IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.5167 of 2010
&
W.M.P.No.1 of 2010

Tvl.Chief Manager
Indian Bank
Kilpauk Branch,Chennai. .. Petitioner

vs.

1.The Commissioner
Corporation of Chennai
Rippon Building
Park Town,
Chennai 600 003.

2.The Zonal Officer, Zone-V
Corporation of Chennnai
183, Periyar EVR Salai
(Poonamallee High Road)
Chennai 600 010.
.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified mandamus, to call for the records relating to the impugned notice dated 22.12.2009, in Ref.Z.O.V.R.D.C.No.R1/3645/2009 in respect of the petitioner's property bearing NO.103, New Avadi Road,Kilpauk, Chennai 600 010, Municipal Division No.70 Zone V issued by the second respondent, quash the impugned notice and consequently forbear the respondent from levying demanding or recovering the property tax an incidental tax retrospectively in respect of the aforesaid building of the petitioner.

For Petitioner : Mr.M.A.Lakshmipathi

For Respondents : Dr.C.Ravichandran
Standing Counsel

O R D E R

Heard Mr.M.A.Lakshmipathi, learned counsel appearing for the petitioner and Dr.C.Ravichandran, learned Standing Counsel, appearing for the respondents.

2.The petitioner is the Indian Bank, Kilpauk Branch, Chennai, represented by its Chief Manager and they have filed this Writ Petition, challenging the communication sent by the second respondent, dated 22.12.2009, calling upon petitioner to pay the arrears of property tax in respect of the property comprised in Door No.103, New Avadi Road, Kilpauk, Chennai 10, which has been purchased by the petitioner Bank.

3.The facts which are necessary for the disposal of the Writ Petition is that the property was owned by one Mr.R.Dakshinamurthy and Mr.M.P.Sukumaran and the petitioner Bank became the tenant in respect of the ground floor portion, by entering into a Lease Agreement during 1997. The owners of the property appear to have availed financial assistance from the petitioner's Bank and executed a deed of equitable mortgage, mortgaging the said property in favour of the petitioner Bank on 29.01.1991.

4.The owners of the property defaulted in repayment of the loan and the petitioner Bank initiated proceedings under the SARFAESI Act, which culminated in the property being brought for sale by public auction by the Indian Bank Asset Recovery Management Branch. Though the property was brought for sale, it appears that there was no bidders, therefore the petitioner Bank itself bid at the auction and they being the sole bidder, the property was purchased by petitioner Bank.

5.At the time when they were a tenant, a notice was issued by the second respondent on 10.08.2009, calling upon the petitioner to pay the arrears of property tax as they being the occupier of the property. On receipt of the notice, the petitioner submitted a representation to the Commissioner of respondent Corporation, informing about the sale of property and that they have purchased the property by sale deed dated 02.04.2008, registered as document No.1262 of 2009, on the file of the Sub-Registrar, Periamet and they are liable to pay property tax only from the date of purchase i.e. April 2008. After the said representation, the second respondent by communication dated 22.12.2009, informed the petitioner that the tenant notice dated 10.08.2009, has been withdrawn and since the petitioner has become the owner of the property, they were called upon to pay the entire arrears. This order dated 22.12.2009, is impugned in this Writ Petition.

6.It is seen that at the time when the Writ Petition was entertained, a conditional order was passed and it appears that the petitioner has complied with the same and they paid a sum of Rs.14,80,343/-.

7.The learned counsel for the petitioner after elaborately setting out the factual position by mentioning about the details as to how and when the petitioner Bank became the owner of the property, relied upon the decision of the Hon'ble Supreme Court in the case of AL CHAMPDANY INDUSTRIES LIMITED v. THE OFFICIAL LIQUIDATOR & ANR [2009 (3) CTC 881], and submitted that the property tax dues cannot be a charge on the property and dues to the Municipality will not come within the purview of crown debt and the petitioner being a purchaser has no legal duty to enquire with regard to the liabilities of the erstwhile owner other than those which would impede the value of the asset and the property tax arrears in respect of the property sold in auction does not constitute charge on such property and there is no requirement to enquire into the said liabilities as the Municipal Corporation is not a preferential creditor under those Act. Therefore, it is submitted that the petitioner would be liable to pay the property tax only after they purchased the property i.e. April 2008.

8.Dr.C.Ravichandran, learned Standing Counsel for the respondent submitted that in terms of under sections 103 & 106 (9) of the Chennai City Municipal Corporation Act, 1919 [CCMC Act], the petitioner Bank is liable to pay the arrears of property tax.

9.After hearing the learned counsel appearing for the parties and perusing the materials placed on record, the only defence which the petitioner seeks to raise as against the impugned demand is by referring the decision of the Hon'ble Supreme Court in AL CHAMPDANY INDUSTRIES LIMITED (supra). In the said case, a Company went into liquidation and the appellant therein purchased the assets of the Company in a Court sale. After which they were served with a notice by the Municipality, claiming arrears of property tax. The appellant contended that they had no liability to pay the arrears of Municipal taxation and the same has to be adjusted from the sale proceeds and that from the date of purchase, they had paid all municipal taxes. The matter ultimately came before the Hon'ble Supreme Court and the Hon'ble Supreme Court pointed out that the dues in respect of the Municipal taxation in terms of the provisions of the said Act do not create any encumbrance on the property and it does not create any charge and it is considered to be a personal liability.

10.After referring to the terms and conditions in the said Act, the Supreme Court pointed out that if the property tax was merely a statutory dues without creating any encumbrance on the property which had cast a duty upon all the auction purchasers to make an investigation, it would mean that he must try to find out all the liabilities of the Company in liquidation in their entirety and that the Municipality was an unsecured creditor and in that capacity it cannot stand on a different footing than an ordinary unsecured creditor, who is required to stand in queue with all other similarly situated for the purpose of realization of their dues from the sale proceeds. Further, it was held that the Companies Act or any other law does not impose any additional obligation upon the purchaser to make an enquiry with regard to the liabilities of the Companies other than those which would impede its value.

11.After referring to the Bombay Provincial Municipal Corporation Act, which provides that the property taxes to be a first charge on the premise for which they are assessed, the Hon'ble Supreme Court took note of Section 100 of the Transfer of Property Act and held that there, cannot, thus, be any doubt or dispute that a provision of law must expressly provide for an enforcement of a charge against the property in the hands of the transferree for the value without notice to the charge and not merely create a charge. In the background of those facts, the Hon'ble Supreme Court pointed out that the Municipality is not a preferential creditor.

12.In the instant case, the facts are totally different. The petitioner has become the purchaser of the property and on the said date, he stepped into the shoes of the vendor. Section 103 of the CCMC Act, states that the property tax on buildings and lands shall, subject to the prior payment of the land revenue, if any, due to the Government thereon, be a first charge upon the said buildings or lands and upon the movable property, if any, found within or upon such buildings or lands and belonging to the person liable to such tax. Sub-section (4) of Section 106 deals with every person who makes a transfer as aforesaid without giving such notice to the commissioner shall continue to be liable for payment of property tax assessed on the premise transferred until he gives notice or until the transfer shall have been recorded in the municipal registers, but nothing in this section shall be held to affect the liability of the transferee for the payment of the said tax or the prior claim of the corporation under section 103 of the At. No record is placed before this Court to state that the provisions of Section 106(4) of the Act was complied with by the petitioner. An argument was advanced by the petitioner stating that the petitioner Bank was a secured creditor and the property was brought for sale on account of the default committed by the erstwhile owners in repaying the loan availed from the petitioner Bank, and the subject property was offered as a security for the said loan. After the petitioner exercised the powers under the SARFAESI Act and the property was brought for auction, they have exercised their right as a secured creditors. But, in the instant case, the petitioner themselves became the purchaser. Therefore, their capacity as a purchaser is different from their capacity as a secured creditor while bringing the property for sale for default in payment of loan. Therefore, after having become a purchaser, then in terms of Section 103 of the CCMC Act, the petitioner Bank is liable to clear the entire arrears of property tax.

13.In the light of the above, the Writ Petition stands dismissed. However, taking note of the fact that already the petitioner has paid 50% of the demand, the petitioner is directed to make a request to the respondents to pay the remaining 50%, within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the respondents shall consider and grant three months time to the petitioner Bank to pay the remaining 50% of the demand . No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rpa
To
1.The Commissioner
Corporation of Chennai
Rippon Building Park Town,
Chennai 600 003.

2.The Zonal Officer, Zone-V
Corporation of Chennnai
183, Periyar EVR Salai
(Poonamallee High Road),
Chennai 600 010.
+1 cc to M/s.C.Ravichandran Advocate sr 44657

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