IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P. Nos.5598 of 2011 & 9649 of 2012
and
M.P.Nos.2 to 4 of 2011 and 1 & 2 of 2012

SHREE AMBIKA SUGARS LTD
NO.112, UTHAMAR GANDHI SALAI,
NUNGAMBAKKAM, CHENNAI - 34. ... PETITIONER IN BOTH WPs

Vs

1. THE STATE OF TAMILNADU
REP BY THE SECRETARY TO THE GOVERNMENT,
DEPARTMENT OF
FORT ST.GEORGE, CHENNAI - 9.

2. THE DISTRICT COLLECTOR AND
PANCHAYAT INSPECTOR,
OFFICE OF THE RURAL DEVELOPMENT DEPUTY INSPECTOR,
THANJAVUR - 01.

3. PRESIDENT,
KOTTUR VILLAGE PANCHAYAT,
THIRUPPANANDAL UNION,
THANJAVUR DISTRICT. ...RESPONDENTS IN BOTH WPs

Prayer in W.P.no.5598 of 2011: Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of certiorarified mandamus calling for the records comprised in impugned notice bearing reference number 5066/2010/A8 dated 21.10.2010 and pursuant notice dated 08.11.2010 issued by the 2nd and 3rd respondents respectively, quash the same as being illegal, arbitrary and in violation of the provisions of the Tamil Nadu Panchayats Act, 1994 (hereinafter referred to as the Act) and the Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules 1999 and consequently direct the respondent to reimburse the petitioner to the extent of Rs.11,82,561/- being the amount already paid by the petitioner.

Prayer in W.P.no.9649 of 2012: Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari calling for the records comprised in impugned dated

05.01.2012 issued by the 3rd respondent, quash the same as being illegal, arbitrary and in violation of the provisions of the Tamil Nadu Panchayats Act, 1994 (hereinafter referred to as the Act) and the Tamil Nadu Village Panchayats (Assessment and collection of Taxes) Rules, 1999.

For Petitioner in both WPs : Mr.K.Prahalad Bhat for Mr.R.Parthasarathy

For Respondents in both WPs : Mr.S.T.S.Murthy, Additional Advocate General, assisted by Mr. P.Chinnadurai

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COMMON ORDER

Heard Mr.K.Prahalad Bhat for Mr.R.Parthasarathy learned counsel for the petitioner and Mr. S.T.S.Murthy, learned Additional Advocate General appearing for the respondent.

2. The petitioner is a sugar factory having itself located in Kottur Panchayat in Thirupanandal Panchayat Union in Thanjavur District. In this writ petition the petitioner has challenged demand of property tax with effect from 2007-08 to 2009-10.

3. The petitioner has challenged the impugned notices as being in total violation of the provisions of the Tamil Nadu Panchayats Act 1994, in particular the provisions of Section 172. However, it is submitted the impugned notices have been issued without providing any reasons whatsoever for increase in the rate of house tax, that too by 98% by a non speaking order. Further, the impugned notices are liable to be set aside on the ground of violation of principles of natural justice. Further, the impugned notices seek to collect enhanced property tax with retrospective effect from 2007-08, which is violation of Article 265 of the Constitution of India. Further, the petitioner was not put on notice about any revision of property tax and without affording opportunity, the respondents could not have demanded such huge difference in property tax, that too with retrospective effect.

4. The learned counsel for the petitioner made elaborate submissions and pointed out various representations given by the petitioner and also contributions made by the petitioner to the village panchayat. They have an established Sugar Mill and power plant with a huge investment of Rs.100 crores and provided employment opportunities both directly and indirectly to the

people of the respondent panchayat as well as the residents of the Thirupanandal Panchayat Union. That apart, the petitioner has also disputed the correctness of the rate of taxes which was adopted in such other manner.

5. The learned Additional Advocate General seeks to sustain the impugned notices by referring to the factual details and submitted that the petitioner has not remitted the enhanced property tax for several years and the arrears as on 2017-18 is Rs.31,96,539/- and without collection of property tax, the welfare measures cannot be implemented by the Panchayat for the village. It is further submitted that if the petitioner is aggrieved, then he has to avail the appeal remedy under the Act and the writ petition is not maintainbale.

6. I have heard learned counsel for the parties more than two occasions and found that conduct of the respondent in demanding enhanced property tax with retrospective effect with an increase of 98% is arbitrary. Any increase of property tax should be preceded by a proper assessment of tax payable. This is more so, when there is a revision of property tax. Apart from the provisions of revision prescribed under the Act, if the local body proposes to revise the property tax, there should be a cause of auction to do so, such as, additional constructions, for providing better amentities, change of users etc. There is nothing on record to show that the petitioner had done any of these for warranting revision of property tax.

7. That apart the respondent did not issue any notice to the petitioner prior to revising the property tax. A revision of tax assessment without opportunity to the assessee is bad in law. All these would be sufficient to set aside the impugned proceedings and the natural consequence would be to remit the matter to the respondents for fresh consideration. However, in the instant case, I do not propose to tread such a path, considering the welfare of the respondent panchayat and also taking note of the fact that the petitioner has made huge investment in the village and have generated lot of employment in the locality. Therefore, I feel that a balanced approach would bring about a solution to the problem.

8. However, if one of the parties is not agreeable to the solution then finality cannot be arrived at. I sincerely feel and hope that the petitioner being a limited company with corporate managers will take pragmatic decision. Equally, Additional Advocate General will advice the respondents as it would be in the best interest of the Panchayat. Therefore, while setting aside the impugned proceedings, this Court proposes to issue directions so that the property tax can be fixed at a particular rate which in all fairness should be accepted by both parties.

9. In the result the writ petition is allowed and the impugned order is set aside with the following directions:

1.Property tax for the assessment year 2007-08, 2008-09 and 2009-10 is fixed at Rs.2,50,000/- per year.

2.The property tax for the Assessment year 2010-11, 2011-12and 2012-13 is fixed at Rs.2,75,000/-.

3.For the Assessment year 2013-14, 2014-15, 2015-16 and 2016-17, the property tax is fixed at Rs.3,00,000/- per year.

4.The respondent Panchayat shall give credit to the amounts already paid and issue a demand to the petitioner for clearing the arrears of property tax upto Assessment year 2016-17 based on the above fixations.

5.

10. The petitioner on receipt of the demand notice, shall clear the entire arrears within a period of 60 days from the date on which such demand notice is issued by the respondent panchayat. The respondent panchayat would be entitled to make further revision of property tax only after issuing notice to the petitioner and strictly adhering to the procedure contemplated under the Act.

11. It is made clear that this order has been passed considering the peculiar facts and circumstances of the case that the petitioner has made substantial investment by establishing sugar mill and power plant in the village, which was declared as a backward area and it has provided substantially, direct and indirect employment to the residents of the Thirupanandal area in general and the residents of Kottur Panchayat Village in particular. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To
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THIRUPPANANDAL UNION,
THANJAVUR DISTRICT.

+2 cc to Mr.R.Parthasarathy,advocate,sr.69384

+1 cc to Mr.P.Chinnadurai, advocate,sr.69381

+1 cc to Govt.Pleader,sr.69870.

krd 3/11