IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.41178 of 2002
and W.M.P.No.60954 of 2002

1.V.Kumaravelan
2. V.Pankajavalli .. Petitioners

Versus

The Commissioner
Dharmapuri Municipality
Dharmapuri .. Respondent

Prayer: Writ Petition filed under Section 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the respondent in his proceedings bearing Na.Ka.No.11692/99/A1 dated 27.08.2001 in respect of Shop Nos.18-17-50 and 18-17-50A and to quash the same.

For Petitioners : Mr.T.Sathiyamurthy
For Respondents : Mr.N.Naveen Kumar
Government Advocate

ORDER

This writ petition has been filed challenging the demand notice in proceedings bearing Na.Ka.No.11692/99/A1 dated 27.08.2001 in respect of Shop Nos.18-17-50 and 18-17-50A issued by the Respondent Municipality enhancing the property tax from Rs.803 to Rs.4240 for the first petitioner's property and Rs.964 to Rs.4240 for the second petitioner's property.

2. It is the case of the petitioner that the subject properties have been purchased from one Mr.Pandurangan vide registered Sale Deed dated 29.06.1995. After purchase, some alterations took place in the year October 1996. The respondent inspected the building and assessed the tax, on 20.11.1998, at the rate of Rs.767 and Rs.639 respectively. Further, the impugned demand notice has been issued without any reasons. Hence, this writ petition is filed.

3. Heard both sides and perused the materials placed on record.

4. The impugned demand notice has been issued only on the basis of the alleged audit report and the tax has been increased from Rs.803 to Rs.4240 for the first petitioner's property and Rs.964 to Rs.4240 for the second petitioner's property. The demand notice has been made for the second half year for the years 1998-1999, there was no reasons whatsoever assigned by the respondent how such tax has been assessed. Whether the proper procedure has been followed while

enhancing the taxes is also silent in the demand notice. The property tax has to be levied as per the procedure contemplated in Sections 78, 79, 80, 81 & 81-A of The Tamil Nadu District Municipalities Act, 1920.

4.a.Section 78 of The Tamil Nadu District Municipalities Act, 1920 deals with enumeration of ordinary taxes and power of control of State Government.

*" **78. Enumeration of ordinary taxes and powers of control of State Government .—** (1) Every Municipal Council may levy*

(a) a property tax ;

(b) a profession tax ;

(c) a tax on carriages and animals ;

(d) a tax on cars.

(dd) a tax on advertisements other than advertisements published in the news papers and advertisements broadcast by radio or television.

(2) A hill station Municipal Council may also levy a tax on servants.

(3) Any resolution of a Municipal Council determining to levy a tax shall specify the rate at which any such tax shall be levied and the date from which it shall be levied :

Provided that before passing a resolution imposing a tax for the first time or increasing the rate of an existing tax, the Council shall publish a notice in at least one vernacular newspaper, on the notice board of the municipal office and in such other places within municipal limits as may be specified by the Council and by beat of drum, of its intention, fix a reasonable period not being less than one month for submission of objections and consider the objections, if any, *received within the period specified*

Provided also that any resolution abolishing an existing tax or reducing the rate at which a tax is levied shall be immediately reported to the State Government and in Municipalities which have an outstanding loan either from the Government or from the public or any other local body, such abolition or reduction shall not be carried into effect without the sanction of the State Government.

4.b. Section 79 of The Tamil Nadu District Municipalities Act, 1920 deals with special taxation.

"79. Special taxation .— *With the previous sanction of the State Government and the Central Government -*

(b) a tax on persons travelling by railway from any station notified under Section 116 in or near the Municipality may be levied by the Council of any Municipality which is resorted to by pilgrims:

Provided that no portion of the proceeds of any tax levied under clause (b) shall be expended for purposes other than making arrangements for the health and comfort of the pilgrims or the improvement or development of the municipal area."

4.c. Section 80 of The Tamil Nadu District Municipalities Act, 1920 deals with notification of new taxes.

80. Notification of new taxes .— *When a Municipal Council shall have determined subject to the provisions of Sections 78 and 79 to levy any tax for the first time or at a new rate, the Executive Authority shall forthwith publish a notification in the district gazette and by beat of drum specifying the rate at which, I the date from which and the period of levy, if any, for which such tax shall be levied.*

4.d. Section 81 of The Tamil Nadu District Municipalities Act, 1920 deals with description and classes of property tax.

> ***81. Description and classes of property tax .— (1)*** *If the Council by resolution determines that a property tax shall be levied, such tax shall be levied on all buildings and lands within municipal limits save those exempted by or under this Act or any other law. The property tax may comprise*
>
> *(a) a tax for general purposes ;*
>
> *(b) a water and drainage tax to provide for expenses connected with the construction, maintenance, repair, extension or improvement of water or drainage works heretofore provided or hereafter to be provided;*
>
> *(c) a lighting tax to provide for expenses connected with the lighting of the Municipality by gas or electricity;*
>
> *(d) a scavenging tax to provide for expenses connected with the removal of rubbish, filth or the carcasses of animals from private premises ; and*
>
> *(e) a railway tax to be used solely for or to further the construction and maintenance of railways:*
>
> *Provided that where the water and drainage tax is levied, the Municipal Council shall declare what proportion of the tax is levied in respect of waterworks and the remainder shall be deemed to be levied in respect of drainage works and the proportion so declared shall also be specified in the notification published under Section 80 :*
>
> *Provided further that the railway tax shall not be levied unless its levy is determined by a resolution of the Municipal Council supported by not less than three-fourth of the members present at a meeting specially convened in that behalf, such resolution being confirmed after a period of six months by a like majority at a like meeting and sanctioned by the State Government.*
>
> *(2) Save as otherwise provided in this Act, these taxes shall be levied at such percentages of the annual value of buildings, or lands which are occupied by, or adjacent and appurtenant to, buildings or*

both, as may be fixed by the Municipal Council, subject to the provisions of Section 78;

(3) (a) Save as otherwise provided in clause (b), the Municipal Council shall, in the case of lands which are not used exclusively for agricultural purposes and are not occupied by, or adjacent and appurtenant to, buildings, levy property tax on such lands at such rate as it may fix, having regard to its location and subject to the minimum and maximum rates per square feet as may be prescribed by the State Government.",

(b) In the case of railway lands which are not used exclusively for agricultural purposes and are not occupied by, or adjacent and appurtenant to, buildings, the Municipal Council shall levy these taxes on the annual value of such lands, and the State Government shall have power to make rules regarding the manner in which, the person or persons by whom and the intervals at which, the annual value of such lands shall be estimated or revised, and they may also by such rules, restrict or modify the application of the provisions contained in Schedule IV to such lands.

(4) (a) The Municipal Council shall, in the case of lands used exclusively for agricultural purposes, levy these taxes at such proportions as it may fix, of the annual value of such lands as calculated in accordance with the provisions of Section 79 of the Tamil Nadu District Boards Act, 1920 [Tamil Nadu] Act XIV of 1920 :

Provided that the proportion shall not exceed the maximum, if any, fixed by the State Government.

(b) If such lands be occupied by tenants, the Municipal Council shall levy the taxes in equal shares, from the landholder and the tenant respectively.

4.e. Section 81-A of The Tamil Nadu District Municipalities Act, 1920 deals with description and classes of property tax.

*" **81-A. Levy of property tax on a direction by Government .— (1)** The State Government may, by order published in the Official*

Gazette, direct any Municipal Council to levy the property tax referred to in sub-section (1) of Section 78 or any class of such tax, at such rate and with effect from such date (not being earlier than the first day of the half-year immediately following that in which the order is published) as may be specified in the order.

(2) When an order under sub-section (1) has been published, the provisions of this Act relating to property tax shall apply as if the Municipal Council had on the date of publication of such order by resolution determined to levy the tax at the rate and with effect from the date specified in the order and as if no other resolution of the Council under Section 78 determining the rate at which and the date from which property tax shall be levied had taken effect.

(3) A Municipal Council shall not alter the rate at which the property tax or any class of such tax is levied in pursuance of an order under sub-section (1) or abolish such tax except with the previous sanction of the State Government."

4.f. Section 82 of The Tamil Nadu District Municipalities Act, 1920 deals with the method of assessment of property.

"...82. Method of assessment of property.- Every building shall be assessed together with its site and other adjacent premises occupied as an appurtenance thereto unless the owner of the building is a different from the owner of the building is a different person from the owner of such site or premises.

(2) The annual value of lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to let from month to month or from year to year (less a deduction in the case of buildings, of ten per cent of that portion of such annual rent which is attributable to the buildings alone, apart from their sites and adjacent lands occupied as an appurtenance thereto;_ and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever:

Provided that

(a) in the case of
(i) any Government or railway building;]or
(ii) any building of a class not ordinarily let the gross annual rent of which cannot, in the opinion of Executive Authority be estimated

the annual value of the premises shall be deemed to be six per cent of the total of the estimated value of the land and the estimated present cost of erecting the building after deducting for depreciation a reasonable amount which shall in no case less than ten per cent of such cost"

5. When Municipality is sought to claim excessive tax without any notification, such action cannot be sustained in the eye of law. To make a demand, the tax ought to have been determined and notified which has not done in this case. The impugned notice requires to be set aside and the respondent are directed to follow the procedure to determine the tax and take action as per law.

6. Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

14.02.2023

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

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To

The Commissioner
Dharmapuri Municipality
Dharmapuri

N. SATHISH KUMAR, J.

dhk

Order in:
W.P.No.41178 of 2002

14.02.2023