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W.P.Nos.17206 of 2021 & 25707 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.17206 of 2021 & 25707 of 2022

and

W.M.P.Nos.18219 & 18222 of 2021 and 24749, 24753 & 24754 of 2022

W.P.No.17206 of 2021:

M/s.Kalyani Constructions Pvt. Ltd.,
No.19 & 30, Ground Floor,
Wellington Plaza,
90/11, Anna Salai,
Chennai – 600 002.

.. Petitioner

Vs.

The Commissioner,
Corporation of Chennai,
Greater Chennai Corporation,
Ripon Building,
Chennai – 600 003.

.. Respondent

W.P.No.25707 of 2022:

M/s.Kalyani Constructions Pvt. Ltd.,
No.19 & 30, Ground Floor,
Wellington Plaza, 90/11, Anna Salai,
Chennai – 600 002.

.. Petitioner

Vs.

1.Assistant Revenue Officer,
Zonal-5,
Greater Chennai Corporation,
Chennai – 600 003.



2.The Commissioner,
Corporation of Chennai,
Greater Chennai Corporation,
Ripon Building,
Chennai – 600 003.

.. Respondents

Prayer in W.P.No.17206 of 2021: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent comprised in his Demand Notice bearing Ref.No. R.D.C.No. G1/5528/2012 dated 07.12.2020 and notice bewaring Ref. No. R.D.C.No. G1/5528/2012 dated 26.02.2021 and quash the same as arbitrary and consequently direct the respondent to consider and grant vacancy remission to the petitioner on its application dated 06.03.2019 for the property at Wellington Plaza, New No.127/11 (90/11), Anna Salai, Chennai – 600 002.

Prayer in W.P.No.25707 of 2022: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Demand Notice bearing reference number Ma.A.5.Va.Thoo.Na.Ka.No.Ko/59/7419/2021 dated 14.07.2022 and quash the same as arbitrary and consequently direct the respondents to consider and grant vacancy remission to the petitioner for the entire period from 1/2018-2019 to 1/2022-23 for the property at Wellington Plaza, New No.127/11 (90/11), Anna Salai, Chennai – 600 002.



W.P.Nos.17206 of 2021 & 25707 of 2022

(In W.P.No.17206 of 2021):

For Petitioner : Mr.Rahul Balaji
For Respondent : Ms.S.Vaitheeswari
Standing Counsel

(In W.P.No.25707 of 2022):

For Petitioner : Mr.Rahul Balaji
For Respondents : Ms.Aswini Devi
Standing Counsel

COMMON ORDER

By this common order, both the Writ Petitions are disposed of.

2.In W.P.No.17206 of 2021, the petitioner has challenged two assessment orders seeking to demand property tax from the petitioner under the provisions of the Chennai City Municipal Corporation Act, 1919.

3.In W.P.No.25707 of 2022, the petitioner has challenged the impugned demand notice of the 1st respondent dated 14.07.2022.

4.The petitioner had questioned the above assessment on the ground that the application of the petitioner dated 06.03.2019 for remission of tax under Section 105 of the Chennai City Municipal



Corporation Act, 1919 was pending before the respondent /

Commissioner, Corporation of Chennai. This Court on 18.08.2021 had

passed the following interim order in W.P.No.17206 of 2021:

“Ms.Vaitheeswari, learned Standing Counsel accepts notice for the respondents and seeks some time to obtain instructions and file a counter.

2. The petitioner seeks a writ of certiorarified mandamus calling for and quashing demand notice issued by the respondent for payment of property tax in regard to the property at Wellington Plaza, New No.127/11 (90/11) Anna Salai, Chennai – 600 002. The petitioner has, in fact, made an application on 06.03.2021 for remission of property tax in line with Section 105 of the Chennai City Municipal Corporation Act, 1919, which has been received on 13.03.2021 and is pending admittedly till date.

3. Let the same be considered after hearing the petitioner and disposed notwithstanding the pendency of this Writ Petition.

4. List on 17.09.2021. Counter by then with an advance copy served upon the petitioner.”

5.Pursuant to the aforesaid order dated 18.08.2021, the 1st respondent in W.P.No.25707 of 2022 viz., Assistant Revenue Officer, Greater Chennai Corporation has passed an order dated 14.07.2022 bearing Ref.No.Ma.A.5.Va.Thoo.Na.Ka.No.Ko/59/7419/2021, rejecting



the request of the petitioner for vacancy remission of the petitioner under

Section 105 of the Chennai City Municipal Corporation Act, 1919.

Relevant portion of the impugned order dated 14.07.2022 of the 1st

respondent in W.P.No.25707 of 2022 reads as under:

“தங்களிடம் மேற்கொள்ளப்பட்ட விசாரணை அடிப்படையிலும், மேலும் சமர்ப்பிக்கப்பட்ட ஆவணங்களை கவனமுடன் கூர்ந்தாய்வு செய்ததின் அடிப்படையிலும், தெரிய வருவது யாதெனில் மேற்குறிப்பிட்ட முகவரியில் உள்ள தங்களது கட்டிடத்திற்கு தளவாரியாக அளவிடப்பட்டு ஒரே மதிப்பீடாக செய்யப்பட்டு ஓர் அரையாண்டு வாரியாக ரூ.8.01.246/- என 2/1998-99 முதல் நிர்ணயம் செய்யப்பட்டு சொத்துவரி வசூலிக்கப்பட்டு வந்தது. இது குறித்து தெரிவிப்பது யாதெனில் தங்களது கட்டிடத்தை வியாபார நோக்கில் தளவாரியாக சிறு சிறு கடைகளாக மாற்றம் செய்து அதற்கேற்றார் போல் வாடகைக்கு விடப்பட்டு, வாடகை வசூல் செய்யப்பட்டு வந்த நிலையில் அவ்வாடகைதாரர்கள் காலி செய்ததின் அடிப்படையில் ஏற்பட்ட காலியை (Vacancy) அடிப்படையாக கொண்டு தாங்கள் ஒரு குறிப்பிட்ட 2 அரையாண்டுகளுக்கு மட்டும் காலி நிவாரணம் கோரி கடிதம் அளித்துள்ளீர்கள். இவ்வாறாக ஏற்படும் காலி இடங்களை காலி நிவாரணத்திற்கு பரிசீலனைக்கு எடுத்து கொள்ள இயலாது.

அதாவது ஒரு கட்டிடத்திற்கு விதிக்கப்பட்ட வரி மதிப்பீட்டில் அக்கட்டிடம் முழுமையாக எந்த ஒரு பயன்பாடும் இல்லாமல் காலியாக இருக்கும் பட்சத்தில் அச்சம்மந்தப்பட்ட காலத்திற்கு



W.P.Nos.17206 of 2021 & 25707 of 2022

உரிய காலி நிவாரணம் (Vacancy Remission) கோரி அளிக்கப்படும் கடிதங்களை சென்னை மாநகராட்சி முனிசிபல் சட்டம் 1919, பிரிவு 105 ன் கீழ் பரிசீலனைக்கு எடுத்துக் கொள்ளப்பட்டு ஓர் அரையாண்டுக்கு பகுதியாகவோ அல்லது முழுவதுமாகவோ காலி நிவாரணம் வழங்க பரிசீலித்திட பரிந்துரைக்கப்படும்.

ஆனால், தங்களது கட்டிடமானது தரைதளம், முதல்தளம், இரண்டு, மூன்று மற்றும் நான்காவது தளமாக அளவிடப்பட்டு ஒரே வரிமதிப்பீடு செய்யப்பட்டுள்ள நிலையில் அக்கட்டிடத்தின் உட்புறத்தில் வணிக நோக்கத்தில் தங்களால் சிறு சிறு கடைகளாக மாற்றம் செய்யப்பட்டதால், வாடகைதாரர்களால் ஏற்படும் காலி இடத்தினை முழு கட்டிடத்திற்குமான காலி இடமாக கருதி சென்னை மாநகராட்சி முனிசிபல் சட்டம் 1919 பிரிவு 105 ன் கீழ் பரிசீலனைக்கு எடுத்துக் கொண்டு காலி நிவாரணம் (Vacancy Remission) வழங்க இயலாது.

ஆகவே, தாங்கள் 06.03.2019 நாளிட்ட கடிதத்தில் 1/2018-19 மற்றும் 2/2018-19 க்கான காலி நிவாரணம் கோரியதற்கு பரிசீலிக்க இயலாது என தெரிவித்து தங்களது மேல்முறையீடு நிராகரிக்கப்படுகிறது. எனவே, தாங்கள் இக்கடிதம் கிடைக்கப்பெற்ற 7 தினங்களுக்குள் தாங்கள் செலுத்த வேண்டிய மொத்த நிலுவைத் தொகை ரூ.57,22,289/- உடன் செலுத்தி தொடர் சட்ட நடவடிக்கைகளை தவிர்க்குமாறு கேட்டுக் கொள்ளப்படுகிறது.”



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6. Arguing on behalf of the petitioner, the learned counsel for the petitioner submits that the issue is *no longer res integra* and is covered by the decision of the Hon'ble Division Bench of this Court in **T.A.S.Rathnam Bros. Vs. The Commissioner of the Corporation of Madras**, [1973] 86 L.W. 427. A specific reference was made to paragraph Nos.3 and 4, wherein it has been held as under:

“3. We are inclined to think the view of the Small Cause Judge on both the matters cannot be sustained. Section 99(1) of the City Municipal Corporation Act authorises the Council by a Resolution to determine that a property tax shall be levied on the buildings and lands within the City. The components of property tax are also set out in that section. The tax shall be levied at such percentage of the annual value of buildings and lands as may be fixed by the council. Method of assessment has been laid down by Section 100. Under this provision every building shall be assessed together with its site and other adjacent premises occupied as appurtenances thereto unless the owner of the building is a different person from the owner of such site or premises. What the annual value shall be has been stated. After dealing with general and special exemptions and stating that property tax is a first charge on the property the Act goes on to deal with vacancy remission in Section 105. It says that when any building whether ordinarily let or occupied by the owner himself has been vacant and unlet for thirty or more consecutive days in



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any half year, the Commissioner shall remit so much not exceeding one half of such portion of the tax as relates to the building only as is proportionate to the number of days during which the building was vacant and unlet in the half year. Every claim for remission under sub-section(1) shall be made during the half year in respect of which the remission is sought or in the following half year and not afterwards. No claim for such remission shall be entertained unless the owner of the building or his agent has previously thereto delivered a notice to the Commissioner that the building is vacant and unless or that the building will be vacant and unlet from a specified date either in the half year in which notice is delivered or in the succeeding half year. As to how the period in respect of which remission is made is to be calculated has been indicated in the section. The expression 'building' has been defined by Section 3. But it does not say what the building is, the definition being only an inclusive one. There is no indication in the definition itself whether a building as defined includes a part of the building. But there is no particular reason why, when vacancy remission is provided for a building it should be confined only to the building in its entirety and not extended to a portion of it as well. A building normally include a portion of the building unless it is specifically excluded. We are unable to see any indication in the definition of the expression 'building' to exclude a portion of the building. It is conceivable that a building may be in separate portions which are capable of letting out independently. In that case the annual value which is the basis of property tax, will be calculated with reference to the rent fetched by each of such separate portions and the aggregate thereof. Logically, therefore, vacancy remission



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should extend to each portion of such building, because the tax is on the building and; the tax being calculated on the annual value which is the aggregate of rent fetched by each of the portions the remission may well be related to that portion of the building which has been separately let out and has been vacant. We do not suggest that, for the purpose of remission, the separate portion for which remission is asked for should have been let out and for a period it remained without letting out. Any portion which is vacant and duly notified will be eligible in our opinion for vacancy remission subject of course, to the limits and conditions imposed by Section 105.

4. Our attention has, however, been invited to . There Ismail J. took the view that on the language of Section 105 and Section 3(4) defining 'building', it must be held that the owner of a building was entitled to a remission of property tax only if the building remained wholly vacant or unlet. He was of the view, that if any portion of the building was in occupation or let out, however small that portion might be, then the provisions of Section 105 were not attracted. With respect we are unable to concur with this view as to the scope of Section 105. The learned Judge referred to the definition of 'building' in the Madras Buildings (Lease and Rent Control) Act which included part of a building. But, there the definition is an exhaustive one and it is not an inclusive one. Section 2(2) of that Act says that a building means so and so. But that is not the case in the City Municipal Corporation Act. There the definition is an inclusive one. We consider, therefore, that the definition of 'building' in Section 2(2) bears no analogy which can be extended to a determination of the scope of the word 'building' as used in the City Municipal



Corporation Act. On the other hand in K. V. Das v. Vijayawada Municipality, 1956 Andh LT 450. Umamaheswaram, J. expressed the view similar to the one we are inclined to accept. The learned Judge said that the expression 'any building' in Section 87(1) might be read as including any portion of a building and need not be construed as only meaning building in its entirety or as a whole. We agree with him that such a construction is not only natural on the plain language of Section 105, but also accords with equity and common sense. The learned Judge in support of the view, also referred to the fact that property tax is fixed on the annual value and the annual is arrived at by taking into account the rent realized from the tenants and the realizable in respect of the portion occupied by the owner, if let out. We hold therefore, that vacancy remission is admissible for a portion of a building as well which is vacant provided as we said the other statutory requirements for remission are satisfied.”

7.The learned counsel for the petitioner would submit that earlier view taken by a Single Judge of this Court in **S.R.Y.Bhavani Devi Vs. Commissioner, Corporation of Madras and another**, AIR 1970 Mad 507, was overruled by the Hon'ble Division Bench of this Court.

8.It is submitted that the petitioner has all the records to substantiate that the petitioner was indeed entitled for remission of tax, namely vacancy remission under the aforesaid provisions of the Chennai



City Municipal Corporation Act, 1919. The property is situated in the location, where extensive work is being carried by Metro Railways and therefore there is disruption of commercial activity in and around the petitioner property.

9.It is submitted that only a portion of the property is being occupied and therefore, the petitioner is entitled for remission of property tax. It is submitted that the benefit of Section 105 of the Chennai City Municipal Corporation Act, 1919 cannot be denied merely because the property is sparsely occupied by few tenants.

10.On behalf of the respondent in W.P.No.17206 of 2021, the learned Standing Counsel for the respondent would submit that the procedure prescribed under Section 105 of the Chennai City Municipal Corporation Act, 1919 is clear. It is submitted that as per Section 105 of the Chennai City Municipal Corporation Act, 1919, every claim for remission under Sub-Section (1) shall be made during the half year in respect of which the remission was sought or in the following half year and not afterwards.



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11.It is submitted that remission can be granted under sub-clause (2) to Section 105 of Chennai City Municipal Corporation Act, 1919, subject to the petitioner satisfy the requirements of Sub-Clause (1) to Section 105 of the Chennai City Municipal Corporation Act, 1919. In this case, remission is sought for a different period long after expiry of the period and therefore, even on this ground remission cannot be allowed.

12.That apart, the learned Standing Counsel for the respondent would submit that as per sub-clause (3), a claim for remission cannot be entertained unless, the petitioner had previously delivered a notice to the commissioner. It is submitted that as per Sub-clause (3) to Section 105 of the Chennai City Municipal Corporation Act, 1919, no claim for remission shall be entertained unless the owner of the building or his agent has previously thereto delivered a notice to the Commissioner that the building is vacant and unlet, or that the building will be vacant and unlet from a specified date either in the half-year in which notice is delivered or in the succeeding half year.

13.That apart, it is submitted that remission is valid only for a



period of six months in terms of the above provisions. Whereas, the petitioner is seeking remission of property tax for a longer period of time without giving any opportunity to the respondent to even examine whether the property was unlet or not.

14.The learned Standing Counsel for the respondent has further drawn attention to Schedule-IV of the Taxation Rules. Specifically, a reference is made to Part – IA of the Chennai City Municipal Corporation Act, 1919, which reads as under:

**“PART I-A
ASSESSMENT OF PROPERTY TAX**

1-C.(1) The Commissioner may, be giving publicity in the local newspapers and otherwise require the owner or the occupier of, any land or building, or a portion thereof to file a return within a period not exceeding one month from the date notified in this behalf by the Commissioner, containing the following particulars with regard to each assessable item, namely:-

- (i) the name of the division and the street in which it is situated and the door number ;
- (ii) description of the assessable item like number of storeys, plinth area in each storey and the extent of vacant land ;
- (iii) the name of the owner ;
- (iv) the name of the occupier ;
- (v) the year in which the assessable item was last assessed and the amount of annual value fixed by the Commissioner ;



- (vi) the amount of tax now being paid per half-year ;
- (vii) whether the assessable item is used for residential or non residential purpose ;
- (viii) whether the assessable item is wholly rented or partly occupied by the owner and partly rented ; and
- (ix) the amount received as rent or lease amount per year.”

15.It is submitted that unless a prior notice was issued, question of granting remission does not arise.

16.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

17.Section 105(3) of the Chennai City Municipal Corporation Act, 1919 reads as under:

- “(3) (a) No claim for such remission shall be entertained unless the owner of the building or his agent has previously thereto delivered a notice to the commissioner—
- (i) that the building is vacant and unlet ; or
 - (ii) that the building will be vacant and unlet from a specified date either in the half-year in which notice is delivered or in the



succeeding halfyear.
(b) The period in respect of which the remission is made shall be calculated--

- (i) if remission is sought in respect of the half-year in which notice is delivered, from the date of delivery of the notice or from the date on which the building became vacant and unlet, whichever is later ; and
 - (ii) if remission is sought in respect of the half-year succeeding that in which the notice is delivered, from the commencement of the half-year in respect of which remission is sought or from the date on which the building became vacant and unlet, whichever is later.
- (c) Every notice under clause (a) shall expire with the half-year succeeding that during which it is so delivered, and shall have no effect thereafter.”

18.The arguments advanced by the learned Standing Counsel for the respondents is not the basis on which the impugned order has been passed rejecting the application for vacancy remission, pursuant to order dated 18.08.2021 of this Court in W.P.No.17206 of 2021.

19.As far as the reasons given in the impugned order is concerned, the issue is squarely covered by the decision of the Hon'ble Division



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Bench of this Court in **T.A.S.Rathnam Bros. Vs. The Commissioner of the Corporation of Madras**, [1973] 86 L.W. 427, referred to supra.

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20.As far as the failure on the petitioner to file application in time prior to or during the period in which remission is claimed in terms of Section 105(2) & (3) of the Chennai City Municipal Corporation Act, 1919 is concerned, the requirement of filing application in time is to be construed as directory. The 1st respondent in W.P.No.17206 of 2021 and the 2nd respondent in W.P.No.25707 of 2022 as the Commissioner of Corporation ought to have known about the extraordinary circumstances have emerged since the passing of the Chennai City Municipal Corporation Act, 1919.

21.There are multiple developments on the roads and arterial roads on account of Metro Rail Project. The work would have completely disrupted the activities in particular area as well as surrounding areas which had commercial establishments in view of limited access to citizens. In any event, it is not as if the respondents cannot determine whether the property was let out or not during the period as there would be other collateral evidence which may be available with the petitioner



particularly consumption of Electricity Charges and consumption of water in the complex / building which can give an indication as to whether the property was let out or vacant.

22.This aspect can be verified by the Commissioner. Therefore, Court is inclined to set aside the impugned order dated 14.07.2022 of the 1st respondent in W.P.No.25707 of 2022 and remits the case back to the 2nd respondent in W.P.No.25707 of 2022 / Commissioner or any other competent officer of the Corporation of Chennai, Greater Chennai Corporation to re-do the exercise after considering the collateral evidences which the petitioner may produce. Pending such exercise, recovery of tax demanded vide demand notice dated 06.03.2019, 07.12.2020 and 26.02.2021 which have been impugned in W.P.No.17206 of 2021 shall be kept in abeyance.

23.In view of the above observations, the impugned order dated 14.07.2022 in W.P.No.25707 of 2022 is set aside and the matter is remitted back to the 2nd respondent or any other competent authority to re-do the exercise. In view of the order passed in W.P.No.25707 of 2022, W.P.No.17206 of 2021 is closed.



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24.As far as levy of demand for property tax under the Tamil Nadu Urban Local Bodies Act, 1998 which came into effect from 13.04.2023 is concerned, the matter has to be left open to be decided in accordance with the provisions of the Act.

25.In the result, W.P.No.25707 of 2022 is disposed of and W.P.No.17206 of 2021 is closed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

08.09.2023

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No



W.P.Nos.17206 of 2021 & 25707 of 2022

To

1. Assistant Revenue Officer,
Zonal-5,
Greater Chennai Corporation,
Chennai – 600 003.

2. The Commissioner,
Corporation of Chennai,
Greater Chennai Corporation,
Ripon Building,
Chennai – 600 003.

C.SARAVANAN, J.

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