
(2011) 02 MAD CK 0316

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 1357 of 2006 and M.P. (MD) No's. 1482 and 1483 of 2006

Vellaikannu

APPELLANT

Vs

The District Collector
and The Commissioner
Madurai City Municipal
Corporation

RESPONDENT

Date of Decision: Feb. 7, 2011

Acts Referred:

- Tamil Nadu Cinemas (Regulation) Act, 1955 - Section 92(5)
- Tamil Nadu Cinemas (Regulation) Rules, 1957 - Rule 92(1)

Hon'ble Judges: M. Venugopal, J

Bench: Single Bench

Advocate: M.P. Senthil, for S. Prabhu Rajadurai, for the Appellant; D. Sasikumar, Government Advocate for R1 and M. Ravishankar, for R2, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M. Venugopal, J.

The Petitioner has filed the present writ petition seeking for the relief of Writ of Certiorarified Mandamus to call for the records relating to the proceedings in O.M.C1.3067/2006 dated 17.01.2006 on the file of the 1st Respondent and quash the same. Further, the Petitioner has sought for an issuance of direction by this Court to direct the 1st Respondent to renew the "C" form licence without insisting upon "no due certificate" either from the 2nd Respondent or from the Commercial Tax Department.

2. The property bearing Door No. 3, Othakadi West Street, Ward 70, Madurai, belongs to the Proprietor of the Petitioner Theatre namely, Mr. P. Thiyagarajan. In the said property, he has constructed a Cinema Theatre and the property tax assessment has been made in the name of the said Theatre. The property has been originally assessed to tax by the erstwhile Ponmeni Panchayat. Thereafter, the entire area has come within the purview of

Madurai City Municipal Corporation Act 1971. The property is assessed by the second Respondent/Corporation and the Petitioner has been paying the property tax regularly without any default whatsoever.

3. In the year 1991, a notice was issued by the second Respondent/Corporation revising the tax increasing the same from Rs. 3067.67 to Rs. 8319.70 payable from 01.04.1998. The said enhancement of property tax has been made without following the procedure enunciated under the provisions of Madurai City Municipal Corporation Act. Hence, the Petitioner filed a suit in O.S. No. 1395 of 1991 on the file of the learned Principal District Munsif, Madurai, seeking the relief of declaration that the demand of enhancing the property tax in respect of the property is not valid and for injunction restraining the 2nd Respondent from demanding the enhanced tax etc. After contest, a decree has been passed in the suit holding that the demand made in increasing the property tax under notice dated 29.05.1991 is not valid one and also a relief of injunction has been granted.

4. The case of the Petitioner is that the Petitioner also filed another suit in O.S. No. 552 of 1997 on the file of the learned Additional District Munsif, Madurai Town and a decree has been passed to the effect that the proceedings of the Assistant Commissioner dated 20.06.1997 is invalid one and the demand made cannot be sustained.

5. The specific plea of the Petitioner is that he is liable to pay tax as originally fixed at Rs. 3067.65 and the decrees passed in O.S. No. 1395 of 1991 and O.S. No. 552 of 1997 are valid and binding one between the parties inter se because of the simple fact that the said decrees have become conclusive and final.

6. According to the Petitioner, "C" form licence has been granted in his name in accordance with the provisions of the Tamil Nadu Cinemas (Regulations) Act 1955. During the year 2002, the first Respondent renewed the "C" form licence for the period from 01.12.2002 to 30.11.2003. However, even before the expiry of the period, the Petitioner submitted his application on 09.11.2003, after remitting necessary fees, but still the renewal was not granted. The Petitioner through his letter dated 18.11.2003 has requested the first Respondent to issue at least "E" form licence on account of the fact that he is yet to get clearance from the second Respondent/Corporation. Only thereafter, "E" form licence has been granted for a period of one month from 01.12.2003 to 31.12.2003. The Petitioner enclosed the order passed in W.P. No. 13572 of 1997 and issued a further communication dated 15.11.2003, requesting the first Respondent to renew the "C" form licence. But, it appears that as against the order passed in W.P. Nos. 18877 to 18879 of 1996, an appeal has been preferred and stay has been obtained. Subsequently, the stay orders have been vacated in the writ appeals. The first Respondent has not been inclined to renew the "C" form licence. The "E" form licence issued in November 2003 has been extended every month.

7. While that being the factual position, the Assistant Commissioner, the second Respondent/Madurai Corporation, issued notice dated 18.03.2005 demanding arrears of

tax for the period of 1989-1990 to 2004/2005 increasing the enhanced tax from 1989-1990. The Petitioner issued notice through Counsel dated 09.04.2005 to the 2nd Respondent stating that the decree has been passed in declaring that the enhanced tax by notice dated 25.05.1991 is null and void and also the subsequent demand dated 20.06.1997 by another decree in O.S. No. 552 of 1997. The Petitioner has also paid an amount of Rs. 76, 688.90 without adverting to the dispute pertaining to the demand made by the 2nd Respondent/Corporation, the second Respondent issued a communication to the first Respondent/District Collector, requesting him to cancel the licence issued to the Petitioner. Pursuant to the same, the Collector has passed the impugned order dated 17.01.2006, stating that the Petitioner ought to remit the property tax as demanded by the 2nd Respondent, failing which, the "E" form licence granted will stand cancelled.

8. In the counter filed by the first Respondent/District Collector, Madurai, it is among other things mentioned that the Petitioner Theatre is functioning on the strength of temporary "E" permit issued to the licensee and that the licensee has been granted the temporary "E" permit, lastly up to 23.06.2006 and that the Petitioner Theatre has been in arrears of property tax to the tune of Rs. 4,09,982/- for the period from 1989-90 to 2005-2006 as per the communication of the second Respondent/Madurai Corporation dated 02.01.2006, and hence, the second Respondent has requested the 1st Respondent/Collector and the licensing authority not to renew the "C" form licence.

9. The plea taken by the first Respondent in the counter is that the operation of G.O. Ms. No. 1311 (Home Cinema-II) Department dated 09.09.1996 insisting the cinema licence to produce property tax clearance certificate along with renewal application by amending Rule 92(1) the TNC (R) Rules 1957 is still in force. Moreover, the production of property tax clearance is compulsory as per the amended provisions of Section 92(5) of TNC (R) Rules 1957, introduced in G.O. Ms. No. 1311, Home (Cinema-II) Department, dated 09.09.1996.

10. At this stage, the learned Counsel for the Petitioner cites the order of this Court in W.P.(MD) No. 1358 of 2006 dated 01.02.2011 wherein, this Court, in paragraph Nos. 7 and 8, has observed as follows:

7. Inasmuch as the second Respondent/Madurai City Municipal Corporation, Madurai has received the entire amount of tax paid by the Petitioner which has been admitted by both parties and the same being not in dispute as on date, this Court is of the considered view that nothing survives for adjudication in the present writ petition.

8. Accordingly, this writ petition is disposed of, leaving the parties to bear their own costs. Consequently, the connected miscellaneous petition is closed.

11. Today, when the matter has come up for hearing, the learned Counsel appearing for the second Respondent/Commissioner for Madurai Corporation produced a letter dated 07.02.2011 of the Madurai Corporation addressed to the first Respondent/District

Collector, Madurai, wherein, it is inter alia stated as hereunder:

...it is submitted that as the Vellai Kannu Theatre has not paid property tax for long period we have written a letter cited in the first reference to your office to stop the renewal of "C" form. Hence, the said Theatre owner has filed a Writ Petition by challenging the said letter in the High Court of Madras vide Writ Petition 1357 of 2006 and also challenged the Demand Notice of Property tax and obtained stay order. Thus the matter was pending before the Court from the year of 2006, of late, the said Vellai Kannu Theatre has paid the entire Property Tax due to our Madurai Corporation after calculating the final amount afresh by taking into consideration of the civil Court decrees. Accordingly the matter was informed to the Honourable Madurai Bench of Madras High Court and thus an order cited in the second reference above was passed in W.P.1358 of 2006.

Hence, it is intimated that the Madurai Corporation has "No Objection" in renewing the "C" form to the said Vellai Kannu Theatre, the order copy of the Madurai Bench of Madras High Court cited in the second reference above and also a copy of our letter cited in the first reference above are enclosed for your kind perusal and necessary action.

12. Admittedly, the Petitioner has remitted Rs. 1,34,692/-(Rupees One Lakh Thirty Four Thousand Six Hundred and Ninety Two only) by means of a cheque and subsequently, has also paid the balance amount of Rs. 6,536/-(Rupees Six Thousand Five Hundred and Thirty Six only) on 31.01.2011. The said payment of balance amount of Rs. 6,536/-(Rupees Six Thousand Five Hundred and Thirty Six only) made by the Petitioner has been cancelled by the 2nd Respondent/Commissioner, Madurai Corporation, through the Assistant Commissioner, West Zone as per communication dated 31.01.2011 addressed to the Petitioner Theatre.

13. Inasmuch as the second Respondent/Madurai City Municipal Corporation, Madurai has received the entire amount of tax paid by the Petitioner, which is not in dispute and admitted between the parties, this Court has earlier disposed of W.P.(MD) No. 1358 of 2006, dated 01.02.2011.

14. As far as the present case is concerned, the second Respondent/Madurai Corporation, in its communication dated 07.02.2011 addressed to the first Respondent/District Collector has candidly stated that it has no objection in renewing the "C" form to the Petitioner Theatre.

15. Therefore, this Court is of the considered view that nothing survives for adjudication in the present writ petition and accordingly, this writ petition is disposed of, leaving the parties to bear their own costs. Consequently, the connected miscellaneous petitions are closed. However, this Court directs the first Respondent/District Collector, Madurai District to renew the "C" form licence to the Petitioner Theatre in the manner known to law and in accordance with law. The Petitioner is directed to submit necessary application in this regard to the first Respondent/District Collector, Madurai. The first

Respondent/District Collector, Madurai, as soon as the application submitted by the Petitioner and received by the first Respondent/District Collector, is directed to complete the exercise in regard to the granting of "C" form licence as expeditiously as possible and in any event to renew the "C" form licence within a period of one month from the date of receipt of a copy of this order.