BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.27917 of 2023
and
W.M.P.(MD)Nos.24018 and 24019 of 2023

M.O.Rajayokkiyan ... Petitioner

Vs.

1.Madurai Corporation,
Represented by its Commissioner,
Anna Maligai, Madurai.

2.The Assistant Commissioner,
Zone – 1, Madurai Corporation,
Madurai. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, the respondents from putting up dust bin and block the entry of the Life Care Hospital, in Door No. 34/11, Ellis Nagar 20 feet Extension Road, Madurai.

For Petitioner : Mr.R.Suriya Narayanan

For Respondents : Mr.S.Vinayak,
Standing Counsel.

ORDER

Heard the learned counsel for the petitioner and the learned standing counsel for the respondents.

2.The writ petitioner is running a hospital at the petition mentioned premises. Mention was made by the learned counsel for the petitioner on 23.11.2023 to list the writ petition for admission on 23.11.2023 itself. According to the petitioner, the Madurai Corporation was taking emergent steps to install a dust bin right outside their hospital premises so as to block the entry. The learned counsel for the petitioner petitioner further alleged that since the petitioner is contesting the tax demand raised by the corporation, the dust bin had been installed in the meanwhile more as a punitive measure. According to the learned counsel for the petitioner, installation had taken place on 22.11.2023.

3.The learned counsel for the petitioner reiterated all contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

4.The learned standing counsel submitted that the dust bin was installed quite few years ago and that the petitioner is re-agitating a stale issue. He called upon this Court to dismiss the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. The learned counsel for the petitioner is probably right that the dust bin was put up only on 22.11.2023. But then, as pointed out by the learned standing counsel, the issue is an old one. The issue is yet to be consigned in dust bin. The petitioner filed W.P.(MD)No.10864 of 2018 questioning the tax demand raised by the corporation and also for removal of the dust bin installed in front of the hospital building. The prayer in the writ petition read as follows:-

> *"Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in M1A9/003934/2018 dated 04.05.2018, on the file of the Respondent No.2 and quash the same as illegal and consequently for a direction, directing the Respondent No.1 to remove the dust bin installed in front of the*

petitioner's hospital building and to levy the property tax of the petitioner's hospital building by way of conducting proper inspection as per the provisions of Madurai City Municipal Corporation Act, 1971, within the time period stipulated by this Court."

6.However, paragraph Nos.3, 5 and 6 of the order dated 10.05.2018 disposing of the said writ petition read as follows:-

"3.The learned Standing Counsel appearing for the Madurai Corporation would submit that the petitioner is in arrears and that is why stringent action is taken to collect the arrears of tax due from the petitioner. Pursuant to the same, the impugned order dated 04.05.2018, has been issued demanding a sum of Rs.11,55,112/-. The learned Standing Counsel would also submit that they will immediately remove the dust bin placed in front of the hospital.

5.A reading of the impugned order reveals contradictory statements. The anterior portion of the order states that the tax was determined from the year 2010-2011 and the following lines state that assessment was not made and tax has not been determined.

6.In such circumstances, this Court is inclined to set aside the demand notice made by the second respondent and a *further direction is issued to re-measure the property and assess the tax, after hearing the objections of the petitioner and thereafter, to demand the tax arrears. While doing so, the money already paid by the petitioner towards tax, shall be adjusted.*

7.Even though a specific prayer for removal of dust bin was sought by the petitioner in W.P.(MD)No.10864 of 2018, the order granting relief in the writ petition is silent on this aspect. Explanation 5 to Section 11 of Civil Procedure Code reads as follows-

> *"**11. Res judicata**— No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court;-*
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> *Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused."*

Of course Civil Procedure Code may not be applicable to writ proceedings but then the Writ Court can always derive inspiration from the overall statutory scheme underlying Civil Procedure Code. I, therefore, have to necessarily hold that the prayer for removal of dust bin sought for by the petitioner should be deemed to have been refused. But then, the dust bin was removed when the petitioner filed Cont.P.(MD)No.533 of 2019. When contempt proceedings are instituted, there is always a knee jerk response from the officials. That cannot be taken to have determined the issue. Since the case of the petitioner is pending before the tax appellate tribunal and the authority threatened to lock and seal the hospital building, the petitioner once again filed W.P.(MD)No.2279 of 2022. The writ prayer included removal of the dust bin placed by the corporation in front of the hospital building. The writ petition was dismissed on 04.02.2022. The affidavit filed in support of the present writ petition is silent as to when the dust bin was removed by the corporation authorities.

8.Thus, the petitioner is faced with two impediments. The order made in W.P.(MD)No.10864 of 2018 is silent in respect of the relief of removal of dust bin sought for by the petitioner. Therefore, it should be deemed to have been refused. W.P.(MD)No.2279 of 2023 also contains the prayer of removal of dust bin. The said writ petition was dismissed on 04.02.2022. Therefore, this Court will not justified in entertaining the very same prayer for the third time. I however would expect the respondent corporation to ensure that the installation of dust bin does not affect the access right of the petitioner in any manner. It should pose minimal inconvenience.

9.This writ petition is dismissed with the aforesaid observations. No costs. Consequently, connected miscellaneous petitions are closed.

24.11.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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