IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.35249 of 2016
&
WMP.No.30366 of 2016

Sailesh R.Mehta (S.R.Mehta) ... Petitioner

Vs

1. The Chennai Metro Water Supply and Sewerage Board, Rep. by its Chairman
   Pumping Station Road, Chintadripet,
   Chennai-2.

2. The Chennai Metro Water Supply and Sewerage Board, Rep. by its Area Engineer
   Area Office IX (formally Area VII),
   Dr.Ranga Road, Abhiramapuram,
   Chennai-18.

3. The Commissioner,
   Corporation of Chennai,
   Chennai-3.

4. The Chairman/District Judge,
   Taxation Appeal Tribunal,
   Metropolitan Water Supply & Sewerage Board,
   Chennai. ... Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the impugned order made in MWSTA.No.77/2015 dated 6.9.2016 received on 20.9.2016 on the file of the fourth respondent and quash the same as it is against the principles of natural justice, non application of mind, perverse and consequently allow the same.

For Petitioner : Mr.P.C.Harikumar for M/s.P.C.Harikumar Associates

For Respondents 1 & 2 : Mr.M.Jothikumar

For Respondent-3 : Mr.T.C.Gopalakrishnan

ORDER

Mr.M.Jothikumar, learned Standing Counsel accepts notice for respondents 1, 2 and 4. Mr.T.C.Gopalakrishnan, learned Standing Counsel accepts notice for the third respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The order impugned in this writ petition is an order passed by the fourth respondent, which is a Tribunal constituted under the provisions of the Chennai Metropolitan Water Supply and Sewerage Act to deal with appeals as against the orders passed by the respondent Board fixing water and sewerage tax.

3. The petitioner was served with a notice dated 10.9.2009 by the Corporation of Chennai proposing to revise the annual value of the building and consequently, demanding the half yearly property tax with retrospective effect from 2/2001-02. The petitioner challenged the said notice by filing a writ petition in W.P.No.23300 of 2009, which was pending for several years and no counter was filed for a long time.

4. When the said writ petition came up for hearing in the year 2014, this Court disposed of the matter by order dated 7.10.2014. The operative portion of the order and direction in the said writ petition reads as follows :

> "In the light of the above facts, since the writ petition is pending from 2009 onwards, this Court is of the view that the petitioner should be granted one more opportunity to submit his objections, for which purpose, there is no necessity to issue fresh notice. Accordingly, the petitioner is directed to treat the impugned notice dated 10.9.2009 as show cause notice and submit his objections within a period of fifteen days from the date of receipt of a copy of this order and on receipt of his objections, the respondents shall afford an opportunity of personal hearing to the petitioner and if necessary, cause an

> inspection of the building and then proceed to assess the petitioner's property to tax in accordance with law. It is made clear that the benefit of this order will enure to the petitioner only if the petitioner agrees to remit the entire property tax without any arrears at the rate of Rs.1,41,332/- from second half year of 2001-2002."

5. In terms of the above directions, the impugned notice, which is a final notice in Form 10 dated 10.9.2009, was directed to be treated as a show cause notice with a further direction to the respondent Corporation to conduct an enquiry. The undisputed position being that pursuant to the order of assessment, no further steps have been taken by the officials of the Corporation, though the petitioner filed his objections on 18.10.2014. In the meantime, the petitioner is remitting the property tax and water and sewerage tax at the pre-revised rate and the remittance has been made upto 30.8.2016.

6. The problem arose because the respondent Board (Chennai Metropolitan Water Supply and Sewerage Board) revised the water and sewerage tax based on the revision of the annual value of the building in the final notice dated 10.9.2009. This was challenged by way of another writ petition in W.P.No.23656 of 2009, which was transferred to the file of the fourth respondent, after its constitution and renumbered as M.W.S.T.A.No.77 of 2015.

7. It appears that the petitioner brought to the notice of the Tribunal, the fact that the very basis of enhancement of water and sewerage tax is due to fixation of higher annual value of the building pursuant to the notice dated 10.9.2009 and such notice has not attained finality because this Court, by order dated 7.10.2014 in W.P. No.23300 of 2009, directed the demand to be treated as a show cause notice and an enquiry to be conducted. Further, the matter is now pending before the Corporation. Therefore, it was submitted before the Tribunal that there was no basis in demanding the enhanced water and sewerage tax.

8. Unfortunately, the Tribunal did not properly appreciate the factual position, but came to the conclusion that the petitioner should have filed an appeal as against the fixation of the annual value of the building by the Corporation. The finding rendered, without going through the documents placed before the Tribunal, is admittedly an incorrect and erroneous finding, which calls for interference.

9. Accordingly, the writ petition is allowed, the impugned order dated 6.9.2016 passed by the fourth respondent is set aside and it is left open to the respondent Board to redetermine the water and sewerage tax after finality is arrived at with regard to the annual value of the building by the Corporation of Chennai pursuant to the order in W.P.No.23300 of 2009 dated 7.10.2014. Till then, the petitioner shall continue to pay the water and sewerage tax at the pre-revised rate. In the light of the above directions, the respondent Board is restrained from disconnecting water and sewerage supply subject to the condition that the petitioner shall pay the arrears of water and sewerage tax at the pre-revised rate. No costs. Consequently, the above WMP is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Chairman,
Chennai Metro Water Supply and Sewerage Board,
Pumping Station Road,
Chintadripet, Chennai-2.

2.The Area Engineer,
Chennai Metro Water Supply and Sewerage Board,
Area Office IX (formally Area VII),
Dr.Ranga Road, Abhiramapuram,
Chennai-18.

3.The Commissioner,
Corporation of Chennai,
Chennai-3.

4.The Chairman/District Judge,
Taxation Appeal Tribunal,
Metropolitan Water Supply & Sewerage Board,
Chennai.

+1cc to Mr.T.C.Gopalakrishnan, Advocate, S.R.No.57329
+1cc to M/s.P.C.Harikumar Associates, Advocate, S.R.No.57517

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WMP.No.30366 of 2016

NR(CO)
CA(19/10/2016)