IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.7268 of 2012 & 18368 of 2017 and
M.P.No.1 of 2012 & W.M.P.No.19941 of 2017

W.P.No.7268 of 2012

Spencer and Company Ltd., rep. by
Taj Connemara, A unit of : The Indian Hotels
Company Ltd., (lessee/licensee),
rep. by its General Manager,
Mr.Vija Pratap Shrikent, Binny Road, Chennai-2... Petitioner

[Amended as per order dated 20.07.2017,
in WMP No.28454/2016 in WP No.7268/2012]

Vs.

1.The Corporation of Chennai,
rep. by it's Commissioner,
Rippon Buildings, Chennai.

2.The Revenue Officer,
Corporation of Chennai,
Rippon Buildings, Chennai. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent in Notice 10 : Final Assessment dated 24.01.2012 and quash the same and consequently direct the respondents to forbear from determining the Annual letting value and the Half yearly tax on the basis of revenue and/or room tariff.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.K.Venkataramani
Additional Advocate General
for Mr.Arunmozhi

W.P.No.18368 of 2017

Taj Connermara,
(Licensee under Spencer & Co.,)
A unit of Indian Hotels Company Ltd.,
rep. by its General Manager,
Mr.Ahmar Siiddiqui,
Binny Road, Chennai-2. ... Petitioner

Vs.

1.Cennai Metro Water Supply &
Sewerage Board,
rep. by its Managing Director,
Chintadripet, Chennai-2.

2.Area Engineer IX,
Chennai Metro Water Supply &
Sewerage Board,
1 Dr.Ranga Road, Abhiramapuram,
Chennai-600 018.

3.Assistant Engineer,
Chennai Metro Water Supply &
Sewerage Board, Division-9,
Chintadripet, Chennai-2. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the third respondent in disconnection notice dated 12.07.2017 and quash the said disconnection notice dated 12.07.2017 issued by the third respondent and directing the respondents to forbear from demanding the tax till the disposal of the writ petition in W.P.No.7268 of 2012.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.C.Manishanker,
Additional Advocate General
assisted by Mr.M.Jothi Kumar

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COMMON O R D E R

Heard Mr.R.Subramanian, learned counsel appearing for the petitioner, Mr.K.Venkataramani, learned Additional Advocate General representing Mr.Arunmozhi, learned counsel for the Corporation of Chennai and Mr.C.Mani Shanker, learned Additional Advocate General assisted by Mr.M.Jothi Kumar, learned Standing Counsel for Chennai Metro Water Supply & Sewerage Board (in short "CMWSSB").

2.The short issue, which falls for consideration in W.P.No.7268 of 2012, is whether the impugned notice in Form No.10 dated 24.01.2012, is valid. The petitioner viz., Spencer and Company Ltd., was issued with a notice in Form No.7 on 23.09.2017, proposing to revise the half yearly property tax to Rs.89,47,785.00/- from the original half yearly tax of Rs.6,87,938/- with retrospective effect from I/2009-10. An objection was filed by the Manager Finance of Taj Connemara, objecting to the sudden increase of property tax. In the objections, reliance was placed on the order passed by this Court dated 14.10.1998 in W.P.Nos.14347 and 14940 of 1998, in support of their contention that the gross rent received by the hotel cannot be a basis for fixation of property tax, as income of the assessee alone cannot be a basis to revise the property tax. Pursuant thereto, the impugned final assessment notice dated 24.01.2012, was issued.

3.The first contention raised by the petitioner is that the objections given on 5th April, 2011 was not considered before passing the impugned final assessment order. The final assessment order issued in Form No.10 does not contain the reason as to why the proposal in Form No.7 has been confirmed. The Court presumed that there will be a speaking order in the assessment files maintained by the respondent-Corporation. Therefore, the learned Additional Advocate General for the Corporation was directed to get instructions in this matter and to produce the original assessment file. In the meantime, the learned Additional Advocate General for the Corporation raised an objection as regards the locus standi of the petitioner viz. Vivanta by Taj Connemara, to challenge the impugned notice. From the materials placed before this Court, it was found that the assessee is Spencer and Company Ltd. and not Vivanta by Taj Connemara. Though the learned counsel for the petitioner sought to sustain the challenge by Vivanta by Taj Connemara by referring to and relying on the arrangement between themselves and M/s.Spencer and Company Ltd., the Court opined that since the assessee is Spencer and Company Ltd., it is they, who have to question the impugned notice. Accordingly, a petition was taken for amendment of the cause title in W.M.P.No.28454 of 2016 and the cause title has been amended by order dated 20.07.2017, and the present petitioner is Spencer and Company Limited represented by Taj Connemara. This Court in order to safeguard the interest of revenue had issued two interim directions viz., on 07.09.2016 and 20.07.2017 and the petitioner has complied with those conditions. Now the question framed for consideration is whether the impugned final assessment notice is sustainable in law.

4.The learned Additional Advocate General for the Corporation submitted that prior to passing of the impugned final assessment order, a detailed inspection was conducted on the petitioner's building, measurements were taken and it is only thereafter, the tax has been computed. In this regard, the learned Additional Advocate General referred to the working sheet dated 29.03.2011, contained in pages 11 to 14 of the typed set of documents filed by the respondent/Corporation of Chennai. Though such a stand has been taken, the impugned notice does not reflect as to the basis on which the proposal to fix the property tax as proposed in Form 7 notice, has been confirmed. The petitioner was made known about the working sheet for the first time when the typed set of documents was filed before this Court on 27.09.2016. Thus, by producing this material, the respondent cannot sustain the impugned final assessment notice as no such reasons are contained in the said order.

5.I find from the working sheet that the respondent/Corporation has taken into consideration, the category of rooms, number of rooms, and total rent per day. Further, the tenant usage area, owner usage area and rate for other areas have been taken into consideration. That apart, the size of the rooms has been calculated for arriving at the total area, which, according to the calculation, is 22,595 square feet and the tenant area is 610 square feet. Though the above calculations have been mentioned, there is no clear indication, as to how, the monthly rental value has been calculated. I find certain multiplication details in the working sheet, but the same does not give a clear picture as to how the half yearly tax has been fixed as Rs.89,47,774/-, as contained in the working sheet whereas in the final assessment notice, half yearly property tax has been determined as Rs.89,47,580.00/-. In order to afford an opportunity to the respondent/Corporation to establish before this Court that there was a speaking order passed prior to issuing a demand, the Court directed the learned Additional Advocate General for the Corporation to produce the files. The document contained in the files does not lend any support to the case of the respondent/Corporation and what has been given in the typed set of documents filed by the respondent/Corporation in this writ petition is what that is contained in the file. Thus, I find that after the objections, which were given by the erstwhile writ petitioner, there is no speaking order passed before issuing the impugned final assessment notice. Thus, this Court is fully satisfied that there has been no due consideration of the objections and there is no speaking order, which is enough to hold that the impugned final assessment notice has been passed in violation of principles of natural justice.

6.For the above reasons, W.P.No.7268 of 2012, is allowed, the impugned final assessment notice is set aside and the matter is remanded to the respondent for fresh consideration. The petitioner viz., Spencer and Company Limited represented by Taj Connemara shall file their fresh objections to the provisional notice dated 29.03.2011, within a period of 30 days from the date of receipt of a copy of this order. On receipt of the objections, it is open to the respondent to conduct an inspection of the petitioner's building if they so desire. In the event, they propose to conduct an inspection, it shall be after prior notice to the petitioner. After the inspection is conducted, the first respondent is directed to afford an opportunity of personal hearing to the authorized representative of the petitioner and pass a speaking order with reasons and then proceed to determine the half yearly property tax for the petitioner's property. Pursuant to the orders passed by this Court, without prejudice to the rights of the parties, Rs.20,00,000/- has been paid by the petitioner as half yearly property tax with effect from I/2009-10. This payment shall abide by the final orders to be passed in terms of the above directions.

7.So far as W.P.No.18368 of 2017 is concerned, the petitioner has challenged the demand issued by CMWSSB, in which the Court has granted an interim direction and the petitioner has been complying with the said condition. The demand of water and sewerage tax shall abide by the revised orders to be passed on the property tax assessment in terms of the above directions. Accordingly, W.P.No.18368 of 2017 stands disposed of. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner
The Corporation of Chennai,
Rippon Buildings, Chennai.

2.The Revenue Officer,
Corporation of Chennai,
Rippon Buildings, Chennai.

3. The Managing Director
Cennai Metro Water Supply &
Sewerage Board,
Chintadripet, Chennai-2.

4. The Area Engineer IX,
Chennai Metro Water Supply &
Sewerage Board,1 Dr.Ranga Road,
Abhiramapuram, Chennai-600 018.

5.The Assistant Engineer, Chennai Metro Water
Supply & Sewerage Board, Division-9,
Chintadripet, Chennai-2.

+1 cc to M/s.R.Arunmozhi Advocate sr 80759

+1 cc to M/s.R.Subramanian Advocate sr 80588

W.P.Nos.7268 of 2012 & 18368 of 2017

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