IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2023

CORAM:

THE HON'BLE MR. JUSTICE M.SUNDAR

W.P.No.251 of 2023
and
W.M.P.Nos.242 & 247 of 2023
in
W.P.No.251 of 2023

1. V.Senthil Kumar
S/o. Late G.Vairakannu Chettiar

2. V.Viswanathan
S/o. Late G.Vairakannu Chettiar ... Petitioners

Versus

The Commissioner
Cuddalore Corporation
Cuddalore Corporation Office
Cuddalore - 607 001. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the impugned property tax demand notice issued by the respondent herein dated 12.11.2022 and 31.12.2022 in Property Tax Assessment No.093/028/900246 corresponding Old Assessment No.093/27434 concerning the property situated at No.4, Theradi Street, Thirupapuliyur, Cuddalore District - 607 002 and quash the same.

For Petitioners : Mr.P.Dinesh Kumar
For Respondent : Mr.C.P.Maurya
standing counsel for Cuddalore Corporation
along with Mr.Harish Parvatham

ORDER

In the captioned main writ petition, 'two demand notices dated 12.11.2022 and 31.12.2022 bearing Property Tax Assessment No.093/028/900246 corresponding Old Assessment No.093/27434' [hereinafter 'first impugned notice', 'second impugned notice' respectively and 'impugned notices' collectively for the sake of convenience and clarity] have been called in question.

2. To be noted, demand notices have been issued by the Cuddalore Municipal Corporation. This Court is informed that 'the Coimbatore City Municipal Corporation Act, 1981 (Tamil Nadu Act 25 of 1981)' [hereinafter 'said Act' for the sake of convenience and clarity] and 'Rules thereunder' [hereinafter 'said Rules' for the sake of convenience and clarity] have been made applicable to the Cuddalore Municipal Corporation.

3. A perusal of impugned notices brings to light that immovable property that is subject matter of the captioned main writ petition is at 'No.4, Theradi Street, Thirupathiripuliyur, Cuddalore District - 607 002' [hereinafter 'said property' for the sake of convenience and clarity].

4. In the first impugned notice, there is a demand for property tax qua said property from financial years 1991-1992 to 2022-2023. As regards second impugned notice, the demand for property tax is from 1997-1998 to 2022-2023. To be noted, first impugned notice, property tax demanded is Rs.23,64,636/- (a little over Rs.23.64 Lakhs) and vide second impugned notice, property tax demanded is Rs.21,52,782/- (a little over Rs.21.52 Lakhs).

5. Mr.P.Dinesh Kumar, learned counsel on record for writ petitioners, in his campaign against the impugned notices, notwithstanding very many averments in the writ affidavit made submissions, a summation of which is as follows:

(i) Impugned notices have been issued in the name of one Rajammal S.V, who is no more. To be noted, Rajammal S.V, is great-grandmother of two writ petitioners herein who are siblings;

(ii) Impugned notices are time barred owing to Section 482 of said Act which says that no distraint, suit or prosecution shall be commenced in respect of sum due to the Corporation after 12 years from the last day of the period in respect of the said sum is claimed;

(iii) Impugned notices are contrary to Rule 28(3) of said Rules as no notice has been served in the half year in which the tax became due;

6. Mr.C.P.Maurya, learned standing counsel for Cuddalore Corporation along with Mr.Harish Parvatham, accepted notice on behalf of lone respondent.

7. Owing to the nature of the challenge, considering the facts and circumstances of the case, the main writ petition was taken up with the consent of both sides as counter affidavit is really not necessary considering the grounds that have been urged.

8. In response to the aforementioned three points, learned standing counsel for the respondent Corporation submitted as follows:

(i) A transferor or transferee have an obligation under Section 128 of said Act to give notice for transfer of property within three months when it is by way of an instrument. In the instant case it is testamentary succession but no such notice has been given;

(ii) As regards Section 482 of said Act, the same applies only to distraint, suit or prosecution as regards sum due and it does not apply to demand;

(iii) As regards Rule 28(3) of said Rules point, it was submitted that petitioners' predecessor in title had filed a suit in O.S.No.612 of 1993 *inter alia* seeking a declaration qua enhancement of property tax for said property and the same has culminated in a second appeal namely, S.A.No.266 of 1997 in this Court which came to be dismissed by this Court in favour of respondent Corporation in and by judgment dated 30.08.2010;

9. This writ Court carefully considered the rival submissions. The first and third points are dovetailed and they go together. As would be evident from the submission of learned counsel for writ petitioners as well as the case file placed before this Court, there was a partition suit between petitioners' father one Vairakannu Chettiar and his brother one Vaithialingam Chettiar. This partition suit is O.S.No.27 of 1999 on the file of Subordinate Judge's Court, Cuddalore and a decree came to be made on 26.03.1999. Learned counsel for writ petitioners submits that said property fell to the share of petitioners' father who in turn bequeathed the said property on the writ petitioners in and by a testament i.e., Will dated 18.12.2003. This means that petitioners as transferees certainly had an obligation to give notice of transfer of ownership under Section 128 of said Act which reads as follows:

> *'128. Obligation of transferor and transferee to give notice of transfer.- (1) Whenever the title of any person primarily liable to the payment of the property tax on any premises, to or over such premises, the person whose title is transferred and the person to whom the same shall be transferred shall, within three months after the execution of the instrument of transfer or after its registration if it be registered or after the transfer is effected, if no instrument be executed, give notice of such transfer to the Commissioner.*

(2) In the event of the death of any person primarily liable as aforesaid the person to whom the title of the deceased shall be transferred as heir or otherwise shall give notice of such transfer to the Commissioner within one year from the death of the deceased.

(e) The notice to be given under this section shall be in such form as the Commissioner may direct and the transferee or the person to whom the title passes, as the case may be, shall if so required, be bound to produce before the Commissioner, any document evidencing the transfer or succession.

(4) Every person who makes a transfer as aforesaid without giving such notice to the Commissioner shall in addition to any other liability which he may incur through such neglect continue to be liable for the payment of the property tax assessed on the premises transferred until he gives notice or until the transfer shall have been recorded in the municipal registers but nothing in this section shall be held to affect -

(a) the liability of the transferee for the payment of the said tax; or

(b) the prior claim of the corporation under Section 125.'

10. There is nothing to demonstrate that such notice was given. There is nothing to demonstrate that the respondent Corporation was informed that noticee S.V.Rajammal is no more. In these circumstances, petitioners cannot be heard to contend that the notice has been issued in the name of a dead person and it cannot be contended that no demand has been made in that half

year within the meaning of sub-rule (3) of Rule 28 of said Rules. The property tax is a charge on the immovable property. This by itself douses both points in one go.

11. This takes this Court to the limitation point which is predicated on Section 482 of said Act which reads as follows :

> *'482. Limitations for recovery of dues.- No distraint shall be made, no suit shall be instituted and no prosecution shall be commenced in respect of any sum due to the corporation under this Act after the expiration of a period of [twelve years] from the last day of the period in respect of which such sum is claimed, or in case the same is not claimed in respect of any specific period, from the last day of the year in which the claim arose.*

12. A careful perusal of Section 482 of said Act and more particularly, the language in which it is couched, leaves this writ Court with a view that the submission of learned counsel for respondent Corporation that it pertains to (a) making of distraint proceedings; (b) institution of suits for recovery of tax due and (c) commencement of prosecution qua property tax arrears is acceptable. In this regard, question of limitation raised under Section 345 of 'The Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of

1920)' [hereinafter 'District Municipalities Act' for the sake of convenience and clarity] came to be considered by me in an unreported judgment dated 20.07.2021 made in S.A.No.1203 of 2019 ***[Dr.R.Ramanarayanan Vs. Chidambaram Municipality, Rep. By its Commissioner, Chidambaram]***. This writ Court is conscious that Section 345 of District Municipalities Act is captioned 'Limitation for recovery of dues' and Section 482 of said Act may not be directly comparable. To put it differently, they may not be *pari materia* but principle does apply. In ***Dr.R.Ramanarayanan*** case, there was an amendment to Section 345 of District Municipalities Act, which kicked in on and from 25.06.2008 and 'three years' thereat was amended as 'twelve years' but the point is with regard to reckoning date qua commencement of limitation, this Court held that it will be the date on which (a) distraint might first have been made; (b) the suit might first have been instituted; and (c) the prosecution might have been first commenced.

13. The neat question i.e., neat substantial question of law that fell for consideration is substantial question of law No.2. There were three substantial questions of law that have been captured in paragraph No.5 of said judgment which reads as follows:

'5. Mr.Srinath Sridevan, learned counsel for plaintiff/assessee and Mr.V.J.Arulraj, learned counsel appearing on behalf of Mr.M.Kirubaharan, learned Standing Counsel for said Municipality are before this Virtual Court. Both learned counsel consented for captioned second appeal being taken up for final disposal. Records from the District Judiciary have been received and the same have been placed before this Court. Before proceeding further, proceedings of this Court made on 15.04.2021 in C.M.P.No.7090 of 2021 in captioned second appeal is of relevance and the same reads as follows:

> *'Mr.Srinath Sridevan, learned counsel on record for the petitioner/appellant and Ms.B.Nirmala, learned counsel representing Mr.M.Kirubaharan, learned counsel on record for the sole respondent are before this virtual Court. This Court is informed that Mr.M.Kirubaharan is the standing counsel for Chidambaram Municipality, which is the sole respondent.*
>
> *2. Captioned main Second Appeal was presented in this Court on 21.11.2012. Learned counsel for appellant submits that it went through twists and turns in terms of case file being misplaced, papers being reconstructed and ultimately it was taken on file as SA.No.1203 of 2019.*
>
> *3. Captioned Second Appeal was admitted by this Court by a Hon'ble Predecessor Judge on*

10.07.2020 on three questions proposed as substantial questions of law by the protagonist of the second appeal and the admission order reads as follows:

'The second appeal is admitted on the following questions of law:-

i) Whether the Municipality can demand property tax for twelve years when the limited period to demand property tax is for only three years?

ii) Whether the limitation to collect the property tax for Municipalities is three years or twelve years?

iii) Whether the lower Appellate Court was right in concluding that the demand notice issued in the name of the dead person is valid?

2. Mr.M.Kirubakaran appears for the respondent.'

4. In the aforementioned admission order, in question no.1, there is a typo and 'limited' has to be read as 'limitation'.

5. Captioned petition has now been moved stating that the respondent-Municipality is taking coercive steps to collect property tax pursuant to 29.01.2009 notice, which is the epicenter of the entire litigation.

6. From the submissions made today, it comes *to light that this matter turns heavily on Section 345 of 'The Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920)', which shall hereinafter be referred to as 'District Municipalities Act' for the sake of convenience and clarity. Section 345 of District Municipalities Act deals with limitation for recovery of dues and the period which originally read as 'three years' was amended and changed as 'twelve years' on and from 25.06.2008 vide 'Tamil Nadu Municipal Laws (Third Amendment) Act, 2008 (Tamil Nadu Act 36 of 2008)', which shall hereinafter be referred to as 'Third amendment Act' for the sake of convenience.*

7. Questions 1 and 2 on which the captioned Second Appeal has been admitted can be rolled into one and reformulated as follows:

'Whether the Third Amendment Act is retrospective qua collection of tax dues in the light of Limitation not being a mere rule of procedure?'

8. Ms.B.Nirmala, learned counsel representing the standing counsel for Chidambaram Municipality requests that the above reformulation may please be considered in the next listing in the presence of her senior Mr.M.Kirubaharan. Request acceded to.

9. Learned counsel for petitioner/appellant makes a simple submission that 29.01.2009 notice *which demands property tax for the period II/1999-2000 [from 01.10.1999] to I/2008-2009 (upto 31.03.2009) being the epicenter of the litigation cannot now be pressed into service when Second Appeal has been admitted and when this Court is in seizin of the matter where this notice was inter alia held to be invalid by the trial Court and reversed by the First Appellate Court at the instance of the respondent-Municipality.*

10. Faced with the above situation, learned counsel representing the standing counsel for Municipality requests for a short accommodation.

List on 17.04.2021.' '

14. The relevant answers which we are concerned with is articulated in paragraph No.15 of said judgment which reads as follows:

'14. This takes us to the question as to what is the reckoning date qua date of commencement of limitation. The answer lies in Section 345 itself in the second limb. The answer is, reckoning date is the date on which a) the distraint might have been first made; b) the suit might have been first instituted and c) the prosecution might have been first commenced. To identify this date with specificity, one has to go to Section 86 of District Municipalities Act, which reads as follows:

'86. Property tax when payable._ The property tax shall be levied every half-year and shall, save as otherwise expressly provided in Schedule IV, be paid by the owner of the assessed premises within thirty days after the commencement of the half-year.' '

15. In the case on hand, the second appeal came to be disposed of by a judgment dated 30.08.2010. A search of the official website of this Court shows that decree is not available. Therefore, the date on which the decree was made available is not available with specificity but it is certainly post 20.07.2021. Purely on a demurrer i.e., without prejudice to the interpretation of the language of Section 482 of said Act placed before this writ Court articulated supra, even if 12 years might have been computed, impugned notices may well be within time but it may not be necessary to go into that aspect of the matter as impugned notices are not making of distraint proceedings, institution of suit or commencement of prosecution. They are demand notices simplicitor.

16. In the light of the narrative, discussion and dispositive reasoning thus far, inevitable sequitur is captioned main writ petition fails and the same

is dismissed. Consequently, captioned Writ Miscellaneous petitions are also dismissed. There shall be no order as to costs.

06.01.2023
(3/3)

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation : Yes / No

mk

To

The Commissioner
Cuddalore Corporation
Cuddalore Corporation Office
Cuddalore - 607 001.

M.SUNDAR, J.

mk

W.P.No.251 of 2023
and
W.M.P.Nos.242 & 247 of 2023
in
W.P.No.251 of 2023

06.01.2023
(3/3)