
(2014) 09 MAD CK 0266

In the Madras High Court

Case No : W.P. (MD) No. 13642 of 2010 and M.P. Nos. 1 of 2010 and 1 of 2013

Jonnison Fernando

APPELLANT

Vs

The Commissioner

RESPONDENT

Date of Decision : 05-09-2014

Acts Referred:

Citation : (2014) 09 MAD CK 0266

Hon'ble Judges : R. Mahadevan, J

Bench : Single Bench

Judgement

R. Mahadevan, J.—Challenge in this Writ Petition is to the order, dated 21.10.2010, in and by which the petitioner has been directed to remit a sum of Rs. 1,84,41,404/- towards property tax.

2. The case of the petitioner is that he, along with his father and brother are the joint owners of the lands and the buildings, bearing Door Nos. 259-B, 260/260-A and 261/A, V.E. Road, Thoothukudi and the said properties were assessed by the respondent, under Assessment Nos. 321011, 321287 and 321288, on 01.04.1997, 01.10.1997 and 01.10.1997, respectively. Thereafter, the respondent revised the orders of assessment, by proceedings, dated 30.06.1999. Challenging the said revised orders, the petitioner filed O.S. No.414 of 1999, on the file of the District Munsif Court, Thoothukudi, seeking declaration that the enhancement of tax, with respect to the scheduled buildings, with effect from 1998-1999, as per the demand notice, dated 30.06.1999 and the distraint notice, dated 14.10.1999, are illegal and void. The said suit came to be decreed, by a Judgment, dated 09.04.2002, holding that the orders of assessment of property tax were illegal and contrary to law. Challenging the same, no appeal was filed by the respondent. Thereafter, the respondent issued a notice, dated 22.05.2002, alleging that there was an audit objection, regarding the assessment orders, pertaining to the Door Nos. 259-B, 260/260-A and 261/A, V.E. Road, Thoothukudi, and directed to show cause as to why the property tax shall not be revised. The petitioner, by way of representation, dated 20.06.2002,

submitted his objections. Without considering the said objections, the respondent, by proceedings, dated 22.07.2002, confirmed the property tax determined in the notice, dated 22.05.2002.

3. Aggrieved over the same, the petitioner preferred an appeal, before the Taxation Appellate Committee. By proceedings, dated 12.09.2002, the said appeal came to be rejected. Challenging the said notice, dated 22.05.2002, and also the Original Order, dated 22.07.2002, the petitioner filed W.P. Nos.8669 and 8670 and of 2003. By order, dated 10.02.2010, W.P. No.8669 of 2003 came to be allowed, by setting aside the notice, dated 22.05.2002, as confirmed by the order, dated 22.07.2002, remitting the matter back to the respondent, who was directed to pass fresh orders, on merits, after providing due opportunity to the petitioner. In view of the order passed in W.P. No.8669 of 2003, dated 10.02.2010, W.P. No.8670 of 2003 was dismissed, as infructuous.

4. In pursuance of the order of this Court, dated 10.02.2010, the respondent, through his communication, dated 08.06.2010, directed to submit his objections before the Taxation Appellate Tribunal of the Corporation, within a period of fifteen days. Immediately, thereafter, the petitioner submitted a reply, explaining the purport of the order passed by this Court, dated 10.02.2010 and also sent a cheque for a sum of Rs.1,38,570/-, as per the original assessment order made in the year 1999 and requested to comply with the order passed by this Court, dated 10.02.2010. Subsequently, without prejudice to the above contentions, the petitioner also preferred an appeal before the Taxation Appellate Tribunal. Thereafter, the respondent, by his impugned communication, dated 21.10.2010, informed that the petitioner had not presented the appeal, along with the receipt for payment of entire arrears and further directed to remit the entire dues within a period of three days. In such circumstances, the petitioner has come up with the present Writ Petition.

5. The learned counsel appearing on behalf of the petitioner submits that the earlier enhancement was challenged by the petitioner, by way of filing O.S. No.414 of 1999, before the District Munsif Court, Thoothukudi, seeking declaration that the enhancement of tax, with respect to the scheduled buildings, with effect from 1998-1999, as per the demand notice, dated 30.06.1999 and the distraint notice, dated 14.10.1999, were illegal and void and the same was decreed, on 09.04.2002. The subsequent proceedings initiated by the respondent was also set aside by this Court, by order, dated 10.02.2010. The learned counsel further submits that by virtue of the order of this Court, dated 10.02.2010, there was no enquiry conducted by the respondent and without affording any opportunity of hearing to the petitioner, the respondent directed the petitioner to remit a huge amount of Rs.1,84,41,404/-, which is in violation of the principles of natural justice. Based on the above, the learned counsel prays for the setting aside of the impugned order.

6. The learned Standing Counsel appearing on behalf of the respondent, reiterating the averments made in the Vacate Stay Petition/Counter Affidavit,

submits that on a careful consideration of all the documents available on record, and taking into consideration of the order passed by this Court, dated 10.02.2010, the respondent passed the impugned order, directing the petitioner to remit the payment of property tax for the past ten years, which is totally justified and the same is in accordance with law and also strictly in line with the order passed by this Court, dated 10.02.2010, which does not require any interference at the hands of this Court.

7. I have considered the above submissions and perused the records carefully.

8. Admittedly, this Court, by order, dated 10.02.2010, while setting aside the assessment made against the petitioner herein, directed the respondent to pass fresh assessment order, after affording due opportunity to the petitioner. However, instead of passing assessment order, the petitioner was directed to file objections, before the Appellate Authority, by a communication, dated 08.06.2010. The petitioner submitted his reply, on 21.07.2010, to the said communication, dated 08.06.2010. Thereafter, again, by the impugned communication, dated 21.10.2010, the petitioner was directed to pay the entire arrears of Rs.1,84,41,404/, within a period of three days. It is not in dispute that there is no assessment order passed by the respondent, in compliance with the order passed by this Court, dated 10.02.2010. Thus, this Court is of the considered view that the petitioner has not been given sufficient opportunity of hearing, to put forth his case, effectively and there cannot be any demand, without an order of assessment.

9. In such view of the matter, the impugned order, dated 21.10.2010, passed by the respondent is set aside. The respondent is directed to issue assessment notice, intimating the petitioner the actual amount of property tax to be remitted by him, or the proposed tax to be remitted, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such notice, the petitioner is permitted to submit his reply, along with all relevant documents, within a period of two weeks, thereafter. On receipt of such reply from the petitioner, the respondent shall consider the same and pass appropriate assessment orders, relating to the property tax payable by the petitioner, within a period of two weeks, thereafter. It is made clear that as this Court directs the respondent to issue assessment notice to the petitioner and permits the petitioner to submit his reply, as stated above, the question of limitation shall not be raised by the petitioner.

10. The Writ Petition is disposed of, on the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.