BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE C.KUMARAPPAN

W.A.(MD).Nos.152 and 153 of 2016
and
C.M.P.(MD).Nos.705 and 706 of 2016

W.A.(MD).No.152 of 2016

The Commissioner,
Ramanathapuram Municipality,
Ramanathapuram District. .. Appellant/Respondent

Vs.

M.Mahadir .. Respondent/Petitioner

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to allow the Writ Appeal by setting aside the order made in W.P.(MD).No. 21359 of 2015 dated 01.12.2015 on the file of this Court.

W.A.(MD).No.153 of 2016

The Commissioner,
Ramanathapuram Municipality,
Ramanathapuram District. .. Appellant/Respondent

Vs.

Sulaiha Bivi (Died) .. Respondent/Petitioner

1.H.Hameed Gani

2.S.Hameetha Banu

3.H.Hameed Kalangiyam .. Respondents

(Respondents 1 to 3 are substituted in the place of the deceased sole respondent vide Court order dated 08.01.2024 made in C.M.P.(MD).No. 12195 of 2018 in W.A.(MD).No.153 of 2016)

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to allow the Writ Appeal by setting aside the common order made in W.P.(MD).No.21360 of 2015 dated 01.12.2015 on the file of this Court.

For Appellant : Mr.A.Kannan

For Respondents : No appearance
(In both Writ Appeals)

COMMON JUDGMENT

DR.G.JAYACHANDRAN,J.
and
C.KUMARAPPAN,J.

A strange prayer emanated from the respondents/writ petitioners to assess the property tax for a vacant land, for which they claim title, was considered by the learned Single Judge of this Court in W.P.(MD). Nos.21359 and 21360 of 2015 and the matter was disposed of vide common order dated 01.12.2015, which reads as follows:

> "*3.Mr.Seethu Jawahar, learned counsel, who takes notice for the respondent, based on instruction submitted that the petitioners herein have not put up any construction in their respective properties and on the other hand, the said properties are lying as a vacant site and therefore, the petitioners are not entitled for levy of property tax and however, the respondent / Municipality can impose vacant site tax on the petitioners' properties. Therefore, he submitted that within a time stipulated by this court the respondent / Municipality will levy and impose vacant site tax on the respective petitioners by issuing appropriate communication.*
>
> *4.Recording the above said submission made by the learned counsel appearing for the respondent / Municipality, the writ petitions are disposed of with a direction to the respondent / Municipality to consider the claim of the petitioners for imposing tax on their property and issue appropriate demand notice imposing appropriate tax on the respective petitioners' land within a period of 4 weeks from the date of receipt of a copy of this order. No costs.*"

2. Against the aforesaid order, the Commissioner, Ramanathapuram Municipality has filed the present Writ Appeals on two grounds. The writ petitioners are not the title holders of the property claimed and the title of the property has a checkered history. Originally, the land belongs to Ramanathapuram Samasthanam. Under Estate Abolition Act, the Settlement Officer, after enquiry, had declared the portion of the land as Government poromboke and the same is in possession of the Government. Though civil suits were filed between the private parties and decrees were obtained in respect of the property without arraying the Government as a party, as per the revenue record 'A' Register, the property is noted as the property held by the Commissioner, Ramanathapuram Municipality and Sarkar poromboke. Initially, the Raja of Ramanathapuram sought for patta in his name before the Settlement Officer for the entire extent of 81 cents, wherein, an order was passed conferring patta to an extent of 10½ cents, where, a construction stands by name Mangammal Chathiram. The rest of the vacant land measuring 70½ cents was maintained as Government Sarkar poromboke. Creating certain documents and claiming title, the Writ Petitions were filed

seeking for a direction to the municipal authorities to assess the property and collect tax.

3. Without adverting to the title of the writ petitioners, the learned Single Judge, by taking into account that there cannot be an assessment for property tax in case of vacant land and that at the most, vacant land tax can alone be collected, directed the appellant/Commissioner to assess the vacant land for tax as per the prevailing Rules.

4. When there is a checkered history regarding the title and the dispute regarding the title was not settled in the manner known to law, the local body cannot assess tax and recognize a person, who holds a disputed title document, as owner of the property and collect tax. It will be a fait accompli, if the property is taxed in the name of a person, who does not have absolute title and the tax receipts may be misused in a judicial proceedings as if the local body has recognized their title.

5. The learned counsel appearing for the appellant, explaining the ill consequences of the order passed by the learned Single Judge, sought for reversal of the order.

6. This Court, on perusing the records, finds that the original writ petitioner in W.P.(MD).No.21360 of 2015, Sulaiha Bivi, died pending disposal of the Writ Appeals and steps to bring the legal representatives on record were taken and pending. Further, there is no representation for the writ petitioner in W.P.(MD).No.21350 of 2015, M.Mahadir. In the light of the facts narrated above, this Court is of the view that these two Writ Appeals need not be kept pending for completion of service, since a person with clouded title and contrary to the revenue records, if seek for assessment of the property in his or her name, the Municipal authorities are not bound to assess the property either under the Property Tax Rules or under the Vacant Land Tax Rules. More so, when the revenue records is very clear that the subject property belongs to the Government and without impleading the Government as a party, the writ petitions have been filed only against the Commissioner, Ramanathapuram Municipality with a dubious intention.

Unfortunately, the learned Single Judge has failed to take note of it and had passed an unlawful order to consider the claim of the writ petitioners. Hence, the common order passed by the learned Single Judge in W.P.(MD). Nos.21359 and 21360 of 2015 dated 01.12.2015 is set aside.

7. Accordingly, the Writ Appeals are allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(G.J.,J.) (C.K.,J.)
11.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

DR.G.JAYACHANDRAN,J.
and
C.KUMARAPPAN,J.

Lm

W.A.(MD).Nos.152 and 153 of 2016

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