(2012) 02 MAD CK 0300

In the Madras High Court

Case No : Writ Petition No''s. 5582, 5583, 5584, 5585, 5586, 5587, 5588, 5589, 5590, 4971, 4972, 4973, 4974, 4975, 4976, 4977, 4978 and 7992 of 2011

K. Mani Naidu APPELLANT

Vs

The Arakkonam Municipality RESPONDENT

Date of Decision : 14-02-2012

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 82
Taxation and Finance Rules — Rule 14(2), 4, 8(2), 9, 9A

Citation : (2012) 02 MAD CK 0300

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : R. Subramanian for Mr. G. Jeremiah, for the Appellant; L.S.M. Hasan Fizal, for the Respondent

Judgement

M. Jaichandren

1. Heard the Learned Counsels appearing for both sides. Since, the issues involved in all the writ petitions are similar in nature, they have been taken up together and a common order is being passed.

2. The above writ petitions have been filed by the petitioners stating that they have been paying the property tax, in respect of the properties belonging to them, at a lesser rate of tax, for a number of years. However, by a subsequent general revision, the property tax, in respect of the petitioners'' premises, had been enhanced. Pursuantto the general revision, the respondents, had been demanding the payment of enhanced property tax, with retrospective effect.

3. The Learned Counsel appearing on behalf of the petitioners had submitted that the demand made against the petitioners, for the payment of the enhanced property tax, is illegal, as it is based on arbitrary exercise of executive powers.

4. It had been further stated that none of the mandatory procedures laid down in

Annexure IV of the Tamil Nadu District Municipalities Act, 1920, had been followed. It had also been submitted that no demand, for the payment of property tax, can be made without the service of a special notice on the assessee stating the reason for the proposed revision and without calling for objections, in respect of the proposed enhancement of the property tax. However, the respondent had been making demands, arbitrarily and illegally, compelling the petitioners to pay the enhanced property tax, without following the procedures established by law.

5. It had also been stated that the respondent had not complied with the mandate of Section 82 of the Tamil Nadu District Municipalities Act, 1920, in fixing the property tax at 10% of the annual rental value of the buildings in the properties in question.

6. The Learned Counsels appearing for the petitioners had further submitted that the respondents had failed to comply with the mandatory requirement of the proviso to Rule 4 of schedule IV of the Taxation and Finance Rules, which states that no increase in the assessment can be made without giving the person concerned a reasonable opportunity to show cause. Further, the demand made by the respondent is contrary to Rule 8(2) of the said Rules and the proviso to the said Rules. Rule 8 (2) makes it clear that the amendment shall take effect only from the first day of the half year in which it was made. The demand made is also contrary to Rule 9 and 9A of the said Rules, as no public notice or a special notice had been issued. As per the Rules, the property tax cannot be enhanced in excess of 300% of the property tax payable immediately before1.10.1987.

7. The Learned Counsels appearing for the petitioners had further submitted that the demand made by the respondent is also contrary to Rule 14(2) of the Rules, which stipulates that the general revision can be given effect only from the first day of the half year following that in which a notice under Rule 9 had been published. As such, the demand made by the respondent for the payment of the enhanced property tax, by threat of distraint proceedings, cannot be sustained in the eye of law.

8. In the counter affidavit filed on behalf of the respondents, it has been stated that the writ petitions are not maintainable, either in law or on facts. It had been further submitted that the Government had issuedG.O.Ms.No.169, Municipal Administration & Water Supply Department, dated 2.9.1998, for the general revision of the property tax, in all municipal corporations and municipalities, with effect from 1.10.1998, as per the existing statutory provisions in the relevant urban local body Acts. Even though the revision of property tax in all urban local bodies, was due on 1.10.2003, no such revision had been made. Hence, the Government had issuedG.O.Ms.No.150, Municipal Administration and Water Supply(Elec.) Department, dated 12.11.2007, directing that general revision of property tax should be made in all Municipal Corporations, Municipalities, Third Grade Municipalities and Town Panchayats, with effect from1.4.2008. The

Government had issued uniform guidelines, by a letter, dated 1.2.2008. Further, the Government had issued G.O.Ms.No.110, Municipal Administration and Water Supply (Elec.) Department, dated 23.6.2008, clarifying that, while augmenting the source of income of property tax, which is the main source of income for urban local bodies to implement public welfare scheme, the property owners should not be put to hardship. Therefore, the enhancement of the property tax was ordered to be not more than 25% for residential buildings, 100% for industrial buildings, and 150% for commercial buildings, from the existing half yearly tax. By G.O.Ms.No.110, Municipal Administration and Water Supply (Elec.) Department, dated23.6.2008, the Government had empowered the urban local body councils to decide about the rate of enhancement, byway of a general revision of property tax, so as to be within the guidelines and clarifications issued by the Government.

9. It had been further stated that in view of the Government Orders, guidelines and clarifications, and incompliance with Rule 9 of the Taxation and Finance Rules, the respondents had issued a notice, by paper publication, on 29.2.2008, stating that the general revision of property tax had been proposed to be taken, with effect from1.4.2008. Many of the petitioners had not submitted the self assessment forms, which they were expected to submit. Further, some of the Municipal Councils had decided to enhance the property tax, by way of a special resolution. Further, in compliance with the first proviso to Rule 9 of the Taxation and Finance Rules, special notices had been issued. However, after receiving the special notices, most of the petitioners had not submitted any objections, within the specified period. While so, it is not open to the petitioners to challenge the demand made by the respondents, for the payment of enhanced property tax. In view of the submissions made by the Learned Counsels appearing on behalf of the petitioners, as well as the respondents, and in view of the conflicting claims made by the petitioners, as well as the respondents, with regard to the issuance and the service of the notices, as per the procedures established by law, this Court finds it appropriate to hold that the demand made by the respondents, without issuing proper notices cannot be sustained in the eye of law. Accordingly, the demand made by the respondents, if any, in respect of the payment of the enhanced property tax, cannot be sustained in the eye of law. As such, the proceedings issued by the respondents, if any, demanding the payment of property tax, without following the procedures established by law, stand quashed. However, it is made clear that it would be open to the respondents to issue the necessary notices, as per the relevant rules and regulations applicable to such service and to fix the amount of property tax to be paid by the petitioners, individually, after giving them an opportunity of hearing. The respondents shall also follow the other relevant procedures, in fixing the amounts to be paid by the petitioners, as provided under the Tamil Nadu District Municipalities Act, 1920, and the Taxation and Finance Rules. Thereafter, it would be open to the respondents, to make the demand for the payment of enhanced property tax, as per the relevant provisions of law.

The writ petitions are ordered accordingly. No costs. Connected M.P. No. 1 of 2011, M.P. No. 1 of 2011, M.P. No. 1 of 2011, M.P. No. 1 of 2011, M.P. No. 1 of 2011, M.P. No. 1 of 2011, M.P. No. 1 of 2011, M.P. No. 1 of 2011, M.P. No. 1 of 2011, M.P. No. 1 of 2011, M.P. No. 1 of 2011, M.P. No. 1 of 2011, M.P. No. 1 of 2011, M.P. No. 1 of 2011, M.P. No. 1 of 2011, M.P. No. 1 of 2011, and M.P. No. 1 of 2011 are closed.