

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2016

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.36986 of 2015
and M.P.Nos.1 & 2 of 2015

1.S.Jayanthi
2.S.Deepak
3.S.Ashwin

... Petitioners

Vs.

1.The State Bank of India,
rep by its Manager,
SME Adyar Branch, Adyar, Chennai.

2.The Pallavaram Municipality,
rep by its Commissioner,
Chromepet, Chennai - 600 044.

... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the 2nd respondent in Na.Ka.No.1836/2012.A1 dated 18.06.2015 and quash the same and consequently forbear the respondents from in any way insisting upon renewing, encashing or invoking the Bank Guarantee in Bank Guarantee No.0505612BG0001119.

For Petitioners : Mr.Richardson Wilson
For Respondents : Mr.Adikesavalu (R1)
Mr.P.Srinivas (R2)

सतममेव जयते
O R D E R

The petitioners have filed the above Writ Petition to issue a writ of certiorarified mandamus to call for the records of the 2nd respondent in Na.Ka.No.1836/2012.A1 dated 18.06.2015 and to quash the same and consequently forbear the respondents from in any way insisting upon renewing, encashing or invoking the Bank Guarantee in Bank Guarantee No.0505612BG0001119.

2.It is the case of the petitioners that they are the absolute owners of the lands comprised in Survey Nos.339/2, 339/3, 337/6,337/7, 337/8, 337/9 & 338/4, Town Survey Nos.21, 22, 24 & 27 having a total extent of 3.92 acres. On 03.06.2011, the 2nd respondent issued a pre-assessment notice for vacant land

tax demanding a sum of Rs.77,57,765/- as arrears of vacant land tax. Challenging the same, the petitioners filed a Writ Petition in W.P.No.3096 of 2012. Subsequently, the petitioners decided to develop the property and accordingly have applied for building permission to the 2nd respondent on 15.04.2011. However, the 2nd respondent refused to process the application for building permission citing the dispute as to the payment of vacant land tax and consequently, the petitioner filed a Writ Petition in W.P.No.6996 of 2012 before this Court praying for issuance of writ of mandamus to process, grant and release the building permission. On 22.06.2012, this Court directed the 2nd respondent to process and release the building permission after obtaining Bank Guarantee from the petitioners in respect of the vacant land tax of Rs.77,57,765/-. Accordingly, the petitioners executed Bank Guarantee to the 1st respondent on 03.07.2012 for a sum of Rs.77,57,765/-. This Bank Guarantee was to be in force till the disposal of the Writ Petition in W.P.No.3096 of 2012. By order dated 02.12.2014, this Court allowed the Writ Petition in W.P.No.3096 of 2012 and set aside the pre-assessment order demanding vacant land tax issued by the 2nd respondent. Thereafter, the petitioners requested the 1st respondent to close the Bank Guarantee and refund the Fixed Deposit receipts. The Bank Guarantee was to expire on 02.10.2015, however, the 2nd respondent communicated to the 1st respondent Bank to extend the Bank Guarantee for a further period of three months.

3.Now, it is brought to the notice of this Court that the 2nd respondent issued an assessment order dated 03.06.2011 fixing the vacant land tax at Rs.77,57,765/-. The petitioners have filed an appeal under Section 124 (i) of the Tamil Nadu District Municipalities Act before the 2nd respondent challenging the order dated 13.01.2015 in Na.Ka.No.1836/ 2012/A1.

4.Mr.P.Srinivas, learned counsel appearing for the 2nd respondent submitted that the petitioners have not made the pre-deposit for the filing of the appeal, therefore, the Bank Guarantee given by the petitioners should continue.

5.Mr.Adikesavalu, learned counsel appearing for the 1st respondent Bank submitted that the Bank Guarantee given by the petitioners had expired on 03.01.2016.

6.Since the Bank Guarantee was given by the petitioners pursuant to the orders passed by this Court in W.P.No.3096 of 2012 and when the Writ Petition was allowed by this Court, the 2nd respondent has no right to continue with the Bank Guarantee. In W.P.No.3096 of 2012, the impugned notice dated 03.06.2011 was set aside. In such circumstances, the 2nd respondent cannot continue with the Bank Guarantee and the Fixed Deposit given by the petitioners. So far as the pre-deposit contemplated under the Tamil Nadu District Municipalities Act is concerned, the

petitioners have to comply with the said provision by making pre-deposit for filing an appeal as against the impugned order dated 13.01.2015. Since the 2nd respondent has no right to continue with the Bank Guarantee, the petitioners are entitled to get back the Fixed Deposit receipts and the petitioners are not liable to extend the Bank Guarantee in favour of the 2nd respondent. In these circumstances, the impugned order passed by the 2nd respondent on 18.06.2015 seeking for extension of the Bank Guarantee is liable to be set aside.

7. Accordingly, the impugned order dated 18.06.2015 passed by the 2nd respondent is set aside. The 2nd respondent cannot insist on renewing, encashing, invoking the Bank Guarantee in Bank Guarantee No.0505612 BG0001119. So far as the pre-deposit is concerned with regard to the filing of the appeal as against the order dated 13.01.2015 is concerned, the petitioners shall comply with the provisions of the Tamil Nadu District Municipalities Act. The petitioners shall approach the 1st respondent for closing the Bank Guarantee and the same can be complied with at the earliest.

8. With this observation, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Manager,
State Bank of India,
SME Adyar Branch, Adyar, Chennai.

2. The Commissioner,
Pallavaram Municipality,
Chromepet, Chennai - 600 044.

+1 cc to Mr. Richardson Wilson, Advocate sr.8146
+1 cc to Mr. P.D. Adikesavalu Advocate sr.8103
+1 cc to Mr. P. Srinivas Advocate sr.8002

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