V.Venkatachalam and anr. Vs. the Commissioner and ors.

V.Venkatachalam and anr. Vs. the Commissioner and ors.

SooperKanoon Citation : sooperkanoon.com/920307

Court : Chennai

Decided On : Jul-20-2011

Judge : P.Jyothimani; M.Duraiswamy, Jj.

Acts : Tirunelveli City Municipal Corporation Act - Sections 278, 121; Constitution of India - Article 265

Appeal No. : Writ Appeal (MD) No.661 of 2011

Appellant : V.Venkatachalam and anr.

Respondent : The Commissioner and ors.

Advocate for Def. : Mr.S.P.Maharajan, Adv.

Advocate for Pet/Ap. : Mr..Meenakshi Sundaram, Adv.

Judgement :

1. The present appeal is directed against the order made in W.P.(MD) No.1992 of 2007, dated 16.11.2010, by the learned Single Judge in a batch of Writ Petitions.

2. The issue involved in this case is that in respect of the appellant, the Municipal Corporation has made a demand in respect of land tax. In the meantime, the writ petitioner has made an application without paying the land tax demanded for the purpose of putting up a construction. While considering the application for construction and for sanctioning the plan, the Municipal Corporation has imposed

a condition that unless and until the previous arrears in respect of the land tax are made, the application will not be processed. In those circumstances, the petitioner filed the writ petition for a declaration to declare that the levy demanded and collection of vacant land tax as a condition precedent for grant of permission/building permit is illegal, unconstitutional and ultra vires the provisions of the Tirunelveli City Municipal Corporation Act (hereinafter referred to as 'the Act') and consequently direct the respondents to process the application and to grant planning permission/building permit without insisting upon the payment of vacant land tax.

3. The learned Single Judge, while referring to Section 278 of the Act, has taken a stand that when there are tax arrears to the Corporation, it is absolutely necessary for the Corporation to collect the said arrears and imposing of such condition precedent for the purpose of considering approval of plan for construction cannot be said to be ultra vires taking note of the fact that the tax laws cannot be liberally interpreted.

4. The learned counsel for the appellant, Mr.S.Meenakshi Sundaram, while bringing to the notice of this Court about the powers of the Corporation in granting approval for construction as contemplated under Section 278 of the Act, would contend that inasmuch as the said section is exhaustive in nature unless and until, the issue comes in any one of the eight circumstances mentioned therein and the Corporation has no jurisdiction to reject or not processing the application. According to him, the conduct of the Corporation in attempting to reject the application on the ground that the previous land tax has to be paid is ultra vires. He has taken a stand under Article 265 of the Constitution of India for the purpose of contending that such condition will be ultravires and unconstitutional.

5. The learned counsel for the City Municipal Corporation would bring to the notice of this Court that under Section 121 of the Act, there is power, which is already available for the Corporation, in imposing the land Tax. While so, there is no violation of Article 265 of the Constitution of India.

6. Section 278 of the Tirunelveli City Municipal Corporation Act reads as follows:

278.Grounds on which approval of site for, or permission to construct or reconstruct building may be refused.

(1) The only grounds on which approval of a site for the construction or reconstruction of a building or permission to construct or reconstruct a building may be refused, are the following, namely, (1) that the work or the use of the site for the work or any of the particulars comprised in the site-plan, ground plan, elevations, sections or specifications would contravene some specified provision of any law or some specified order, rule, declaration or by-laws made under any law. (2)that the application for such permission does not contain particulars or is not prepared under rules or by-laws.

(3)that any of the documents referred to in section 272 have not been signed as required under rules or by-laws,

(4)that any information or documents required by the commissioner under the rules or by-laws has or have not been duly furnished; (5)the streets or roads have not been made as required by section 250; (6)that the proposed building would be an encroachment upon Government or municipal land;

(7)that the site of such building does not abut on a street or a projected street and there is no access to such building from any such street by a passage or pathway appertaining to such site and not less than 3.5 metres wide at any part;

(8)that the site is required for a public purpose under any law for the time being in force;

.....

7. It is no doubt true that it is an exhaustive provision and it contemplates nearly 8 circumstances, in which, the application for planning permission can be rejected. One of the eight circumstances is not the demand of previous arrears. But as correctly submitted by the learned counsel for the respondent under Section 121 of the Act, it clears that the corporation not only collects tax in respect of buildings but also in respect of lands. When such power is available, it is true that the

demand made by the Corporation as early as on 29.01.2007 cannot be said to be either illegal or against the Constitution of India.

8. Be that as it may, now Mr.S.Meenakshi Sundaram, counsel for the appellant, brings to the notice of this Court that the entire property tax, in respect of the property is concerned, has been paid in full. If that is true, it is for the corporation to take appropriate steps in processing the application filed by the petitioner for the purpose of grant of approval for construction. Making it clear, in the event of the appellant approaching the Corporation for the purpose of renewal of the permit, it is for the Corporation to grant such renewal without insisting on the payment of land tax during the relevant period concerned. However, it does not mean that the Corporation has no right to recover the land tax as per the provision under Section 121 of the Act. The power is already available to them, but that cannot be a condition precedent for the purpose of not processing the application on the ground that the tax in respect of the land has not been paid. Except clarifying the same, We see no reason to interfere with the order of the learned Single Judge. The Writ Appeal is ordered accordingly. No costs. Consequently connected miscellaneous petition is closed.