BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2023

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THE HONOURABLE **MR.JUSTICE G.R.SWAMINATHAN**

W.P(MD)No.86 of 2023
and
W.M.P(MD)Nos.99 & 100 of 2023

M/s.The Tuticorin Spinning Mills Limited,
Represented by its Nagarajan, Consultant & Authorized Signatory,
106-G/4, Palayamkottai Road,
Tuticorin-628 008. ... Petitioner

Vs.

1.The Commissioner,
Thoothukudi City Municipal Corporation,
No.113, Palai Road,
Thoothukudi District-628 002.

2.Johnson,
An employee in the Corporation,
Thoothukudi City Municipal Corporation,
Thoothukudi.

3.Nasarain,
The Revenue Inspector and Bill Collector,
Thoothukudi City Municipal Corporation,
Thoothukudi. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to pay a sum of Rs.6,00,000/- (Rupees Six Lakhs only) as compensation jointly or severely for the illegal detention of the petitioner's staff and the Joint Managing Director (aged 78 years and a heart patient) including lady staffs and illegally locking and sealing of the petitioner's premises without notice and consequently direct the first respondent to take action against the second and third respondents for their unlawful acts.

For Petitioner	:	Mr.Sricharan Rangarajan Senior Counsel for Mr.T.Antony Arul Raj
For R-1	:	Mr.N.Anand Kumar Standing Counsel
For R-2 & R-3	:	Mr.D.Senthil

ORDER

Heard the learned Senior Counsel for the writ petitioner, the learned Standing Counsel for the first respondent and the learned Counsel for the second and third respondents.

2. The writ petitioner is a company incorporated under the provisions of the Indian Companies Act. It is having buildings situated within the jurisdictional limits of the first respondent Corporation. It is an assessee liable to pay property tax to the local body. The petitioner is aggrieved by the coercive measures adopted by the respondents for recovering the tax demanded by the local body. The events that had taken place on 21.12.2022 and 22.12.2022 have been set out in detail in the affidavit filed in support of this writ petition.

3. The specific allegation is that the Corporation officials particularly, the respondents 2 and 3 herein locked and sealed the premises and illegaly detained some of the staff including lady staff. In these circumstances, the petitioner was left with no other option but to issue a post-dated cheque for Rs.11,00,000/-. Only after collecting the said cheque by exerting such coercive pressure, the seals were removed. Demanding that the respondents must pay compensation to the petitioner and for directing the first respondent to take action against the second and third respondents, the present writ petition has been filed.

4. The learned Senior Counsel took me through the contents of the affidavit filed in support of this writ petition and also the relevant statutory provisions and called upon this Court to grant relief as prayed for.

5. The first respondent has filed a detailed counter affidavit and the learned Standing Counsel took me through his contents. The stand taken in the counter affidavit is that post-dated cheque for a sum of Rs.11,00,000/- was voluntarily handed over and it was encashed only after few days. The Corporation would further contend that only legitimate dues have been recovered and that the petitioner has to pay a further sum of Rs.24,18,285/-. The respondents seek dismissal of the writ petition.

6. I have carefully considered the rival contentions and went through the materials available on record.

7. The sequence of events is not in dispute. On 08.07.2022, the local body issued notice levying property tax for the year 2022-2023. It appears to be a general revision. However, the notice itself reads that the noticee can lodge their objections. The petitioner lodged their objection on 06.11.2022. It is seen therefrom that the petitioner pointed out that some of the buildings for which assessment has been made and revised have fallen and are not even in existence. In otherwords, the stand of the petitioner is that out of the eight assessed buildings only four buildings still remain on ground as on date. When such a specific stand has been taken by the petitioner, the first respondent is obliged to conduct an inspection and pass an order on the petitioner's objection dated 06.11.2022. Without doing so, the first respondent has reiterated the earlier demand made vide notice dated 08.07.2022. The petitioner immediately sent a representation dated 18.11.2022 informing the first respondent that it is against natural justice to pass final order without considering the petitioner's objections. At this stage, the respondent officials proceeded to enforce their demand on 22.12.2022.

8. The first contention of the learned Standing Counsel for the

Corporation that the cheque bearing No.000934 dated 30.12.2022 for Rs.11,00,000/- was voluntarily handed over has to be rejected. As rightly pointed out that the learned Senior Counsel appearing for the petitioner this is the case in which Section 114 of the Indian Evidence Act can be pressed into service. Section 114 of the Indian Evidence Act is as follows:

> *"**114. Court may presume existence of certain facts**. — The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case."*

The petitioner is an assessee. They have been strongly contesting the stand taken by the local body. The petitioner has sent quite a few representations calling upon the local body to conduct a spot inspection, hold an enquiry and pass an order on their objection. Hence the claim that the petitioner on their own handed over a cheque for Rs.11,00,000/- flies in the face of common sense. The events have taken place on 22.12.2022. Even as per the acknowledgement given by the Corporation officials, the cheque was collected only on that date. My categorical conclusion is that only under coercive circumstances, the petitioner was called upon to part with the post-dated cheque for a sum of Rs.11,00,000/-.

9. The learned Senior Counsel draws my attention to the enforcement provisions set out in the relevant statute. The Coimbatore City Municipal Corporation Act, 1981, Schedule II, Part VI Collection of Taxes which is applicable to the respondent Corporation is as follows:-

> ***"169. Application of Schedule II.***— *The rules and tables embodied in Schedule II shall be read as part of this Chapter.*
>
> ***28****. (1) Where any tax, not being a tax in respect of which a notice has to be served under '[section 136] or section 147 is due from any person the Commissioner shall cause to be served upon or sent to such person a bill for the sum due before proceeding to enforce the provisions of rule 29.*
>
> *(2) A notice under 1[section 136] or section 147 and a bill under sub-rule (1) shall be signed by the Commissioner and shall contain -*
>
> *(a) a Statement of the period and a description of the occupation, property or thing for which the tax is charged and other particulars of the demand; and*
>
> *(b) notice of the liability which may be incurred in default of payment.*
>
> *(3) Where a notice or bill referred to in sub-rule (1) has not been served or given either in the half-year in which the tax became due or in the succeeding half-year the tax for the half-year first mentioned in this sub-rule shall not be demanded.*

***29**. (1) If the amount due on account of any tax is not paid within fifteen days from the service of the notice or bill referred to in 1[section 136] or section 147 or rule 28 and if the person from whom the tax is due has not shown cause to the satisfaction of the Commissioner why it should not be paid, the Commissioner may recover by distraint, under his warrant and sale of the movable property of the defaulter or if the defaulter is the occupier of any building or land in respect of which a tax is due, by distress and sale of any movable property which may be found in or on such building or land the amount due on account of the tax together with the warrant fee and distraint fee and with such further sums as will satisfy the probable charges that will be incurred in connection with the detention and sale of the property so distrained:*

Provided always that movable property described in the proviso to subsection (1) of section 60 of the Code of Civil Procedure, 1908 (Central Act V of 1908) shall not be liable to distraint.

***Explanation**. - It shall not be open to any person whose negligence or misconduct has caused or contributed to any such deficiency or loss to contend that notwithstanding his negligence or misconduct the deficiency or loss would not have occurred but for the negligence or misconduct of some other person;*

(2) If for any reason the distraint, or a sufficient distraint of the defaulter’s property is impracticable the Commissioner may prosecute the defaulter before a Magistrate.

(3) Nothing herein contained shall preclude the Corporation from suing in a civil Court for the recovery of any tax, duty or other

amount due to it under this Act.

Section 125 Property tax, a first charge on property and movable .— *The property tax on buildings and lands shall, subject to the prior payment of the land revenue, if any, due to the Government thereon be a first charge upon the said buildings or lands and upon the movable property, if any found within or upon such buildings or lands and belonging to the person liable to such tax."*

10. The action of the local body suffers from a two-fold vice. Firstly, without passing a formal order in compliance with the principles of natural justice on the objection lodged by the petitioner, they could not have straight away proceeded to enforce their demand. Second vice is that the enforcement provisions set out in the statute had not at all been adhered to. In the counter affidavit it has been fairly admitted that the Corporation officials did resort to lock and seal measures. I wanted to know from the learned Standing Counsel as to whether the Corporation officials are empowered to lock and seal the premises for non-payment of property tax. My attention has not been drawn to any such provision. On the other hand, the learned Senior Counsel for the petitioner pointed out the statutory scheme set out in the Town and Country Planning Act, 1971. The said statute contains specific provisions for lock and

seal. Absence of corresponding provision in the relevant statute applicable to the Tuticorin City Municipal Corporation is significant. Any administrative action has to be grounded on some statutory provision. A coercive action not contemplated in the statute cannot be carried out by the authority. I therefore declare that the respondents acted illegaly against the petitioner on 22.12.2022.

11. I direct the first respondent to hold an enquiry on the petitioner's objection dated 06.11.2022 and pass final order on merits and in accordance with law within a period of eight (8) weeks from the date of receipt of a copy of this order. The rights of the petitioner will abide by the outcome of the said order. The act of the respondents amounts to a tort. I direct the first respondent to pay a token sum of Rs.100/- as compensation to the petitioner.

12. The respondents 2 and 3 have obviously acted on instructions. That is why the counter affidavit filed by the Commissioner also endorses their stand. Obviously the second and third respondents do not have any personal motive against the petitioner. Their object was only to collect tax for the Corporation. I therefore reject the request of the petitioner for taking action against the second and third respondents. They are only after all arrows. The person who shot is the institution itself. There is no need to initiate any action against the second and third respondents. The first respondent shall not resort to such measures in

future. The first respondent shall stick to due process of law. This writ petition stands allowed on these terms. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

31.01.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Btr

Issue order copy on 16.03.2023.

To

1.The Commissioner,
Thoothukudi City Municipal Corporation,
No.113, Palai Road,
Thoothukudi District-628 002.

2.An employee in the Corporation,
Thoothukudi City Municipal Corporation,
Thoothukudi.

3.The Revenue Inspector and Bill Collector,
Thoothukudi City Municipal Corporation,
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G.R.SWAMINATHAN, J.

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