

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.28123 of 2017 and 12879 of 2016
and W.M.P.Nos.30214 of 2017, 11243 and 11244 of 2016

W.P.No.28123 of 2017

ANF Mohamed Iqbal

.. Petitioner

..Vs..

- 1.The Tahsildar/Deputy Collector,
Chennai Metropolitan Water Supply &
Sewerage Board - Area VIII,
No.217, 12th Main Road, Anna Nagar West,
Chennai - 600 040.
- 2.The Assistant Engineer,
Depot 104/Area VIII,
Chennai Metropolitan Water Supply &
Sewerage Board,
No.15 (Old No.71), Letangs Road,
Purasawalkam, Chennai - 600 084.
- 3.The Special Tahsildar, Revenue Recovery,
Chennai Metropolitan Water Supply &
Sewerage Board, Area VIII,
No.1, M.C.Road, Anna Park,
Chennai - 600 021.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records pertaining to the impugned notice dated 11.09.2017 issued by the first respondent and quash the same.

For Petitioner : Mr.R.Jagadeesan
for M/s.K.V.Subramanian Asso.

For Respondents : Mr.N.Ramesh
Standing counsel for CNWSSB

W.P.No.12879 of 2016

Habeeb

.. Petitioner

..Vs..

- 1.The Deputy Collector, Area NO.VII,
Chennai Metropolitan Water Supply &
Sewerage Board,
No.25, Sathyamoorthy Road, Chetpet,
Chennai - 600 031.
- 2.The Senior Accounts Officer (S.A.O.)
Egmore Division, Area No.VII,
Chennai Metropolitan Water Supply &
Sewerage Board,
No.25, Sathyamoorthy Road, Chetpet,
Chennai - 600 031.
- 3.The Special Tahsildar, Revenue Recovery,
Area V, Chennai Metropolitan Water Supply &
Sewerage Board, No.1, M.C.Road, Anna Park,
Chennai - 600 021. .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records pertaining to the notice before confiscation proceedings dated 04.08.2015 from the 3rd respondent and to quash the same.

For Petitioner : No appearance

For Respondents: Mr.N.Ramesh
Standing Counsel FOR CMWSSB

सत्यमेव जयते

COMMON ORDER

Heard Mr.R.Jagadeesan, learned counsel for M/s.K.V.Subramanian Associates, learned counsel appearing for the petitioner in W.P.No.28123 of 2017 and Mr.N.Ramesh, learned Standing Counsel appearing for the respondents in both the writ petitions.

2.The petitioner in W.P.No.28123 of 2017 is one Mr.A.N.F.Mohamed Iqbal, Son of Mr.A.N.F.Deensha. The petitioner in W.P.No.12879 of 2016 is Mr.Habeeb, Son of Mr.Fakrudeen. In

both these writ petitions, the petitioners have challenged a warrant notice issued by the respondent, Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB) proposing to take action against the petitioners for non-payment of water and sewerage tax for the period from II/2004-2005 onwards. The petitioners contended that the impugned proceedings have been issued without notice to the petitioners and they are separately contesting the revision of property tax for the building. One more submission which was made is by contending that the two different offices of the respondent Board have issued separate demand in respect of the same building.

3. When the writ petition in W.P.No.12879 of 2016 came up for admission on 06.04.2016, the Court while issuing notice of motion granted an order of interim stay. When the writ petition in W.P.No.28123 of 2017 came for hearing before me, the learned Standing Counsel for the respondent Board accepted notice and submitted that the petitioner has not paid the water and sewerage tax from the year 1997 and as on date, the total amount payable is Rs.14,40,817.40. The Court further recorded that the petitioner has paid a sum of Rs.2 lakhs on two dates, viz. 19.09.2017 and 27.09.2017 which was accepted as part payment. The writ petition was directed to be tagged along with W.P.No.12879 of 2016 and that is how the matter is before this Court today.

4. Learned Standing Counsel appearing for the respondents has filed a counter affidavit and a copy of which has been served on the learned counsel for the petitioner in W.P.No.28123 of 2017 today. Under normal circumstances, the Court would have granted time to the learned counsel for the petitioner to go through the counter affidavit and to give their response. However, considering the suppression of vital facts as made by the petitioner in the affidavit filed in support of the writ petition, this Court is not inclined to grant any adjournment. At the request of the learned counsel for the petitioner, the matter was passed over and it was taken up in the post lunch session. From the records placed by the learned Standing Counsel for the respondents which is a computer generated statement maintained in the official website of the Corporation of Chennai, it is seen that the owner of the property has paid the property tax as revised by the Corporation at the rate of Rs.57,930/- upto I/2016-2017 and in so far as II/2016-2017 is concerned, the owner of the property has remitted Rs.12,119/-. Thus the statement found in the official website of the Corporation of Chennai shows the balance tax and cheque penalty payable is Rs.1,62,671/-. The property has been assessed to tax in the name of Mr.Fakrudeen, who is the father of the petitioner in W.P.No.12879 of 2016.

5.Learned Standing Counsel appearing for the respondent Board produced a copy of the judgment in O.S.No.3316 of 2010 filed before the XIV Assistant City Civil Court, Chennai. The plaintiffs are three in number, namely, A.N.F.Ammanullah, A.N.F.Habeebullah and Iqbal. So far as Iqbal is concerned, the cause title given in the judgment does not give his full name or his initial. However, the second plaintiff is A.N.F.Habeebullah who appears to be none other than the petitioner in W.P.No.12879 of 2016, whereas he has given his name only as Habeeb. There is one more co-owner of the property, namely, A.N.F.Mohamed Iqbal. That apart, there appears to be one other co-owner, A.N.F.Ammanullah and he is the first plaintiff in the suit filed by the other plaintiffs and one other counsel along with A.N.F.Mohamed Iqbal is M.I.Javid Nazeem, who is stated to be his son. One undisputed fact is that the property continues to remain in the name of original owner Fakrudeen and the plaintiffs and the petitioners are all his legal heirs and the property tax assessment record has not been transferred in the name of the petitioners or the plaintiffs. However, some of the legal heirs have moved the Civil Court who filed the said suit for the relief of (a) mandatory injunction to direct the defendants (CMWSSB) to follow the procedure of law as contemplated under the Tamil Nadu Water Supply and Drainage Board Act, 1970 (TNWSDB Act) and the Chennai City Municipal Corporation Act, 1919 (CCMC Act) in the matter of collection of water tax and water charges; (b) to grant a decree of permanent injunction restraining the defendants from interfering with the peaceful possession of the suit schedule property; (c) mandatory injunction directing the defendants to issue fresh notice to the plaintiffs for revision of annual value with the calculations done as provided in the CCMC Act and the TNWSDB Act, (d) mandatory injunction directing the defendants to restore metro water supply to the suit premises and (e) mandatory injunction to produce working sheet for calculation of annual value and the water tax arrived at by the defendants for fixing the rate of water tax for the suit property by the Court on the basis of the said two enactments.

6.The suit was pending before the Civil Court from the year 2010. Admittedly, there was no order of interim injunction granted. Thus, the respondent Board was fully justified in proceeding with the recovery. When a demand notice was sent, the petitioners have filed the present writ petitions without disclosing about the pendency of the suit. Parallely the suit was being taken up in the Civil Court and ultimately, by judgment and decree dated 24.10.2017, the suit has been dismissed. A defence is being raised stating that one of the plaintiff is not a writ petitioner, etc. This hardly matters in the present case since the property continues to remain assessed in the name of the original owner Fakrudeen (since deceased).

Thus all the legal heirs are bound by the judgment and decree that has been passed. The Court is satisfied that the non-disclosure of the matter before the Civil Court is fatal to the present proceedings.

7.Thus, for the above reasons, the writ petitions are dismissed and the interim order granted in W.P.No.12879 of 2016 stands vacated. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

cse

To

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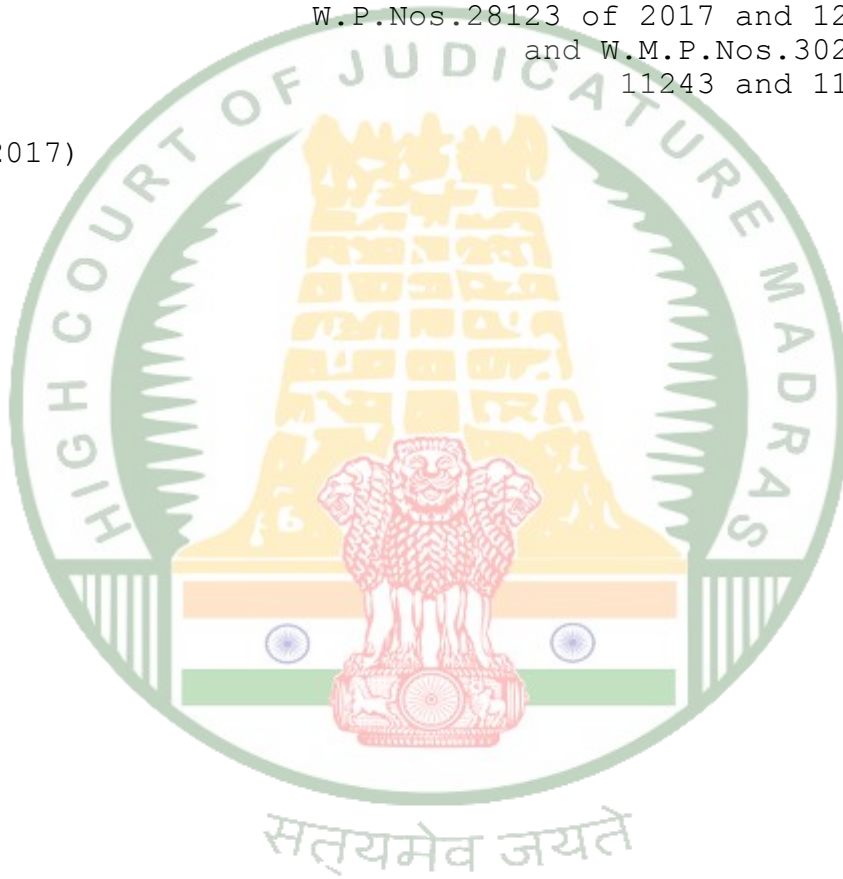
5.The Senior Accounts Officer (S.A.O.)
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Chennai - 600 031.

+1cc to Mr.N.RAMAN Advocate, S.R.No. 80349

+1cc to Mr.K.V.SUBRAMANIAM Advocate, S.R.No. 81175

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11243 and 11244 of 2016

GMI (CO)
TR(04/12/2017)



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