IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2018

CORAM
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.5055 of 2014
and
W.M.P.No.1 & 2 of 2014

M/s. Victory Electrical Limited
Rep by its Manager-Operation,Mr.B.V.R.Bhaskar,
850/64/B,Near Royal Enfield Ltd,
Thiuvottiyur, Chennai - 19. ... Petitioner

Vs

1. The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai -3.

2. The Zonal Officer -I,
Revenue Department,
Corporation of Chennai,
Zone I, Ward No.05,
Chennai - 19.

3. The Assistant Revenue Officer-I,
Revenue Department,
Corporation of Chennai,
Zone I, Ward No.05,
Chennai - 19. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for an issuance of Writ of Certiorarified Mandamus, calling for the records of the respondent relating to the impugned notice dated 07.02.2014 issued by the second respondent under section 379(A) (1) of Chennai City Municipal Corporation Act IV of 1919 to M/S.Hackbridge Hewittic and Easun Ltd., and quash the same and directing the respondents to remove the lock and seal put up by them in the premises of the petitioner company at No.850/64/B, Near Royal Enfield Ltd., Thiruvottiyur,Chennai-19, so as to enable them to carry on their repair and service work of transformers thereat.

For Petitioner : Mr.H.Mohammed Farook

For Respondents : Mr.A.Nagarajan
Standing Counsel

ORDER

The impugned notice dated 07.02.2014, issued by the 2nd respondent under Section 379 (A) (1) of Chennai City Municipal Corporation Act IV of 1919 to M/s.Hackbridge Hewittic and Easun Ltd, is under challenge in this writ petition and further, a direction is sought for to direct the respondents to remove the lock and seal put up by them in the premises of the petitioner Company at No.850/64/B, Near Royal Enfield Ltd., Thiruvottriyur, Chennai-19, so as to enable them to carry on their repair and service work of transformers.

2. The petitioner states that the petitioner Company was engaged in manufacturing electrical transformers during the year 2008 under the name and style of ''Victory Electricals Limited'' in rented premises at No.850/64/B, near Royal Enfield Ltd., Thiruvottriyur, Chennai-19 and the property was belonged to the M/s.Hackbridge Hewittic and Easun Limited. Previously, the property was in the territorial jurisdiction of Thiruvottriyur Municipality and now, it is within the greater Chennai Corporation, more specifically, in Zone No.1.

3. The grievance of the writ petitioner is that the impugned notice was issued without following the procedures contemplated in the Chennai City Municipal Corporation Act, 1919 and no notice was given to the petitioner's Company as required under the Statutes and no inspection was conducted by the authorities to verify the nature of the work and the activities being done in the said premises. The respondent officials have not taken any attempts to know the particulars of the occupants in the premises. Thus, the principles of natural justice has been violated. The petitioners were carried out the service and repair work of transformers and therefore, they have to get licence from the Corporation of Chennai under the Chennai City Municipal Corporation Act, 1919. It is contended that the reference is pending before the BIFR under the Sick Industrial Companies (Special Provisions) Act, 1985. Under these circumstances, no coercive or distress proceedings can be initiated by the respondent against the petitioner Company for recovery of property tax amount.

4. The learned counsel appearing for the respondents states that as of now, the petitioner is not running any such business or the Company in the said premises and the building in the property was also demolished. The petitioners are proposing to form layouts to sell the area as plots. In the event of allowing such things, it would be the duty for the Corporation to collect property tax arrears.

5. The writ petitioner is a chronic defaulter of payment of property tax dues. The petitioner now, without clearing the

property tax dues, are proposing to form layout and sell the plots to the third persons. It would cause prejudice, in the event of allowing the writ petitioner to form layout and sell the plots to the third person. If the interest of the third persons are created, it would be difficult for the respondent Corporation to collect the property tax dues. Thus, the writ petition deserves to be rejected.

6. This Court is of an opinion that the conduct of business, carrying of repair works or trade in the particular property is altogether a different issue. However, an owner or an occupier of the property is liable to pay the property tax as per the assessment made by the Chennai Corporation in respect of the premises under the occupation of the writ petitioner. It is the duty mandatory on the part of the writ petitioner to pay the property tax dues. The dues are not paid with effect from 2010 onwards. Thus, this Court is of an opinion that the writ petitioner is liable to pay the entire arrears of property tax and thereafter, form a layout. In the event of allowing the petitioner to form layout and to sell the property to the third person, then the collection of property tax by the Corporation will be prejudiced.

7. Thus, the grounds raised by the writ petitioner that no opportunities were given before issuing show cause notice, deserves no consideration, in view of the fact that the notice was issued by the Corporation under Section 379 A of the Chennai City Municipal Corporation Act, 1919.

8. The impugned notice states that the writ petitioner has to stop the trade activities and restore the premises in its original condition. The learned counsel appearing for the respondents states that the notice itself is an opportunity provided to the writ petitioner to submit their explanation / objections, if any and thereafter, the closure order will be passed and only after the issuance of the closure order, the competent authority will lock and seal the premises. This being the procedures being followed by the Chennai Corporation, the writ petitioner has challenged the very issuance of notice and therefore, the writ petition is not maintainable.

9. This Court is of an opinion that no writ petition can be entertained against the showcause notice in a routine manner. Judicial review against the showcause notice is certainly limited. A writ against the notice can be entertained, only if the same has been issued by an incompetent authority having no jurisdiction or if an allegation of malafides are raised or if the same is in violation of the statutory rules in force. Even in case of raising allegation of malafides, the authority against whom such an allegation is raised, to be impleaded as a party respondent in the writ proceedings in his personal capacity. In the absence of any one of the legal grounds, no

writ petition can be entertained against the show cause notice.

10. This apart, now the writ petitioners have proposed to form layout without paying the arrears of property tax due to the Chennai Corporation. Thus, no leniency or misplaced sympathy can be shown in respect of the payment of tax, as the same will affects the right of all other citizens residing within the jurisdiction of Chennai city.

11.The State provides infrastructure facilities and other amenities to the citizens only from and out of the collection of tax amount from the citizens. In respect of Chennai City, the Corporation is providing various amenities, infrastructures and other facilities to the citizens by collecting a tax from the citizen, residing within the territorial jurisdiction of Chennai City. In the event of non payment of taxes by few individual, the rights of all other citizens will be affected. Non payment of the property tax by few individuals, it will infringe the rights of all other persons. When the infrastructure facilities and other amenities are provided for the welfare of the citizen at large, every citizen is bound to pay the property tax and other statutory charges and in the event of non payment, it is to be construed as they are infringing the constitutional rights of all other citizens, who all are paying tax promptly. Thus, there cannot be any leniency in respect of collection of property tax and other statutory charges from the citizens.

12. The authorities competent in this regard are duty bound to be vigil and collect the property tax and other statutory charges from the citizens without any delay. The Commissioner, Chennai Corporation, should ensure that such duties of the officials are performed without any corrupt activities and with utmost devotion. In the event of any negligence or dereliction on duty on the part of the officials concerned, the Commissioner, Corporation of Chennai is bound to initiate appropriate prosecution and disciplinary proceedings against all the officials concerned. The officials in this regard are duty bound to ensure that all such statutory and revenue charges are collected in the interest of the Corporation and in the interests of the public at large.

13. In this view of the matter, the contention raised by the writ petitioner in the present writ petition deserves no consideration and accordingly, the following orders are passed:

(1) The relief as such sought for in the present writ petition has been rejected.

(2) The writ petitioner is directed to pay arrears of property tax due of Rs.1,41,14,432/- within a period of four weeks from the date of receipt of a copy of this order.

(3) In the event of non payment within a time

stipulated above, the respondent / Corporation is directed to initiate appropriate action by following the procedures as contemplated under law within a period of four weeks thereafter.

14. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions is closed.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

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To
1. The Commissioner,
Corporation of Chennai,
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Zone I, Ward No.05, Chennai - 19.

+1cc to Mr.A.Nagarajan, Advocate SR.No.62473

+1cc to Mr.H.Mohammed Farok, Advocate SR.No.62838

W.P.No.5055 of 2014

GMY(15/10/2018)