

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2018*

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.Nos. 9650 of 2014

IG 3 Infra Limited,
Represented by its Company Secretary
Mrs.Krithika Vijay Karthik,
'Chennai One', Pallavaram-Thoraipakkam
200 Feet Road, Thoraipakkam,
Chennai-600 097. ... Petitioner

Vs

1. State of Tamil Nadu
Rep. By its Chief Secretary to Government
[Chairman- committee for Review and
Development of SEZ]
Fort St. George,
Chennai-600 009.
2. The Commissioner,
Corporation of Chennai,
Ribbon buildings,
Chennai - 600 003.
3. The Assistant Revenue Officer
Zone-14,
Corporation of Chennai,
No.6/64, Puzhuthivakkam Main Road,
Chennai - 600 091.
4. The Development Commissioner [SEZ]
Madras Export Processing Zone
Tambaram,
Chennai - 600 045. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the entire records in connection with the impugned Final Assessment/Notice No.10 Vide Order No.M/14/189/13-14/0061 of the 3rd respondent dated 18.03.2014 and quash the same and consequently forbear the respondents from making and levying property tax to the petitioner's property 'Chennai One', Pallavaram-Thoraipakkam 200 Feet Road, Thoraipakkam, Chennai - 600 097 at Zone-XIV, Ward-189.

For Petitioner : Mr.S.Parthasarathy
Senior Counsel for Mr.M.Sriram.

For Respondents : Mr.R.S.Selvam
Government Advocate
For R1
Mr.T.C.Gopalakrishnan
For R2 & R3
Mr.K.Gunasekar,
Central Government Standing
Counsel for R4.

O R D E R

The Final Assessment Order, issued by the third respondent in proceedings dated 18.03.2014, is under challenge in this writ petition. A further relief is sought for to forbear the respondents from making and levying property tax to the petitioner's property in 'Chennai One', Pallavaram-Thoraipakkam 200 Feet Road, Thoraipakkam, Chennai - 600 097 at Zone-XIV, Ward-189.

2. Learned Senior Counsel, appearing on behalf of the writ petitioner, states that before the year 2011, the property belongs to the writ petitioner was under the jurisdiction of Pallikaranai Municipality and subsequently, it was amalgamated and became Greater Chennai Corporation with effect from the year 2011.

3. The Respondent/Chennai Corporation assessed the premises belongs to the writ petitioner under Section 137-B of the Chennai City Municipal Corporation Act and the escaped assessments were made and a notice was issued to the writ petitioner to pay the arrears of property tax amount. The writ petitioner-Company, admittedly, have not preferred any appeal contemplated under the Statutes. Contrarily, they have chosen to file the present writ petition, challenging the assessment notice issued by the Chennai Corporation.

4. The learned Senior Counsel for the writ petitioner is of an opinion that the final assessment is not made in accordance with the provisions of the Act. The assessment made is not proper in respect of the constructed portion of the building under the occupation of the writ petitioner. It is contended that before the year 2011, there was no assessment to property tax in respect of the premises of the writ petitioner. The writ petitioner seeks an exemption on the ground that they are entitled for such an exemption, as the premises are situated within the Special Economic Zone notified by the Government. However, it is contended that the exemption is also not granted

and the writ petitioner was under the legitimate expectation that the exemption would be granted in favour of the writ petitioner.

5. The learned counsel for the respondent-Corporation opposed the said contention of the learned Senior Counsel for the writ petitioner, by stating that escaped assessments were made in respect of the premises belong to the writ petitioner for the year 2008 to 2011. Thus, there is no irregularity or infirmity in respect of the assessment order issued to the writ petitioner in proceedings dated 18.03.2014. No exemption was granted in favour of the writ petitioner by the competent authority. The writ petitioner's premises are not entitled for any such exemption under the provisions of the Act. Thus, they are liable to pay the property tax, as applicable and as assessed by the respondent- Corporation.

6. The learned counsel for the respondent-Corporation further states that in respect of the assessment year from 2008 to 2011, the writ petitioners are liable to pay the arrears of property tax amount to the tune of Rs.2,72,18,056/-. Thereafter, the premises came within the jurisdiction of Chennai Corporation. Thus, the writ petitioner is liable to pay a total sum of Rs.4,76,31,598/- for the assessment years 2011 to 2018. From and out of the total amount of 4,76,31,598/-, the writ petitioner had already deposited Rs.2 crores. Thus, the balance arrears of property tax to be paid for the assessment year 2011-2018 is Rs.2,76,31,598/-. Accordingly, the writ petitioner is liable to pay the said amount along with the escaped assessment arrears due of property tax to the tune of Rs.2,72,18,056/-.

7. The respondent-Corporation states that in respect of exemption, the writ petitioner-Company is not entitled for exemption under the provisions of that Act. No such orders are passed by the Government, granting exemption in favour of the writ petitioner. Thus, the writ petitioner-Company is liable to pay the property tax as per the assessment made by the competent authority. In the event of any dispute in respect of assessment, the writ petitioner-Company is at liberty to approach the Appellate Authority, namely, the Commissioner, then Taxation Appeal Tribunal and thereafter, before the Municipal Tax Appeals, Principal District Judge, City Civil Court, Chennai. Admittedly, the writ petitioner has not preferred any appeal so far. Thus, in respect of the escaped assessment or otherwise, the writ petitioner is at liberty to prefer an appeal. However, this will not preclude the writ petitioner from paying the arrears of property tax, which is due to the Chennai Corporation. The writ petitioner has not paid the property tax arrears as assessed by the Competent Authority at Chennai Corporation from the year 2004 onwards. The escaped assessment,

in relation to the financial year 2008-2011, was issued in proceedings dated 18.03.2014. Therefore, this Court is of an opinion that the writ petitioner is liable to pay the entire arrears of property tax due to the Corporation within the stipulated period.

8. Citizen in general are using the infrastructure facilities and other common amenities, including roads etc., provided by the local authority and the State. When the citizen are using such common amenities and infrastructural facilities, they are bound to pay the property tax, within the time limit prescribed by the authorities concerned.

9. Payment of property tax is to be cleared in the interest of public at large. Non-payment of property tax would be treated as an infringement on other's right. For instance, if few citizen refused to pay property tax to Chennai Corporation though utilising the infrastructural facilities and other amenities from and out of the tax payers' money, then they are infringing the rights of all other citizen. It is the duty cast on the part of the authorities concerned to ensure that every citizen is paying the property tax in the interest of the public at large.

10. Evasion of the property tax is to be construed as an offence. Evasion of property tax will result in denial of rights to others. When equality in law and the constitutional rights are ensured to every citizen, this Court is of an opinion that the same is to be ensured by uniform implementation of law in respect of all concerned. Thus, the payment of property tax and recovery of such tax by the competent officials are the important functions of the State stipulated under the Constitution of India. Any inaction on the part of the officials are also to be viewed seriously. The officials, who are duty bound to collect the property tax from the persons concerned, also should face departmental proceedings on the hands of the Disciplinary Authorities.

11. Thus, it is made clear that if the property tax and the arrears are not collected promptly by the officials concerned, then the Commissioner of Chennai Corporation is bound to initiate appropriate disciplinary proceedings against all such officials for their inaction, negligence and dereliction of duty. In this view of the matter, it is made clear that the writ petitioner cannot evade payment of property tax.

12. Unnecessary or routine invasion into the statutory powers of the competent authorities under a statute should be restrained by the Constitutional Courts. Frequent or unnecessary invasions in the executive power will defeat the constitutional

perspectives enshrined under the Constitution of India. Undoubtedly, the separation of powers under the Indian Constitution has been narrated and settled in umpteen number of judgments. Separation of powers demarcated in the Constitution of India is also to be considered, while exercising the powers of judicial review in the matter of dispensing with the appeal remedy provided for an aggrieved person under a statute. If the High Courts started interfering with such Appellate powers without any valid and substantiated reasons, then the very purpose and object of the statute and provision of appeal under the statute became an empty formality and the High Courts also should see that the provisions of appeal contemplated under the statutes are implemented in its real spirit and in accordance with the procedures contemplated under the rules constituted thereon. While entertaining a writ petition as narrated by the Apex Court, the provision of efficacious alternative remedy under the statute also to be considered. If the writ petitions are entertained in a routine manner, by not allowing the competent Appellate authority to exercise their powers under the provisions of the statute, then this Court is of an opinion that the power of judicial review has not exercised in a proper manner. Thus, it is necessary for this Court to elaborate the legal principle settled in respect of the separation of powers under the Constitution of India.

1. Madras Bar Association vs. Union of India (UOI) (25.09.2014 - SC) : MANU/SC/0875/2014 : If the historical background, the preamble, the entire scheme of the Constitution, relevant provisions thereof including Article 368 are kept in mind there can be no difficulty in discerning that the following can be regarded as the basic elements of the constitutional structure. (These cannot be catalogued but can only be illustrated):
- (1) The supremacy of the Constitution.
 - (2) Republican and Democratic form of government and sovereignty of the country.
 - (3) Secular and federal character of the Constitution.
 - (4) Demarcation of power between the Legislature, the executive and the judiciary.
 - (5) The dignity of the individual secured by the various freedoms and basic rights in Part III and the mandate to build a welfare State contained in Part IV.
 - (6) The unity and the integrity of the Nation.

2. Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Anr. [MANU/SC/0445/1973 : (1973) 4 SCC 225].

That separation of powers between the legislature, the executive and the judiciary is the basic structure of the Constitution is expressly stated by Sikri, C.J.

3. P. Kannadasan and Ors. v. State of T.N. and Ors. [MANU/SC/0650/1996 : (1996) 5 SCC 670] the Supreme Court noted that the Constitution of India recognised the doctrine of separation of powers between the three organs of the State, namely, the legislature, the executive and the judiciary. The Court said:

It must be remembered that our Constitution recognises and incorporates the doctrine of separation of powers between the three organs of the State, viz., the Legislature, the Executive and the Judiciary. Even though the Constitution has adopted the parliamentary form of government where the dividing line between the legislature and the executive becomes thin, the theory of separation of powers is still valid.

4. State of Tamil Nadu and Ors. vs. State of Kerala and Ors. (07.05.2014 - SC) : MANU/SC/0425/2014

121. On deep reflection of the above discussion, in our opinion, the constitutional principles in the context of Indian Constitution relating to separation of powers between legislature, executive and judiciary may, in brief, be summarized thus:

(i) Even without express provision of the separation of powers, the doctrine of separation of powers is an entrenched principle in the Constitution of India.

The doctrine of separation of powers informs the Indian constitutional structure and it is an essential constituent of rule of law.

In other words, the doctrine of separation of power though not expressly engrafted in the Constitution, its sweep, operation and visibility are apparent from the scheme of Indian Constitution. Constitution has made demarcation, without drawing formal lines between the three organs- legislature, executive and judiciary. In that sense, even

in the absence of express provision for separation of power, the separation of power between legislature, executive and judiciary is not different from the constitutions of the countries which contain express provision for separation of powers.

(ii) Independence of courts from the executive and legislature is fundamental to the rule of law and one of the basic tenets of Indian Constitution.

Separation of judicial power is a significant constitutional principle under the Constitution of India.

(iii) Separation of powers between three organs—legislature, executive and judiciary—is also nothing but a consequence of principles of equality enshrined in Article 14 of the Constitution of India. Accordingly, breach of separation of judicial power may amount to negation of equality Under Article 14. Stated thus, a legislation can be invalidated on the basis of breach of the separation of powers since such breach is negation of equality Under Article 14 of the Constitution.

(iv) The superior judiciary (High Courts and Supreme Court) is empowered by the Constitution to declare a law made by the legislature (Parliament and State legislatures) void if it is found to have transgressed the constitutional limitations or if it infringed the rights enshrined in Part III of the Constitution.

(v) The doctrine of separation of powers applies to the final judgments of the courts. Legislature cannot declare any decision of a court of law to be void or of no effect. It can, however, pass an amending Act to remedy the defects pointed out by a court of law or on coming to know of it aligned. In other words, a court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances.

(vi) If the legislature has the power over the subject-matter and competence to make a validating law, it can at any time make such a validating law and make it retrospective. The validity of a validating law, therefore,

depends upon whether the legislature possesses the competence which it claims over the subject-matter and whether in making the validation law it removes the defect which the courts had found in the existing law."

13. This Court is of a strong opinion that institutional respects are to be maintained by the constitutional Courts. Whenever there is a provision for an appeal under the statute, without exhausting the remedies available under the statute, no writ petition can be entertained in a routine manner. Only on exceptional circumstances, the remedy of appeal can be waived, if there is a gross injustice or if there is a violation of fundamental rights ensured under the Constitution of India. Otherwise, all the aggrieved persons from and out of the order passed by the original authority is bound to approach the Appellate Authority. The Constitutional Courts cannot make an appeal provision as an empty formality. Every Appellate Authority created under the statute to be trusted in normal circumstances unless there is a specific allegation, which is substantiated in a writ proceedings. Thus, the institutional functions and exhausting the appeal remedies by the aggrieved persons, are to be enforced in all circumstances and writ proceedings can be entertained only on exceptional circumstances. Rule is to prefer an appeal and entertaining a writ is only an exception. This being the legal principles to be followed, this Court cannot entertain the writ petitions in a routine manner by waiving the remedy of appeal provided under the statute.

14. Now, let us look into the legal principles settled by the Apex Court for exhausting the efficacious alternative remedy provided under the statute.

15. When an effective alternative remedy is available, a writ petition cannot be maintained

1. In City and Industrial Development Corporation vs. DosaAardeshirBhiwandiwalla and Ors. MANU/SC/8250/2008 : (2009) 1 SCC 168, this Court had observed that:
The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

- (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;
- (b) the petition reveals all material facts;

(c) the Petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.

2. Kanaiyalal Lalchand Sachdev and Ors. vs. State of Maharashtra and Ors. (07.02.2011 - SC) : MANU/SC/0103/2011

It is well settled that ordinarily relief Under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See Sadhana Lodh v. National Insurance Co. Ltd.; Surya Dev Rai vs. Ram Chander Rai and SBI v. Allied Chemical Laboratories.)

3. Commissioner of Income Tax and Ors. v. Chhabildass Agarwal, MANU/SC/0802/2013 : 2014 (1) SCC 603, as follows:

Para 15. while it can be said that this Court has recognised some exceptions to the Rule of alternative remedy i.e. Where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titaghur Paper Mills case and other similar judgments that the High Court will not entertain a petition Under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

4. Authorized Officer, State Bank of Travancore and Ors. vs. Mathew K.C.

(30.01.2018 - SC) :

MANU/SC/0054/2018

The petitioner argued that the SARFAESI Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18. The High Court ought not to have entertained the writ petition in view of the adequate alternate statutory remedies available to the Respondent. The interim order was passed on the very first date, without an opportunity to the Appellant to file a reply. Reliance was placed on *United Bank of India vs. Satyawati Tandon and others*, 2010 (8) SCC 110, and *General Manager, Sri Siddeshwara Cooperative Bank Limited and another vs. Iqbal and others*, 2013 (10) SCC 83. The writ petition ought to have been dismissed at the threshold on the ground of maintainability. The Division Bench erred in declining to interfere with the same. The Supreme Court agreed to the arguments and held the same also noted that the writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum.

5. *State of Himachal Pradesh v. Gujarat Ambuja Cement Ltd.* reported at AIR 2005 SC 3856, the Supreme Court explained the rule of 'alternate remedy' in the following terms :

Considering the plea regarding alternative remedy as raised by the appellant-State. Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226

of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.

6. K.S. Rashid and Sons v. Income Tax Investigation Commission and Ors., AIR (1954) SC 207; Sangram Singh v. Election Tribunal, Kotah and Ors., AIR (1955) SC 425; Union of India v. T.R. Varma, AIR (1957) SC 882; State of U.P. and Ors. v. Mohammad Nooh, AIR (1958) SC 86 and M/s K.S. Venkataraman and Co. (P) Ltd. v. State of Madras, AIR (1966) SC 1089, Constitution Benches of the Supreme Court held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

7. First Income-Tax Officer, Salem v. M/s. Short

Brothers (P) Ltd., [1966] 3 SCR 84 and State of U.P. And Ors. v. M/s. Indian Hume Pipe Co. Ltd., [1977] 2 SCC 724.

There are two well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly,

the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition.

16. In view of the legal principles settled above, the following orders are passed:-

(i) The relief, as such, sought for in the present writ petition stands rejected;

(ii) The writ petitioner-Company is directed to pay the arrears of property tax amount of Rs.2,72,18,056/- for the assessment of the year 2008 to 2011 and Rs.2,76,31,598/- for the assessment of the year 2011-2018, within a period of eight weeks from the date of receipt of a copy of this order;

(iii) In the event of failure on the part of the writ petitioner in paying the arrears of property tax amount, within the time limit stipulated above, the respondent-Chennai Corporation is directed to initiate appropriate action to recover the entire arrears of property tax amount by following the procedures contemplated under law.

17. With the above directions, the writ petition stands disposed of. However, there shall be no order as to costs.

s/d-
Assistant Registrar(CS-V)
dt. 28/09/2018

corrected as per order
dated 14.11.2018

True Copy

Sd/-
Sub Assistant Registrar
14.11.2018

Sub-Assistant Registrar

Svn/kmm

To

1.The Chief secretary to government
State of Tamil Nadu
[Chairman- committee for Review
and Development of SEZ]
Fort St.George,
Chennai-600 009.

2. The Commissioner,
Corporation of Chennai
Ribbon Buildings,
Chennai - 600 003.

Substituted for the
order already depatched
on 10.10.2018

3.The Assistant Revenue Officer,
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No.6/64, Puzhuthivakkam Main Road,
Chennai - 600 091.

4. The Development Commissioner [SEZ]
Madras Export Processing Zone
Tambaram,
Chennai - 600 045.

+1 CC to Mr.T.C. Gopalakrishnan, Advocate sr 64037.
+1 CC to Govt. Pleader sr 64168.
+1 CC to Mr.M. Sriram, Advocate sr 64025.
+1 CC to Mr.K. Gunasekar, Advocate sr 63726.

WP No. 9650 Of 2014

SP(28/09/2018)
EU 14.11.2018

सत्यमेव जयते

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