(1978) 03 MAD CK 0066

In the Madras High Court

Case No : Writ Petition No. 4148 of 1974

M. Gopal Pondither — APPELLANT

Vs

The District Magistrate-cum-Collector of Chingleput and Another — RESPONDENT

Date of Decision : 21-03-1978

Acts Referred:
Cantonments Act, 1924 — Section 84, 87

Citation : AIR 1978 Mad 413 : (1978) 91 LW 400

Hon'ble Judges : Ramanujam, J

Bench : Single Bench

Advocate : G.R. Abdul Kalaam, for the Appellant; C. Chinnaswami, Govt. Pleader and K. Alagiriswami, for the Respondent

Final Decision : Allowed

Judgement

Ramanujam, J.—The petitioner has prayed for the issue of a writ of mandamus directing the first respondent (The District Magistrate-cum-Collector of Chingleput) to dispose of the petitioner''s appeal filed on 19-8-1968, in the following circumstances.

2. The petitioner is the owner of the house and ground bearing No. 7/19, East Chetti St., St. Thomas Mount, Madras 16. In respect of the said house, the property tax was originally levied for the half-year at Rs. 138, on the annual rental valuation of Rs. 1200. On 6-4-1968, the Cantonment Executive Officer (the second respondent) sent a special notice enhancing the property tax to Rs. 414 on the basis of the annual rental of Rs. 3960 for the period from 1-4-1965. The petitioner made his representations on 2-5-1968 to the second respondent that the enhancement by more than double the tax originally levied is unjust and illegal. Accepting the said objections, the second respondent issued a demand notice demanding the original tax of Rs. 138 for the period commencing from 1-4-1968. However, on 20-7-1968, the second respondent issued another demand notice for the same half-year i.e. for the period commencing from

1-4-1988, demanding a sum of Rs. 276 thus making a total of Rs. 414 on the basis of the revised assessment, against which the petitioner had already submitted his objections.

3. Thereafter, the petitioner preferred an appeal on 19-8-1968 u/s 84 of the Cantonments Act 1924 to the first respondent who is the prescribed appellate authority under the Act. By a communication dated 3-2-1970, the first respondent called upon the petitioner to deposit a sum of Rs. 1245 u/s 87(b) of the said Act as a condition precedent to hear his appeal. The petitioner, thereupon, on 9-3-1970, deposited a sum of Rs. 414 being the tax demanded to the credit of the Cantonment Board. Subsequent to the deposit, the petitioner expected that his appeal would be disposed of by the first respondent. But the second respondent sent a letter on 6-4-1970 stating that his appeal could not be admitted unless the balance amount of arrears of Rs. 1245 is deposited. The petitioner, however, did not get any communication from the first respondent before whom the appeal was filed. After waiting nearly for six years, the petitioner has filed this writ petition seeking a writ of mandamus directing the first respondent to dispose of the appeal.

4. Both the respondents have not filed their counters. But it is contended on their behalf that the appeal could not be entertained by the first respondent unless the entire arrears of property tax due to the second respondent is deposited. That was the stand taken by both the respondents right from the beginning. They have been demanding the payment of the entire arrears of property tax as a condition precedent for disposing of the appeal. It is not in dispute that the petitioner has deposited a sum of Rs. 414 u/s 87(b) of the Cantonments Act 1924. It is after deducting the said sum, the respondents have demanded a sum of Rs. 1245, as a condition precedent for entertaining the appeal.

5. The question is whether the petitioner is bound to deposit the entire amount of property tax arrears before his appeal could be entertained and disposed of by the first respondent. I am of the view that the insistence of the first and second respondents that the entire tax arrears should be deposited by the petitioner as a condition precedent for entertaining his appeal u/s 87(b) of the Act is quite untenable and not supported by the statutory provisions. Section 87 of the Cantonments Act 1924 says that no appeal shall be heard or determined under Chapter V of the Cantonments Act unless the appeal is brought within thirty days next after the date of the authentication of the assessment list u/s 69 and the amount of tax in dispute in the appeal has been deposited by the appellant in the office of the Board. Admitted in this case, the tax in dispute is only a sum of Rs. 276 being the difference between the tax as enhanced and the tax as originally levied. But the petitioner has deposited a sum of Rs. 414 which represents the tax as enhanced. Therefore, the petitioner had paid more than the amount which he is bound to deposit u/s 87(b) of the Act. Therefore, I do not see how the respondents could seek to recover the entire amount of tax arrears in the guise of giving effect to the provisions of Section 87(b) of the Act. The action of the

first respondent requiring the petitioner to deposit the entire tax arrears due by him in respect of his house is not only unjustified, but it leads to the inference that the first respondent has not looked into the statutory provisions under which he has to act as an appellate authority. In a similar situation, a Division Bench of this court in W. A. No. 470 of 1971 has held that the District Magistrate-cum-Collector, who is the appellate authority, is not justified in insisting on the payment of the entire amount of tax arrears as a condition precedent for entertaining the appeal. The writ petition is, therefore, allowed with costs and a writ of mandamus will issue to the first respondent to entertain and dispose of the petitioner''s appeal filed on 19-8-1968 within six weeks from this date. The first respondent will pay the costs of the petitioner. Counsel''s fee Rs. 100.

