IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.6950 of 2020
and
W.M.P.No.8290 of 2020

A.Karivaratharajan ... Petitioner

Vs.

Punjai Puliampatti Municipality,
Represented by its Commissioner,
Punjai Puliampatti,
Sathyamangalam Taluk,
Erode District. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of attachment-cum-sale notice dated 10.03.2020 issued under Schedule IV, Rules 30 to 34 of the Tamil Nadu District Municipalities Act, 1920, quash the same and consequently forbear the respondent from demanding the property tax by taking note of the fire accident which took place on 14.11.2018 for the assessment year 2018 to 2020.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.V.Jayaprakash Narayanan

ORDER

The petitioner is aggrieved by the impugned order of Attachment-cum-Sale Notice dated 10.03.2020 seeking to bring the property of the petitioner to sale by way of auction for the arrears of tax due from the petitioner for the period between 2017-2018 and 2019-2020 together with Solid Waste Management User Charges for the year 2017-2018 as detailed below:-

In Assessment No.060/7418

Year	SUC Amount
2017-2018	Rs. 900/-
2018-2019	Rs. 1200/-
2019-2020	Rs. 1200/-
Total	Rs. 3,300/-

Year	Tax Amount
2018-2019 (I & II)	Rs. 12,124/-
2019-2020 (I & II)	Rs. 12,124/-
Total	Rs. 24,248/-

SUC & Tax Amount totally Rs.27,548/-

In Assessment No.060/7419

Year	SUC Amount
2017-2018	Rs. 900/-
2018-2019	Rs. 1200/-
2019-2020	Rs. 1200/-
Total	Rs. 3,300/-

Year	Tax Amount
2018-2019 (I & II)	Rs. 15,036/-
2019-2020 (I & II)	Rs. 15,036/-
Total	Rs. 30,072/-

2. The specific case of the petitioner is that the petitioner's property, which is covered by the above two assessment numbers was gutted with fire, as a result of which/due to the fire accident on 14.11.2018, the building collapsed. Therefore, the petitioner is entitled for complete waiver.

3. That apart, it is submitted that the impugned proceeding is without following the principles of natural justice and highly arbitrary inasmuch as, it seeks to attach the property of the petitioner and auction the same to recover the aforesaid amount as stated above in the impugned order.

4. The learned counsel for the petitioner would submit that the mandatory requirements of Rule 29 of the 4th Schedule to the Tamil Nadu District Municipalities Act, 1920 (hereinafter referred to as the Act), has not been complied with.

5. The learned counsel for the respondent would further submit that the petitioner has failed to exercise the option under Section 89(2) of the Act and therefore, the petitioner required to pay tax for the period covered by the impugned order of attachment-cum-sale notice and even if there is an alleged violation of Rule 29 of the 4th Schedule to the Act. It is therefore submitted that the petitioner is liable to pay the arrears of tax, as there is no order for granting waiver/abatement of tax to the property of the petitioner.

6. That apart, it is submitted that the petitioner has been served with the notices as is required under the provisions of the 4th Schedule to the Act, and therefore, on this count also this writ petition is devoid of merits. Hence, prays for dismissal of the writ petition.

7. I have considered the arguments advanced by the learned counsel

for the petitioner and the learned counsel for the respondent.

8. The extra-ordinary power of attaching the property of the petitioner to recover the arrears of Rs.60,920/- appears to be disproportionate.

9. Prima facie, it appears that there is no dispute that the property has been destroyed in a fire accident on 14.11.2018 as is admitted in the counter affidavit filed by the respondent.

10. Although, the petitioner has failed to file appropriate application for waiver/abatement of tax in terms of Section 89(2) of the Act, nevertheless, the extreme measure of attaching the property to bring the property to sale cannot be countenanced. The respondent has to act responsibly while recovering the tax due from an assessee.

11. Considering the over all facts and circumstances of the case, the impugned order of attachment-cum-sale notice is set aside and the case is remitted back to the respondent to pass a fresh order of attachment, after due notice to the petitioner within a period of ninety days (90) from the date of

receipt of a copy of this order.

12. Meanwhile, liberty is given to the petitioner to file appropriate application under Section 89(2) of the Act. If such application is filed, it shall be considered and disposed by the respondent within a period of two months (2) from the date of such application.

13. In case the petitioner is entitled to waiver, all further proceedings initiated so far shall stands abated.

14. This Writ Petition is disposed of with the above directions and liberty. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

06.07.2023

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

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To

The Commissioner,
Punjai Puliampatti Municipality,
Punjai Puliampatti,
Sathyamangalam Taluk,
Erode District.

C.SARAVANAN, J.

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