IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.01.2018

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.10941 of 2004
and
M.P.No.32916 of 2004

The Management of Vellore District,
Central Co-operative Bank Ltd.,
(Formerly North Arcot District
Central Co-operative Bank Ltd.)
Rep. by its Special Officer,
Vellore - 1. ...Petitioner

Vs.

1. The Special Commissioner &
Commissioner of Land Reforms,
Chepauk, Chennai - 600 005.

2. The District Revenue Officer,
Office of the District Collector,
Vellore - 9.

3. The Assistant Commissioner,
Urban Land Tax, 5, Sannadhi Street,
Poonammallee, Chennai - 600 056.
...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records of the first respondent, resulting in the impugned order, dated 12.01.2004, made in file No.B1/13714/2002, and to quash the same, and consequently, to direct the first respondent to take into account the records submitted by the petitioner herein while determining the imposition of urban land tax to the petitioner/Bank within a time frame to be fixed by this Court.

For Petitioner : Mrs. G. Thilakavathi,
Senior Counsel for
for Mr. R. Gopinath

For Respondent : Mrs. G. Dhana Madhri
Government Advocate

O R D E R

Heard Mrs. G. Thilakavathi, the learned Senior Counsel appearing for Mr. R. Gopinath, the learned counsel for the petitioner and Mrs.G.Dhana Madhri, the learned Government Advocate for the respondents.

2. The petitioner has filed this Writ Petition, challenging the order passed by the first respondent, dated 12.01.2004, rejecting the Revision Petition filed by the petitioner, in which, the petitioner challenged the order passed by the second respondent, dated 27.09.2001. The second respondent, by the said order, dismissed the Appeal Petition filed by the petitioner, challenging the order passed by the third respondent, levying urban land tax on the land owned by the petitioner.

3. The petitioner is the Management of the Vellore District Central Co-operative Bank Limited, Vellore. The challenge to the impugned proceedings are broadly on two grounds, viz., i) that the determination of market value, in respect of the property, in question, has not been determined in accordance with Section 10 of the Tamil Nadu Urban Land Tax Act, 1966 (hereinafter, referred to as the Act) and ii) the land, in question, not only houses the building of the petitioner's Co-operative Society, but, there are two other Co-operative Societies, in the same campus, and the total extent is about 98 acres, a part of which, has been sold to two other Co-operative Societies, and it is an open area, put to use by the public, and there is also a link road, and the petitioner is entitled for being exempted from payment of urban land tax, in the light of Section 29 (g) of the Act.

4. Counter affidavit has been filed by the third respondent, reiterating the stand taken by the first respondent, in the impugned order.

5. In the instant case, the petitioner did not file their returns, as required under Section 7 of the Act. Section 9 of the Act contemplates the procedure to be followed by the Assessing Officer, in cases, where, the owner of the urban land fails to furnish the return under Section 7 of the Act. In terms of the said provision, the petitioner has to obtain necessary information in respect of the particulars specified under Section 7 of the Act, viz., name of the owner of the urban land; extent of the urban land, in the urban area; the name of the division or ward and of the street; survey number and sub-division number of the urban land; and the amount, which in the opinion of the owner is the market value of the urban land.

This information can be obtained by the third respondent, either by himself or through, such agency, as he thinks fit. On collection of the information, the Assistant Commissioner, the third respondent is required to determine the market value of the property. Section 10 deals with the said aspect. Section 10 (1) (c) of the Act deals with the case, like that of the petitioner's case, where, the owner has failed or did not produce evidence, pursuant to a notice under clause (a) of Section 10(2) and on the basis of the enquiry he has conducted under clause (a), he shall, by order, in writing, determine the market value of the urban land and the amount of urban land tax payable in respect of such urban land. The copy of the order passed under Section 10 shall be communicated to the owner of the urban land, in terms of Section 12 of the Act.

6. In the instant case, the order, determining the market value of the urban land has not been passed in consonance with Section 10 of the Act. As pointed out by the learned Senior Counsel for the petitioner, the lands, in question, are situated in Block-6 of Ward No.5 of Vellore Municipal Town, in Town Survey No.268/2A, whereas, the sales statics pertaining to the lands in Town Survey No.281, in Block No.7 of Ward No.V has been taken into consideration for determination of the market value. The petitioner did not have an opportunity to put forth their contention that the market value of the land, as fixed by the respondent was erroneous. This point was specifically canvassed by the petitioner, in their Appeal Petition before the second respondent, and as many as 16 grounds were raised. However, the second respondent did not consider all the issues raised by the petitioner, but proceeded only on the basis that the land cannot be presumed to remain vacant always, as it has not been alloted specifically for the public purpose. This order has been affirmed by the first respondent.

7. The Court, in the case of Jacob A. Chakramakal Vs. Urban Land Tax Tribunal, reported in [(1989) 1 L.W. 41, considered somewhat a similar issue with regard to the fixation of the market value of the property, and held that, there is failure on the part of the Authorities to determine the market value, as per the procedure required under the provisions of the Section 10 of the Act. Further, the Court pointed out that the Authorities have to strictly adhere to the procedure under the Act, which stipulates, as to how, the market value has to be determined. The said decision would apply with full force to the case on hand.

8. Insofar as the second issue is concerned, admittedly, the petitioner is a Co-operative Society, under the control of the Government, and administered by an elected body. In the absence of the elected body, the Government nominates a Special

Officer, who administers the Co-operative Society. The overall control of the affairs of the Society vests with the Registrar of the Co-operative Society, who, in turn, is bound by the direction issued by the Government from time to time. Though the Society cannot be termed to fall within the definition of the 'State' under Article 12 of the Constitution of India, for all purpose, nevertheless, there is a deep pervasive administrative and Governmental control over the Co-operative Society.

9. The contention of the petitioner is that the vast extent of land is not utilized by the petitioner, but, there are two other Societies. Thus, what is to be determined is the purpose, for which, the land is put to use, should be considered by the respondent, and if that is so, then, there is every likelihood that the petitioner's case can be brought under Section 29 (g) of the Act, for being entitled to exemption, as no rent is charged for the land and no remuneration is derived from the land, and the public of the area, who are either customers of the Bank or other Societies use the land. That apart, in the order passed by the first respondent, it is admitted that there is a link road. Therefore, this Court deems that this is a fit case, where, the Authorities should consider whether the petitioner/Society would be entitled to grant of exemption under Section 29 (g) of the Act.

10. Thus, for the above reasons, the impugned order calls for interference. In other words, as this Court has held that the determination of the market value of the land has not been properly done and in terms of the Section 10 of the Act, the matter requires to be remanded to the Assessing Officer, viz., the third respondent for fresh consideration.

11. Accordingly, the impugned order passed by the first respondent, dated 12.01.2004 is set aside. Consequently, the order passed by the second respondent, dated 27.09.2001 and the proceedings of the third respondent, dated 10.03.1994 are set aside, and the matter is remanded to the third respondent/Assessing Officer for fresh consideration, who shall firstly determine the market value of the property in accordance with the provisions of Section 10 of the Act, taking note of the decision of the Jacob A. Chakramakal Vs. Urban Land Tax Tribunal (referred supra) and also consider the plea of exemption raised by the petitioner, prior to the commencement of the proceedings, in respect of the property, which shall be done in the presence of the authorized Officer of the petitioner/Bank, for the purpose of taking measurement of the land and noting its physical features.

12. In terms of the interim injunction granted by the Court, in W.P.M.P.No.32916 of 2004, dated 14.10.2004, 75% of the demand made by the third respondent has already been paid. Such

payment shall abide by the orders to be passed by the third respondent, in terms of the above directions.

13. In the result, this Writ Petition is allowed on the terms, as indicated above. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

dna/sd
Index : yes/no

To
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Commissioner of Land Reforms,
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+1cc to Mr.R.GOPHINATH, Advocate, S.R.No. 2227
+1cc to the Government Pleader, S.R.No. 2175

Writ Petition No.10941 of 2004

KAN(CO)
TR(01/02/2018)