BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. (MD) No. 6396 of 2021
and
W.M.P. (MD) No. 4994 of 2021
and
W.P. (MD) No. 29131 of 2022
and
W.M.P. (MD) No. 23093 of 2022

W.P. (MD) No. 6396 of 2021:-

P.Tiburcius ... Petitioner

-vs-

The Commissioner,
The Colachel Municipality,
Rep. by the Commissioner,
Colachel and Post,
Kanyakumari District. ... Respondent

Prayer:- Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relates to the Tax Assessment No. 148/015/00215 dated 16.02.2021 on the file of the Respondent and quash the same.

For Petitioner : Mr. J.John Jayakumar

For Respondent : Mr. P.Athimoolapandian
Standing Counsel

W.P. (MD) No. 29131 of 2022:-

P.Tiburcius ... Petitioner

-vs-

1. The Commissioner,
   The Colachel Municipality,
   Rep. by the Commissioner,
   Colachel and Post,
   Kanyakumari District.

2. The Commissioner,
   Colachel Municipality,
   Colachel & Post,
   Kanyakumari District. ... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relates to the Demand Notice of the Second Respondent in Na.Ka.No. 4826/2012/A1 dated 17.03.2022 and quash the same.

For Petitioner	:	Mr. J.John Jayakumar
For Respondents	:	Mr. P.Athimoolapandian Standing Counsel

O R D E R

Heard Mr. J.John Jayakumar, Learned Counsel for the Petitioner and Mr. P.Athimoolapandian, Learned Standing Counsel appearing for the Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition in W.P. (MD) No. 6396 of 2021 challenges the

Proceedings No.148/015/00215 dated 16.02.2021 sent by the Respondent, which is evidently a demand notice calling upon the Petitioner to pay the arrears of property tax aggregating to Rs. 7,06,042/- for the period from 2003-2004 to 2020-2021. Though this Court by an order dated 29.06.2021 dismissed that Writ Petition as withdrawn as it had been then represented that the said impugned order was an appealable one, by another order dated 21.02.2023 in Review Application (MD) No. 39 of 2023, the same has been set aside, as there is no question of filing any appeal against a demand notice, and that Writ Petition had been restored to file to be heard and determined on merits in accordance with law.

3. In the interregnum, the Respondents by another Demand Notice in Na.Ka.No. 4826/2012/A1 dated 17.03.2022 have called upon the Petitioner to remit the arrears of property tax aggregating to Rs. 7,63,498/- for the period from 2003-04 to 2020-21, which is assailed in the Writ Petition in W.P. (MD) No. 29131 of 2022 before this Court.

4. Learned Counsel for the Respondents contends that if the Petitioner has any objection for the amount of property tax claimed in the impugned orders,

he would have to submit his representation with supporting documents in that regard, which would be duly considered by the concerned authority before taking further proceedings for recovery of that amount from him.

5. The consistent legal position has been reiterated by the Hon'ble Supreme Court of India in ***Union of India -vs- Kunisetty Satyanarayana*** [(2006) 12 SCC 28] that a charge memo or show cause notice cannot be challenged before the completion of enquiry and the proceedings cannot be interdicted till it reaches its logical conclusion. It would be useful here to extract the relevant passages from the said decision which reads as follows:-

> *"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide* ***Executive Engineer, Bihar State Housing Board -vs- Ramdesh Kumar Singh*** *[JT 1995 (8) SC 331],* ***Special Director -vs- Mohd. Ghulam Ghouse*** *(AIR 2004 SC 1467),* ***Ulagappa -vs- Divisional Commissioner, Mysore*** *[2001(10) SCC 639[,* ***State of U.P. -vs- Brahm Datt Sharma*** *(AIR 1987 SC 943) etc.*
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> *14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A*

mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if *it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."*

Having due regard to the aforesaid legal position, as there is nothing which precludes the Petitioner from raising the contentions in these Writ Petitions in the reply to be submitted to the Respondents, who are bound to deal with the same before coming to any ultimate conclusion, there is no necessity for the Court to interfere at this pre-mature stage of the matter.

6. In such circumstances, without expressing any view on the merits of the controversy involved in these matters, these Writ Petitions are disposed on the following terms:-

(i) it shall be incumbent upon the Petitioner to submit his explanation to the demand notices, which are impugned in these Writ Petitions, if not done already, to the Respondents by 30.06.2023;

(ii) if necessary, physical measurement of land and buildings shall be taken by an authorized engineer and/or surveyor of the Respondents in the presence of the Petitioner or his authorized representative, after due notice of such inspection and a working-sheet showing the calculation with specific details of the annual value for the property shall be furnished to him;

(iii) in the event of not being satisfied with the explanation submitted by the Petitioner, an enquiry shall be conducted following the prescribed procedure after affording full opportunity of personal hearing to the Petitioner to explain his position in that regard;

(iv) a reasoned order shall be passed dealing with each of the contentions raised by the Petitioner on merits and in accordance with law and the decision taken communicated under written acknowledgment;

(v) if any adverse decision is taken, the Petitioner may pursue legal remedies in accordance with law;

(vi) consequently, the connected Miscellaneous Petitions are closed; and

(vii) there shall be no order as to costs.

23.02.2023

PKN

Index: Yes/No
NCC: Yes/No
Note: Issue order copy by 14.06.2023

P.D. AUDIKESAVALU, J.

PKN

To

The Commissioner,
The Colachel Municipality,
Rep. by the Commissioner,

Colachel and Post,
Kanyakumari District.

Copy to

P.Tiburcius,
S/o.Paniadimai,
House No. 15-92/1,
Matha Colony,
Colachel Post,
Kanyakumari District.

W.P. (MD) No. 6396 of 2021
and
W.P. (MD) No. 29131 of 2022

23.02.2023