IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.10.2017

Coram :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.26028 of 2017
&
W.M.P.No.27631 of 2017

Sree Gokulam Hotel (India) Pvt.Ltd.,
Represented by its Director
Mr.A.M.Gopalan
D.No.14 (New No.67), Ashok Nagar
First Avenue, Chennai - 600 083
Tamil Nadu ... Petitioner

Vs

1. The Commissioner,
   Corporation of Greater Chennai,
   Rippon Building,
   Chennai - 600 003.

2. The Assistant Revenue Officer,
   Zone-10, Corporation of Greater Chennai,
   Rippon Building, Chennai - 600 003.

3. The Member Secretary,
   Chennai Metropolitan Development Authority,
   No.1, Gandhi Irwin Road, Egmore,
   Chennai - 600 008. ... Respondents

Prayer: The Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus, directing the first and second respondents to re-assess and to collect the property tax of the Petitioner's premises for the period from II/1998-99 to till date as per the third respondent letter No.Reg.C6/51404/2000, dated 20.03.2017.

For Petitioner : Mr.V.J.Arul Raj

For Respondents : M/s.Karthikaa Ashok for R1 and R2
Mr.M.Karthikeyan for R3

O R D E R

Heard Mr.V.J.Arul Raj, learned counsel for the petitioner and M/s.Karthikaa Ashok, learned standing counsel appearing for the respondents 1 & 2. Though the third respondent/Chennai Metropolitan Development Authority has been served and their name has been printed in the cause list, none appears for the third respondent.

2. The petitioner has filed this writ petition praying for a direction to the respondent Corporation to re-assess and to collect the Property tax for the petitioner's premises for the period II half year 1998-1999 to till date based upon a communication given by the Chennai Metropolitan Development Authority dated 20.03.2017. The said communication reads as follows:

> "The Regularisation Application received in the reference 1st cited has been examined.
>
> In the 60th Monitoring committee Meeting decision it was observed that Chennai Corporation Tax assessment vide in the reference 5th cited has to re-assessed the excess built-up area for considering regularization.
>
> Therefore, you are requested to get your building re-assessed for the excess builtup area and then remit all the arrears of property tax for the difference in area of 3330 Sq.ft for the period from II/1998-99 to till date under intimation to this office with receipt copy for further process."

3. When the petitioner approached the respondent Corporation requesting permission to remit the property tax, they were informed by the second respondent by letter dated 19.09.2017 that the respondent Corporation can collect tax retrospectively upto 6 years only (i.e. 12 Half years) in terms of Section 137 (B) of the Chennai City Municipal Corporation Act, 1919. This has prompted the petitioner to approach this Court by way of this writ petition.

4. When this writ petition was heard earlier, the endeavour of this Court was to ascertain as to whether the petitioner was trying to take advantage of the communication of the Chennai Metropolitan Development Authority,(CMDA) dated 20.03.2017 and get his building regularised by requesting the Corporation of Chennai to assess the property to tax with retrospective effect. After the learned counsel for the respondent Corporation got instructions in the matter, this Court found that the construction put up by the petitioner was in existence as on

09.11.1988. This has been admitted by the Chennai Metropolitan Development Authority, in their written statement filed in O.S.No.4417 of 1993 on the file of the City Civil Court, Chennai, which suit was filed by the petitioner to restrain the Chennai Metropolitan Development Authority,(CMDA) from demolishing the construction put up by them contrary to the approved building plan.

5.The Government of Tamilnadu, introduced a scheme for regularization of the unauthorised construction put up by various parties, provided construction had been completed prior to 28.02.1999. Therefore, the petitioner appealed to the Government of Tamilnadu, for regularising the construction put up contrary to the approved building plan. This application was processed and placed before the monitoring committee constituted for such purposes. In the meeting held on 27.07.2007, the monitoring committee wanted to ascertain the date of construction and pursuant to the resolution passed by the monitoring committee, the Chennai Metropolitan Development Authority,(CMDA) addressed the petitioner by letter dated 20.02.2013 to produce the evidence for the site and construction to show that it was completed prior to 28.02.1999.

6.It appears that the petitioner has placed all the materials and subsequently monitoring committee took a decision in its meeting held on 07.02.2017 wherein it observed that Chennai Corporation's Tax assessment vide proceedings dated 27.11.1999 has to be re-assessed and the excess built up area to be brought within that tax frame work for considering regularisation. Pursuant to such decision, the Chennai Metropolitan Development Authority (CMDA) addressed the petitioner vide letter dated 20.03.2017, directing the petitioner to approach the Corporation for re-assess of the excess buildup area and remit all the arrears of the Property Tax for the difference in the build up area i.e., over and above the approved built up area. There was also a direction to pay property tax of such re-assessment from the period II half year 1998-99. Thus, the communication given by the Chennai Metropolitan Development Authority,(CMDA) dated 20.03.2017 is an outcome of the decision of the monitoring committee in its meeting dated 07.02.2017, which was constituted by the Hon'ble Division Bench of this Court to consider such application for regularization taking note of the scheme of regularization announced by the Government of Tamilnadu. Therefore, the factual situation is thus the legal embargo under Section 137(B) cannot be put against the petitioner as the petitioner seeks to comply with the directions issued by the Chennai Metropolitan Development Authority,(CMDA). Therefore, there will be no error in respondent Corporation re-assessing the building in terms of the letters dated 20.03.2017.

7.The petitioner's case is that building consists of 5 floors. In fact, such stand was taken by the Chennai Metropolitan Development Authority,(CMDA) in the written statement filed in O.S.No.4417 of 1993 before the City Civil Court, Chennai.

8.The learned standing counsel for the respondent Corporation submits that when the officers of the corporation inspected the building, there are only three fully constructed floors and the fourth floor being a temporary structure. However, I do not propose to go into the controversy in this writ petition as Chennai Metropolitan Development Authority, (CMDA) is already considering the petitioner's application for regularization. Therefore, whatever is the excess construction made by the petitioner, to be re-assessed as directed by the Chennai Metropolitan Development Authority,(CMDA) in their declaration on 20.03.2017.

Therefore, the writ petition is disposed of directing the respondents 1 and 2 to re-assess the petitioner's building in respect of the excess construction put by the petitioner and collect appropriate rate of tax for the period from II half year 1998-99 to till date and issue appropriate receipt to enable the petitioner to submit the same before the Chennai Metropolitan Development Authority (CMDA). The above directions be complied with, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

klt/gpa

To

1. The Commissioner,
   Corporation of Greater Chennai,
   Rippon Building,
   Chennai - 600 003.

2. The Assistant Revenue Officer,
   Zone-10, Corporation of Greater Chennai,
   Rippon Building, Chennai - 600 003.

3. The Member Secretary,
   Chennai Metropolitan Development Authority,
   No.1, Gandhi Irwin Road, Egmore,
   Chennai - 600 008.

+1cc to M/s.Karthikaa Ashok, Advocate, S.R.No.77457
+1cc to Mr.M.Karthikeyan, Advocate, S.R.No.77052
+2cc's to Mr.V.J.Arul Raj, Advocate, S.R.No.76818

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AR IV
CA(10/11/2017)