IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2017

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
The Hon'ble MR.JUSTICE M.SUNDAR

W.P.No.18645 of 2014
and
M.P.No.1 of 2014

Non Such Tea Estates
rep. by its Manager, H.S.Mehta. ... Petitioner

-Vs-

1. The Commissioner of Land Administration,
   Chepauk,
   Chennai 600 005.

2. The District Collector,
   Nilgiris District,
   Ootacamund.

3. The District Revenue Officer,
   Udagamandalam.

4. The Revenue Divisional Officer,
   Office of the Revenue Divisional Office,
   Coonoor-643 102.

5. The Tahsildar
   Taluk Office,
   Coonoor-643 102.

6. The Executive Officer,
   Hulical Panchayat,
   Hulical Post,
   The Nilgiris. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records of the 1st respondent in her proceedings bearing R.C.No.E3/4018/2005 dated 30.06.2014 and quash the same.

For Petitioner	:	M/s.P.T.Asha for M/s.Sarvabhauman Associates
For Respondents	:	Mr.R.Vijayakumar Additional Government Pleader For RR 1 to 5
	:	MS.V.Durai Solaimalai for R-6

O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

On 03.01.2017, we had passed the following order:

''The petitioner has been found in possession of excess land to the extent of 1.95 Acres for which 'B' Memos have been issued since 1986, now lease amounts are sought to be determined for the same. The subsequent development has been that the possession has already been taken over by the respondents. 'B' Memo charges have been paid up to that date. Further, Rs.6,00,000/- has been deposited by the petitioner out of the demand of Rs.16,31,123/-.

2. The learned counsel for the respondents sought to justify the determination under the Revenue Standing Order BSO 24A which deals with grant of land and buildings at the disposal of the government for temporary occupation for non-agricultural purposes, while Clause (9) deals with levy of charge for the occupation.

3. However, in the present case, there is no grant of land and action has been taken under the Tamil Nadu Land Encroachment Act, 1905. That being the position, we are of the view that the determination has to take place in accordance with the said Act and not as per the Revenue Standing Orders.

4. It appears that there may be possibility of putting a quietus to the matter as possession has already been taken over and Rs.6,00,000/- stand deposited in Court. We, thus, put to the learned counsel for the respondents if that amount is released to the respondents and the issue is closed with the same.

5. The learned counsel for the respondents seeks some time to obtain instructions.

List on 12.1.2017.''

2.The petitioner was willing to put a quietus to the matter by treating the amount already deposited in Court of Rs.6,00,000/- as final amount, but learned Additional Government

Pleader states that he has obtained written instructions and the department is not willing to do so. He has produced the proceedings of the Principal Secretary / Commissioner of Land Administration, in Letter No.E3/4018/2005, dated 25.01.2017. The justification for the same is stated to be the fact that 'B' Memo charges are levied where encroachment is utilised for agricultural activities, but, in the present case, the petitioner had constructed a building and their activities are commercial in nature for which determination of rate as per the Tamil Nadu Encroachment Act, 1905, is not reasonable. The fact that the petitioner had given consent and also applied for allotment of suit land on lease basis is stated to weigh in favour of this determination.

3.We are unable to accept the plea of the learned Additional Government Pleader or the stand taken by the Principal Secretary / Commissioner of Land Administration. This is so as unless there is a lease of the land, admittedly, it was not so despite the petitioner seeking it, the determination cannot be on lease basis. In fact, the respondents themselves took action under the said Act and if that Act itself provides for method of determination of charges, in matters of revenue recovery, the respondents cannot say that the statutory provisions would not prevail, but that they give it so on some other basis. Section 3 of the said Act specifically provides for method of assessment of land unauthorisedly occupied.

4.Our intent was to see that the interest of revenue could be protected by appropriating the amount of Rs.6,00,000/- deposited by the petitioner in Court rather than having the levy determined under the said Act, as the amount may be much lower since 'B' memo payments have already been received. However, the stand of the Principal Secretary / Commissioner of Land Administration seems to be to the contrary.

5.We have, thus, no option but to quash the impugned demand with the direction that the said amount can be determined and recovered that is provided under the Act. Since that amount was already determined by 'B' memo charge, which stands paid, the petitioner would not be liable for paying any further amount.

Writ petition is, accordingly, allowed, leaving the parties to bear their own costs. The amount deposited in Court be released to the petitioner.

27.1.2017

FOR BEING MENTIONED

This Writ Petition having been posted on Tuesday, the Fourteenth Day of February 2017, under the Caption "For Being Mentioned" and pursuant to the order of this Court dt.27.1.2017 and made herein and in the presence of the abovesaid Advocate, the court made the following order:

The matter is mentioned today by the learned counsel for the petitioner. In the order passed on 27.1.2017, while the last sentence contains a direction "the amount deposited in Court be released to the petitioner:", it is now stated that the amount is not deposited in Court, but is with the Executive Officer of Hulical Panchayat/Respondent No.6. The Direction thus is modified for the said respondent to refund the amount to the petitioner within a period of fifteen days of the receipt of the copy of this order.

Registry is directed to issue the modified order copy to all parties.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sra

To

1. The Commissioner of Land Administration,
   Chepuak, Chennai 600 005.

2. The District Collector,
   Nilgiris District, Ootacamund.

3. The District Revenue Officer,
   Udagamandalam.

4. The Revenue Divisional Officer,
   Office of the Revenue Divisional Office,
   Coonoor-643 102.

5. The Tahsildar
   Taluk Office, Coonoor-643 102.

6. The Executive Officer,
Hulical Panchayat,
Hulical Post, The Nilgiris.

+1cc to M/s.Sarvabhauman Associates, Advocate, S.R.No.5113
+1cc to the Government Pleader, S.R.No.5267

W.P.No.18645 of 2014

SK(CO)
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