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W.A.No.1066 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2024

CORAM

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN**

**W.A.No.1066 of 2020
and
C.M.P.No.12996 of 2020**

M/s.Sambandam Spinning Mills Limited,
Represented by its Chairman and Managing Director,
Mr.S.Devarajan,
Kamarajar Nagar Colony,
Salem - 636 014.

... Appellant

-Vs-

1. The Additional District Court,
Fast Track,
Salem.
2. The Tax Appellate Tribunal,
Salem.
3. The Commissioner,
Salem Municipal Corporation,
Salem.

... Respondents

PRAYER : Appeal filed under Clause 15 of Letters Patent, to set aside the order in W.P.No.24965 of 2012 dated 08.09.2020 and allow the above writ appeal.



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For Appellant : Mr.R.Parthasarathy, Senior Counsel
for Mr.Ragul Balaji

For Respondents : R1 and R2 - Court
Mrs.N.Devi
Standing Counsel for R3

J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This intra Court appeal has been filed against the order passed by the writ Court in W.P.No.24965 of 2012 dated 08.09.2020.

2. The necessary facts which are required to be noticed for the disposal of this appeal are as follows:

(i) that the appellant is a Spinning Mill which was located initially within the jurisdiction of South Ammapettai Village Panchayat at Salem District. The buildings of the appellant had been assessed for the house tax by the Village Panchayat which has been quantified at Rs.52,500/- per year and that was demanded during the year 1990-91, correspondingly for the subsequent years, i.e., 1991-92, 1992-93 and 1993-94, such a demand has been made where the amount has been enhanced to Rs.55,000/-



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(ii) The said amount seems to have not been paid by the appellant however, from 01.06.1994, the Salem Municipality has been upgraded as Salem City Municipal Corporation where some of the adjoining areas including the South Ammapettai Panchayat had been included.

(iii) Therefore, the appellant's property also comes within the jurisdiction of the respondent Municipal Corporation with effect from 01.06.1994.

(iv) Since the house tax demand made by the said Village Panchayat from the year 1991-92 has not been paid till 1994-95, a consolidated demand had been made by the respondent Municipal Corporation on 22.12.1994 from the appellant.

(v) In the meanwhile, a Government Order had been issued by the Municipal Administration Department in G.O.Ms.No.169, Municipal Administration and Water Supply Department, dated 19.04.1999, wherein in order to ensure the uniform levy of property tax of all the properties / houses / buildings which comes under the jurisdiction of the Salem Municipal Corporation including the properties which had been annexed along with the Municipal Corporation by virtue of the upgradation of the Municipality with



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effect from 01.06.1994, permission had been sought for by Municipal Corporation from the Government.

(vi) The Government having considered such a request made by the Municipal Corporation had issued the G.O.(Ms).No.169 on 19.04.1999, wherein, *inter alia*, the Government has passed the following order:

"இந்த நிலையில் சேலம் மாநகராட்சியிலுள்ள இந்தப் பகுதிகளில் மட்டும் இன்னும் வீட்டுவரியே வசூலிக்கப்பட்டு வருவதாகவும் சொத்துவரியாக மாற்றுவதற்கு நடவடிக்கை எடுக்கப்பட்டு வருகிறது என்று தெரிவித்து இதற்கு அரசின் அனுமதி அளிக்குமாறு சேலம் மாநகராட்சி ஆணையர் கேட்டுக் கொண்டுள்ளார். நகராட்சி நிர்வாக ஆணையரும், அரசின் அனுமதி வழங்குமாறு கேட்டுள்ளார். சமீபத்தில் அரசாணை (டி)620, நாள் 25.11.98ன்படி திருச்சி மாநகராட்சியில் இவ்வாறு வீட்டுவரியை சொத்து வரியாக மாற்றி 100 விழுக்காடுக்கு மிகாமல் உயர்திக் கொள்ள அனுமதிக்கப்படுள்ளது. சேலம் மாநகராட்சி ஆணையர் தெரிவித்துள்ள விவரங்களை ஆராய்ந்த போது இனைக்கப்பட்ட பகுதிகளில் 46,832 கட்டிடங்கள் உள்ளன என்றும், அவைகளில் சுமார் 30,000 கட்டிட உரிமையாளர்கள் ரூ.50/-க்கும் குறைவாக வீட்டுவரி இதுவரை செலுத்தி வருகிறார்கள் என்றும்



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தெரிய வருகிறது. திருச்சிராப்பள்ளி மாநகராட்சிக்கு அனுமதித்ததுபோல் சேலம் மாநகராட்சிக்கு 100 விழுக்காடு மிகாமல் வீட்டுவரியை சொத்துவரியாக மாற்றியமைத்து வசூலிக்க அனுமதித்தால் தற்போது ரூ.50/-க்கும் குறைவாக வீட்டுவரி செலுத்தி வருகிற 30,000 கட்டிட உரிமையாளர்களும் கூடுதலாக ரூ.50/- வரை மட்டுமே அரை ஆண்டு சொத்துவரியாக கட்டவேண்டிய நிலை ஏற்படும். அப்பகுதிகளிலுள்ள மீதி சுமார் 17,000 கட்டிட சொந்தக்காரர்கள் ரூ.50/- லிருந்து ரூ.100/- அதற்கு மேல் ஒரு சிலரும் வீட்டுவரி கட்டி வருவதால் அவர்களுக்கும் இந்த 100 விழுக்காடு உச்ச வரம்பு பாதிப்பு ஏற்படி வாய்ப்புகள் இல்லை. 1.10.98 முதல் சேலம் மாநகராட்சியுடன் இணைக்கப்பட்ட பகுதிகளில் தற்பொழுது வீட்டுவாரியாக வசூலிக்கப்படும் கட்டிடங்களுக்கு மாநகராட்சி சட்ட வீட்டுவரியில் 100 விழுக்காடு மிகாமல் அரையாண்டு சொத்துவரி வசூலிக்கவும் சேலம் மாநகராட்சி அனுமதிக்கப்படுகிறது."

(vii) Under the import of the said Government Order, whatever the house tax or property tax paid by the buildings owners hitherto coming under the jurisdiction of erstwhile local bodies other than the Salem Municipal area which has been subsequently annexed, such property tax would be enhanced at the



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maximum of 100% from the existing tax paid by them to the erstwhile local bodies, such an enhancement shall be for half year.

(viii) It is to be noted that, hitherto those property tax or house tax were paid by them to the erstwhile local bodies on yearly basis, therefore, a clarification had been given by the Government in the said G.O.(Ms)No.169 stating that, the existing house tax / property tax payable annually to the erstwhile local bodies can be enhanced to 100% maximum for half year payable to the Municipal Corporation of Salem. This is the main import of G.O.(Ms)No.169.

(ix) Pursuant to the said Government Order, it seems that, the Salem Municipal Corporation by Resolution No.235 has enhanced the property tax payable by the appellant to the extent of Rs.1,65,000/- for half year and accordingly, such a demand has been made by the respondent Municipal Corporation through the demand notice dated 10.12.2001.

(x) That was questioned by the appellant before the Tribunal and matter has ultimately been decided by the Appellate Tribunal, by order, dated 27.07.2007 in Appeal No.30 of 2007, where the Tribunal has held as follows:



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"பிரச்சனை:2

பிரச்சனை 1ல் இந்த மேல்முறையீடு அனுமதிக்கப்படத்தக்கது என்று தீர்வு காணப்பட்டுள்ளதால் 1998-99 இரண்டாம் அரையாண்டிலிருந்து இந்த மேல்முறையீட்டாளர் அரையாண்டு சொத்துவரியாக ரூ.1,10,000/- செலுத்தி வரவேண்டும் என்ற பரிகாரம் தவிர இந்த மேல்முறையீட்டாளருக்கு வேறு எந்த பரிகாரமும் கிடைக்க கூடியது அல்ல என்று இந்த பிரச்சனைக்கு தீர்வு காணப்படுகிறது.

முடிவில் இந்த மேல்முறையீடு அனுமதிக்கப்படுகிறது. செலவுத் தொகை இல்லை. வரி விதிப்பு எண்.125861 கொண்ட இந்த வழக்கு சம்மந்தப்பட்ட கட்டிடத்திற்கு 01.10.98 முதல் ரூ.1,65,000/- ஆக இருந்த அரையாண்டு சொத்து வரியை ரூ.1,10,000/- ஆக குறைத்து உத்திரவிடப்படுகிறது."

(xi) Against the order passed by the Appellate Tribunal, the appellant filed C.M.A.No.2 of 2008 before the District Court, Salem under Rule XXIII of the Taxation Rules framed under the Municipal Corporation Act, that was also dismissed by confirming the order by the Appellate Tribunal. Against the said order only, the appellant filed the writ petition in W.P.No.24965 of 2012 which was decided by the writ Court, by order, dated 08.09.2020, which is impugned herein.



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3. Heard Mr.R.Parthasarathy, learned Senior Counsel appearing for the appellant who would submit that, even under the erstwhile Town Panchayat of South Ammapettai, the enhanced rate of property tax at Rs.55,000/- per year had been paid by the appellant. When that being so, even by virtue of the G.O.(Ms)No.169, such a huge enhancement of more than 100% cannot be made by the respondent Municipal Corporation. Therefore, such an exorbitant enhancement made by the respondent Municipal Corporation and pursuant to which, the demand impugned made by the Municipal Corporation cannot be sustained, he contended.

4. He would also submit that, if at all, the import of G.O.(Ms).No.169 is given effect to by the respondent Municipal Corporation as guided in the said Government Order, the maximum enhancement would have been made only at 100%. If that being so, Rs.55,000/- levied already as a property tax or house tax on the buildings of the appellant by the erstwhile Panchayat since could be taken as a basic rate, from which, if 100% maximum enhancement is given by the respondent Municipal Corporation, that shall come only to Rs.1,10,000/- and not Rs.1,65,000/- as has been claimed or demanded by the respondent Municipal Corporation, therefore, on that ground also, the impugned demand cannot be sustained, he contended.



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5. We have heard Mrs.N.Devi, learned Standing Counsel appearing for the respondent Municipal Corporation who relied upon the averment made in the counter affidavit filed before the writ Court, where, *inter alia*, it has been stated like this:

"2. It is humbly submitted that M/s.Sambandam Spinning Mills is situated at Division No.37 of Ammapet Zone Office III in Salem Corporation. Further, M/s.Sambandam Spinning Mills was already assessed property tax vide Assessment No.125861 and the property tax was fixed at Rs.55,000/- per half year that too before 01.10.1998. The property tax was paid by the petitioner regularly. During the general revision of tax on 01.10.1998, the above said Mill was categorized as 'INDUSTRY', and property tax was revised as Rs.1,65,000/- per half year as per resolution No.235 passed on 29.09.1999 as per G.O.169, M.A.W.S. Department, dated 19.04.1999."

6. Relying upon this averment, the learned Standing Counsel appearing for the respondent Municipal Corporation would submit that, since the power of enhancing the property tax already been vested with the Municipal Corporation by virtue of G.O.(Ms)No.169, exercising such power, the Municipal Corporation passed a Resolution No.235 on 29.09.1999, as per which, the property tax payable by the appellant has been enhanced to Rs.1,65,000/- for



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six months. If that being so, the yearly property tax payable by them is Rs.3,30,000/- which alone has been demanded through the impugned demand and therefore, it has got every justification to make such a demand, she contended.

7. We have considered these rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

8. In fact the appellant has already been subjected to levy of property tax under the erstwhile local body, namely, the South Ammapettai Panchayat from 1990-91 financial year, where the rate was fixed at Rs.52,500/-, that has subsequently been enhanced to Rs.55,000/- from 1993-94. Therefore, at that time, when the said local panchayat has been brought under the purview of Salem Municipal Corporation with effect from 01.06.1994, already a sum of Rs.55,000/- annually had been fixed as property tax and levied on the appellant.

9. It seems that, from 1991-92 till 1994-95, even the said amount of Rs.55,000/- has not been paid by the appellant, therefore, the consolidated demand has been made in fact on 22.12.1994, subsequently, in view of the



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enhancement made by virtue of the resolution dated 29.09.1999 as it has been enhanced to Rs.1,65,000/- for six months, the consolidated demand has been made through the letter of demand dated 10.12.2001.

10. If that enhancement is questioned by the appellant, the Tribunal in fact has gone into all aspects and has given a finding stating that, if at all the maximum enhancement of 100% could be made by the respondent Municipal Corporation on the appellant by exercising the power vested in them under G.O.(Ms)No.169, the enhancement could be at the maximum of Rs.1,10,000/- for six months and not Rs.1,65,000/- as has been made or demanded by the respondent Corporation. This position has been concurrently confirmed by the learned District Judge as well as the writ Court.

11. The enhancement that could be made by the respondent Municipal Corporation by virtue of G.O.(Ms).No.169 is at the maximum of 100% from the erstwhile rate that too for half year. If the erstwhile rate is Rs.55,000/- which cannot be disputed by the appellant, the respondent Municipal Corporation were at liberty to enhance the same to the maximum of 100%, i.e., to Rs.1,10,000/- for six months, i.e., half year.



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12. If that being so, the resolution that has been made by the respondent Municipal Corporation in Resolution No.235 dated 29.09.1999 enhancing the same for half yearly to the extent of Rs.1,65,000/- is beyond the scope of the power to make such an enhancement within the meaning of G.O.(Ms)No.169, therefore, we do not have any hesitation to hold that, such an enhancement to the extent of Rs.1,65,000/- as property tax against the appellant for half year is unjustifiable. But at the same time, the enhancement can be restricted to Rs.1,10,000/- for half yearly.

13. This in fact has been reiterated by the Tribunal as well as the District Court and the learned Judge of the writ Court.

14. When that being the position, the enhancement if at all could be made maximum is Rs.1,10,000/- for half year and on that basis, if it is calculated, the demand now made totally may also vary, hence, the respondent / Municipal Corporation is liable to make the revised demand instead of the demand which has been impugned.

15. It is to be noted that, during the pendency of this appeal, the appellant has deposited a sum of Rs.20,00,000/- on 24.12.2020 and also has claimed to have paid Rs.55,000/- per year as a pre-revised property tax.



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16. These aspects have to be verified by the respondent Municipal Corporation and accordingly, based on the revised demand at the rate of Rs.1,10,000/- for six months from 1991-92 onwards till date, what shall be the total amount payable by the appellant shall be calculated and accordingly, such a revised demand shall be made by the respondent Municipal Corporation. Before making such a revised demand, the amount that has already been paid shall be adjusted, after adjusting the said amount, if any, balance payable as a property tax due, shall alone be demanded and that the detailed working sheet to that effect shall also be annexed along with the revised demand to be made by the respondent Municipal Corporation which they can do it within a period of one month from the date of receipt of a copy of this order.

17. With these directions and observations, this Writ Appeal is ordered accordingly. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

(R.S.K., J.) (C.S.N., J.)

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NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

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[Order of the Court was made by **R.SURESH KUMAR, J.**]

This matter is listed today under the caption "being mentioned" at the instance of Ms.S.Rekha, learned counsel on behalf of Mr.Rahul Balaji, learned counsel for the appellant.

2. It is pointed out by the learned counsel for the appellant that, in paragraph No.16 of the order dated 21.08.2024, in third line, the period has been mentioned as "1991-92", but the actual period to be covered is "1998-99", therefore, the correction has to be made, she contended.

3. In view of the same, the period "1991-92" in the third line in paragraph No.16 of the order dated 21.08.2024 shall be substituted as "1998-99".



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4. The other portions of the order, dated 21.08.2024 shall remain unaltered.

**[R.S.K., J.] [C.S.N., J.]
04.10.2024**

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Note to office: Registry is directed to issue the corrected order copy immediately to the parties.

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