BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD)No.965 of 2023
and
W.M.P.(MD)No.910 of 2023

The Pennington Committee,
Rep. by its Secretary,
S.Shanmuganathan,
No.9, Library Street,
Srivilliputhur. ... Petitioner

Vs.

The Commissioner,
Srivilliputhur Municipality,
Srivilliputhur. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, to call for the records and quash the proceedings of the respondent passed in Na.Ka.No.3457/2009/A2 dated 06.12.2022 confirming its order passed in Na.Ka.No. 3457/2009/A2 dated 07.11.2022 insofar as it relates to Assessment No.21253 for Door No.66 (Ground Floor) of Nethaji Road, Srivilliputtur, is illegal and contrary to the provisions of Tamil Nadu District Municipalities Act, 1920 and Rules made thereunder.

For Petitioner : Mr.V.Radhakrishnan
Senior Counsel
for Mr.S.Kadarkarai

For Respondent : Mr.J.Parekh Kumar
Standing Counsel

ORDER

This is a second round of litigation before this Court. Earlier, the petitioner was issued with the demand notice, pursuant to which, the petitioner appears to have filed a Revision before the respondent under the provisions of the Tamil Nadu District Municipalities Act, 1920. The respondent Commissioner had passed a Revision Order dated 23.07.2009 for Assessment No.21253 and the consequential Order 1-43/2009-10 dated 16.09.2009. This was challenged by the petitioner before this Court in W.P.(MD)No.10794 of 2009. By an order dated 30.03.2022, this Court had set aside the order and remitted the case back to the respondent to pass a fresh order. Paragraph Nos.11 and 12 of the said order read as under:-

> *"11. Accordingly, the writ petition is allowed and the order dated 16.09.2009 passed by the respondent is set aside and the matter is remitted back to the respondent for a fresh consideration.*
>
> *12. The petitioner is at liberty to file a fresh application setting out its objection and the present situation, within a period of three weeks from the*

date of receipt of a copy of this order. On receipt of such application, the respondent shall conduct a detailed enquiry by providing an opportunity of hearing to the petitioner as contemplated under Rule 12 and pass a reasoned order within a period of twelve weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed."

2. The above said conclusion was based on the observation in Paragraph Nos.8 to 10 of the said order, which read as under:-

"8. Rule 12 and 13 of Schedule IV of the Tamil Nadu District Municipalities Act, 1920 is extracted as under:-

12. No petition under rule [9 or 10] or 11 shall be disposed of unless the petitioner has been given a reasonable opportunity to appear either in person or by authorised agent and to represent his case.

13. Immediately after the disposal of a revision petition, the Executive Authority shall inform the petitioner or his authorised agent, either orally or in writing, of the orders passed thereon, shall direct him to pay the amount fixed on revision within fifteen days [after the date of receipt of such intimation], or if the amount is not yet due, within fifteen days from the date on which it becomes due, and shall, if necessary, cause the assessment books to be corrected.

9. From the perusal of the record, it appears that in this case, the petitioner was heard. However, the order passed by the respondent under Rule 13 is not a speaking order, without assigning any reason *for rejecting the request of the petitioner. As against the order passed by the respondent under Rule 13, a remedy is also available to the petitioner for filing an appeal before the Taxation Appeals Committee under Rule 23. As per Rule 25, any such appeal shall be made in writing and shall set forth concisely and under distinct heads the grounds of objection to the decision or other proceedings appealed against.*

10. As rightly pointed out by the learned Senior Counsel for the petitioner, the order dated 16.09.2009 passed by the respondent under Rule 13 is not a speaking order. Therefore, this Court is inclined to set aside the order dated 16.09.2009 and remit the matter back to the respondent for a fresh consideration."

3. Meanwhile, pursuant to the above said direction, the petitioner has given a representation dated 06.05.2022, in response to which, the petitioner has received the impugned notices dated 07.11.2022 and 06.12.2022. The first notice was replied by the petitioner on 15.11.2022.

4. The learned Senior Counsel for the petitioner submits that during the interregnum, the petitioner has paid a sum of Rs.29,50,000/- for the period starting from 2009-2010 and that if the impugned demand is confirmed as proposed in the impugned notice, the remaining balance is Rs.6,39,220/- for the period upto 2022-2023 and a sum of Rs.7,15,686/- for the Assessment Year 2023-2024 and the first Half Year in 2024-2025.

5. The learned Senior Counsel for the petitioner submits that the respondent has merely come to a conclusion that as if the petitioner is liable to pay huge tax. It is submitted that originally, the petitioner was asked to pay tax of Rs.1,19,281/-, which was subject matter of W.P.(MD)No.10794 of 2009. This amount has been revised to Rs.2,38,562/- for the Assessment Years 2009-2010 up to 2019-2020. Thus, the petitioner has been subjected to unjust demand contrary to Rules 12 and 13 of Schedule IV of the Tamil Nadu District Municipalities Act, 1920, the content of which has already been extracted above.

6. On the other hand, the learned Standing Counsel for the respondent submits that the Writ Petition is premature. A specific reference was made to Paragraph Nos.8 and 9 of the counter affidavit, which read as under:-

> *"8. It is most respectfully submitted that since the property is being used for commercial purpose, this respondent has levied property tax as Commercial building to the said building based on the rate fixed in the assessment book, invoking the provisions of the Tamil Nadu District Municipalities Act 1920 in assessment No.21253. As per particulars given by the petitioner and after inspecting the building this respondent arrived the annual rental value as Rs.7,40,877/- and the half yearly tax was fixed as Rs.1,19,281/-. The working sheet also served*

to the petitioner and therefore, there is no illegality or infirmity and the procedure for levying property tax for commercial building has been strictly followed as per provision of the Tamil Nadu District Municipalities Act, 1920 and therefore, the above writ petition has to be dismissed by this Hon'ble Court.

9. It is further submitted that the petitioner preferred revision to the Commissioner of the respondent Municipality against the above said assessment on 27.07.2009 and it was considered and rejected after providing an opportunity of hearing to the petitioner by this respondent vide order dated 17.09.2009. If there is any grievance, the petitioner has to prefer Appeal to the Taxation Appeal Committee as per provisions of the Act and Rules but without doing so, the petitioner has filed a writ petition in W.P.(MD) No.10794 of 2009 before this Hon'ble Court. However, this Hon'ble Court was pleased to set aside the rejection order passed by this respondent and remanded back the same for fresh consideration. Accordingly, the petitioner herein has submitted a detailed representation dated 06.05.2022 and in which the petitioner pleaded that there is a huge expenses for maintain the Two Wheeler Parking and therefore the property Tax to be reduced 30%. After receiving the said representation, this respondent informed the petitioner vide letter dated 07.11.2022 that the property tax has not been levied based on the income and expenditure of the property and it has been levied based on the annual rental value in zone wise, which was fed in the computer software classifying that Residential, Commercial and Industry and therefore there is no chance to reduce the property tax by the Commissioner and however to provide the opportunity of hearing to the petitioner, he was called for in person to peruse the working sheet of the petitioner's property and give *written objections if any. But the petitioner without doing so, sent another representation dated 15.11.2022 by reproducing same plea and to provide vacancy remission and therefore this respondent replied vide letter dated 06.12.2022 that the petitioner cannot claim vacancy remission under Section 87 of the Tamil Nadu District Municipalities Act, 1920, since the property was locked sealed for running unauthorised cart stand under the Tamil Nadu District Municipalities Act following the due process. Immediately the petitioner come forward with the present writ petition for challenging the communications of the respondent without any basis and on this sole ground this writ petition has to be dismissed by this Hon'ble Court."*

7. I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned Standing Counsel for the respondent.

8. There is a substantial compliance for the tax paid to be paid by the petitioner inasmuch as the petitioner has paid as on date a sum of Rs.29,50,000/- over a period of time. It has been appropriated at Rs.2,38,562/- for the Assessment Years 2009-2010 up to 2019-2020 and for Assessment Years 2020-2021 and 2021-2022, the tax has been demanded at Rs.2,39,762/- p.a. and for the Assessment Year 2022-2023, the tax has been demanded at Rs.4,78,324/- p.a.

9. It is noticed that the petitioner is a Society registered under the provisions of the Tamil Nadu Societies Registration Act, 1975 although it is in existence for the last 150 years. It appears that in the year 2009, the petitioner had put up a multi-storied building with a Shopping Complex. In the basement, there is also a parking area. It is noticed that there are over all 240 shops and income is generated by the petitioner from the rentals it receives from the shops apart from the parking charges collected both from the persons visiting the Shopping Complex and from its tenants.

10. The prime object of the petitioner appears to run a Library in Srivilliputtur, which is more than 150 years old having rare collection of books. It is noticed that this Court in its order dated 20.09.2017 in W.P.(MD)No.13950 of 2014 had also directed the respondents therein to consider the claim of the petitioner for waiver of licence fee, which has also been considered favourably and accepted by the Government.

11. Be that as it may, the order passed by this Court on 30.03.2022 in W.P.(MD)No.10794 of 2009 is yet to be complied with by the respondent. Since the petitioner has also paid substantial amount during the pendency of the present Writ Petition, I am inclined to give a positive direction to the respondent to pass a fresh order on the petitioner's representation in the light of the proposals in the impugned notices. Needless to state the petitioner shall also be heard and proper assessment shall be made within a period of eight weeks from today.

12. This Writ Petition stands disposed of with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes/ No **29.07.2024**
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
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To

The Commissioner,
Srivilliputhur Municipality,
Srivilliputhur.

C.SARAVANAN, J.

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W.P.(MD) No.965 of 2023

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