
(2002) 04 MAD CK 0117

In the Madras High Court

Case No : Writ Petition No. 20176 of 1994 and W.M.P.Nos.30747 and 30748 of 1994

Madras Club

APPELLANT

Vs

State of Tamilnadu

RESPONDENT

Date of Decision : 19-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 04 MAD CK 0117

Hon'ble Judges : A.K. Rajan, J

Bench : Single Bench

Advocate : Mohan Parasaran, for the Appellant; B. Parthasarathy, GA.(T), for the Respondent

Final Decision : Dismissed

Judgement

A.K. Rajan, J.—Writ petition is filed to issue a writ of certiorarified mandamus calling for the records comprised in the proceedings of the third respondent undated in C.No.102/ Bk-86/Myl/91 seeking to collect urban land tax for faslis 1401,1402 and 1403 and of the order of the second respondent dated 28.9.1994, to quash the proceedings and forbearing the respondents from levying or collecting urban land tax from the petitioner.

2.In the affidavit, it is stated that the petitioner is a Club registered under the Societies Registration Act, which has been in existence for over 150 years. The first respondent by G.O.Ms.No.2566 Revenue dated 26.11.1977 granted exemption to the petitioner from payment of urban land tax by 50% with effect from fasli year 1382. The petitioner being aggrieved against the order of the competent authority-Assistant Commissioner of Urban Land Tax in his proceedings dated 21.12.1982, preferred appeal to the Commissioner of Land Reforms and by order dated 25.1.1983, the commissioner was pleased to stay the collection of urban land tax under the provisions of the Tamilnadu Urban Land (Ceiling and Regulation) Act. By order dated 9.8.1994, the Special Commissioner

and Commissioner of Land Reforms stayed the collection of urban land tax from the petitioner. While so, the petitioner had received undated notice of demand from the second respondent for the payment of urban land tax for the faslis 1401 to 1403 by the petitioner for a total sum of Rs.10,48,677/- and a deduction of a sum of Rs.64,512/- was made in respect of the amounts already paid and net demand was raised at Rs.9,84,165/-. The petitioner had not been put on notice about such revision and the revision was also contrary to the earlier orders including G.O.Ms.No.578 Revenue dated 20.5.1992 wherein it is ordered that where the revised urban land tax levied based on the market value as on 1.7.1981 exceeds 5 times that of the tax already levied based on the market value as on 1.7.1971, then the revised urban land tax shall be limited to five times that of the existing tax levied on the urban land on the market value as on 1.7.1971. The demand has been made without following the requirements of law and without being a proper assessment under Sections 10 and 11 of the Act and without the petitioner having been informed about it by prior order u/s 12 of the Act. The petitioner invoked the provisions of Section 30 of the Act and moved to the second respondent, but the second respondent passed an order that pending disposal of the revision, the petitioner should pay a sum of Rs.1,61,280 per fasli. Thereafter by order dated 23.11.1994 of the third respondent directing the petitioner to pay a sum of Rs.4,83,840/- within 7 days from the date of the receipt of the notice. Therefore, the order of demand is invalid and it is not in accordance with law and therefore, liable to be set aside and the order passed in revision by the second respondent also is liable to be set aside.

3.No counter has been filed.

4.Learned counsel for the petitioner has submitted that originally the urban land tax was Rs.32,256/-, but it has been raised to Rs.1,61,280/- that is five times of the original tax; but the authorities before revising the tax has not followed the procedure specified under the Act. Learned counsel for the petitioner submitted that the authorities are bound to follow the procedure as laid down under Sections 7 to 15 of the Tamilnadu Urban Land Tax Act, 1966. As per Section 7 of the Act, every owner of urban land is liable to file a return within a period of one month from the date of the publication of the Tamilnadu Urban Land Tax Ordinance, 1966. u/s 10 of the said Act the market value is determined by Assistant Commissioner. As per Section 11 of the Act, where the owner of urban land has failed to furnish the return u/s 7, and the Assistant Commissioner has obtained the necessary information u/s 9, he shall serve a notice on the owner. As per Section 12 of the Act, copy of order to be sent to the assessee and urban land tax officer. As per Section 13 of the Act, market value to remain in force for a specified period. As per Section 14 of the Act, after the determination of the market value and of the amount of the urban land tax u/s 10 or Section 11, the Urban Land Tax Officer shall cause a notice of demand to be served on the assessee; as per Section 15 of the Act, separate notice of demand shall be served on the assessee for each fasli year. Learned counsel for the petitioner relied upon Sections 14 and 15 and submitted that the notice of demand shall be

given to the assessee and it shall be separately made for each fasli year ; he further argued that if that is not done so, and if a consolidated notice of demand for more than one year is issued, then it is not in compliance with the mandatory provisions of Section 15 and therefore, such a notice is not valid. In this case since demand notices were issued in a consolidated manner, for three fasli years 1401 to 1403 , the said notices are not valid. He has further argued that when the Act provides that a particulars action shall be taken in a particular manner, that act shall be done only in the manner specified therein; the provisions of the Act shall be construed strictly. If that act was done in any other manner, it is not in compliance of the provisions of the Act and therefore, such an act would not be in accordance with law and therefore, not enforceable.

5.The learned counsel for the respondent submitted that the assessment in question is not a fresh assessment, but it is a revised assessment and to a case where revision was made by the authorities, the procedure laid down u/s 15 of the Act will not apply and therefore, merely because one consolidated demand was issued, the demand does not become invalid . The learned counsel appearing for the respondents further submitted that merely because the word "shall" is used in Section 15 of the Act it need not necessarily be held as mandatory; Under certain circumstances, the word "shall" may be construed as "may"; since it is only a demand notice issued by the authorities, it is not invalid. Learned counsel for the respondents further submitted that the order passed in revision is not an original order of assessment and therefore the impugned order is valid in law.

6.Under Section 30 of the Act the Commissioner of Land Reforms may, either on his own motion or on application made by the assessee in this behalf, call for and examine the records of any proceeding under this Act to satisfy himself as to the regularity of such proceeding or the correctness of the order passed therein . If, in any case, it appears to the Commissioner of Land Reforms that any such decision or order should be reversed or remitted for reconsideration, he can pass an order to that effect: But the Commissioner of Land Reforms shall not pass any order under the sub section in any case where the decision or order is sought to be revised by the Commissioner of Land Reforms on his own motion, if such decision or order had been made more than three years earlier. Since the impugned order an order passed in revision the provisions of Sections 14 and 15 of the Act are not applicable at all; and therefore, the impugned order cannot be set aside on the ground that it is a consolidated order of demand for three fasli years.

7. The undated impugned order reads as follows:-

"Please take notice that for fasli year/part of the fasli year 1403 the sum of Rs.3,49,559-00 (Rupees three lakhs forty nine thousand five hundred and fifty nine only) has been determined to be payable by you u/s 14 of the Tamilnadu Urban Land Tax Act, 1966 as amended in 1976, for; your land bearing Door No..Adyar Club Gate Road S.No.390/and sub division No.109A,109B with an

extent of 227 ground 1855 square feet of Mylapore village, M.T. Taluk, Madras District.

2.You are required to pay the above sum within fifteen days from the date of service of this notice to the Treasury Officer/Sub-Treasury Officer/ Reserve Bank/ State Bank of India at Madras.

Total ...Rs.10,48,677-00 Already paid ...Rs. 64,512-00 -----
Balance ...Rs. 9,84,165-00 -----Sd..... Special Officer, Urban Land Tax
Mylapore Madras."

Similarly another notice for the fasli 1404 also has been issued. Apart from this, on the top of the undated impugned notice the following words are mentioned:-

"Arrears for faslis 1401&1402 upto 30.6.1993 ...Rs.6,99,118-00 Current fasli 1403 ...Rs.3,49,559-00 ----- Total ... Rs.10,48,677-00 -----

Similarly in the corner of the other notice it is found that the arrears for the faslis 1401 to 1403 up to 30.6.1994 a sum of Rs.10,48,677/-, current fasli 1404 a sum of Rs.3,49,599/- and the total is Rs.13,98,276/- and at the bottom also it is stated that the total sum of Rs.13,98,276/-, already paid a sum of Rs.64,512/- and the balance is Rs.13,33,764/-. From this, learned counsel for the petitioner submitted that, these are not the demand notices for a particular year but it is a consolidated demand for 1403 and 1404 faslis respectively. This argument submitted by the counsel for the petitioner is not acceptable. In the body of the notice, it is specifically mentioned one fasli year 1403 and 1404, the other particulars given thereunder in both, at the top as well as in the bottom with respect to the arrears, which has not been paid by the petitioner, in respect of demand notices, separately issued already. These two additions are not part of the demand notices, because, they are added only for the convenience of the officials as well as the assesses. Therefore, the demand notices were issued only for faslis 1401 and 1403; two separate demand notices have been issued. Hence, the argument of the learned counsel for the petitioner that the impugned demand notice is a consolidated demand notice and therefore, the demand notice is not in accordance with the provisions u/s 15 of the Act is factually not correct.

8. The learned counsel for the petitioner submitted that the impugned order does not give any reason for arriving at the conclusion and therefore, this order is liable to be set aside on this ground alone. This order dated 28.9.1994 is an interim order passed by the authorities pending disposal of the revision filed by the petitioner u/s 30 of the Act. The revision is still pending and the order is yet to be passed by the revisional authorities. In this interim order, the revisional authorities exercised their power of discrimination and directed the petitioner to pay a sum of Rs.1,61,280/- per fasli and on receipt of the amount for three faslis Rs.4,83,840/- further collection measures are stayed till the disposal of the revision petition. Inasmuch as the interim order, which is pending disposal of the revision and the revisional authorities have exercised their discretion, this cannot

be stated to be illegal.

9. Learned counsel for the petitioner further submitted that even for the faslis 1401 & 1402 demand notice was received fixing the tax as Rs.1,63,000/- but the tax for the faslis 1401 & 1402 had already been paid by the petitioner, immediately when earlier demand was made. The revisional order is an upward revision of tax by the authorities exercising power conferred u/s 30 of the Act. The Commissioner of Land Reforms has got the power to revise the assessment of tax even suo motu. It is so revised as per the proviso to Section 30(1) of the Act, which runs as follows:-

"The Commissioner of Land Reforms may, either on his own motion or on application made by the assessee in this behalf, call for and examine the records of any proceeding under this Act to satisfy himself as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein and if, in any case, it appears to the Commissioner of Land Reforms that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, he may pass accordingly:

Provided that the Commissioner of Land Reforms shall not pass any order under this sub section in any case, where the decision or order is sought to be revised by the Commissioner of Land Reforms on his own motion, if such decision or order had been made more than three years previously;

Provided further that the Commissioner of Land Reforms shall not pass any order under this section prejudicial to any party unless he has had a reasonable opportunity of making his representations."

Learned counsel for the petitioner submitted that the petitioners were not even aware of the fact that the tax was revised, since no notice of revision was served on them before increasing the tax. Therefore, the petitioners are under the impression that it is a first demand of tax for the fasli 1403. No notice was given to the petitioner before passing the order of revising the assessment. Therefore, this order inasmuch as it has been passed without hearing the petitioner and it is prejudicial in the sense that it increases the claim of tax payable by 5 times, is not a valid. Adopting the G.O.Ms.No.578 Revenue Department dated 20.5.1992, the Government has passed a beneficial order whereby when on the assessment of market value of the land if it is found that the market value has increased more than five fold the tax shall not be increased to more than five times of the tax already assessed. It appears that probably the revisional authorities has applied this Government Order to the case of the petitioner and revised the order of assessment for the fasli 1401 as well as for fasli 1402. The counsel for the petitioner submitted that no demand can be made without passing an assessment order. Further a revision of tax cannot be made without giving an opportunity to the petitioner; in this case, the assessment had already been made for the faslis 1401 and 1402 and the tax was also paid by the petitioner.

10. The demand of tax for the fasli year 1403 & 1404 are orders of revision of

assessment made u/s 30 of the Act. Further; in these two orders, it is specifically mentioned that the actual amount payable was to be deducted by the tax paid already for the two faslis. Therefore, there is no difficulty in coming to the conclusion that the orders are only revisional orders made by the authorities exercising the power conferred u/s 30 of the Act. That is the order which has been challenged in appeal/revision before the second respondent.

11. The argument of the counsel for the petitioner has force. But the order of revision of tax is not the impugned order; against that, a statutory revision is pending before the second respondent. It is for the petitioner to advance these arguments before the second respondent who shall consider that and pass orders on merits. The impugned order in this writ petition is only an interim order pending disposal of the revision; it cannot be held illegal as stated earlier. In the circumstances of this case, the impugned order dated 28.9.1994 is stayed pending disposal of the revision by the 2nd respondent, against the assessment of tax.

12. The second respondent shall dispose the statutory revision filed against the revision of tax by the third respondent within four weeks from the date of receipt of this order.

13. With the above observations, the writ petition is dismissed. No costs. Consequently, W.M.P.Nos.30747 & 30748 of 1994 are also dismissed.