IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.25285 & 25286 of 2017 and
WMP.Nos.26737 & 25738 of 2017

Bomman M.Irani ... Petitioner in both petitions

Vs.

1.The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai 600 003.

2.The Assistant Revenue Officer,
IX Zone,
Corporation of Chennai,
4th Street, Lake Area,
Nungambakkam, Chennai 600034.

3.The Managing Agent,
M-A, Namazie Endowment,
No.224, Angappa naicken Street,
Chennai 600 001

4.The Tamil Nadu Wakf Board,
Rep. by Chief Executive Officer,
No.1, Jaffar Sybang Street,
Vallal Seethakadi Nagar,
Chennai 600 001.

(R4 suo motu impleaded as per order dated 03.11.2017
in WP.Nos.25285 and 25286 of 2017) ... Respondents
in both petitions

PRAYER:Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the 2nd respondent's notice under Rule 29, Schedule IV of the Chennai City Municipal Corporation Act IV of 1919, under Ref. Ward Committee office IX/R.D./2017 Bill No.02327 Ward III, dated 27.06.2017 and to quash the same as illegal and invalid.

For Petitioner : Mr.Ashok Menon

For Respondent : Ms.Karthikaa Ashok (for R1 and R2)
Mr.Goutham Raman (for R3)
for Ms.S.P.Arthi
Mr.V.Laskhmi Narayanan (for R4)

ORDER

Heard Mr.Ashok Menon, learned counsel for petitioner. The petitioner who is a Tenant, in respect of premises owned by the 3rd respondent/ Endowment is before this Court, challenging the notice issued by the respondent/Corporation, demanding a payment of sum of Rs.28,25,028/- which is arrears of property tax payable by the 3rd respondent / Endowment, who owns the property.

2. The petitioner has been served the impugned notice in exercise of power under Rule 29, Schedule IV of the Chennai City Municipal Corporation Act IV of 1919, in the capacity of occupier of the premises. Apart from the petitioner, there are two other occupiers in the property, one of whom, according to the 3rd respondent is rank encroacher under the name and style of 'Sai Balaji (Hero) motors'.

3. The petitioner urged to this Court challenging the impugned notice on the ground that they are occupying the small area of premises and the monthly rent which is paid by the petitioner is only Rs.3,000/- in respect of Irani Tea stall and Rs.6750/- in respect of Sweet corner (Sweet Shop). Therefore, it will be unreasonable for the respondents to compel the petitioner to pay the arrears of sum of Rs.28,25,028/- of property tax.

4. This Court after taking into consideration the submissions of the learned counsel for petitioner and the learned standing counsel for the respondent/Corporation and also the payments effected by the petitioner before filing the writ petition while granting an order of interim stay and passed the following order dated 21.09.2017, which reads as follows:

"Heard Mr.Ashok Menon, learned counsel for the petitioner.

2. The petitioner is at tenant under the third respondent, which is an endowment called as Namazie Endowment (Property), Public Wakf, New No.231, Anna Salai, Chennai-2. The petitioner has taken on rent two shops owned by the said endowment and is carrying on business of selling tea and sweets. The respondent Corporation served the impugned proceedings dated 27.06.2017, demanding from the petitioner property tax to the tune of Rs.28,25,028/- for each of the two shops on the ground that the owner of the shops namely the third respondent-endowment defaulted in payment of rent.

3. The case of the petitioner is that he has taken up the shops on monthly rent of Rs.3,000/- and Rs.6,750/- respectively, that the amounts demanded are wholly sustainable and that the petitioner cannot be directed to pay such a huge amount of money, when the endowment is very much in existence and for the reasons best known, the Corporation has not initiated any action against the endowment. In spite of this being a factual position, the petitioner paid a total sum of Rs.6 lakhs, which has been received by the respondent Corporation vide receipts dated 31.03.2016 and 21.03.2017.

4.Thus, considering the facts and circumstances of the case, this Court is of the view that no further amount can be demanded from the petitioner and that respondents 1 and 2 shall proceed only against the third respondent.

5. Accordingly, there will be an order of interim stay. Notice to respondents 1 and 2 is accepted by Mrs.Karthika Ashok, learned Standing Counsel. Notice to the third respondent alone through Court as well as privately returnable 31.10.2017. Post on 31.10.2017."

5. Subsequently, the wakf board as well as the learned counsel for 3rd respondent has entered appearance. The learned counsel for the 3rd respondent on instructions submitted that if reasonable time is granted to the owner of the premises, they are willing to clear the arrears of property tax in instalments. Apart from that they also agreed to pay the half year property tax without default.

6. This Court directed the 3rd respondent to place the same in the form of affidavit today. Mrs.Rehane Yavar Dhala, wife of Mr.Yavar Dhala has filed an affidavit to the following effect:

"I, Rehane Yavar Dhala, wife of Mr.Yavar Dhala, Muslim, aged about 48 years, residing at Villa Nur, 4/6, Casuarina Drive, Neelankarai, Chennai 600 041, do hereby solemnly affirm and sincerely state as follows:-

1. I am the 3rd respondent herein and I am well coversant with the facts and circumstances of the case.

2. I submit that I am a Mutawalli of the M.A.Namazie Endowment, a notified waqf. Amongst various properties, owned by its, the Endowment also owns property at New No.231, Old No.172, Anna Salai, Chennai 600 006. The said property has been let out to various third parties, including the petitioner herein, who is in occupation of two portions. I have gathered that the Corporation has levied half yearly property tax of Rs.1,40,087/- with respect to the said property and that the waqf is now due and payable a sum of Rs.22,00,000/- towards arrears of property tax.

3. As the Mutawalli of the endowment, have been making earnedst efforts to muster funds to pay the statutory dues. Since the rents received by the Waqf are considerably lower than the market standards, the Endowment has not been able to meet the statutory commitments. As the Mutawalli of the

M.A.Namazie Endowment, I hereby agree and undertake on behalf of the Waqf, to make a monthly payment of Rs.25,000/- to the Corporation of Chennai to discharge the accumulated dues. Needless to mention that the Waqf reserves its right ot challenge or seek reduction / exemption in the levy of property tax.

The above undertaking may be recorded and the writ petition may kindly be disposed in terms thereof."

7. The learned standing counsel for the respondent / Corporation on instructions would submit that the affidavit may be placed on record and the 3rd respondent may be directed to strictly abide by the affidavit of undertaking. As could be seen from the counter affidavit filed by the 1st and 2nd respondent, apart from the petitioner, there are two other persons occupied the premises, one in the First Floor, other in the Ground Floor, who stated to be an encroacher. The settlement of arrears to be paid by those two persons have also been furnished before this Court. I find that substantial amount payable. In any event, since the owner of the premises namely the 3rd respondent has come forward to liquidate the arrears in instalments and taking note of the fact that it is a notified wakf and they are already faced certain litigation. The Court places on record the undertaking affidavit filed on behalf of the 3rd respondent and the 3rd respondent is directed to pay the arrears of property tax at the rate of Rs.25,000/- per month. First of such payment shall commence from 05.03.2018 and the subsequent payment shall be made by 5th of every succeeding English calender month. Since already the recovery proceedings have been initiated against other two tenants, it is open to the respondent / Corporation to proceed in accordance with law. However they shall not demand any further payment from the petitioner. So far as payment which have been effected by the petitioner to the Corporation of Chennai towards arrears of property tax, it is open to the petitioner to work out the recovery process with the 3rd respondent.

8. With the above direction, the writ petition stands disposed of. No costs. Consequently connected miscellaneous petition is closed.

sk/sai

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To
1.The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai 600 003.

2.The Assistant Revenue Officer,
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Vallal Seethakadi Nagar,
Chennai 600 001.

+1cc to Mr.C.Seethapathy, Advocate Sr.no.9950
+1cc to Mr.V.Raghavachari, Advocate Sr.no.9661
+1cc to Mr.Karthikaa Ashok, Advocate Sr.No.9657

sm:1.3.2018

W.P.Nos.25285 and 25286 of 2017