IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2017

CORAM

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

W.P.No. 23156 of 2017

Prashanth Kumar,
rep. by his Power Agent
R.Suriyanarayanan ... Petitioner

Vs.

1.The Commissioner,
Office of Principal Commissioner
Of Service Tax, Chennai II,
3rd Floor, Newry Towers,
2054/1, II Avenue,
Anna Nagar West, Chennai – 40.

2.Ms. Pushkar Properties (P) Ltd.,
Pushkar K.V.Residency,
1A, F Block, 51/3, 2nd Main Road,
Anna Nagar East, Chennai – 102. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus by quashing the first respondent letter C.No.IV/06/45/2015-ST-SIR-GV-VI dated 19.06.2017 and directing the first respondent to exempt the reconstructed premises in terms of the Provisions of Finance Ministry Circular No.151/2/2012-ST dated : 10.02.2012.

For Petitioner : Mr.S.Kothandaraman

For Respondent-1 : Mr.Naveen Duraibabu
for Mrs. Hemamuralikrishnan
Senior Standing Counsel

For Respondent-2 : Mr.G.Vijayakumar

O R D E R

Heard Mr.S.Kothandaraman, the learned counsel appearing for the petitioner, Mr.Naveen Duraibabu, the learned counsel appearing on behalf of M/s Hemamuralikrishnan, the learned Senior Standing Counsel for the first respondent and Mr.G.Vijayakumar, the learned counsel for the second respondent.

2. This Writ Petition has been filed by the petitioner, who is one of the co-owners of the property, bearing Door No.309/5, New No.23, Ponni Colony, Main Road, Anna Nagar West,

Chennai, and he along with other co-owners, has entered into a joint venture agreement with the second respondent.

3. The grievance of the petitioner is that, the second respondent has not handedover the constructed flat, as agreed to, in the joint development agreement, on the alleged ground that the petitioner has to pay service tax for the portion of the construction. The petitioner is stated to have written a letter to the first respondent, requesting that the first respondent may direct the builder/second respondent to handover keys of the flat. In response to the said communication, the first respondent has sent an impugned reply, dated 19.06.2017, stating that the service provider, who is the second respondent herein, is liable to pay the service tax for the construction service provided to the land owner on joint venture agreement, as per Section 67 (1) (iii) of the Finance Act read with 2 (A) (ii) of the Service Tax, (Determination of Value) Rules, 2006 read with clarification given by the CBEC, vide circular No.151/2/2012-ST, dated 10.02.2012. Further, the petitioner was informed that the first respondent has no jurisdiction to direct the builder/second respondent to handover the flat keys to the petitioner, as requested for.

4. In my considered view, the petitioner cannot be aggrieved by the impugned communication, as the petitioner is not the service provider, and it is the second respondent, who is liable to pay the service tax for the construction service provided to the land owner. Therefore, if the case of the petitioner is that, the transaction is between the petitioner and the second respondent, and the second respondent is not liable for payment of service tax, it is the service provider, who has to question the same in the manner known to law. Furthermore, the first respondent was fully justified in stating that, they have no jurisdiction to direct the builder to handover the flat keys to the petitioner. The agreement, being a private agreement between the petitioner and the second respondent, the petitioner has to necessarily workout his remedy in accordance with the terms of the contract entered into between them, upon failure to invoke common law remedy.

5. Thus, for the above reasons, the prayer sought for by the petitioner, cannot be granted. Accordingly, this Writ Petition is dismissed. However, this will not prevent the second respondent from pursuing appropriate remedies before the competent forum. No costs.

sd

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner,
Office of Principal Commissioner
Of Service Tax, Chennai II,
3rd Floor, Newry Towers,
2054/1, II Avenue,
Anna Nagar West, Chennai - 40.

+1cc to Mr.S.Kothandaraman, Advocate Sr.No.91030
+1cc to Mr.G.Vijayakumar, Advocate Sr.No.90998

NMI(CO)
sm:23.1.2018

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