

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 30.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.20874 of 2016 and
W.M.P.No.17893 of 2016

M/s.CDC MEDINVEST

Rep. by its Sole Proprietor

Dr.SFV. Selvaraj, Having its Office at

G.G. Hospital Complex

6-E, Nungambakkam High Road,

Chennai - 600 034.

... Petitioner

Vs.

1.The Commissioner,
Corporation of Chennai, Chennai.

2.The Asst. Engineer/Junior Engineer,
CMWSSB - Zone -9, Chennai.

3.The Area Engineer IX
CMWSSB, No.1, Dr.Ranga Road,
Alwarpet, Chennai - 600 018.

4.The Official Liquidator,
High Court Madras, Provisional Liquidator
Of M/s.RBF Nidhi Ltd., Corporate Bhavan,
II Floor, No.29, Rajaji Salai,
Chennai - 1.

.. Respondents

Prayer:Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records pertaining to the proceedings of the 2nd respondent in No.4042 and 4043 dated 20.05.2016 in and quash the same as illegal and incompetent and ultravires.

For Petitioner : Mr.M.Guruprasad

For 1st Respondent : Mr.T.C.Gopalakrishnan

For Respondents 2 & 3 : Mr.M.Jothikumar

For 4th respondent : Mr.S.R.Sundar

ORDER

Heard Mr.M.Guruprasad, learned counsel for the petitioner; Mr.T.C.Gopalakrishnan, learned counsel for the 1st respondent; Mr.M.Jothikumar, learned counsel for respondents 2 and 3 and Mr.S.R.Sundar, learned counsel for the 4th respondent/Official Liquidator, High Court Madras.

2.The petitioner challenges a disconnection notice dated 20.05.2016 issued by the CMWSSB on the ground that the water and sewerage tax charges remain unpaid from the assessment years 2001-2002 to 2009-2010 and for the first half year 2016-2017, the property which is subject matter in issue belonged to RBF Nidhi Limited. The said company is under liquidation in C.P.No.230 of 2004 before the Company Court of this Court and the Official Liquidator, Madras has been appointed as petitioner Provisional Liquidator. The undisputed fact is that the petitioner purchased the property during 2011, the dues which have been demanded by the CMWSSB is substantially for the period prior to the date of purchase except for one demand for the first half year 2016-2017. The learned counsel for the petitioner would state that after they have purchased the property, they are regularly paying the property tax, water and sewerage tax and charges and there is no default and if there is any default, they will clear the same. The Official Liquidator therefore has to discharge the liability towards the water and sewerage tax in terms of the demand raised by the CMWSSB. There has been correspondence between the Official Liquidator and the officials of the CMWSSB and a claim has been filed by the CMWSSB claiming Rs.5,57,314/- being the total dues, out of which the tax dues are Rs.2,69,540/- and the surcharge is Rs.2,87,774/-. The Official Liquidator has addressed the 3rd respondent stating that the surcharge is more than 100% of the dues and requested not to levy the surcharge. The 3rd respondent vide communication dated 07.01.2014 has stated that surcharge has been levied on account of belated payment and it cannot be waived, the stand taken by the 3rd respondent is perfectly justified. Surcharge is in the nature of penal levy and when tax is not remitted within the appropriate date, the assessee is given liberty to remit the tax along with the penal levy which is automatic and there is no discretion vested with the authority. Therefore, the Official Liquidator cannot challenge the quantum of demand towards surcharge. Thus, the only option would be for the Official Liquidator to settle the claim as made by the CMWSSB/3rd respondent. It is pointed out by the learned counsel appearing for the Official Liquidator that in respect of the property in question they had earlier moved an application before the Company Court in Company Application No.420 of 2013 for various reliefs such as transfer of unclaimed dividend account, permission to remit income tax, clearance of portion of the property tax dues etc. which were ordered by the Company Court, by order dated 16.04.2013. Therefore, the learned counsel submits that the learned Official Liquidator

will move the Company Court at the earliest and obtain appropriate orders from the Company Court and settle the claim made by the 3rd respondent. The said submission is placed on record and the Official Liquidator shall move the Company Court within a period of three weeks from the date of receipt of a copy of this order and endeavour to settle the dues in its entirety at the earliest.

3. In the light of the above directions, the Writ Petition is allowed and the impugned orders are set aside. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

sgl

To

The Official Liquidator,
High Court Madras, Provisional Liquidator
Of M/s.RBF Nidhi Ltd., Corporate Bhavan,
II Floor, No.29, Rajaji Salai,
Chennai - 1.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.49221

+1cc to Mr.P.L. Gopalakrishnan, Advocate, S.R.No.49097

SR(CO)
EU(09/09/2016)

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W.P.No.20874 of 2016

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