

(2011) 07 MAD CK 0330

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 4819 of 2006

Arulmigu Vaithiyanatha Swamy
Thirukoil

APPELLANT

Vs

The Commissioner, Rajapalayam
Municipality and Others

RESPONDENT

Date of Decision: July 6, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226
- Tamil Nadu District Municipalities Act, 1920 - Section 82

Hon'ble Judges: Vinod K. Sharma, J

Bench: Single Bench

Advocate: G.R. Saminathan, for the Appellant; P. Srinivasan, for R1, M. Thirunavukkarasu, for R2, J. Suresh Kumar, for R3, M. Ashok Kumar, for R5, G. Prabhu Rajadurai, for R6 and R8, A. Sivaji, for R10 and V. Sarangappan, for R15, R16 and R17, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Vinod K. Sharma, J.

The Petitioner Arulmigu Vaithiyanatha Swamy Thirukoil has invoked the jurisdiction of this Court under Article 226 of the Constitution of India with the prayer for issuance of writ in the nature of writ of certiorari to quash the order dated 11th April, 2006 passed by the Commissioner of Rajapalayam Municipality.

2. The Petitioner approached the Commissioner, Rajapalayam Municipality with a prayer to effect change in the name of property tax assessment on the ground that under the provisions of the Tamilnadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 settlement was ordered in favour of the Petitioner, in pursuance to which patta was ordered in favour of the Petitioner.

3. Some of the occupants of the lands challenged the settlement patta granted in favour of the Petitioner before the Tribunal constituted under the Act. The Tribunal upheld the settlement order. The appeal filed before this

Court against the decision of the learned Tribunal was subsequently, dismissed as not pressed.

4. Thus the order passed by the settlement authorities has attained finality.

5. Keeping in view the fact, that the Respondents 2 to 17 herein, are the successors in interest of the persons, who had raised construction and were held to be the owner of the structures on the land were assessed to Property Tax.

6. The application moved by the Petitioner stands rejected by the Municipal Commissioner. The translated copy of the order reads as follows:

As per your request letter under ref: 1 to assess the buildings and properties situated in Ooranipatti Street, Town Survey No. 21, 15 (Part), 27, 25, 26, 34, 40, 32, 31, 28 (Part), 55(Part), 82, 106 (Part) in the name of Arulmighu Vaithianathaswamy Thirukoil, this office sent a letter to the persons who are occupying at present under ref: 2 to produce the proof as to how the properties belong to them.

On receipt of the notice the owners of the superstructures objected for changing the assessment from their names to anybody's name and stated that they have put up the constructions and they are residing in the said place for several years and they produced the registered documents.

Therefore, if application is made after getting order from the Criminal Court, the request for changing the name will be considered.

7. The learned Counsel for the Petitioner challenged the impugned order, by vehemently contending that the order on the face of it is not sustainable as the learned Commissioner has directed the parties to approach the Criminal Court.

8. This plea deserves to be noticed to be rejected in view of the stand of the learned Counsel appearing for the Municipal Commissioner, that it is only a typographical error and infact a direction has been issued to approach Civil Court.

9. The second contention raised is that the impugned order cannot be sustained, in view of the final adjudication under the settlement order passed under the Tamilnadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 in pursuance to which property register has to be changed and the assessment is to be made separately for the land and building constructed therein, which admittedly was constructed by the Respondents 2 to 17 and not by the Petitioner.

10. In support of his contention, the learned Counsel for the Petitioner placed reliance on Section 82 of the Tamil Nadu District Municipalities Act, which reads as under:

82. Method of Assessment of Property. -(1) every building shall be assessed together with its site and other adjacent premises occupied as an appurtenance thereto unless the owner of the building is a different person from the owner of such site or premises.

(2) The annual value of lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be accepted to let from month to month or from year to year less a deduction in the case of buildings, of ten per cent of that portion of such annual rent which is attributable to the buildings alone, apart from their sites and adjacent lands occupied as an appurtenance thereto; and the said deduction shall be in lieu of allowance for repairs or on any account whatever;

Provided that

(a) in case of

(i) any Government or Railway building, or

(ii) any building of a clause not ordinarily let the gross annual rent of which cannot, in the opinion of the execution authority, be estimated;

the annual value of the premises shall be deemed to be six per cent, of the total of the estimated value of the land and estimated cost of erecting the building after deducting for depreciation a reasonable amount which shall be in No. case be less than ten per centum of such cost,

(aa) in the case of any building in industrial estate wherein essential amenities including water-supply, drainage and lighting are not provided by the municipality but provided by the Industries Department of the State Government or by any other authority under the control of the State Government, the annual value of such building shall be deemed to be four per cent of its capital value;

Provided that if any question arises whether for the purposes of this clause, essential amenities are proved by the Industries Department or other authority, it shall be decided by such authority as may be prescribed.

11. A reading of Section 82 of the Tamil Nadu District Municipalities Act shows, that it was open to the Municipal Commissioner to asses the land and building separately, which is admittedly owned by the Petitioner and Respondents respectively.

12. The Respondent No. 1 has thus failed to perform the statutory duties u/s 82 of the Tamil Nadu District Municipalities Act.

13. The Writ Petition is accordingly allowed and the impugned order is set aside. The Municipal Commissioner is directed to change the property tax register by showing the Petitioner to be the owner of the land, and the Respondents 2 to 17 as the owner of the structure over the land in dispute and assess the land and

constructions separately for the purpose of property tax.

14. It is however, left open to the respective parties to have their property right determined in accordance with law before the competent Court of jurisdiction.

15. It is made clear any observation made herein be not treated as opinion of this Court with respect of the rights of the parties in the property in dispute.

16. This order is passed on interpretation of Section 82 of the Tamil Nadu District Municipalities Act alone. No. costs.