

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Order	Date of Pronouncing the Order
26.09.2016	30.09.2016

Coram

The Hon'ble Mr. Justice T.S. Sivagnanam

Writ Petition Nos. 5790 to 5797 of 2016 (8 cases)
and

W.M.P. Nos. 5132, 5134, 5136, 5138, 5140,
5142, 5144 and 5146 of 2016

W.P. No. 5790 of 2016

M/s. Gupta and Co.,
rep. by its Partner Dr. S.K. Gupta,
No. 84, G.N. Chetty Road,
T. Nagar, Chennai - 600 017. Petitioner

Vs

1. The State of Tamil Nadu,
rep. by its Secretary,
Municipal Administration and
Water Supply Department,
Fort St. George, Chennai - 600 009.
2. Taxation Appeals Committee,
rep. by Chairman,
Pallavaram Municipality,
Chrompet, Chennai - 600 044.
3. The Commissioner,
Pallavaram Municipality,
Chrompet, Chennai - 600 044. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the third respondent, in assessment notice, dated 05.12.2011, but signed on 10.04.2015, in Ref No. 5978/12/A1, assessment notice, dated 05.12.2011, but signed on 10.04.2015, in Ref. No. 5978/12/a1, order dated 03.08.2015, in Na.Ka.No. 5978/2012/a1, order dated 29.01.2016, in Na.Ka.No. 5978/2012/a1, and order, dated 10.02.2016, in Na.Ka.No. 5978/2012/a1, and to quash the same, and consequently, to forbear the respondents from collecting vacant land tax from the petitioner, except by applying the provisions of the amended Tamil Nadu District Municipalities Act, 1920 and rules framed thereunder.

W.P.No.5791 of 2016:

- 1 M/s.Class Weave
rep. by its Partner Dr.S.K.Gupta NO.21
Yogambal Street T.Nagar Chennai-17 [PETITIONER]

Vs

- 1 The State of Tamilnadu
rep. by its Secretary Municipal
Administration And Water Supply Department
Fort St. George Chennai-9
- 2 The Commissioner
Pallavaram Municipality
Chrompet Chennai-44 [RESPONDENTS]

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to calling for the records of the 2nd respondent in assessment notice dated 5.12.2011 but signed on 10.4.2015 in Ref. No.5978/12/A1 assessment notice dated 5.12.2011 but signed on 10.4.2015 in Ref. No.5978/12/A1 and order dated 10.2.2015 in Na. Ka. No.5978/2012/A1 quash the same and consequently forebear the respondents from collecting vacant land tax from the petitioner except by applying the provisions of the amended Tamilnadu District Municipalities Act 1920 and rules framed thereunder

W.P.5792 of 2016:

- M/s.Sawan Enterprises
rep. by its Partner Puneet Guptha NO.6
Thiyagaraya Road T.Nagar Chennai-17 [PETITIONER]

Vs

- 1 The State of Tamilnadu
rep. by its Secretary Municipal
Administration And Water Supply Department
Fort St. George Chennai-9
- 2 The Commissioner
Pallavaram Municipality Chrompet
Chennai-44 [RESPONDENTS]

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to calling for the records of the 2nd respondent in assessment notice dated 5.12.2011 but signed on 10.4.2015 in Ref. No.5978/12/A1 assessment notice dated 5.12.2011 but signed on

10.4.2015 in Ref. No.5978/12/A1 and order dated 10.2.2015 in Na. Ka. No.5978/2012/A1 quash the same and consequently forebear the respondents from collecting vacant land tax from the petitioner except by applying the provisions of the amended Tamilnadu District Municipalities Act 1920 and rules framed thereunder

W.P.5793 of 2016

1 M/s.French Knot Clothing [PETITIONER]
Company rep. by its Karta Dr.S.K.Gupta No.
13 Ponnamman KOil Street Saligramam
Chennai-93

Vs

1 The State of Tamilnadu
rep. by its Secretary Municipal
Administration And Water Supply Department
Fort St. George Chennai-9
2 The Commissioner
Pallavaram Municipality Chrompet
Chennai-44 [RESPONDENTS]

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to calling for the records of the 2nd respondent in assessment notice dated 5.12.2011 but signed on 10.4.2015 in Ref. No.5978/12/A1 assessment notice dated 5.12.2011 but signed on 10.4.2015 in Ref. No.5978/12/A1 and order dated 10.2.2016 in Na. Ka. No.5978/2012/A1 quash the same and consequently forebear the respondents from collecting vacant land tax from the petitioner except by applying the provisions of the amended Tamilnadu District Municipalities Act 1920 and rules framed thereunder

W.P.5794 of 2016:

1 M/s.Guptha Garments [PETITIONER]
Repd. by its Partner Puneet
Guptha No.6
Thiyagaraya Road T.Nagar
Chennai-600 017.

Vs

1 The State of Tamilnadu
Repd. by its Secretary Municipal
Administration and Water Supply Department
Fort St. George Chennai-9

2 The Commissioner
Pallavaram Municipality
Chrompet Chennai-44

[RESPONDENTS]

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to calling for the records of the 2nd respondent in assessment notice dated 5.12.2011 but signed on 10.4.2015 in Ref. No.5978/12/A1 assessment notice dated 5.12.2011 but signed on 10.4.2015 in Ref. No.5978/12/A1 order dated 10.02.2016 in Na. Ka. No. 5978/2012/A1 quash the same and consequently forebear the respondents from collecting vacant land tax from the petitioner except by applying the provisions of the amended Tamilnadu District Municipalities Act 1920 and rules framed thereunder

W.P.NO.5795 of 2016:

1 M/s.All Times Fashions and
Sportswear Repd. by its Proprietor Dr.S.K.
Gupta No.13 Ponnamman Koil Street
Saligramam Chennai-600 093.

[PETITIONER]

Vs

1 The State of Tamilnadu
Repd. by its Secretary Municipal
Administration and Water Supply Department
Fort St. George Chennai-9

2 The Commissioner
Pallavaram Municipality
Chrompet Chennai-44

[RESPONDENTS]

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to calling for the records of the 2nd respondent in assessment notice dated 5.12.2011 but signed on 10.4.2015 in Ref. No.5978/12/A1 assessment notice dated 5.12.2011 but signed on 10.4.2015 in Ref. No.5978/12/A1 and order dated 10.02.2016 in Na. Ka. No. 5978/2012/A1 quash the same and consequently forebear the respondents from collecting vacant land tax from the petitioner except by applying the provisions of the amended Tamilnadu District Municipalities Act 1920 and rules framed thereunder

W.P.NO.5796 of 2016:

- 1 M/s.Village Craft
Repd. by its Partner Puneet
Guptha No.6
Thiyagaraya Road T.Nagar
Chennai-600 017.

[PETITIONER]

Vs

- 1 The State of Tamilnadu
Repd. by its Secretary Municipal
Administration and Water Supply Department
Fort St. George Chennai-9
- 2 The Commissioner
Pallavaram Municipality
Chrompet Chennai-44

[RESPONDENTS]

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to calling for the records of the 2nd respondent in assessment notice dated 5.12.2011 but signed on 10.4.2015 in Ref. No.5978/12/A1 assessment notice dated 5.12.2011 but signed on 10.4.2015 in Ref. No.5978/12/A1 order dated 10.02.2016 in Na. Ka. No. 5978/2012/A1 quash the same and consequently forbear the respondents from collecting vacant land tax from the petitioner except by applying the provisions of the amended Tamilnadu District Municipalities Act 1920 and rules framed thereunder

W.P.NO.5797 of 2016:

- 1 M/s.Central Fold Fashion
Repd. by its Partner Puneet
Guptha No.6
Thiyagaraya Road T.Nagar
Chennai-600 017.

[PETITIONER]

Vs

- 1 The State of Tamilnadu
Repd. by its Secretary Municipal
Administration and Water Supply Department
Fort St. George Chennai-9
- 2 The Commissioner
Pallavaram Municipality
Chrompet Chennai-44

[RESPONDENTS]

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to calling for the records of the 2nd respondent in assessment notice dated 5.12.2011 but signed on 10.4.2015 in Ref. No.5978/12/A1 assessment notice dated 5.12.2011 but signed on 10.4.2015 in Ref. No.5978/12/A1 order dated 10.02.2016 in Na. Ka. No. 5978/2012/A1 quash the same and consequently forebear the respondents from collecting vacant land tax from the petitioner except by applying the provisions of the amended Tamilnadu District Municipalities Act 1920 and rules framed thereunder

For Petitioner : Mr.AR.L. Sundaresan, Senior Counsel
for Mr.Abishek Jenasenan

For Respondent-1 : Mr.R.Govindasamy,
Special Government Pleader

For Respondents 2&3 : Mr.P.Srinivas

COMMON O R D E R

As the prayer sought for in all these Writ Petitions are identical, and the challenge is to identical orders passed by the respondent-Municipality, demanding vacant land tax from the petitioners, these Writ Petitions were heard together, and disposed of by this common order.

2. For the purpose of disposal of these cases, Writ Petition No.5790 of 2016, is taken as a lead case, and it would suffice to note the facts stated thereunder.

i) The petitioner is the absolute owner of the land, comprised in S.Nos.36 (part), 37 (part), 38/2(part), and 39/4B (part), in Pallavaram, measuring a total extent of 43600 sq.ft.

ii) The petitioner received a notice, dated 24.01.2012, from the Commissioner of the respondent-Municipality, demanding payment of vacant land tax, to the tune of Rs.14,74,841/-. The tax was demanded for two periods, viz., from second half year 2005-06 to first half year 2009-10, and from second half year 2009-10 to second half year 2011-12. As the demands were raised only in the year, 2012, the petitioner contended that the amended Section 81 (3) (a) of Tamil Nadu District Municipalities Act, (hereinafter, referred to as 'the Act') was not applied to calculate the applicable vacant land tax for the first spell, and the demand was issued contrary to the principles of natural justice, as no pre-assessment notice was issued, nor an opportunity was given, and no information or calculation was

provided as to how the valuation was arrived at, as prescribed in Section 82 of the Act.

iii) Therefore, the petitioner filed a Writ Petition, in W.P.No.14306 of 2012, challenging the demand notice and another Writ Petition, i.e., W.P.No.14307 of 2016, seeking to quash the Government Order, passed in G.O.Ms.No.151 dated 20.08.2009, which notified Tamil Nadu Town Panchayats, Third Grade Municipalities, Municipalities and Municipal Corporations (Levy of Property Tax on vacant land) Rules, 2009, and to the extent that it was not made to operate retrospectively. The said Writ Petitions along with other connected matters, (i.e., W.P.Nos.13797, 13798 etc., of 2012) were disposed of by this Court, by a common order, dated 02.12.2014, and it appears that the petitioner, while accepting the order passed in W.P.No.14306 of 2012, which was filed, challenging the demand notice, has preferred a Writ Appeal as against the dismissal of W.P.No.14307 of 2016, which was filed challenging the Government Order, dated 20.08.2009, and it is stated that the Appeal is yet to be numbered, and it is in the Sr Stage.

iv) Pursuant to the orders passed in the earlier batch of cases, the impugned notice was issued, dated 05.12.2011, but signed on 10.04.2015. The petitioner submitted representations to the concerned respondent-Municipality, and subsequently, the petitioner preferred Appeal to the Taxation Appeal Committee of Pallavaram Municipality. However, the Appeal Petition filed by the petitioner came to be rejected by the Commissioner himself, on the ground that the petitioner has not pre-deposited the entire tax before filing the Appeal. Pursuant to which, the demand notice has been issued on 10.02.2016.

v) Thus, all the petitioners have challenged the pre-assessment notices, dated 05.12.2011, signed on 10.04.2015, the orders passed by the Commissioner, in rejecting the Appeal Petitions filed by the petitioners before the Taxation Appeal Committee, and the consequential orders of demand.

3. Mr.AR.L. Sundaresan, learned Senior Counsel, assisted by Mr.Abishek Jenasanen, learned counsel for petitioners contended that the first ground of challenge is that, on the date of issuing the impugned notices, amended Section 81 (3) (a) of the Act, had come into force, under which, vacant land tax has to be calculated only on square feet basis subject to maximum and minimum rates, and the same ought to have been applied to calculate the vacant land tax due, and not the provisions of the un-amended Section 81 (3) (a) of the Act, existed prior to 01.09.2009, which provided for calculation of vacant land tax based on capital value.

4. Referring to several decisions of the Hon'ble Supreme Court, it is submitted that, in relation to taxation statute amendments, that are beneficial to the assessee, or those, that are introduced with an intent to remove any hardship suffered by the assessee, should be presumed to be retrospective in operation, and when two interpretations are possible, the one, which is convenient to the citizens should be preferred. It is further submitted that, amended Section 81 (3) (a) of the Act, being beneficial to the assessee should be held to be retrospective in operation.

5. It is further submitted that, on merits, the impugned orders are in violation of principles of natural justice, as there is no basis for issuance of pre-assessment notices, and the rejection of the Appeal Petitions by the Commissioner is devoid of reasons, and the Commissioner had no jurisdiction to reject the petitioners' Appeal Petitions filed before the Taxation Appeal Committee, and, in any event, if there are any defects in Appeal Petitions, opportunity should have been granted to rectify the defects. Furthermore, insisting on the payment of the entire tax before preferring appeal is an unreasonable restriction.

6. Mr.P.Srinivas, the learned counsel for the respondent-Municipality contended that, as per Sections 117 A and 81 A of the Act, vacant land tax is assessed on the basis of the tax rate and method that is prevalent on the particular half year, for which, the tax is due, and in the present cases, limitation under Section 117 A assessment has been made from 2005-06, and in such a case, calculation of the tax can be done only on the basis of the method and rate that were prevalent on those date, and subsequent amendment will apply only prospectively, and the assessment made in the case of petitioners will not come under the proposition of the retrospective application of a beneficial provision, as the provision is a time bound provision, and the tax is payable in each half year, and therefore, the method of calculation of the tax is only as per the rate applicable for that particular half year.

7. It is further submitted that the capital value of the property is universally adopted from the guideline value of the property, as adopted in the registration procedure, and in the case of the petitioners, the value of the properties, purchased several years ago cannot form the basis for fixing the value of the properties perpetually. Further, it is submitted that there is no arbitrariness in the action of the respondent-Municipality, and the petitioners having not deposited the tax demanded, cannot prefer Appeals, and if the petitioners sells the property, the respondent-Municipality cannot recover the same.

8. Heard the learned counsel for the parties and perused the materials placed on record.

9. At the time of commencement of arguments of the learned counsels, this Court pointed out to the learned Senior Counsel for the petitioners that, an identical issue was considered by this Court, in the case of (S.Jayanthi and others Vs. The Pallavaram Municipality) in W.P.No.11383 of 2016, and the said Writ Petition was allowed by order, dated 01.09.2016, issuing certain directions. It was mentioned that, in the said Writ Petition, identical issue was considered, and the properties, which were the subject matter of those Writ Petitions were also covered in the earlier batch of cases, i.e., W.P.Nos.13797, 13798 etc., of 2012, to which, the petitioners herein were also parties, and this Court proposes to dispose of these Writ Petitions on the same lines.

10. The learned Senior Counsel for the petitioners, on instructions from their clients/petitioners, submitted that, in the instant cases, the petitioners have raised a legal issue as to whether the amendment under Section 81 (3) (a) of the Act would be prospective or retrospective, and in the interpretation of the petitioners, amendment being beneficial to the assessee, has to be applied retrospectively, and this contention appears to have not been raised in W.P.No.11383 of 2016. However, for the present, the petitioners are inclined to take the order on the lines, as made by this Court in W.P.No.11383 of 2016, leaving it open to the petitioners to canvass the other legal issues, which have been raised in these Writ Petitions.

11. I have heard the learned counsel for the respondent-Municipality on the above submissions.

12. Upon considering the submission on either side, this Court is convinced that the issues raised by the petitioners are covered by the order passed in the case of S.Jayanthi (supra) wherein, identical impugned notices were put to challenge, and after elaborately considering the factual aspects, the Writ Petition was allowed with certain directions, and at this stage, it would be relevant to quote the entire order passed thereunder:-

"3. The following facts would be relevant for the purpose of deciding the controversy in this Writ Petition. The petitioner was served with a demand notice dated 03.06.2011, demanding Vacant Land Tax for the period from I/2005-06 to II/2011-12. The amount of tax demanded for the period from I/2005-06 to I/2009-10 was Rs.8,29,485/- per half year and from

II/2009-10 to II/2011-12 at the rate of Rs.58,480/- per half year. The petitioner submitted his objections and thereafter filed a Writ Petition before this Court challenging the said order in W.P.No.3096 of 2012, contending that the respondent Municipality has no authority to impose vacant land tax on the subject property as it is an agricultural land as evidenced by the title deeds, revenue records, town survey records etc., and there is a clear prohibition under Section 83(1) of the Tamil Nadu District Municipalities Act, 1920. It was further contended that the relevant rules, namely Tamil Nadu Town Panchayat III Grade, Municipalities, Municipalities and Municipal Corporation (Levy of Property Tax on vacant land), Rules 2009, came into force on 01.09.2009, which stipulates the procedure for fixing the Vacant Land Tax for lands which are not exclusively used for agricultural purposes and these Rules have been ignored by the respondent. Further, it was stated that the respondent has not furnished any statement to show how they have assessed the vacant land tax, no show cause notice was issued and it is in violation of principles of natural justice. In the mean time, the petitioner wanted to promote the property by constructing residential apartments for which purpose they applied for planning permission. Since this was refused to be granted, the petitioner filed another Writ Petition in W.P.No.6996 of 2012, challenging the said order of refusal. The said Writ Petition was disposed of by order dated 22.06.2012, by directing the petitioner to furnish Bank Guarantee for a sum of Rs.77,67,765/- and the application for planning permission was directed to be considered. The petitioner complied with the conditions and furnished Bank Guarantee. Thereafter, the Writ Petition which was filed by the petitioner challenging the demand of vacant land tax in W.P.No.3096 of 2012, was posted for final hearing, and disposed of by common order dated 02.12.2014 along with other connected matters. The Writ Petition was allowed and the notice of demand was quashed and the respondent Municipality was directed to

issue pre-assessment notice giving full details to enable the petitioner to raise their objections and the same were directed to be considered. Though this is the direction in the penultimate paragraph of the order i.e., in paragraph 13, the Court has made certain observations in the preceding paragraphs as well. Therefore, it would be useful to refer to the relevant paragraphs of the order namely, paragraphs 10 to 13, which are as hereunder:-

"10. So far as the writ petitions which have been filed challenging the notices issued under Rule 9 of Schedule IV, it has been pointed out that while assessing the property tax, the respondent/Municipality has to adopt the method contemplated under Section 82 of the Act. While issuing the notice under Section 82, it is not sufficient to quote the provision of law and call upon the petitioner to pay the tax. This is more so when the respondent/Municipality would contend that property has escaped Assessment tax and they are exercising power under Section 117-A.

11. In such circumstances, it is a pre-requisite that a pre-assessment notice should be issued to each of the petitioners clearly indicating as to the basis of the demand as to what is the extent of the property, as to how, the annual value/value of the property has been determined and what is the amount demanded by way of tax. Unless and until, the pre-assessment notice is issued giving full details, the owner of the property would not be in a position to submit an effective representation or objection. The impugned notices are classical example of non application of mind without furnishing the relevant

particulars and to state that impugned notice is only a proposal to which the petitioners can object, is an empty formality. A person, who sends an objection or a person, who has called upon to give objection should be clearly informed as to what is the proposal. A vague proposal or a proposal bereft of details would not satisfy the requirements of an effective show cause notice. Therefore, the impugned notices have been issued merely as a formality and this has caused serious prejudice to the petitioner, in as much as they were kept in the dark as to what is the basis of demand and how the property has been assessed to tax and how the tax payable has been determined. As held by this Court, in several decisions the guidelines for assessing the market value as provided under the Tamil Nadu buildings (Lease and Rent Control) Act, 1960 should be applied while exercising power under Section 82 of the District Municipalities Act. It is not known as to how the vacant land tax has been calculated what is the land value adopted. Even knowing by the provisions of G.O.Ms.No.151 dated 20.08.2009, the Government Order stipulates upper and lower limits.

12. Therefore, in respect of the all the properties, uniform taxation cannot be done. As the Government order provides broad parameters depending upon the grade of the municipal area, on a perusal of the G.O.Ms.No.151 dated 20.08.2009, it is clear that vacant land tax is leviable on land which was not used exclusively for agricultural purpose and are not occupied or occupied by or adjacent and appurtenant to building subject to the minimum and maximum rent

power sq.ft. Even while considering such vacant tax, the location is also very relevant in terms of G.O.Ms.No.151 dated 20.08.2009. The impugned notices do not disclose as to the basis on which demands have been made. Therefore, this Court is not satisfied that the impugned notice are bad in law for not furnishing the relevant details which are required to be furnished to enable owner to effectively resist the claim.

13. Therefore, all the writ petitions are allowed and the impugned notice are quashed. However, it is left open to the respondent/Municipality to issue pre-assessment notices giving full details to enable the petitioners to raise their objections in accordance with law. It is also open to the petitioners to raise all objections in the event such pre-assessment notice are issued. Consequently, connected miscellaneous petitions are closed. No costs.

4. After the Writ Petition was disposed of, what the respondent was expected to do was to issue of pre-assessment notice. However, the respondent sent a notice dated 13.01.2015, enclosing a copy of notices dated 03.06.2011, in which certain calculations were given. It is submitted by the learned counsel for the respondent that these notices dated 03.06.2011, are infact the pre-assessment notices, which ought to have been given before the impugned demand dated 03.06.2011, was made, but were not given to the petitioner, and therefore, the respondent has enclosed the copy of the same notice and forwarded to the petitioner. The manner in which the respondent has understood the scope of the direction issued in the earlier Writ Petition cannot be appreciated. In fact, the respondent Municipality has

virtually abdicated his duties in complying with the directions.

5. It is not in dispute that the so called pre-assessment notice, dated 03.06.2011, and the demand dated 03.06.2011, were passed on the same day, but the pre-assessment notices were kept in the file and not communicated to the petitioner and only a statement of demand was issued by publishing the same in the website. The correctness of the demand dated 03.06.2011, was tested in W.P.No.3096 of 2012, and it was held to be illegal. Thus, it goes without saying that if the demand was pursuant to a pre-assessment notice dated 03.06.2011, that also should be taken to have been set at naught and the matter should have to be redone afresh by the respondent Municipality. This Court is not inclined to accept the contentions raised by the petitioner that the notice dated 03.06.2011, which ought to have been communicated in 2011, is now being communicated and there is no error. The stand taken by the respondent Municipality cannot be appreciated. Likewise, this Court is not inclined to examine as to whether the details of the assessment as furnished in the notices for the periods i.e., from I/2005-06 to I/2009-10, said to be based on the purchase percentage of capital value of the land and the details of assessment from 01.10.2009 to 2nd half year 2009-10 to second half year 2011-12, which is based on a fixed levy, since the manner in which the respondent Municipality has proceeded is arbitrary and in clear violation of the direction issued in the previous Writ Petition. Therefore, this Court holds that the notice dated 13.01.2015, enclosing the copy of the notice dated 03.06.2011, is not in compliance with the directions in W.P.No.3096 of 2012. The order impugned in this Writ Petition is dated 02.03.2016, which is a demand for vacant land tax upto II/20015-16.

6. It is not in dispute that the petitioner applied for a building plan permission during 2011, so as to put the

land to use by constructing apartment complexes. Therefore, it is deemed that on and from that date, the land will not be a vacant land. The construction has been completed and the houses have been assessed to property tax, since 2013. Therefore, it is not known as to how the respondent Municipality could have demanded vacant land tax till second half year 2015-16 at the same rate as fixed from the second half year 2009-10. However, this Court does not propose to under any finding in this regard at this stage.

7. The learned counsel for the respondent Municipality submitted that the petitioner has filed an appeal against the impugned order and it has been returned for non-payment of the pre-deposit. The copy of the appeal grounds has been furnished, from which it is seen the appeal has been presented as against the notice dated 13.01.2015 and not against the impugned order. After hearing the counsels for considerable length of time, it turned out that the order dated 02.03.2016, is not the order demanding vacant land tax, but the actual order based on which the impugned order has been issued, is an order dated 03.08.2015. The counter affidavit states that this order was passed after considering the petitioner's objection. The counter does not state it has been communicated to the petitioner. The petitioner states he has not received the order dated 03.08.2015. In such circumstances, the respondent Municipality committed further error in passing the impugned order without even communicating the order dated 03.08.2015. In fact, the learned counsel for the respondent Municipality volunteered to produce the copy of the order before this Court. Even it is produced, it will not in any manner improve the case of the respondent. Assuming the order has been shown to be served on the petitioner, that, by itself will not cure the inherent defects which has crept in while the respondent took a decision in the matter. Therefore, since the impugned proceedings commencing from issuance of the notice dated 13.01.2015, is

vitiated by serious procedural errors, infirmities and non-compliance of the order and direction issued in the earlier Writ Petition, the entire proceedings commencing from 13.01.2015, culminating in the orders dated 03.08.2015 and 02.03.2016 (impugned order), are required to be set aside.

8. Accordingly the writ Petition is allowed and the proceedings initiated by the respondent commencing from the notice 13.01.2015 culminating in the orders dated 03.08.2015 and 02.03.2016 are set aside and the matter is remanded to the first respondent for fresh consideration to scrupulously follow the order and direction in W.P.No.3096 of 2012, dated 02.12.2014. No costs. Consequently, connected Miscellaneous Petition is closed. "

13. Thus, except for the difference in the date of the impugned notices, the factual findings rendered by this Court in the above referred case would squarely cover the issues involved in the cases on hand. As could be seen from the material papers, the impugned demands were raised in the year, 2011, but signed in the year, 2015, and served on the petitioners.

14. The stand of the respondent-Municipality is that, the impugned notices are pre-assessment notices, and they were kept in the files and not communicated to the petitioners, after the earlier batch of cases were disposed of, they are now communicated to the petitioners. While testing the correctness of the said submission, this Court rejected the same and faulted the procedure adopted by the respondent-Municipality, in terms of the findings recorded in para No.5 of the order passed in W.P.No.11383 of 2016. Furthermore, if the petitioners had not complied with the pre-deposit condition, before filing Appeals, the Registry of the Taxation Appeal Committee ought to have returned the Appeal Papers, for compliance of defects, and the Commissioner of Municipality has no jurisdiction to reject the Appeal Petitions.

15. Hence, for the above reasons, and by following the orders passed in the earlier Writ Petitions, the present Writ Petitions are allowed, and the proceedings initiated by the respondents, commencing from the impugned pre-assessment notices and culminating in the impugned demands as well as the orders, rejecting the Appeal Petitions filed by the petitioners are set aside and the matters are remanded to the respondent-Municipality for fresh consideration, by scrupulously following the order and direction issued by this Court, in W.P.Nos.13797, 13798 etc., of 2012, dated 02.12.2014. As observed earlier, the

legal issue with regard to the prospective/retrospective operation of Section 81 (3) (a) is left open to be canvassed. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sd

To

1. The Secretary, State of Tamil Nadu
Municipal Administration and
Water Supply Department,
Fort St. George, Chennai - 600 009.
2. The Chairman, Taxation Appeals Committee,
Pallavaram Municipality,
Chrompet, Chennai- 600 044.
3. The Commissioner,
Pallavaram Municipality,
Chrompet, Chennai- 600 044.

+1cc to Mr.Abishek Jenasenar, Advocate, S.R.No.56760
+1cc to Mr.P. Srinivas, Advocate, S.R.No.56877

VGI (CO)
EU(17/10/2016)

Writ Petition Nos.5790 to 5797 of 2016 (8 cases)

and
W.M.P.Nos.5132, 5134, 5136, 5138, 5140,
5142, 5144 and 5146 of 2016