BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.12967, 13034, 13045, 13145 and 13281 of 2020
and
W.M.P.(MD)Nos.10935, 10977, 10995, 11030 and 11109 of 2020

W.P.(MD)No.12967 of 2020:-

C.Ajoy Kumar ... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by the Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai.

2.The Chairman & Members of the Taxation Appeal Committee,
Presently represented by the Special Officer,
Nagercoil Municipal Corporation,
Nagercoil.

3.The Commissioner,
Nagercoil Municipal Corporation,
Nagercoil. ... Respondents

Prayer : 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 on the file of the third respondent in building tax demand notice in Assessment No.150/014/00231/Old No.150/19230, Ward No.14 dated

20.02.2020 and quash the same and consequently direct the third respondent to comply with the directions of this Court in W.P.(MD) No.2815 of 2010 dated 09.03.2010 and re-assess the building No.16 B in Ward No.14, Assessment No.150/014/00231 (Old Asst. No.150/19230), Savariyarcoil Street, Nagercoil within such time as may be directed by the Court.

For Petitioner : Mr.M.Azeem

For Respondents : Mr.K.Selvaganeshan,
Addl. Government Pleader for R1 & R2.
Mr.P.Athomoolapandian,
Standing Counsel for R3.

W.P.(MD)No.13034 of 2020:-

C.Ajoy Kumar ... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by the Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai.

2.The Chairman & Members of the Taxation Appeal Committee,
Presently represented by the Special Officer,
Nagercoil Municipal Corporation,
Nagercoil.

3.The Commissioner,
Nagercoil Municipal Corporation,
Nagercoil. ... Respondents

Prayer : 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 on the file of the third respondent in building tax demand notice in Assessment No.150/014/00163/Old No.150/19162, Ward No.14 dated 20.02.2020 and quash the same and consequently direct the third respondent to comply with the directions of this Court in W.P.(MD) No.2510 of 2010 dated 18.03.2010 and re-assess the building No.613 C in Ward No.14, Assessment No.150/014/00163 (Old Asst. No.150/19162), Cap Road, Kottar, Nagercoil within such time as may be directed by the Court.

For Petitioner : Mr.M.Azeem

For Respondents : Mr.T.Villavankothai,
Addl. Government Pleader for R1 & R2.
Mr.P.Athomoolapandian,
Standing Counsel for R3.

W.P.(MD)No.13035 of 2020:-

C.Ajoy Kumar ... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by the Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai.

2.The Chairman & Members of the Taxation Appeal Committee,
Presently represented by the Special Officer,
Nagercoil Municipal Corporation, Nagercoil.

3.The Commissioner,
Nagercoil Municipal Corporation,
Nagercoil. ... Respondents

Prayer : 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 on the file of the third respondent in building tax demand notice in Assessment No.150/014/00230/Old No.150/19229, Ward No.14 dated 20.02.2020 and quash the same and consequently direct the third respondent to comply with the directions of this Court in W.P.(MD) No.2816 of 2010 dated 09.03.2010 and re-assess the building No.16 A in Ward No.14, Assessment No.150/014/00230 (Old Asst. No.150/19229), Savariyarvoil Street, Nagercoil within such time as may be directed by the Court.

For Petitioner : Mr.M.Azeem

For Respondents : Mr.S.Kameshwaran,
Government Advocate for R1 & R2.
Mr.P.Athomoolapandian,
Standing Counsel for R3.

W.P.(MD)No.13145 of 2020:-

C.Ajoy Kumar ... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by the Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai.

2.The Chairman & Members of the Taxation Appeal Committee,
Presently represented by the Special Officer,
Nagercoil Municipal Corporation,
Nagercoil.

3.The Commissioner,
Nagercoil Municipal Corporation,
Nagercoil. ... Respondents

Prayer : 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 on the file of the third respondent in building tax demand notice in Assessment No.150/014/00229/Old No.150/19228, Ward No.14 dated 20.02.2020 and quash the same and consequently direct the third respondent to comply with the directions of this Court in W.P.(MD) No.2818 of 2010 dated 09.03.2010 and re-assess the building No.16 in Ward No.14, Assessment No.150/014/00229 (Old Asst. No.150/19228), Savaroyarcoil, Nagercoil within such time as may be directed by the Court.

For Petitioner : Mr.M.Azeem

For Respondents : Mr.M.Lingadurai,
Spl. Government Pleader for R1 & R2.
Mr.P.Athomoolapandian,
Standing Counsel for R3.

W.P.(MD)No.13281 of 2020:-

C.Ajoy Kumar ... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by the Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai.

2.The Chairman & Members of the Taxation Appeal Committee,
Presently represented by the Special Officer,
Nagercoil Municipal Corporation,
Nagercoil.

3.The Commissioner,
Nagercoil Municipal Corporation,
Nagercoil. ... Respondents

Prayer : 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 on the file of the third respondent in building tax demand notice in Assessment No.150/014/00162/Old No.150/19161, Ward No.14 dated 20.02.2020 and quash the same and consequently direct the third respondent to comply with the directions of this Court in W.P.(MD) No.2817 of 2010 dated 09.03.2010 and re-assess the building No.613 B in Ward No.14, Assessment No.150/014/00162 (Old Asst. No.150/19161), Cap Road, Kottar, Nagercoil within such time as may be directed by the Court.

For Petitioner : Mr.M.Azeem

For Respondents : Mr.M.Lingadurai,
Spl. Government Pleader for R1 & R2.
Mr.P.Athomoolapandian,
Standing Counsel for R3.

COMMON ORDER

Heard both sides.

2.The petitioner is owning two buildings within the corporation limits of Nagercoil. The petitioner is assessed to property tax under five separate heads. Dispute arose between the assessee and the local body with regard to assessment of the buildings for the year 1987. The petitioner and his family members filed O.S.No.450 of 1991 on the file of the Principal District Munsif Court, Nagercoil. The suit was dismissed by the trial Court on 26.03.1998. Aggrieved by the same, the petitioner and his family members filed A.S.No.69 of 1998 before the Principal Sub Court, Nagercoil. The first appellate Court reversed the decision of the trial Court and allowed the appeal and decreed the suit as prayed for on 28.04.2000. Based on the said decision of the Civil Court, the assessment was completed by the local body. Thereafter, dispute arose with regard to assessment in respect of the second half of the assessment year 1998. The petitioner challenged the quantum of the property tax levied by the local body. The appellate committee partly allowed the appeal and reduced the quantum of property tax. The order of the appellate committee was issued on 29.05.2006. The Commissioner of Nagercoil municipality set aside the order passed by the appellate committee vide order dated 13.02.2010. This was put to challenge by the petitioner in W.P.(MD)No.2510 of 2010. Since the petitioner was an assessee under five assessment proceedings, he also filed four other writ petitions in W.P.(MD)Nos.2815 to 2818 of 2010. The said writ petitions were allowed on 09.03.2010 and 18.03.2010. It was held that the Commissioner being a subordinate authority could not have set aside the order passed by the appellate committee. The order dated 13.02.2010 was set aside. The Commissioner was also directed to serve the order of the committee on the assessee.

3.Even though such a categorical direction was given by this Court, the local body did not appear to have paid heed to the same. Assessments continued to be made without taking into account the order of the appellate committee dated 29.05.2006. When I wanted to know as to why this was so, the learned standing counsel for the corporation submitted that questioning the order passed by the appellate committee, the local body had filed an appeal before the Government and that it is still pending. The learned counsel for the petitioner categorically states that the petitioner had not received any summon from the Government in the appeal said to have been filed by the local body.

4.Even if the statement that an appeal had been filed challenging the order of the appellate committee is correct, mere filing of an appeal will not operate as stay. There is nothing on record to show that the Government had stayed the order passed by the appellate committee. Therefore, the local body had committed an act of illegality by making assessments without taking into account the order passed by the appellate committed on 29.05.2006.

5.In this view of the matter, the impugned orders are set aside. The matter is remitted to the file of the third respondent. The third respondent shall re-assess the property tax payable by the petitioner for the period in question by taking into account the order passed by the appellate committee on 29.05.2006. Of course, this exercise of reassessment will be subject to the order that may be passed by the Government in the appeal said to have been filed by the local body.

6.At this stage, the learned standing counsel for the local body submitted that the petitioner is resisting the efforts to measure the property in question. This allegation is vehemently denied by the learned counsel for the petitioner. I make it clear that Commissioner is very much having statutory power to measure the property before making reassessment. However, the petitioner will have to be given reasonable notice and the petitioner is also expected to extend his fullest cooperation.

7.These writ petitions are allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

23.01.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

1.The Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai.

2.The Chairman & Members of the Taxation Appeal Committee,
Presently represented by the Special Officer,
Nagercoil Municipal Corporation,
Nagercoil.

G.R.SWAMINATHAN, J.

ias

W.P(MD)Nos.12967, 13034, 13045, 13145 and 13281 of 2020

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