IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.04.2016

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The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.12634 of 2016
and
W.M.P.No.11001 of 2016

M/s.KSM Nirman Pvt. Ltd.,
rep. by its General Manager (Legal)
P.V.Umapathy ...Petitioner

Vs.

1. The Commissioner,
Pallavapuram Municipality,
Chrompet, Chennai - 600 044.

2. The Junior Engineer,
Chennai Metro Water and Sewage Board,
Chintadripet, Chennai - 600 002. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the respondents to provide water and drainage connections and to provide scavenging services for 695 apartment dwelling units in 16 towers (A1 toA9, B1 to B3, D, E, F1 to F2), comprised in T.S.No.2, 4/1, 2, 5/1, 2,6/1A, 1B, 1C1, 1B1, 8/1A, 22/1, 23/1, 24/1 ward -A, Block No.15, GST Road, Pallavaram Village, within the limits of Pallavaram Municipality, without insisting for payment of vacant land tax within a reasonable time.

For Petitioner : Mr.Kumarpal R Chopra

For Respondent-1 : Mr.P.Srinivas

For Respondent-2 : Mr.M.Jothikumar
Standing Counsel

O R D E R

Heard Mr.Kumarpal R Chopra, the learned counsel appearing for the petitioner, Mr.P.Srinivas, the learned counsel for first respondent and Mr.M.Jothikumar, learned Standing Counsel for second respondent.

2. The petitioner in this Writ Petition seeks for issuance of a writ of mandamus to direct the respondents to provide water and drainage connections and scavenging services to 695 apartment, which has been put up by the petitioner in the land in question. The reason for approaching this Court is on the ground that the petitioner has not remitted the vacant land tax. In fact, at the first instance, the same embargo was placed on the petitioner, where, the petitioner's application for the grant of planning permission was not processed. Therefore, the landowners approached this Court by filing W.P.No.14694 of 2012, to quash the demand, dated 22.05.2012, and to direct the respondent/Municipality to issue building plan permit. The said Writ Petition was disposed of, by order, dated 13.07.2012, with a direction to the petitioners therein to file an affidavit of undertaking to pay the vacant land tax forthwith if the writ petitions filed by them challenging the payment of vacant land tax is dismissed. Further direction was given enabling the Municipality to recover the said amount. At this stage, it would be apposite to quote the operative portion of the order, dated 13.07.2012, which is as follows:-

> " In such view of the matter, since the condition specified in Section 203 of the Act is not attracted to the present case, the plea for payment of vacant land tax as a precondition for grant of building permit cannot be justified. However, since the demand for vacant land tax has been challenged before this Court and stayed, the petitioners shall file an affidavit, undertaking to pay the vacant land tax forthwith, if the writ petitions filed challenging the vacant land tax is dismissed on merits. The Authority will be entitled to recover the same either under the Provisions of the Tamil Nadu District Municipalities Act, or under any other provision of law as may be applicable. On submitting an affidavit of undertaking as above, the building permission shall be granted, subject to the compliance of other legal requirements. Writ Petition stands ordered as above. Consequently, connected miscellaneous petitions are closed. "

3. As against the aforesaid order, the respondent/Municipality preferred a Writ Appeal before the Hon'ble First Bench of this Court in W.A.No.1907 of 2012, and the First Bench, by a judgment,dated 12.09.2012, disposed of the Writ Appeal by passing the following order :-

> "Hence, this Appeal is disposed of with a modification that in stead of undertaking, the respondents-writ petitioners shall furnish a bank guarantee in respect of demand raised by the appellant for payment of vacant land tax. Needless to say that the respondents-writ petitioners shall keep the bank guarantee alive till the disposal of the writ petitions, which have been filed challenging the demand of vacant land tax. It also goes without saying that the bank guarantee shall be unconditional which could be invoked by the appellant at the appropriate stage. "

4. Pursuant to the judgment passed in the Writ Appeal, bank guarantee has been offered by the petitioner, and it is kept valid, and the application for planning permission has been processed accordingly, and in the meantime, the Writ Petitions filed by the landowners challenging the demand of vacant land tax along with other connected matters came up before me, ie., W.P.Nos.13797, 13798, etc., of 2012. The said Writ Petitions were allowed by order, dated 02.12.2014, with certain observations/directions, which are as follows:-

> "11. In such circumstances, it is a pre-requisite that a pre-assessment notice should be issued to each of the petitioners clearly indicating as to the basis of the demand as to what is the extent of the property, as to how, the annual value/value of the property has been determined and what is the amount demanded by way of tax. Unless and until, the pre-assessment notice is issued giving full details, the owner of the property would not be in a position to submit an effective representation or objection. The impugned notices are classical example of non application of mind without furnishing the relevant particulars and to state that impugned notice is only a proposal to which the petitioners can object, is an empty formality. A person, who sends an objection or a person, who has called upon to give objection should be clearly informed as to what is the proposal. A vague proposal or a proposal bereft of details would not satisfy the requirements of an effective show cause notice. Therefore, the impugned notices have been issued merely as a formality and this has caused serious prejudice to the

petitioner, in as much as they were kept in the dark as to what is the basis of demand and how the property has been assessed to tax and how the tax payable has been determined. As held by this Court, in several decisions the guidelines for assessing the market value as provided under the Tamil Nadu buildings (Lease and Rent Control) Act, 1960 should be applied while exercising power under Section 82 of the District Municipalities Act. It is not known as to how the vacant land tax has been calculated what is the land value adopted. Even knowing by the provisions of G.O.Ms.No.151 dated 20.08.2009, the Government Order stipulates upper and lower limits.

12. Therefore, in respect of the all the properties, uniform taxation cannot be done. As the Government order provides broad parameters depending upon the grade of the municipal area, on a perusal of the G.O.Ms.No.151 dated 20.08.2009, it is clear that vacant land tax is leviable on land which was not used exclusively for agricultural purpose and are not occupied or occupied by or adjacent and appurtenant to building subject to the minimum and maximum rent power sq.ft. Even while considering such vacant tax, the location is also very relevant in terms of G.O.Ms.No.151 dated 20.08.2009. The impugned notices do not disclose as to the basis on which demands have been made. Therefore, this Court is not satisfied that the impugned notice are bad in law for not furnishing the relevant details which are required to be furnished to enable owner to effectively resist the claim.

13. Therefore, all the writ petitions are allowed and the impugned notice are quashed. However, it is left open to the respondent/Municipality to issue pre-assessment notices giving full details to enable the petitioners to raise their objections in accordance with law. It is also open to the petitioners to raise all objections in the event such pre-assessment notice are issued."

5. Pursuant to the order, dated 02.12.2014, the respondent/Municipality has issued notice to the petitioner, and determined the amount payable as vacant land tax, which, in fact, is the amount, which has been secured by the respondent/Municipality by means of bank guarantee. As against the said order, the petitioner has preferred a Petition before the first respondent itself to consider the matter, but, since the condition imposed on the petitioner to deposit part of the amount was not complied with, the Petition has been rejected. This has been the subject matter of challenge in a batch of cases, and the Writ Petition filed by the landowner is, W.P.No.5793 of 2016, and the learned Single of this Court, by a common order, dated 17.02.2016, had granted interim stay. Though, during the earlier round of litigations, in all the Writ Petitions, the landowners were only parties, the bank guarantee furnished in favour of the respondent/Municipality is on behalf of the petitioner herein, which could be seen from the copy of the bank guarantee, dated 28.09.2012, wherein, the Authorized Signatory of the petitioner-Company had requested the State Bank of India, Industrial Finance Branch, to furnish bank guarantee in favour of the respondent/Municipality.

6. In the light of the above facts, the amount, demanded as vacant land tax is secured by means of bank guarantee furnished by the petitioner, and they being developer, the respondents are directed to process the petitioner's application made for provision of water and drainage connections and proceed further in accordance with law, and this is subject to the ultimate result of the Writ Petitions filed by the landowners challenging the demand of vacant land tax in W.P.Nos.5790 to 5797 of 2015 and 5132, 5134, etc., of 2016.

7. With the above direction and observation, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
1. The Commissioner,
Pallavapuram Municipality,
Chrompet, Chennai - 600 044.

2. The Junior Engineer,
Chennai Metro Water and Sewage Board,
Chintadripet, Chennai - 600 002.

+1 cc to M/s.P.Srinivas Advocate sr.26246
+1 cc to Mr.Kumarpal R.Chopra Advocate sr.26485

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