(2006) 10 MAD CK 0150

In the Madras High Court

Case No : Writ Petition No. 2095 of 2001

R. Shivakumar, R. Shyamala and R. Venkatakrishnan Petitioners 2 and 3 represented by their duly constituted Power of Attorney Agent, Mr. R. Shivakumar — APPELLANT

Vs

The State of Tamil Nadu — RESPONDENT

Date of Decision : 18-10-2006

Acts Referred:
Tamil Nadu Urban Land Tax Act, 1966 — Section 11, 11(1), 35

Citation : (2006) 10 MAD CK 0150

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : P.B. Balaji, for the Appellant; Haja Nazirudeen, Spl. Govt. Pleader (Taxes), for the Respondent

Judgement

R. Banumathi, J.—The Petitioner seeks to issue a Writ of Certiorari to quash the Orders of the first respondent rejecting the revision confirming the assessment of Urban Land Tax. The averments as stated in the affidavit are as follows:-

The Petitioners are the joint owners of vacant agricultural lands in Survey No. 103 situate in Pallavaram Village to an extent of 3.38 acres. The lands are wet agricultural lands but has become uncultivable due to leather factories situated around. The Petitioners have received a demand notice dated 17.10.1998 calling upon the Petitioners'' father to pay a sum of Rs. 1,10,268/- as Urban Land Tax to be paid for fasli years 1401 to 1408. The Petitioners filed a revision before the Second Respondent stating that no notice of assessment for the previous years has been served upon them and that they are not liable to pay any amount since the lands are agricultural lands. After calling for an enquiry, the Second Respondent dismissed the revision preferred by the Petitioners and confirmed the assessment of Urban Land Tax which is challenged in this Writ Petition.

2. The learned counsel for the Petitioners submitted that no notice has been served upon the Petitioners as contemplated u/s 11 of Tamil Nadu Urban Land

Tax Act (in short ''Act). It was further submitted that issuance of notice for ascertaining the market value is pre-requisite and the demand notice is vitiated for want of notice.

3. Drawing the attention of the Court to the Judgment dated 21.12.2000 in W.A. No. 1446 of 2000, the learned counsel for the Petitioners further submitted that for want of notice, the Division Bench has set aside the demand notice and directed the Department to serve a fresh notice to the Petitioners.

4. It is the specific case of the Petitioners that no notice as contemplated under the Act has been served upon them. Admittedly, the Petitioners have not filed the return and hence the case falls within the ambit of Section 11 (1) of the Act. Before taking action by the authorities either for determination of market value and assessment of Urban Land Tax or for Collection of Tax, notice is an important pre-requisite. Though the learned Government Advocate has submitted that notice was served upon the Petitioners, no material had been produced showing that the notice had been served on the Petitioners in accordance with the provisions of the Act. Section 35 of the Act deals with the service of notice. A notice under the Act may be served on the person named either by post, or, as if it were summons issued by a Court under the Code of Civil Procedure. Since the officials are performing judicial functions under the Act, serving of notice and holding of enquiry are mandatory. But, the Department has not produced any material showing service of notice u/s 11 (1) of the Act.

5. In this regard, the learned counsel for the Petitioners has drawn the attention of the Court to the decision of the Division Bench of this Court in W.A. No. 1446 of 2000. In the said case, though notice was stated to be served, holding that the notice was not served as contemplated u/s 35 of the Act, the Division Bench has set aside the demand notice directing the Department to serve a fresh notice to the Petitioner therein and to proceed with the matter afresh in the light of the provisions of the Law. The case on hand is covered by the said judgment. In view of the above said decision of the Division Bench, the impugned order has to be quashed. In the result, the Writ Petition is allowed. The impugned order and the demand notice in Rc/28932/98/C2, dated 26.12.2000 are quashed. The respondents are directed to serve fresh notice as contemplated under the Provisions of Law and afford an opportunity to the Petitioners and then proceed with the matter afresh in the light of the provisions of Law. No costs.

