In the High Court of Judicature at Madras

Dated : 02.11.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.37982 of 2016 &
WMP.Nos.32572 & 32573 of 2016

A.Abdul Azeez, Muthavalli,
Dr.Mohammed Ismail Manzil ...Petitioner

Vs

1.The Special Tahsildar (Recovery),
CMWSS Board, Alwarpet, Chennai-18.

2.The Managing Director, CMWSS Board,
Pumping Station Road, Chindatripet,
Chennai-2.

3.The Assistant Engineer, Division VI,
CMWSS Board, Triplicane, Chennai-5

4.The Junior Engineer, Division VI,
CMWSS Board, Area VI, Bharathi
Salai, Triplicane, Chennai-5.

5.Taxation Appellate Tribunal Rep. by
its Chairman, Metro Water, Rippon
Building, Chennai-3. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records pertaining to the impugned proceedings of the 5th respondent dated 3.8.2016 passed in M.W.S.T.A.No.81 of 2015 and the proceedings of the 1st respondent in C.M.C.No.06/087/0008/00 & No.A.7673 dated 13.7.2010 addressed to a deceased person Dr.Mohammed Ismail in respect of the property bearing Door No.60, Pycrofts Road (now known as Bharathi Salai), Triplicane, Chennai-5 and quash the same.

For Petitioner : Mr.N.C.Ashok Kumar

For Respondents : Mr.M.Jothikumar

ORDER

Mr.M.Jothikumar, learned Standing Counsel accepts notice for the respondents. Heard both.

2. The petitioner is the muthavalli of a wakf and the challenge in this writ petition is to an order passed by the Taxation Appeal Tribunal in M.W.S.T.A.No.81 of 2015. The Tribunal has exercised the power as an Appellate Tribunal over the orders passed by the respondent Board in respect of demand for water and sewerage taxes and charges.

3. Earlier, the petitioner filed a writ petition in W.P.No.15913 of 2010 challenging a notice issued by the respondent Board dated 13.7.2010 in the name of Dr.Mohammed Ismail in respect of the property at door No.60, Pycrofts Road, presently known as Bharathi Salai, Triplicane, Chennai-5. The primary contention in the said writ petition was that the water and sewerage connection has been disconnected in the year 1989, that the muthavalli namely Dr.Mohammed Ismail died in the year 1990 and that they are not liable to pay water and sewerage tax.

4. During the pendency of the said writ petition, since the Taxation Appeal Tribunal was constituted under the provisions of the Chennai Metropolitan Water Supply and Sewerage Act, 1978, the said writ petition stood transferred to the Tribunal and was renumbered as M.W.S.T.A.No.81 of 2015. The contentions raised before this Court in the said writ petition were reiterated before the Tribunal. The Tribunal considered the matter and rightly held that disconnection of water and sewerage supply would not entitle the petitioner to seek exemption from payment of water and sewerage tax and that they would be exempted from payment of water and sewerage service charges.

5. The legal principle being that there is no quid pro quo for a tax. The Tribunal, after referring to Section 106 of the Chennai City Municipal Corporation Act, 1919 and Rule 62(2) of the Chennai Metropolitan Water Supply and Sewerage Service Charges (Levy and Collections) Regulations, 1998, rightly held that there can be no exemption from payment of water and sewerage tax and that the petitioner is confused with the claim of charges to that of taxes. Thus, there is absolutely no ground to interfere with the order passed by the Tribunal.

6. The learned counsel for the petitioner, during the course of arguments, submits that in so far as the water and sewerage tax is concerned, the petitioner is willing to pay the same and in this regard, the amount demanded in the notice dated 13.7.2010 was referred and the petitioner agreed to pay a sum of Rs.1,28,980/- within a reasonable time. What is being contested is the demand for surcharge.

7. Surcharge is a penal levy for non payment of tax within the time stipulated. Thus, there is no discretion vested with the Authorities to waive surcharge, as it is automatic for any default in payment of tax within the time stipulated. Therefore, there can be no escape from payment of surcharge as demanded.

8. Since, after 2010, no demand has been served on the petitioner, there will be a direction to respondents 3 and 4 to issue a fresh demand to the petitioner clearly indicating both the water and sewerage tax as well as the surcharge separately. On receipt of the same, the petitioner is granted eight weeks' time to pay the entire water and sewerage tax. In so far as the surcharge is concerned, the petitioner shall remit the same in twelve equal monthly instalments and first of such instalment shall commence from December 2016. It is needless to state that on payment of water and sewerage tax, the water and sewerage connection shall be restored and the same shall be continued subject to the petitioner paying water and sewerage tax on half yearly basis promptly. It is also made clear that it is open to the petitioner to approach the Corporation of Chennai for transfer of property tax assessment in the name of the present muthavalli.

9. With the above directions, the writ petition is dismissed. No costs. Consequently, the above WMPs are also dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

RS   Sub Assistant Registrar

To

1.The Special Tahsildar (Recovery), CMWSS Board, Alwarpet, Chennai-18.

2.The Managing Director, CMWSS Board, Pumping Station Road, Chindatripet, Chennai-2.

3.The Assistant Engineer, Division VI, CMWSS Board, Triplicane, Chennai-2.

4.The Junior Engineer, Division VI, CMWSS Board, Area VI, Bharathi, Salai, Triplicane, Chennai-5.

5.The Chairman, Taxation Appellate Tribunal, Metro Water, Rippon Building, Chennai-3.

+ 1 cc to Mr.N.C. Ashok Kumar, Advocate SR.62290

SSI(CO)
EU(24/11/2016)

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of 2016