 07.07.2007. Hence, the respondent/Municipality cannot recall or cancel Resolution No.123 by way of Resolution No.302, dated 26.12.2012.

7. The issue that arises for consideration is that whether the municipal council is entitled to recall or withdraw any resolution passed by them in an

earlier meeting. Section 25 of the Tamil Nadu District Municipalities Act is extracted as follows:

> *"25. **Rules and regulations for proceedings of council**.-The council shall observe the rules in Schedule III and may make regulations not inconsistent therewith or with other provisions of this Act or any rules made by the State Government in regard to the following matters:-*
>
> *(a) the time and place of its meetings;*
>
> *(b) the manner in which notice thereof shall be given;*
>
> *(c) the preservation of order and the conduct of proceedings at meetings, and the powers, which the chairman may exercise for the prupose of enforcing his decisions on points of order;*
>
> *(d) the division of duties among the members of the council*
>
> *(e) the constitutions and procedure of committees;*
>
> *(f) the delegation of its powers, duties or functions-*
>
> *(i) to the chairman, a councillor, an officer or servant of the council or a servant of the Government; or*
>
> *(ii) to a committee constituted under clause (e) or to its chairman or to any one or more of its members;*
>
> *(g) the persons by whom receipts may be granted for money paid to the council; and*
>
> *(h) all other similar matters."*

8. As per Section 25 of the District Municipalities Act, the council has to observe the rules in schedule III of the Act with regard to the matters that are specified in the said schedule. Rule nos.5 and 8 in schedule III are relevant for the purpose of adjudication of the present writ petition. Rules 5 and 8 are extracted as follows:

> *"5. All questions which may come before the council at any meeting shall be decided by a majority of the members present and voting at the meeting and, in every case of equality of votes, the presiding member shall have a second or casting vote.*
>
> *8. No resolution of the council shall be modified or cancelled within three months after the passing thereof except at a meeting specially convened in that behalf and by a resolution of the council supported by not less than one-half of the sanctioned number of members."*

9. A combined reading of rules 5 and 8 will clearly indicate that the municipal council cannot modify or cancel any resolution, which has already been passed within a period of 3 months from the date of passing of the said resolution, unless one half of the sanctioned members supported the modification or cancellation at a specially convened meeting. However, if three months have lapsed from the date of passing of the resolution, the

modification or cancellation of a resolution could be passed like any other resolution as contemplated under Rule 5. As per Rule 5, any resolution could be passed by a majority of the members present and voting at the meeting. Only if the resolution which is sought to be modified or cancelled has been passed within a period of three months, it requires the support of one half of the sanctioned number of members. In all other cases, it can be passed through a simple majority. Hence, it is clear that the municipal council is entitled to modify or cancel a resolution which it had already passed. Therefore, the contentions of the learned counsel for the petitioners that once a municipal council has passed a resolution, thereafter, it will not have any powers to modify or cancel the same is not legally sustainable. In the present case, Resolution No.123, dated 31.05.2007 has been recalled on 26.12.2012, after a period of 5 years.

10. The learned counsel for the petitioners has placed much reliance upon Rule 9-A of schedule 4 of Tamil Nadu District Municipalities Act, 1920. According to the learned counsel for the petitioners, the second half of 1987-88 should be taken as the base year for all the subsequent revisions in future. The rules under schedule 4 have been framed as contemplated under Section 124 of the Act. A scrutiny of Rule 9-A clearly indicates that it has laid

down the procedure for enhancement of property tax only for the second half of 1987-88. The various sub-rules relating to percentage of property tax clearly indicate that the rule relates to the buildings that are constructed immediately before first half of October 1987. There is no provision, whatsoever under Rule 9-A, for any building that has been constructed after first of October 1987, even though the rules were introduced under Tamil Nadu Act 35 of 1990.

11. A reading of Rule 10 under schedule IV clearly indicates that where the executive authority intends to assesses any property for the first time or increases the assessment on any property otherwise than in consequence of a general enhancement of the rate at which the property tax is leviable, a special notice to the owner or occupier of the property is mandatory. This rule has not been amended under Act 35 of 1990. Therefore, it is clear that Rule 9-A relates to the general revision effected in the second half of 1987-88, which would be valid until the next general revision is effected. In the present case, even as per Resolution No.123, the petitioners were granted certain concessions only for the general revision effected in 1987-88. However, they were not granted any concession for the revisions effected in the year 1993 or 1998. Hence, the contention of the learned counsel for the petitioners that the

second half of general revision of the year 1987-88 should be taken as the base year for all the future general revisions is not legally sustainable.

12. An analysis of the statement of the objects and reasons of Act 35 of 1990 reveals that Section 9-A was introduced only to fix certain limits on property tax assessment and to dispose of the revision petitions filed by the tax payers. There was no general revision from the year 1970-71 to 1985 -86. When the general revisions were effected from the second half of 1987-88, the Executive Authorities enhanced the property tax according to their whims and fancies. Hence, Rule 9-A was introduced under Tamil Nadu Act 35 of 1990 in order to place a ceiling upon the enhancement of the property tax.

13. A reading of Rule 9-A will clearly show that it does not speak about the increase in percentage on the pre-revision tax, but it only fixes a ceiling on the enhancement from the pre-revision tax. Hence, the contention of the learned counsel for the petitioner that the second half of 1987-88 should be taken as a base year for all other future general revisions is not factually correct.

14. The next general revision was effected from 01.10.1993 onwards. Again a guideline was issued by the Commissioner of Municipal Administration, Madras in Roc.No.4314/Rs/92 dated 14.05.1993. Under the said circular, similar ceiling limit was placed for enhancement of property tax. The said circular was challenged before this Court. Our Division Bench in a Judgement reported ***in 1994-2-L.W.715 (Dindigul Anna District Tax Payers Sangam etc., Vs. The Government of Tamil Nadu.etc., and another)*** has upheld the said circular. The Division Bench has further held that the revision effected from 01.10.1993 is only a general revision and not a special revision. Hence, it is clear that Rule 9-A was introduced only for the general revision of the quinquennial assessment year starting from the second half of 1987-88 till the first half of 1993-94. The demand notices issued by the respondent municipality are all relating to the general revision effected from 01.10.1993 onwards and also relating to the subsequent general revision in future quinquennial years. Hence, the petitioner cannot rely upon Rule 9-A, for general revision effected from second half 1993-94, which are governed by different circulars and Government orders.

15. The learned counsel for the petitioners has further contended that the Resolution No.123 was placed before this Court in C.R.P.No.312 of 2005

and the same was approved by this Court. Only based upon the said resolution, the Civil Revision Petition was closed. Hence, the municipal council is not entitled to recall or withdraw the said resolution. A perusal of the order in C.R.P.No.312 of 2005 does not indicate any thing about the approval of the resolution passed by the respondent/Municipality. This Court has only recorded that the resolution has been passed in favour of the petitioners and hence, no further orders are required in the revision petition. Hence, it cannot be construed by any means that the Resolution No.123 was approved by this Court. In case, if the petitioners are aggrieved that the basis of closure of C.R.P.No.312 of 2005 has been withdrawn, it is open to the petitioner to work out his remedy in a manner known to law.

16. As rightly pointed out by the learned standing counsel for the respondent, the tax payers association of Sengottai have challenged the general revision in the second half of 1993 and the same was dismissed. The writ appeal filed by them has also been dismissed, granting liberty to the individuals tax payers to challenge their respective special notices in a manner known to law. Admittedly, in the present case, special notices have been issued to the writ petitioners arising out of general revision 1993-94 and 1998-99. However, none of the said general revisions have been challenged.

17. A decree passed in O.S.No.48 of 1992 confirming in A.S.NO.76 of 1993 relate to the general revision of the year 1987-88, which was prevailing till the first half of 1993-94. Thereafter, demand notices have been issued by the Municipality only from the second half of 1993-94. In fact, Resolution No.123 also states that from the year 1993-94, the general revisions would be effected. The said resolution further points out that the petitioners have only requested for reduction in the general revision of 1987-88. Hence, the decree of the Civil Court cannot come to rescue of the writ petitioners for the subsequent general revisions.

18. The learned counsel for the petitioners had further contended that the buildings are in occupation of Government departments and public sector banks and hence, the enhancement in the property tax can only be up to a maximum of 50% and not more than that. In such special cases, the petitioners are always at liberty to approach the respondent/Municipality for reduction in the tax on production of relevant documents. A general order cannot be passed to reduce the property tax of the building forever. There is every likelyhood that the tenant may get himself shifted and some other tenant may occupy. Hence depending upon the tenant in occupation, the

petitioner is always at liberty to approach the respondent/Municipality for the reduction in the property tax based upon the certain Government Orders for the relevant period.

19. In view of the above said discussions, this Court finds that the respondent/Municipality has got every right to modify or cancel a resolution that was already passed by them. The Rule9-A of schedule IV of Tamil Nadu District Municipality Act and the Civil Court decrees would not confer any right upon the petitioner to challenge the enhancement of property tax in the subsequent general revision.

20. In view of the above said facts, this Writ Petition is devoid of any merits and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

28.09.2022

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Internet : Yes/No
Index : Yes/No

To

The Commissioner,
Sengottai Municipality,
Sengottai,
Tirunelveli District.

R.VIJAYAKUMAR, J.

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Pre-delivery order made in

W.P.(MD).No.1707 of 2015

28.09.2022