

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 17.08.2017

JUDGMENT PRONOUNCED ON : 05.10.2017

CORAM

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.Nos.7836 & 7837 of 2002

Madura Coats Private Limited
By its Vice President Legal & Company Secretary
New Jail Road,
Madurai - 625 001. .. Petitioner in both Wps
[Cause-title amended as per order dated 22.11.2010 made in
WMP.Nos.727 & 728 of 2010 in W.P.Nos.7836 & 7837 of 2002]

Vs.

1.The State of Tamil Nadu
Rep. by its Secretary to Government
Municipal Administration and Water Supply (ELEC) Department
Fort St.George, Chennai - 600 009.

2.The Thoothukudi City Municipal Corporation
Rep. By its Executive Authority
Tuticorin. .. Respondents in both Wps

[Cause-title amended as per order dated 01.3.2013
made in WPMP.Nos.55 & 56 of 2013 in W.P.Nos.7836 & 7837 of
2002]

Prayer in W.P.No.7836 of 2002 : Writ Petition filed under
Article 226 of the Constitution of India, praying for issuance
of Writ of Certiorarified Mandamus, calling for the records of
the respondents in connection with G.O.Ms.No.127 Municipal
Administration & Water Supply (ELEC) Department dated 27.05.1999
and to quash the said Government Order and consequently to
direct the respondents to forbear from imposing, levying or
demanding any tax for the property of the petitioner without due
notice of hearing and in contravention of the provisions of the
Tamil Nadu District Municipalities Act, 1920.

Prayer in W.P.No.7837 of 2002 : Writ Petition filed under
Article 226 of the Constitution of India, praying for issuance
of Writ of Certiorarified Mandamus, calling for the records of
the second respondent in ROC.No.47830/2001/AS and to quash the
proceedings dated 21.12.2001 and the consequential proceedings

dated 21.01.2002 made by the second respondent therein and to direct the respondents to forbear from imposing, levying or demanding property tax for the mill premises of the petitioner from 01.10.1998, except in accordance with Section 82(2)(a) (ii) of the District Municipalities Act and till deletion of the said provision.

[prayer amended as per order dated 14.11.2013 in WMP.No.225/2013 in W.p.No.7837/2002]

For Petitioner : Mr.T.M.Hariharan
(in both Wps)

For Respondents : Mr.A.N.Thambidurai
(in both Wps) Special Government Pleader [R1] Spl Gp
Mr.Babu Rangasamy [R2]

COMMON ORDER

[Order of the Court was delivered by N.SESHASAYEE,J.]

The petitioner herein is a Private Limited Company and has been a leading manufacturer of textiles in this country for over a century now. It has come forward with two separate writ petitions, both associated with assessment of property tax, during the General Revision of Property Tax that took effect from 1.10.1998.

2.1 The petitioner has its factory facility within the limits of the second respondent. Its units bear door Nos.247 to 259, 249A, 249B, 249D to 249F, 85 to 89, 247A, 248A to 248C, 260, 2 to 13, 13A to 13E, 14, 15, 15A, 15B, 16 to 18, 20 and 80, Beach Road, Tuticorin. They *inter alia* comprise of office, factory buildings, godowns, power house, pumping room, boiler house, fire station, office building, security post, canteen etc., The units have been functioning from 1889, and the age of the aforesaid buildings as at the time of filing of the writ petition ranged between 75 years to 110 years. These buildings do not belong to a class of buildings that are, or, can be ordinarily be let out.

2.2 Be that as it may, General Revision of Property Tax in the State took place and was to take effect from 01-10-1998. The said revision saw alarming increase of property tax payable by the petitioner for the buildings stated from Rs.3,24,072/- to Rs.7,42,900/-. The property tax is assessed as a percentage of the annual value of the property concerned, and the annual value which thus forms the foundation for fixation of the property tax of the buildings of the petitioner itself was enhanced from Rs.16,74,436/- to Rs.69,09,890/-. This in essence represents a

mind boggling increase by 313%. However, the method adopted for revising the property tax runs counter to, and inconsistent with, the provisions of the Tamil Nadu District Municipalities Act, 1920 (hence forth will be referred to as 'the Act'/District Municipalities Act). As per Proviso (a)(ii) to Sec. 82(2) of the Act, the annual value of the premises of the petitioner should be deemed to be 6% of the total estimated value of the land and the estimated cost of erecting the buildings, less the depreciation on the latter. Based on an illegal assessment of property tax, the petitioner had paid property tax for six half years, i.e., up to 30-09-2001. The amount which has been collected in excess of what is justly payable itself constitutes Rs.28,61,232/-. The buildings as stated are more than a century old and they are not ordinarily capable of being let out. Besides, the properties in question fall within the Coastal Regulatory Zone and as such there is no possibility for any fresh construction in the premises of the petitioner-company. In this backdrop of events, on 16.11.2001, the petitioner preferred a revision before the second respondent under Rule 11 of the Schedule IV of the District Municipalities Act that pertains to Taxation and Finance Rules. The Commissioner of the Municipal Administration, Vide his communication dated 21.12.2001 in ROC.No.47830/2001/A-8, declined to entertain the revision on the ground that the Rule 11 of the Schedule IV of the Act has been deleted Vide G.O.Ms.127, Municipal Administration and Water Supply (ELEC) Department, dated 27.5.1999. This situation has prompted the petitioner to move this Court with separate writ petitions seeking writ of certiorarified mandamus (a) for quashing the G.O.Ms.127, Municipal Administration and Water Supply Department referred to above and to forbear the respondents from demanding any property tax contrary to provisions of Tamil Nadu District Municipalities Act; and (b) to quash the proceedings of the Municipal Commissioner dated 21-12-2001, declining to entertain the revision preferred by the first respondent and to forbear the respondent from imposing/demanding any property tax for the various units of the petitioner, contrary to Proviso (a)(ii) to Section 82(2) of the District Municipalities Act, 1920.

3. In the counter preferred by the second respondent, following objections are taken :

- There took place a General Revision of Property Tax from 01-10-1998 in terms of Rules 8 (that provides for quinquennial revision of property tax) Schedule IV of Tamil Nadu District Municipalities Act, 1920. The special notices for revision of property tax as contemplated in Rule 9 of Schedule IV was served on the assessee/petitioner on 21-12-2001 and objections/representations to the intended tax required to be presented within the statutorily prescribed 30 days from the date of receipt of such notices too were invited, but the petitioner opted not to offer any representations to the proposed revision of

property tax to take effect from 01.10.1998. Hence, what was proposed under the special notices stood confirmed. The petitioner had also paid the property tax so fixed up to 30-09-2001. The petitioner did not avail the opportunities statutorily provided either under Rule 9 or Rule 13 of Schedule IV of the said Act. It must however, be stated to the credit of the petitioner that it did submit its representations twice objecting to the revised property tax, first Vide its communication dated 16.11.2001 and the second Vide another communication date 15-01-2002, but the same could not be considered under any of the provisions of the Tamil Nadu District Municipalities Act, 1920. Besides, the grounds on the basis of which reduction of tax was required too were found baseless.

- So far as deletion of Rule 11 of Schedule IV of the Tamil Nadu District Municipalities Act, 1920 is concerned, the Executive Order of the Government in G.O.Ms.127, Municipal Administration and Water Supply Department dated 27.5.1997 is concerned, the same has been accorded legislative sanction when the same was approved by the State Legislature as required under Section 305 (1) and 305(A) of the said Act. The fact remains that the petitioner has failed to avail the statutory opportunities otherwise available to it under Rules 9 and 13 of Schedule IV.
- So far as the annual value of the petitioner's property is concerned, the petitioner has not proved that the same has decreased after they chose to accept the fixation of property tax during the general revision that took effect from 01-10-1998. There is procedural impracticality in fixing property tax every half year depending on an alleged increase or decrease in the value of the property.
- There is no foundation for the allegation of the petitioner that the value of its properties in question suddenly declined after they opted to accept the revision of property tax from 01-10-1998.
- As to the applicability of Section 82(2) Proviso (a)(ii) of the Act is concerned, there is no need to apply the same during quinquennial revisions and the same is applicable only for assessing property tax for newly constructed buildings. To infuse uniformity in the method adopted by all the Municipalities in the State during the quinquennial revision of property tax from 01.10.1998, a system was adopted whereby worksheets of the revised taxes have been communicated to the assesseees. This was also extended to the petitioner herein. Ample opportunities too were given to the assesseees, including the petitioner, but so far as petitioner is concerned, it did not choose to come up with

its objection. At any rate, it ought to have preferred its objection within the statutorily prescribed period.

4. There are two parts to the petitioner's contention. One pertains to its challenge of G.O.Ms.No.127 Municipal Administration and Water Supply (ELEC) Department, dated 27.5.1999, where under, Rule 11 of the Act that originally provided for filing a revision to the Commissioner of Municipality challenging the proposed revision of tax was deleted. The other is its insistence that property tax be collected only in terms of Section 82(2) Proviso (a)(ii) of the Act, upon quashing the proceedings under which the Commissioner of Municipality has rejected the revision filed by the petitioner in view of G.O.Ms.127 referred to above.

5. As to the first point, this is a prayer sought in W.P.No.7836 of 2002. A remedial forum of revision, appeal or review are statutorily created and as long as there is legislative competence and statutory sanction to create, delete or modify anyone of this remedial procedure, one cannot take an exception to the same. The respondents have contended that the impugned G.O.127 has been approved by the legislature in terms of Sec.305 of the District Municipalities Act, which empowers the State Government to alter, add to or cancel either prospectively or retrospectively *inter alia* Schedule IV dealing with Taxation and Finance Rules. There is no challenge before this Court that the Executive Order deleting Rule 11 of Schedule IV of the Act lacks legislative or statutory sanction, and necessarily the same cannot be entertained at this point of time. Secondly given the nature of contest raised, which would be discussed in paragraphs below, it is also not required to go into this question either.

6. The second objection raised by the petitioner is significant. It has preferred a revision challenging the revision of property tax, unaware perhaps of the fact that the very provision that originally provided for preferring a revision to the Executive Authority of the Municipality to reduce the tax to which it is liable for the forthcoming half year on the ground that the annual value of the property in respect of which the tax is imposed has decreased since the assessment of the property tax was last revised. If G.O.127, Municipal Administration and Water Supply (ELEC) Department, dated 27.5.1999 is valid, then what the Municipal Commissioner has done is only appropriate and legal.

7. But there is a larger question which still requires to be addressed. Whether the foundation for revising the property tax, as adopted by the second respondent is consistent with Section 82(2) of the Act. Section 82 of the Tamil Nadu District Municipalities Act, 1920 reads as follows :

82. Method of assessment of property:- (1) Every building shall be assessed together with its site and other adjacent premises occupied as an appurtenance thereto unless the owner of the building is a different person from the owner of such site or premises.

(2) The annual value of lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to let from month to month or from year to year ²[less a deduction in the case of buildings, of ten per cent of that portion of such annual rent which is attributable to the buildings alone, apart from their sites and adjacent lands occupied as an appurtenance thereto;] and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever;

Provided that -

³[(a) in the case of
(i) any Government or railway building;] or
(ii) any building of a class not ordinarily let the gross annual rent of which cannot, in the opinion of the ⁴[Executive Authority], be estimated,

the annual value of the premises shall be deemed to be six per cent of the total of the estimated value of the land and the estimated present cost of erecting the building after deducting for depreciation a reasonable amount which shall in no case be less than ten per centum of such cost; ⁵[***].

¹[(aa) ...

³[(3)]

8. The second respondent states that Section 82 of the Act has no application for revision of property tax and has relevance only for new assessment, implying thereby only for newly constructed buildings. If Section 82 of the Act is closely read, it prescribes the method for assessing the property tax merely. There is no provision or expression anywhere in the Act that is indicative of a restricted application of Sec.82 to only newly constructed building, or borrow the very expressions of the respondent, 'new assessment'.

9. The Commissioner of Municipal Administration Vide his Circular in ROC.No.60572/98/R1 dated 31.12.1998 has issued some instructions to be followed during General Revision of Property Tax . The relevant paragraph in the circular which is essential for the current purpose is extracted and reproduced :

" The attention of all the Municipal Commissioners is invited to the Fax Message communicated through the Regional Directors of Municipal Administration cited wherein the revised ceiling fixed for enhancement of property tax has been indicated as follows :-

- 1) Owner occupied Residential Buildings :Enhancementshould not exceed 25%
- 2) Rented Residential Buildings :Enhancement should not exceed 50%
- 3) Commercial Buildings :Enhancementshould not exceed 100%
- 4) Industrial Buildings :Existing ceiling of 150% retained."

It is further stated that this circular is intended to bring about transparency in the matter of revising the property tax and to eliminate scope for manipulation and discretion at all level.

10. Primarily, any taxing statute should be strictly interpreted and where there are more than one interpretations possible, the one in favour of the assessee should be preferred. If the circular referred to above had the effect of capping the property tax at a level lower than what is payable based on increase in annual value of the property then inasmuch as it confers a benefit on the assessee, one cannot take exception to the fact. However, when it introduces a mechanical process of not involving the statutorily prescribed method or parameters and attempt to fasten a tax liability which is more than what would be statutorily payable, then it has to fail to that extent. No circular can override a statute and if ever it runs counter to what the statute has prescribed the statute would prevail and its supremacy needs to be established.

11. As per Sec.82 (2) of the District Municipalities Act, the annual value of lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to let from month to month or from year to year. **The basis therefore for determining the annual value is not the actual**

value of the land and building, but its estimated annual rental value. And the legislature has foreseen the existence of classes of buildings or properties that are not so ordinarily let out. It therefore, has prescribed a method for assessing the annual value of that class of buildings in the Proviso to Sec.82 (2). It provides, that where annual rental value cannot be reasonably be estimated for those class of buildings that are not ordinarily let out annual value of the premises shall be deemed to be 6% of the total of the estimated value of the land and the estimated present cost of erecting the building after deducting for depreciation a reasonable amount which shall in no case be less than 10% of such cost.

12. The objection of the petitioner is that its buildings are not ordinarily let out, and hence they fall within the category of buildings covered by Proviso (a)(ii) to Sec.82(2) and hence in determining their annual value, the Municipality should adhere to the formula provided in the said proviso. This Court finds considerable merit in the argument. None shall be taxed in this country, except in strict adherence to the method prescribed there for by the statute imposing the tax. And, should it be altered, then it can be done only by a legislative process and not by a process or procedure dehors it. The working sheets appended to the special notices issued under Rule 9 on the face of it go tangential to the method prescribed in Sec.82(2) since it ignores (a) first to state whether the buildings in question are capable of being ordinarily let out and if so; and (b) if they are so, why their annual value was not arrived in the manner provided under Proviso (a)(ii) to Sec.82(2) of the Act?

13. It is true the relief of certiorari is not focused at the special notices or the working sheets but on G.O.Ms.No.127 and also on the proceeding of the second respondent refusing to entertain a revision purportedly made under Rule 11, that stood deleted under the said G.O. A palpable illegality affecting the rights of citizens cannot go unaddressed merely because the format in which the relief is sought is wrongly phrased. There indeed a mandamus part to the relief sought which can be addressed independent of the need to quash any proceedings that are challenged. It might be true that the petitioner may not have utilised the opportunity thrown at it under Rule 9 of Schedule IV. But, even there is no certainty about this. While the affidavits supporting the writ petitions are silent as to the date of service of Rule 9 notice on the petitioner, the second respondent in paragraph 4 of his affidavit would state that the said notice was served on the petitioner on 21-12-2001. But the same respondent also avers in its affidavit that the petitioner had submitted two representations for reduction of property tax and the first of the two is dated 16-11-2001. If the statements in the counter affidavit are accepted then it would indicate that the petitioner had sent his representation

even prior to service of Rule 9 notice on it. Could it be true in the context? But what is even more important here is that the petitioner's the objection is not about crossing the 't' or dotting an 'i' in the working sheet attached to the Rule 9 notice, but is about the legality or the absence of it in computing the annual value of its properties in terms of Sec.82 (2) of the Act. As already indicated annual rental value of the property which is not ordinarily let out shall be 6% of the estimated value of the property. This is a legislative directive provided in Proviso (a)(ii) to Sec.82(2) of the District Municipalities Act. The 6% factor cannot be ignored nor can be discarded by any instrumentalities of the State, which the second respondent is, unless the legislature considers it otherwise. This apparent and patent illegality cannot be let to survive another day and be consumed by procedural debates.

14. In the result, W.P.No.7836 of 2002 is dismissed. W.P.No.7837 of 2002 is partially allowed and the impugned proceedings dated 21.12.2001 and 21.01.2002 are quashed and remanded to the second respondent to consider (a) whether the properties of the petitioner now in question fall within the category of buildings that are not ordinarily capable of being let out, and if it were so, then to compute the annual value of the properties in terms of Proviso (a)(ii) to Sec.82(2) of the Act after affording the petitioner an opportunity of being heard in the matter and to conclude the entire process within twelve weeks from the date of receipt of copy of this order. Until the second respondent takes a decision in the matter, the petitioner shall pay the property tax as is being currently paid and the tax paid shall be adjusted against the tax determined as payable in terms of the proceedings of the second respondent to take place pursuant to this order. No costs.

ds

सत्यमेव जयते

Sd/-

Assistant Registrar [CS VI]

/TRUE COPY/

Sub-Assistant Registrar

WEB COPY

To:

1.The Secretary to Government

State of Tamil Nadu

Municipal Administration and Water Supply (ELEC) Department

Fort St.George, Chennai - 600 009.

2.The Executive Authority

The Thoothukudi City Municipal Corporation

Tuticorin.

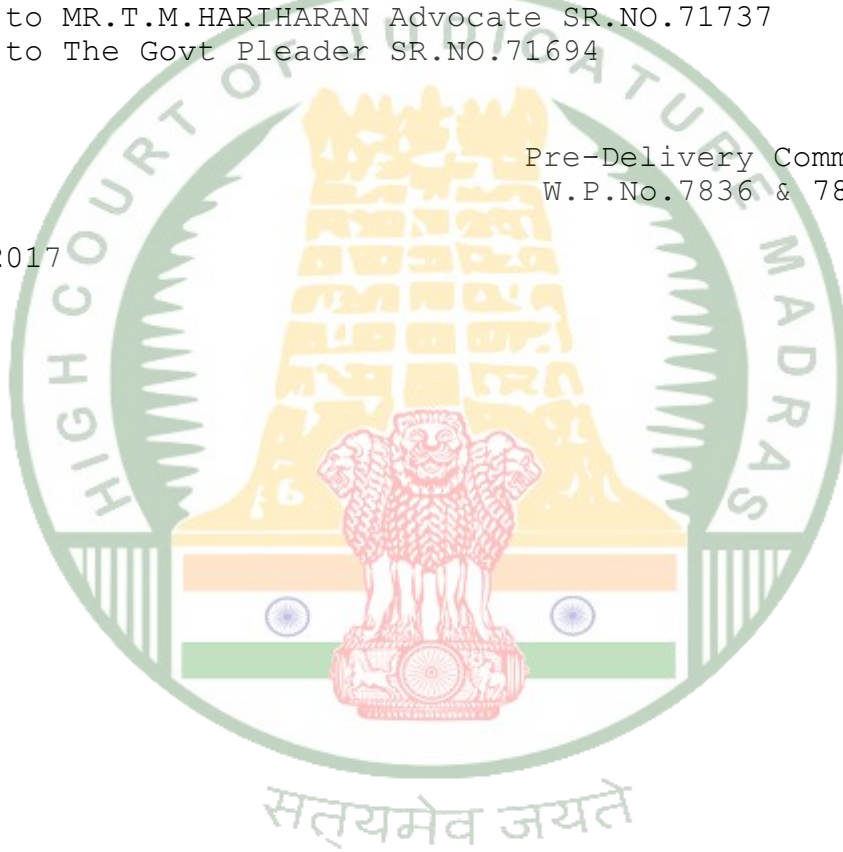
+1CC to M/S.BABU RANGASAMY Advocate SR.NO.71446

+1CC to MR.T.M.HARIHARAN Advocate SR.NO.71737

+1CC to The Govt Pleader SR.NO.71694

Pre-Delivery Common Order in
W.P.No.7836 & 7837 of 2002

VD[CO]
MK:28/10/2017



WEB COPY