

P.V. Srinivasan Vs. the Prescribed Judicial Authority (District Judge) and anr.

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Court : Chennai

Decided On : Mar-21-1967

Reported in : (1968)1MLJ403

Appellant : P.V. Srinivasan

Respondent : The Prescribed Judicial Authority (District Judge) and anr.

Judgement :

ORDER

P.S. Kailasam, J.

1. Writ Petition No. 2760 of 1966 is filed by a Councillor of the Salem Municipal Council for the issue of a writ of certiorari calling for the records of the District Judge of Salem in O.P. No. 93 of 1965 and to quash his order dated 12th September, 1966 holding that the respondent, Ramakrishnan, was not disqualified to hold office as Municipal Councillor due to failure to pay taxes. C.R.P No. 2212 of 1966 is also filed by the same Councillor praying that the order of the District Judge Salem, made in O.P. No. 93 of 1965 be set aside as illegal and unsustainable in law.

2. As both the writ petition and the revision petition are against the same order they may be dealt with by a common judgment. The petitioner filed O P No as of

1965 before the District Judge, Salem, under Section 51(1) of the Madras District Municipalities Act alleging that the respondent Ramakrishnan failed to pay arrears of taxes due to the Municipality and thereby ceased to hold office as Municipal Councillor. The respondent Ramakrishnan is the Chairman of the Salem Municipal Council. He owns four houses in Komarasamipatti West Street bearing door Nos. 106, ABC. 107, 107-A and 124 with assessment Nos. 899, 900 001 and 2273. The properties are registered in the name of 'Ramakrishnan and Brothers' in the Municipal Demand Register. A house service connection for supply of water to door No. 124, Komarasamipatti West Street is given in the name of the respondent Ramakrishnan. The half-yearly taxes for these properties for the half-years ending With 30th September, 1964, 31st March, 1965, 30th September, 1965 and 31st March, 1966 were not paid by the respondent or by any of his brothers After the Original Petition was filed on 19th December, 1965 the taxes were remitted on 2ist December, 1965. Apart from the house taxes due it was also alleged that the respondent Ramakrishnan had to pay some Water charges due to the Municipality, which he failed to pay and as such he became disqualified under Section 50(1)(hh) of the Madras District Municipalities Act.

2. The only question that arises for consideration is whether the respondent Ramakrishnan ceased to hold office under Section 50(1)(hh) of the Madras District Municipalities Act. Section 50(1)(hh) provides that a Councillor shall cease to hold his office if he fails to pay arrears of any kind due by him (otherwise than in a fiduciary capacity) to the Municipality within three months after a bill notice has been served upon him under the District Municipalities Act or where in the case of any arrear District Municipalities Act does not require the service of any bill or notice, Within three months after a notice requiring payment of the arrear (which notice it shall be the duty of the Executive Authority to serve at the earliest possible date) has been duly served upon him by the Executive Authority That the respondent Ramakrishnan Was in arrears of property tax and water chaw is not contested. The question is whether the requirements of Section 50(1)(hh) had been complied with Sub-section 1(hh) requires that a Councillor to cease to hold his office should have failed to pay arrears due to the Municipality within three months after a bill or notice had been served upon him under the Act and in cases in which any arrear under the Act does not require the service of a bill or notice

within three months after a notice requiring payment of the arrears had been duly served upon him. Regarding the arrears of house tax the case for the petitioner is that a notice was served and that the respondent Ramakrishnan failed to pay the arrears within three months after the receipt of the notice. Regarding water charges where the Act does not require service of any bill or notice it was contended that the arrears were not paid within three months after service of notice regarding payment of water charges on the respondent Ramakrishnan.

3. The method of serving a notice is prescribed in Section 331(1) of the Act. It provides that when any notice is required to be served on any person by the Act the service may be effected (a) by giving or tendering the said document to such person, or (b) if such person is not found, by leaving such document at his last known place of abode or business or by giving or tendering the same to some adult member or servant of his family. It is unnecessary for the purpose of this petition to consider the other modes of service provided for in the section. The service of notice can be effected by either giving or tendering the same to such person, or if such person is not found by leaving such document at his last known place of abode or business. In this case the service of notice was effected by the Bill Collector, P.W. 1. As his evidence is material for deciding the question, the relevant portion of his evidence may be extracted:

Respondent and his brothers are living in that house. For 1963-1964 and 1964-1965, I gave demand notices in the house. The house was found closed and I threw the demand notices inside the house through the window which was found open. For serving demand notices I used to go to houses. I went thrice to the house of the respondent. Tax was not paid.

4. There was practically no cross-examination of this witness and so the statement of this witness can be taken as accepted. The learned District Judge also has accepted the evidence of this witness. Section 331(1), as already pointed out, requires that the service of notice may be effected by giving or tendering the notice to the person. This admittedly was not done. When a person is not found, the alternative method of service is by leaving the document at this last known place of abode or business. But the mode of service by leaving the document at

the last known place of abode or business is available only when the person is not found. The learned District Judge was of the view that as the respondent was the Chairman of the Municipality, he could be expected to be in his office and that the notice might have been tendered to him in the office. He also observed that the respondent's brothers were also living in the house and that if the Bill Collector wanted to serve the notice he could have tendered it to the respondent or to his brothers. The reasoning of the learned District Judge may not be correct, for it is not incumbent on the Bill Collector to search for the respondent's brothers personally. It would be sufficient compliance if the Bill Collector attempted to serve the notice on the respondent in the house. If he had attempted to serve on the respondent in the house and if the respondent was not found, he would have been justified in leaving the document in the house* The Bill Collector does not say in his evidence that in the house the respondent Ramakrishnan was not found and therefore he left the notice in the house. The service of notice by leaving the same in the house could be effected only when the person is not found. There is no evidence that the Bill Collector attempted to find whether Ramakrishnan was in the house. All that he says in the evidence is that 'the house was found closed and I threw the demand notices inside the house through the window which was found open'. The witness does not say that the house was locked or that he attempted to serve the notice on the respondent Ramakrishnan and that he could not be found. The learned District Judge may not be right in stating that leaving such document at his last known place of abode or business does not by any stretch of imagination mean throwing the notice through the window without making any attempt to contact any adult member or servant of the family. Service by leaving the document at the last known place of abode or business is different from giving or tendering the notice to some adult member or servant of the family. Service of notice by leaving the notice at the last known place of abode could be effected only if the Bill Collector attempted to serve the notice on the respondent Ramakrishnan and could not do so. Even accepting the entire evidence of the Bill Collector there is nothing to show that an attempt was made to serve the notice on the respondent Ramakrishnan or any one of the members of the joint family. As there had been no effective service of notice the respondent Ramakrishnan cannot be held to have ceased to hold office as a Councillor or as Chairman.

5. It was submitted that so far as water charges are concerned the by-laws of the Municipality framed under Clause (3) of the Section 306 of the Madras District Municipalities Act, 1920 provide that the tap rates for each month shall be always payable in advance on or before the fifth of every month. So far as water charges are concerned, the District Municipalities Act or the rules or the by-laws framed thereunder do not require any service of notice. In such a case Section 50(1)(hh) provides that the arrears should be paid within three months after a notice requiring payment of the arrears has been duly served upon the Councillor by the Executive Authority. In this case a general notice calling upon the consumers to pay water charges was issued on 19th October, 1965, and the charges were paid by the respondent on 21st December, 1965, which was within three months from the date of the publication of the notice. As the charges had been paid within three months of the publication of the general notice, it is unnecessary to consider the question whether under Section 50(1)(hh) a separate notice should be served upon the respondent Ramakrishnan. Thus on the evidence there is nothing to show that a notice as required under Section 331(1) had been served on the respondent Ramakrishnan calling for payment of tax or arrears of water charges. The respondent Ramakrishnan has therefore not ceased to hold office as Councillor or as Chairman. The Writ Petition and the Civil Revision Petition are dismissed. There will be no order as to costs.

These petitions having been set down this day for being mentioned, the Court made the following

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