IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.08.2018

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.9167 &9168 of 2016
WMP.No.8173 of 2016 to 8176 of 2016

Chennaiyilulla Virudunagar Hindu Nadars'
Abiviruthi Dharma Fund, rep.by its Manager
S.Jayachandran,
No.61, P.A.N.Rajarathinam Salai,
Old Washermenpet,
Chennai-600 021. ... Petitioner in both W.Ps.

..Vs..

1.The State of Tamil Nadu
Rep. by its Secretary to Govt.
Rural Development and Local Administration
Secretariat, St.George Fort,
Chennai - 600009.

2.Chennai Metro Water Supply and Sewerage Board
Rep. By its Managing Director
No.1, Pumping Station Road,
Chintadripet, Chennai - 2.

3.The Commissioner of Corporation,
Corporation of Chennai,
Ribbon Building, Chennai - 3.
.. Respondents 1 to 3 in both Petitioner

4.The Assistant Revenue Officer,
Corporation of Chennai,
Zone-4, Old Washermenpet,
Chennai-21.
.. 4th Respondent in WP.9167/16

The Assistant Revenue Officer,
Corporation of Chennai,
Zone-5, Old Washermenpet,
Chennai-21. .. 4th Respondent in WP.9168/16

5.The Senior Accounts Officer,
Chennai Metro Water Supply and Sewerage Board,
New Area 04 Office,
No.35/19, Ramanujar Street, Chennai-21.
... 5th Respondent in W.P.9167/16

The Senior Accounts Officer,
Chennai Metro Water Supply and Sewerage Board,
New Area 05 Office,
No.1, M.C. Road, Chennai-21.

... 5th Respondents in W.P.9168/16

PRAYER in WP.No.9167/2016 : Petition filed Under Article 226 of the Constitution of India praying this Hon'ble Court to issue a Writ of Certiorari to call for the records pertaining to demand notice dated 29.01.2015 issued by fifth respondent and quash the same as it is defective, non est in law and without following the due process of law.

PRAYER in WP.No.9168/2016 : Petition filed Under Article 226 of the Constitution of India praying this Hon'ble Court to issue a Writ of Certiorari to call for the records pertaining to demand notice dated 18.09.2015 issued by fifth respondent and quash the same as it is defective, non est in law and without following the due process of law.

For Petitioner in both Writ Petitions : Mr.S.Pushpakaran

For Respondents in both Writ Petitions : Mr.R.S.Selvam
Government Advocate
for R1

: Mr.T.C.Gopalakrishnan
for R3 & 4

: Mr.N.Ramesh
for R2 & 5

COMMON ORDER

The demand notices dated 29.01.2015 & 18.09.2015 issued by the 5th respondent is under challenge in these Writ petitions. The Writ petitioner is a Charitable trust started in the year 1922 and registered in the year 1977 under the Societies Registration Act, assigned with Regn.No.10/1977.

2. The petitioner claims that in order to provide education to all sections of society on charity basis, the petitioner trust started a college in the name of K.C.S.Kasi Nadar Arts and Science College during the year 1999. The College is functioning at No.94-96, Illaya Mudali Street, Korukkupet, Chennai-600021, in the buildings/premises belonged to the petitioner Trust. The petitioner Trust is carrying out educational activities and other charitable activities such as running medical clinic for outpatient at lower cost, free

medical camp, blood donation camp and conducting cultural and social events necessary for the promotion of the education.

3. The learned counsel appearing for the petitioner states that the petitioner Trust is exempted from the payment of property tax.

4. The learned counsel appearing on behalf of the respondent also admits the fact that the exemption was granted to the Writ petitioner, in respect of the payment of property tax alone and not the water tax and sewerage charges which is to be paid to the Chennai Metro Water Supply and Sewerage Board.

5. The grievances of the Writ petitioner is that when the exemption was granted in respect of payment of the property tax, the similar exemption has to be granted for payment of Water tax also. This apart, the Writ petitioner contested the assessment made by the respondent Chennai Metro Water Supply and Sewerage Board in respect of fixation of charges. The learned counsel for the petitioner states that an exorbitant amount of tax has been levied on the Writ petitioner which is over and above the permissible limit and therefore, the Writ petitioner is constrained to move the present writ petition.

6. The learned counsel for the respondents opposed the contention by stating that the respondent / Chennai Metro Water Supply and Sewerage Board is assessing the Water tax and Sewerage charges based on the assessment made by the Chennai Corporation for payment of property tax. In all cases, the assessment made by the Chennai Corporation will be taken into account for the purpose of levying Water tax and other Sewerage charges. In the case of the Writ petitioner also, the same yardstick has been followed and accordingly the charges are levied and therefore, there is no irregularity in respect of fixation of Water tax and Sewerage charges to the Writ petitioner. The Chennai Metro Water Supply and Sewerage Board has no independent assessing body and therefore they are following the assessment made by the Chennai Corporation for levying Water tax and other charges. Thus, there is no infirmity in respect of the demand notice issued to the writ petitioner in proceeding dated 29.01.2015. The Writ petitioner is running an Arts and Science college wherein more than 1000 students are studying. This part, they are running Clinic and utilizing the services of the Chennai Metro Water Supply and Sewerage Board. Thus, they are liable to pay the Water tax and other charges and the exemption was granted by the Government only in respect of the payment of property tax and the similar benefit in payment of water tax, cannot be extended infavour of the writ petitioner.

7. The learned counsel for the respondent cited the judgment of this Court dated 09.02.2017 passed in W.P.No.10295 of 2003 [Chennai Metropolitan Water Supply and Sewerage Board rep.by its Chairman Vs. The Area Engineer-VII, Chennai Metropolitan Water Supply and Sewerage Board] and the learned Single judge following the judgment of the Division Bench and passed an order and it is relevant to extract paragraphs Nos.4 and 5 of the same:

'' The issue whether the property that is exempted from the payment of property tax should also be exempted from the payment of water and swerage tax, came up before a Division Bench of this Court in W.A.No.239 of 2001 (Sree S.S.Jain Sthank (prayer hall), c/o.Sree S.S.Jain Charitable Trust, rep. by its Managing Trustee Vs.Chennai Metropolitan Water suppply and Sewerage Board rep. by its Chairman, Chennai) and by order dated 09.09.2009, this Court has held as follows:

We are not able to accept the contention of the learned counsel with regard to the levy and demand. Of course, the levy of water and sewerage tax has to be determined by the value of the property as determined by the Corporation for the purpose of determination of the property tax Mere exemption granted in payment of property tax cannot be construed that the property has no value and the annual rental value cannot be determined. Only after determination of the rental value by the Corporation in accordance with the statutory provision, the demand of property tax has beer determined. Of course, the levy and collection has been exempted by virtue of the order dated 25.01.1999. But that cannot be by any stretch of imagination be the impediment for the respondents authorities to levy and demand the Water and Sewerage tax. Till the exemption is granted in the application stated to have been filed by the appellant for exemption, the authorities/respondents are right in their levying and demanding the Water and Sewerage tax. That is the very reason given by the Learned Single Judge for non suiting the appellant for quashing the ''demand''''

8. In yet another judgment in the case of Bentinck Higher Secondary School for Girls, Rep.by its Head Mistress, Vepery Vs. Chennai Metropolitan Water Supply & Sewerage Board, Rep.by its Managing Director & others reported in CDJ 2018 MHC 522 and it is relevant to extract Paragraph No.4 of the same:

'' So far as the taxes leviable by the CMWSSB are stipulated in Section 34 of the Chennai Metropolitan Water Supply and Sewerage Act, 1978 (the Act). Section 35 of the Act deals with Assessment of Annual Value and sub-Section (3) of Section 35 states that till such time as the annual valuation of land and buildings is deterined under the CMWSS Act, the annual value of land and buildings for the puposes of the said Act, shall be the annual value as asessed by a Municipal Corporation, Municipality, Panchayat or other like authority. So far as the impugned demands are concerned, it is based on the annual value of the building as assessed by the Chennai Corporation and thoug there is power vested, both under the Act and the Regulations to independently assesse the properties for asertaining the annual value for the purpose of levying water and sewerae tax, the respondent Board has continued to exercise powers only under Section 35(3). In fact, in tow decisions of this Court viz., in the case of The Madras Sanskrit College & S.S.V.Patasala V.Chennai Metropolitan Water Supply and Sewerage Board and another [2009-5-L.W.320],it has been held that the assessment is required to be done in accordance with Section 34 of the CMWSS Act, 1978 and it has been further held Section 35 of the Act is only a temporary provision. Similar view was taken by this Court in the case of M.O.P. Iyengar Charities V. The Special Tahsildar (Revenue Recovery), C.M.W.S.S Board and others [2007 (3) CTC 270]. Thus, it has to be seen as to whether the impugned demand raised by the CMWSSB are just and proper. One important and common feature in all the cases is that the petitioners have not been served with th sopis of the notice proposing to revise the annual value of the building issued by the Corporation of Chennai. The petitioners would state that only after the impugned demand notices were issued by the CMWSSB, they approached the Corporationif Chennai and secured copie of the noties issued in Form No.6, from which they were shocked to find that the annual value of the building has been proposed to be revised multifold. Therefore, it is the submission of the petitiners that they had no opportunity to question the same more so when all the buildings were exempt from payment of property tax to the Corporation of Chennai''.

9. By following the legal principles settled in the order cited above, this Court is of an opinion that the Writ petitioner cannot be exempted from the payment of Water tax and other Sewerage charges and accordingly, they are liable to pay the same in accordance with the assessment made by the respondent Board. In respect of any differences, it is for the Writ petitioner to approach the appropriate forum for the redressal of his grievances and therefore the relief as such sought for in this writ petition cannot be granted and the Writ petitioner is directed to pay the entire arrears of water tax

and sewerage charges within a period of 2 weeks from the date of copy of the receipt of this order.

10. The Writ petition stands dismissed with the above direction. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

sk/kkn

To

1. The Secretary to Govt.
   Rural Development and Local Administration
   Secretariat, St.George Fort,
   Chennai - 600009.

+1cc to Mr.S. Pushpakaran, Advocate SR.No.57618

+1cc to Mr.N. Ramesh, Advocate SR.No.57736

+1cc to Government Pleader SR.No.57892

W.P.Nos.9167 &9168 of 2016

GMY(12/09/2018)