IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2018

Date of Reserving the Order	Date of Pronouncing the Order
02.01.2018	10.01.2018

Coram

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

W.P.No.28171 of 2004
and WMP.No.34207 of 2004

V.G.P.Housing Private Limited,
Represented by its Managing Director,
Mr.V.G.P.Ravidas,
having office at V.G.P.Square,
No.6, Dharmaraja Koil Street,
Saidapet, Chennai - 600 015. ...Petitioner

Vs.

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

2.The Assistant Commissioner,
Urban Land Tax, (Alandur)
No.169, Sannadhi Street, Chennai - 88.

3.The Special Tahsildar
ULT Collection,
Tambaram Taluk, Tambaram,
Chennai - 45. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent vide Ref.No.C2/3948/2000 dated 07.05.2004 confirming the order of the second respondent vide ULT Case No.458A, 458B, 458C, 79A, 79B, 79C, 79D, 79E, 79F, 79G, 79H, 79I, 79J, 79K, 79L and 79M dated 22.01.1999 of Injambakkam Village, in respect of lands in S.No.17/174, 64/1, 64/2, 15/24, 15/105, 15/150, 15/189, 15/190, 15/191, 15/198, 15/200, 15/201, 15/203, 18/10, 15/102 and 38/2A and the demand notice of the third respondent dated 15.02.2000 for fasali 1401 to 1409 and quash the same and further direct the respondents to treat the lands as falling outside the purview of the Act.

For Petitioner : Mr.V.Ramesh

For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

The petitioner has filed this writ petition challenging an order passed by the first respondent dated 07.05.2004, confirming the order of assessment passed by the second respondent under the provisions of the Tamil Nadu Urban Land Tax Act, 1966 as amended by Act, 1991 (Act of Brevity).

2.The petitioner's case is that they owned vast extent of lands in Injabakkam Village, Tambaram Taluk which was assessed to Urban Land tax by the second respondent. Pursuant to such assessment, demand notice dated 15.02.2000 was issued by the third respondent directing the petitioner to pay a sum of Rs.11,51,038/- being Urban Land Tax for fasali 1401 to 1409. Questioning such demand, the petitioner filed a revision petition before the first respondent under Section 30(1) of the Act and also sought for stay of collection of the tax. Initially, the first respondent granted an order of interim stay and subsequently, the revision petition was taken up for disposal and by order dated 07.05.2004, the revision was dismissed. This order is impugned in this writ petition.

3.Mr.V.Ramesh, learned counsel for the petitioner submitted that the lands in Survey No.64/1 and 64/2 are agricultural in character as evidenced by adangal extract and cannot be subjected to Urban Land Tax as agricultural lands are exempted from levy of Urban Land Tax under Section 2(13) of the Act. The lands in Survey No.15/198 is being put to issue for cultivation of casuarina which is deemed to be used for agricultural purpose and therefore, those dry lands are exempted as per G.O.Ms.No.3162. S.Nos.15/200, 15/201 and 15/203 are used for resort purposes which are again agricultural lands. The first respondent failed to consider that the Agricultural Income Tax Officer in his order dated 31.07.1997 has assessed an extent of 32.3 acres as agricultural lands and agricultural Income Tax has been levied upto fasali 1400. 5.Further, it is submitted that even without conducting an inspection, the second respondent passed an order of assessment ignoring the fact that major portion of the lands are agricultural in character. Further, the eastern boundary of the lands is Bay of Bengal and in terms of prohibition contained in the coastal zone regulations, no construction is permissible upto a distance of 500 meters from the high tide zone and therefore, those lands cannot be urban lands as construction is not permissible. Thus, on the above grounds, the learned counsel submitted that the impugned orders are liable to be set aside.

4.Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent submitted that notice under Section 11(1) read with Section 7D and Section 40A of the Act was issued by the second respondent and served on the petitioner on 10.09.1998. The petitioner filed their objections on 07.10.1998 stating that the entire land is being used as VGP Golden Beach resort and major portion of the land is covered by agricultural operations. However, the petitioner did not produced any document to prove that the lands are agricultural in nature. The inspection notes of the Deputy Thasildar shows that the lands are dry lands and have been converted into housesites. Therefore, the second respondent rightly assessed the petitioner to Urban Land Tax by order dated 21.08.1998. Further, the lands where cultivation of casuarina is made requires no maintenance and it will not fall under the category of agricultural activities. The inspection report of the Deputy Thasildar, Office of the Assistant Commissioner (ULT), Alandur clearly shows that the lands in S.Nos.15/200, 15/201 and 15/203 are being used as recreational area, restaurant, guest house and shops and these lands are being utilized for the beach resort. Further, the order levying agricultural income tax was for the fasali 1394 to 1398, i.e. upto 1984 to 1989 whereas the Urban Land Tax has been assessed only from fasali 1401 after ascertaining that the lands are Urban Lands in character. Before orders were passed, the lands were inspected and after considering all the materials, the first respondent has dismissed the revision petition and as such there is no merit in the writ petition.

5.Heard the learned counsels for the parties and perused the materials placed on record.

6.Before the first respondent, the revisional authority, the petitioner contended that there is no inspection conducted by the Assistant Commissioner. The lands are being maintained as agricultural lands, a portion of the land is being used as resort which does not change the nature and character of the land from that of being agricultural and on account of the prohibition contained under the coastal zone regulations, no construction is permissible. Therefore, the lands cannot be treated as urban lands. The Assistant Commissioner, Urban Land Tax has conducted inspection of the lands on 30.03.2000 and 09.12.2003 and reported usage of the lands as mentioned below:

S.No.64/1 S.No.64/2	12.0821) 33.0950)	Lands are lying vacant
S.No.15/198	62.1896	Situated near the Bay of Bengal. Vacant lands lying to a depth of 3 feet now being levelled.
S.No.15/200	0880.1376	VGP Golden Beach Amusement Park, Guest Houses, Restaurant, Recreational games, Parks and shops surrounded by trees.
S.No.15/201	18/0394) 36.0788)	Recreational games, Toy trains, etc.

7.The revisional authority after taking into consideration the inspection notes and the connected records held that S.Nos.15/200, 15/201 and 15/203 are being used as recreational area, restaurant, guest house and shops and S.No.15/198 is lying vacant and the agricultural income tax assessment pertains to the years 1984-1985 to 1988-1989 and the Urban Land Tax assessment is only with effect from 1991 (fasali 1401). Therefore, the authority on facts concluded that the contention of the petitioner that the land is agricultural in nature is not tenable. Referring to Section 2(13) of the Act which states that no Urban Land Tax can be levied in respect of the land which is not capable of being used as a house site. But the petitioner themselves have admitted that the land is used for recreational and commercial purpose. Thus, on a re-appreciation of the factual position, the first respondent upheld the order passed by the second respondent.

8.Record the proceedings show that the petitioner had been afforded an opportunity to put forth their submissions. Further, it is seen that inspection was conducted of the petitioner's lands which is clear from the fact that the usage of the land in respect of different survey numbers has been specifically mentioned which fact has not been denied by the petitioner. In such circumstances, the Original Authority, namely, the second respondent having done a factual exercise measured the property, ascertain the usage and then assessed the petitioner to tax, the correctness of which was tested by the first respondent in the revision by re-appreciating the factual position, this Court exercising jurisdiction under Article 226 of the Constitution cannot convert itself into that of second Appellate Authority and interfere with the impugned order. Thus, for the above reasons, this Court finds that there is no error in the orders passed by the respondents 1 and 2.

9.In the result, the writ petition fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

cse/dna

To

1.The Special Commissioner &
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Chepauk, Chennai 600 005.

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3.The Special Tahsildar
ULT Collection,
Tambaram Taluk, Tambaram,
Chennai 45.

+1cc to Mr.V.Ramesh, Advocate SR.No.2209
+1cc to Special Government Pleader(Taxes) SR.No.2429

W.P.No.28171 of 2004
and WMP.No.34207 of 2004

RJ(CO)
GN(05/02/2018)