BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.07.2024

Delivered on : 02.08.2024

CORAM :

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

W.P(MD)Nos.10135 and 10136 of 2021
and
W.M.P(MD)Nos.7859 and 7860 of 2021

T.K.Sethuram Babu : Petitioner (in both petitions)

Vs.

The Executive Officer,
Special Grade Panchayat,
Courtallam – 627 802.
Tenkasi District. : Respondent (in both petitions)

PRAYER in W.P(MD)No.10135 of 2021**:** Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of certiorarified Mandamus, to call for the records pertaining to the impugned proceedings passed by the respondent in Na.Ka.No.61/2020/A1, dated 11.11.2020 signed by the respondent on 05.03.2021 and to quash the same as illegal and contrary to law and consequently, direct the respondent to levy the property tax in accordance with law after giving opportunity of hearing to the petitioner.

PRAYER in W.P(MD)No. 10136 of 2021**:** Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of certiorarified Mandamus, to call for the records pertaining to the impugned proceedings passed by the respondent in Na.Ka.No.61/2020/A1, dated 05.03.2021 and to quash the same as illegal and contrary to law and consequently, direct the respondent to levy the property tax in accordance with law, after giving opportunity of hearing to the petitioner.

(in both petitions)
For Petitioner : Mr.T.R.Subramanian

For Respondents : Mr.S.Sundarapandian,
Government Advocate, for R2 to R4.

**O R D E R**

These Writ Petitions are directed against the order, dated 05.03.2021 passed by the respondent and for direction to the respondent to levy the property tax in accordance with law after giving opportunity of hearing the petitioner.

2. It is not in dispute that the petitioner and his wife are the owners of the property No.5, 5D, 6th Ward, Lakshmipuram, 1st East Street, Courtallam; that the respondent has assessed the building for the property tax at Rs.3,285/- per half year till 30.09.1998, in assessment No.1264 in respect of

property No.5 and the property tax at Rs.3,408/- per half year till 31.03.2021 in assessment No.1268 for the property No.5D; that the respondent has already sent a special notice, dated 25.01.1999 under Rule Nos.9 and 10 of schedule IV of the District Municipalities Act, 1920 intimating that from the half year 1998-1999 II (01.10.1998) the property tax has been for the property at Rs.6,570/- enhanced the same from the existing tax of Rs.3,285/- over the property No.5 and the property tax has been for the property at Rs.5,112/- enhanced the same from the existing tax of Rs.3,408/- over the property No.5 D; that the respondent later on reduced on revision at Rs.4,928/- and Rs.3,408/- respectively; that the petitioner has filed two original suits in O.S.Nos.67 and 68 of 2000 on the file of the Principal District Munsif Court, Tenkasi Taluk; that the learned District Munsif, after full trial has passed the judgments and decrees in favour of the petitioner, directing the respondent/Municipality to issue a Special Notice in terms of the provisions of the Act and to proceed further; that thereafter, the respondent has sent the notice, directing the petitioner to pay half year property tax of Rs.8,945/- and that the petitioner was constrained to file writ petitions in W.P(MD)Nos.2556 and 2557 of 2009 before this Court and that this Court by setting aside the impugned notice directed them to issue special notice for the period commencing from 01.04.2008; that the respondent without following the mandatory requirements and without giving any opportunity to the petitioner and without conducting any enquiry has sent a demand notice, dated 09.11.2020, directing the petitioner to pay a sum of Rs.3,11,284/- and Rs.3,23,602/- respectively; that the petitioner has paid Rs.1,83,974/- and Rs.1,48,952/- for the respective assessments and that the respondent has sent the impugned proceedings demanding the petitioner to pay Rs.1,27,310/- and Rs.1,74,650/- for the respective assessments and that therefore, the petitioner with no other option has filed the present writ petition.

3. It is the specific case of the petitioner that since his wife is no more, he has filed the writ petition in W.P(MD)No.10136 of 2021 for the property owned by his wife.

4. The respondent has filed the separate counter affidavits for the above writ petitions stating that the respondent has assessed the building property tax at Rs.3,285/- per half year till 30.09.1998 and also assessed the building property tax at Rs.3,408/- per half year till 31.03.2021 through assessment Nos. 1264 and 1268 respectively; that the respondent has served notice as per Rule 9 of the District Municipalities Act, 1920 in special notice,

dated 25.01.1999 and fixed the property tax at Rs.6,750/- for the property No.5 and Rs.5,112/- for the property No.5 D and the same were revised and reduced to Rs.4,928/- and Rs.3,408/- respectively; that the petitioner has not paid property tax till date and kept on refusing the same as illegal and void and he has been using the judgment of Tenkasi District Munsif, dated 17.07.2002 as tool to escape from paying property tax; that the proceedings now impugned in the writ petitions were only a follow up of the proceedings issued earlier and the petitioner without questioning the said proceedings has chosen to challenge the impugned proceedings; that the respondent through its resolution, dated 25.04.2008 has revised the property tax as per letter of the Commissioner, dated 12.02.2008 and that therefore, the petitions are liable to be dismissed.

5. As already pointed out, the petitioner has earlier challenged the proceedings before this Court in W.P.(MD)Nos. 2556 and 2557 of 2009 and the learned Judge of this Court, by observing that the impugned notices were in printed form and none of the blanks have been filled up except the petitioner's name and door number and there are no details as to how the demand has been arrived at and by holding that the impugned orders are vitiated on the ground of non-application of mind and violation of principles

of natural justice, set aside the notices and granted liberty to the respondent to issue a special notice for the period commencing from 01.04.2009 after following the provisions contained in the Tamil Nadu District Municipalities Act and Rules framed thereunder and the determination of the property tax for the said period shall be done after affording opportunity to the petitioner.

6. The main contention of the writ petitioner is that the respondent without following the directions issued by this Court, without conducting any enquiry and without affording any opportunity to the petitioner has passed the impugned orders.

7. As rightly contended by the learned counsel for the petitioner, though this Court has directed the respondent to issue a special notice for the period commencing from 01.04.2009, the respondent has issued the impugned order commencing from 1998 -1999 and even on the said ground alone, the impugned order cannot be sustained.

8. Admittedly, the petitioner has paid the earlier tax and according to him, he has paid Rs.1,83,974/ for property No.5 and Rs.1,46,952/ for property No. 5 D. As already pointed out by the learned counsel for the

petitioner, the respondent after deducting the amount paid by the petitioner for two assessments, claimed balance amount of Rs.1,27,310/- for the property No.5 and Rs.1,74,650/- for the property No.5D.

9. Admittedly, the respondent has not produced any material or evidence to show that they have complied with the directions of this Court given in the order, dated 12.10.2009 made in W.P.(MD)Nos.2556 and 2557 of 2009. When the matter was taken up for hearing, the learned counsel for the respondent would fairly submit that though this Court has directed the respondent to issue special notice for the period commencing from 01.04.2009, the respondent has issued the impugned proceedings for the period commencing from 1998-1999 and that the respondent may be directed to issue fresh special notice as directed earlier.

10. The learned counsel for the petitioner would submit that the respondent is entitled to issue a notice only demanding the property tax for the period subject to the limitation as contemplated under the District Municipalities Act and according to him, the respondent is entitled to recover the tax within a period of three years.

11. But according to the learned counsel for the respondent as per G.O.Ms.43, Municipal Administration and Water Supply Department dated 12.02.1996, the period has been extended to six years. The learned counsel for the petitioner has also relied on the decision of this Court in ***K.R.Santharam Vs. The Commissioner, Madurai City Municipal Corporation*** reported in ***2000 (IV) CTC 348***, wherein the learned Judge of this Court after referring to Section 168 and 483 of the Madurai City Municipal Corporation Act 1971 has observed as

" A reading of the above provisions makes it clear that if the tax payable is determined and due, it is open to the respondent to recover the same within a period of six years and after expiry of such period it is not open to the respondent to recover the said due. This is clear from section 483 of the Act. If the amount is un-determined and un-assessed, the same steps have to be taken within 3 years from the date on which such person should have been assessed. This is clear from section 168 of the Act."

12. It is necessary to refer the decision of this Court in the case of ***A.Kuberan Vs. The Commissioner, Villupuram Municipality, Villupuram*** in ***W.P.No.17400 of 2003, dated 10.02.2017***, wherein it has been held that

" On a close scrutiny of the said Government Order, it is seen that the Government had made a recommendation to the Legislature to extend the period in Section 345 from 3 years to 6 years. But, the same was not accepted by the Legislature then, as could be seen from the Tamil Nadu Municipal Laws (Third Amendment) Act 2008 (Tamil Nadu Act 36 of 2008), which came into effect from 25.06.2008 vide G.O. Ms.No.116, Municipal Administration and Water Supply Department. The Third Amendment Act did not amend Section 345. Only subsequently, in the year 2008, Section 345 was amended and the period of 3 years was extended to 12 years. In the result, this writ petition is allowed and the claim of the respondent municipality of property tax prior to 2000-2001 is hereby set aside. No costs. Connected W.P.M.P. is closed."

13. It is pertinent to note that Section 345 of Tamil Nadu District Municipalities Act 1920, contemplated that no distraint shall be made, no suit shall be instituted and no prosecution shall be commenced in respect of any sum due to the municipal council under this Act after the expiration of a period of three years from the date on which distraint might first have been made, a suit might first have been instituted, or prosecution might first have been commenced, as the case may be, in respect of such sum. But vide amendment under the Tamil Nadu Municipalities Laws (Third Amendment) Act, 2008 (Tamil Nadu Act 36 of 2008) the period three years was substituted

by period of 12 years. Hence, Section 345 of the said Act as of now prescribes the period 12 years as limited period for recovery of dues.

14. Considering the facts and circumstances of the case and taking note of the submissions on either side and also the amended Section 345 of the Tamil Nadu District Municipalities Act, this Court is of the view that the impugned proceedings are liable to be quashed and the respondent is to be directed to issue special notice for the period subject to the limitation provided under Section 345 of the Tamil Nadu District Municipalities Act and after following the provisions contained in the Tamil Nadu District Municipalities Act and Rules made thereunder and after affording reasonable opportunity to the petitioner.

15. In view of the above, the impugned proceedings in Na.Ka. No.61/2020/A1 and Na.Ka.No.61/2020/A1, dated 05.03.2021 are quashed and the respondent is directed to issue special notice for the period subject to the limitation provided under Section 345 of the Tamil Nadu District Municipalities Act and after following the provisions contained in the Tamil Nadu District Municipalities Act and Rules made thereunder and after affording reasonable opportunity to the petitioner.

16. With the above observation and directions, these Writ Petitions are disposed of. Consequently, connected Miscellaneous petitions are closed. No costs.

**02.08.2024**

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
das

To

The Executive Officer,
Special Grade Panchayat,
Courtallam – 627 802.
Tenkasi District.

**K.MURALI SHANKAR, J**

DAS

Pre-delivery order made in
W.P(MD)Nos.10135 and 10136 of 2021
and
W.M.P(MD)Nos.7859 and 7860 of 2021

Dated : .02.08.2024