(2015) 03 MAD CK 0183

In the Madras High Court

Case No : Writ Petition (MD) Nos. 10952, 11403 and 15646 of 2013 and Miscellaneous Petition (MD) Nos. 1, 2, 2 and 3 of 2014

M.S. Sheela Evanjalin and Others — APPELLANT

Vs

Municipal Commissioner and Others — RESPONDENT

Date of Decision : 17-03-2015

Acts Referred:

Citation : (2015) 4 LLN 157 : (2015) 3 LW 104 : (2015) WritLR 477

Hon'ble Judges : K. Ravichandra Babu, J.

Bench : Single Bench

Advocate : K. Sreekumaran Nair, for the Appellant; K. Vamanan, Advocates for the Respondent

Judgement

K. Ravichandra Babu, J.—In all these writ petitions, the petitioners are aggrieved against the impugned order of recovery made against them by fixing the liability on them to pay back the amount, which is arising out of tax arrears payable by the public.

2. The petitioners are fastened with such liability on the reason that they were responsible for not collecting the taxes from the concerned persons within time.

3. It is stated that five petitioners are Revenue Assistants and the sixth petitioner is Pipe Line Fitter.

4. It is the contention of the respondents that the petitioners being Revenue Assistants and Pipe Line Fitter have to collect the water tax and pay the same and if the amount is not paid, the petitioners cannot shift their responsibility and therefore, they have to face the loss sustained by the respondent municipality. Whether the petitioners like persons can be fastened with such liability was the question that has come up for consideration before this Court earlier in another matter in W.P(MD)No.7348 of 2009, wherein by an order dated 23.09.2010, the learned Judge has allowed the writ petition by holding that the entire arrear due from the defaulter cannot be fastened on the Revenue Assistants. The relevant

paragraphs 4 and 6 read as follows:-

"4. The learned counsel for the petitioner stated that in case of any arrears of tax, whether professional tax or house tax, the role of the Revenue Assistant is very limited and if there is any deliberated omission to collect the said amount, disciplinary action can be taken. But the entire liability for collection of arrears cannot be fastened on the Revenue Assistant. Strong reliance was placed upon the judgment in V.Nagarajan Vs. Commissioner, Salem Municipality, Salem reported in 1988 WLR 38. In that case, this Court, after referring to the previous decisions of the said subject, held that under the municipal rules, the responsibility to collect the tax arrears from the defaulters vested only with the Commissioner being the Chief Executive of the Panchayat and it is for him to set the law in motion by filing appropriate cases. The arrears standing to the credit of such defaulters cannot be taken from the salary of either the Bill Collector or the Revenue Assistant. The said decision was also came in M.Ramiah Vs. Commissioner, Tirunelveli Corporation, Tirunelveli and another reported in 2008 INDLAW MAD 1362.

6. In the light same, if there is any negligence orany lacks on the part of the Revenue Assistant, it is always open to respondent to take disciplinary action and impose appropriate punishment. But that does not mean the entire arrears due from the defaulters fastened on the Revenue Assistant. With these observations, the writ petition stands allowed. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs."

5. In another decision reported in V. Nagarajan Vs. Commr., Salem Municipality, , the learned single Judge of this Court has observed as follows:-

"1. The petitioner is a Bill Collector of the respondent. He is being penalised and it being called upon to pay the profession taxes, on the ground, he allowed their collection and recovery from the tax payers become time-barred. The view of this Court with regard to liability of the Bill Collector of a Municipality to recoup it on the allegation of his failure to collect the taxes and allowing them to become time barred, has been expressed by Mohan, J. in A. Selvaraj and others v. The Commissioner, Tiruvarur Municipality (W.Ps.3364 to 3369 of 1976 order dated 23.11.1976), saying-

"Having regard to these provisions, I find it rather impossible to appreciate the stand of the Municipality as to how a Bill Collector could cause pecuniary loss to the Municipality by his failure to collect the taxes. Firstly, it does not lie within his powers to allow the recovery of taxes to become time barred. The very elaborate procedure relating to collection of taxes mentioned in paragraph 65 of Municipal Volume I would clearly indicate that it is the duty of the Executive Officer to have periodic verification of the arrears. If he had failed to do the duty and thereby the arrears of tax had become time barred for recovery, that liability cannot be passed on to the Bill Collector."

The above view has been followed by V.Ramaswami, J, as he then was, in

S.Nagarajan v. Commissioner of Ramanathapuram Municipality (W.P. 3221 of 1977, order dated 29.02.1980) by Padmanabhan, J in S.Nagarajan v. Commissioner, Ramanathapuram Municipality (W.Ps.3911 of 1977 order dated 28.4.1980) and by me in S.Srinivasan and others v. The Special Officer, Tiruvallur Municipality (W.P. Nos.3421 to 3426 of 1978, order dated 4.2.1981). My attention has not been drawn to any pronouncement of this Court, taking a contrary view. The respondent in the present case seemed to have acted against the petitioner under the Tamil Nadu Municipal Service (Discipline and Appeal) Rules, but withheld recovery process on account of stay by the Government. Now, by virtue of the Government vacating the stay, the process of recovery from the salary of the petitioner is being set in motion by the present order of the respondent. It is only in that context, a writ of Mandamus is being asked for by the petitioner, to forbear the respondent from recovering from the salary of the petitioner, the time-barred profession taxes. Basically, there are no grounds at all to pin down the liability on the petitioner, as now being done. The proceedings taken in this behalf are the result of a misconception of the legal position. They have to stand ignored and cannot be implemented. Taking note of the ratio of this Court, I have to hold that the petitioner cannot be mulcted with liability on this account. In view of this, this writ petition so far as the petitioner is concerned, is allowed. No costs."

6. The learned counsel appearing for respondent Municipality is not disputing the above said position. Moreover, in this case, the impugned proceedings were passed also in violation of principles of natural justice. Needless to say that any recovery proceedings can be made only by giving opportunity of hearing to the affected persons. Therefore, both on the ground of violation of principles of natural justice as well as on merits by following the other decisions made in W.P(MD)No.7348 of 2009, all these writ petitions are allowed and the impugned proceedings are quashed. Since the impugned recovery order is quashed in these writ petitions, any amount recovered from the individual petitioners so far, has to be refunded to the petitioners by the respondents. Such exercise shall be done by the respondents within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

