IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2017

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.No.10295 of 2003

Asthika Samajam
rep.by its General Secretary D.Ganesan
14, Venus Colony 1st Street
Teynampet
Chennai 600 018 .. Petitioner

Vs.

1. Chennai Metropolitan Water Supply and Sewerage Board
rep.by its Chairman
Chennai

2. The Area Engineer - VII
Chennai Metropolitan Water Supply and Sewerage Board
5, Sathyamoorthy Road
Chetpet, Chennai 600 031 .. Respondents

Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the 2nd respondent in his cut off notice No.2380 Ref.CMC No.07/113/1160/03 dated 27.3.2003 and quash the same.

For Petitioner .. Mr.C.Ramesh
For Respondents .. Mr.V.Manohar

ORDER

The petitioner owns a property bearing New No.2 Old No.14 (previously No.7A1 and 7B1 - Division 104), 1st Street, Venus Colony, Teynampet, Chennai-18, wherein the petitioner conducts spiritual discourses and other programmes for the public.

2. The Corporation of Chennai assessed the said property to property tax and when they demanded payment of property tax, the petitioner filed O.S.No.1227 of 1977 before VII Assistant Judge, City Civil Court, Chennai for a declaration that assessment of the property tax and demand for the same for the petitioner's property is illegal and unlawful. The said suit was contested

by the Corporation of Chennai and the same was decreed in favour of the petitioner on 31.3.1980. It appears that the said decree has attained finality and therefore, the petitioner is not paying the property tax to the Corporation of Chennai. However, the Chennai Metropolitan Water Supply and Sewerage Board issued a demand notice dated 27.3.2003, claiming water and sewerage tax for the period from 1989-90 to 2002-03, amounting to Rs.92,622/-. The petitioner filed the present writ petition challenging the demand and obtained stay.

3. It is the contention of the petitioner that when the petitioner has been exempted from payment of property tax to the Corporation of Chennai, the first respondent cannot levy water and sewerage tax.

4. The issue whether the property that is exempted from the payment of property tax should also be exempted from the payment of water and sewerage tax, came up before a Division Bench of this Court in W.A.No.239 of 2001 (Sree S.S.Jain Sthanak (prayer hall), c/o.Sree S.S.Jain Charitable Trust, rep.by its Managing Trustee Vs. Chennai Metropolitan Water Supply and Sewerage Board, rep.by its Chairman, Chennai) and by order dated 9.9.2009, this Court has held as follows:

> "5. We are not able to accept the contention of the learned counsel with regard to the levy and demand. Of course, the levy of water and sewerage tax has to be determined by the value of the property as determined by the Corporation for the purpose of determination of the property tax. Mere exemption granted in payment of property tax cannot be construed that the property has no value and the annual rental value cannot be determined. Only after determination of the rental value by the Corporation in accordance with the statutory provision, the demand of property tax has been determined. Of course, the levy and collection has been exempted by virtue of the order dated 25.01.1999. But that cannot be by any stretch of imagination be the impediment for the respondents authorities to levy and demand the water and sewerage tax. Till the exemption is granted in the application stated to have been filed by the appellant for exemption, the authorities/respondents are right in their levying and demanding the water and sewerage tax. That is the very reason given by the learned Single Judge for non suiting the appellant for quashing the demand."

5. This Court is bound the aforesaid judgment and therefore, the plea of the petitioner that the first respondent cannot levy water and sewerage tax on the ground that the

petitioner has been exempted from the payment of property tax to the Corporation of Chennai, cannot be sustained. However, before levying water and sewerage tax, the Corporation of Chennai should first assess the annual rental value of the property and only thereafter the first respondent can fix the water and sewerage tax and make a demand from the petitioner.

6. The following provisions of the Chennai Metropolitan Water Supply and Sewerage Act, 1978 may be relevant to decide this case:

> "2(l)(ii) " Property tax" means the property tax or the house tax as the case may be, levied and collected by any local authority having jurisdiction over the Chennai Metropolitan Area or part thereof.
>
> 34. Taxes leviable by the Board: (1) For the purposes of this Act, the Board shall levy on premises situated within its area
>
> (a) Water Tax; and
>
> (b) a sewerage tax
>
> (2) The taxes mentioned in sub-section (1) shall be levied at such rates as may be prescribed which in the case of water tax (shall not be more than thirty-five per cent and in the case of sewerage tax shall not be more than fifteen per cent of the property tax.)
>
> (3) The Board may, exempt any local area from the whole or portion of the water tax and sewerage tax on the ground that such area is not deriving any or the full benefit from the water supply or sewerage system, or the Board may remit a portion of such taxes not exceeding one half on the ground that the premises concerned has remained vacant.
>
> Explanation: For the purposes of this chapter, the expression " premises" shall mean any land or building.
>
> (4) Where water tax or drainage tax is comprised in the property tax levied and collected by the existing authority such existing authority shall reduce the property tax by an amount equal to the amount attributable to water tax and drainage tax."

From the above provision, it is clear that a property should be first assessed to property tax by the Corporation of Chennai and based on the assessment, the first respondent should levy water and sewerage tax in terms of Section 34(2) of the Chennai Metropolitan Water Supply and Sewerage Act, 1978. Though there is a decree in O.S.No. 1277 of 1977 in favour of the petitioner, yet this Court is of the view that the decree would enure to the benefit of the petitioner only in respect of demand and payment of property tax and not with regard to assessment of property tax. The decree in O.S.No.1277 of 1977 will not be a bar for the

Corporation of Chennai to assess the annual rental value of the petitioner's property.

7. In the result, this Writ Petition is allowed and the impugned notice dated 27.3.2003 is set aside. The respondents are directed to first have the property assessed to property tax by the Corporation of Chennai and thereafter demand water and sewerage tax from the petitioner. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ajr
To
1. The Chairman
Chennai Metropolitan Water Supply and Sewerage Board
Chennai

2. The Area Engineer - VII
Chennai Metropolitan Water Supply and Sewerage Board
5, Sathyamoorthy Road
Chetpet, Chennai 600 031

3. The Commissioner
Corporation of Chennai, Chennai-3.

+1cc to Mr.C. Ramesh, Advocate, S.R.No.8238

SVI(CO)
EU 01.03.17

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