In the High Court of Judicature at Madras

Dated : 18.12.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Writ Appeal No.2718 of 2018 & CMP.No.22359 of 2018

Mahalaxmi Inn Pvt. Ltd., rep.its
Director R.Sumerchand Bafna ...Appellant /Petitioner

Vs

1.The Commissioner, Corporation of
Chennai, Rippon Buildings, Chennai-3.

2.The Assistant Revenue Officer,
Corporation of Chennai, Zone VIII,
NSK Salai, Chennai-24. ...Respondents/Respondents

APPEAL under Clause 15 of the Letters Patent to set aside the order dated 12.9.2018 made in W.P.No.14472 of 2011.

Prayer in W.P.No.14472 of 2011:

Writ of Certiorarified Mandamus or any other appropriate Writ Calling for the records of the 1st respondent in Z.O.VIII.R.D.C.No.R6/3070/2009 and to quash the order dated 26.05.2011 made therein and consequently to direct the respondents to forbear from levying demanding and collecting from the petitioner the enhanced property tax pursuant to the said proceedings of the 1st respondent.

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For Appellant : Mr.T.M.Hariharan for Ms.Aruna Ganesh

For Respondents : Mr.R.Arunmozhi
Standing Counsel for Corporation

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal by the writ petitioner is directed against the order dated 12.9.2018 passed in W.P.No.14472 of 2011.

2. We have heard the learned counsel for the appellant and Mr.R. Arunmozhi, learned Standing Counsel accepting notice for the respondents.

3. The appellant is a company incorporated under the Indian Companies Act and is running a hotel, which, according to the appellant, is a posh hotel and is to be classified as a star category hotel.

4. The appellant filed the said writ petition challenging the order passed by the Commissioner, Corporation of Chennai dated 26.5.2011 demanding property tax at the rate of 20% of the gross income of the appellant classing the appellant as 'A' category hotel.

5. Earlier, the appellant approached this Court by filing W.P.No.17096 of 2009 challenging the warrant notice issued by the respondent Corporation. In that writ petition, several grounds were raised by the appellant including the contention that in spite of change of classification of the appellant's hotel as 'S' category hotel, which, according to the appellant, is a star hotel status, the property tax has been charged by classifying it as 'A' category hotel. The said writ petition was allowed by order dated 09.10.2009 and the respondent Corporation was directed to consider the objections filed by the appellant, hear them and issue a final order in accordance with law within a time frame. The impugned order in the present writ petition is purported to have been passed pursuant to the directions issued in the said writ petition.

6. However, we find that the grounds raised by the appellant in their objections were not specifically dealt with in the impugned order in the present writ petition and the classification was appended to the impugned order classifying the appellant as 'S' category hotel, which, according to the appellant, is a star hotel status. Though the calculation sheet showed that the property tax is computed on 10% of the gross income, the demand was arrived at on 20% of the gross income. Therefore, the appellant filed the present writ petition namely W.P.No.14472 of 2011 challenging the demand dated 26.5.2011.

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7. At the time when W.P.No.14472 of 2011 was entertained, an order of interim stay was granted and it was in force for eight years. However, the respondent Corporation did not file a counter affidavit. When the case was heard finally, the learned Single Judge of this Court noted that the appellant's name did not find a place in the list of star hotels produced by the respondent Corporation before the Court.

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8. The contention of the appellant was that the requirement to be listed as a star hotel was not contemplated in terms of G.O.Ms.No.856 Rural Development and Local Administration Department dated 19.4.1972, which only classified hotels as posh hotels and lodging houses. The learned counsel for the appellant submitted that the appellant might be granted an opportunity to apply to the Competent Authority for obtaining such a star category certification.

9. However, the learned Single Judge was not inclined to accept such a submission and ultimately rejected the writ petition and the appellant was directed to pay the entire arrears of property tax. It was also made clear that in the event the appellant did not do so, there was a direction to the respondent Corporation to initiate further action by following the procedure contemplated under law. There was no reasonable explanation given by the respondent Corporation as to why for eight long years, they did not file a counter affidavit nor moved the learned Single Judge for vacating the interim order.

10. The learned counsel for the appellant has drawn the attention of this Court to the information obtained under the Right to Information Act wherein the Information Officer had given a reply dated 02.11.2018.

11. To one of the queries pertaining to list of star category hotels, which have been assessed to property tax by the respondent Corporation and charged to tax at the rate of 10% of gross income, the Information Officer furnished a list of eight hotels. It is not in dispute that those eight hotels did not find a place in the list of star hotels, which was produced before the learned Single Judge at the time of hearing the present writ petition.

12. The learned counsel for the appellant has also drawn our attention to another list of hotels, which are not included as star category hotels by the various Departments and it is the case of the appellant that those hotels were also charged at the rate of 10% of the gross income.

13. Thus, in our considered view, the respondent Corporation has not complied with the directions issued in the earlier writ petition in W.P.No. 17096 of 2009 dated 09.10.2009 in its letter and spirit. No reasons were assigned by the respondent Corporation for rejecting the appellant's contention. Therefore, we are of the view that the matter required to be considered afresh. However, such a concession is coupled with a condition.

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14. Admittedly, the appellant would contend that they are liable to pay property tax only at the rate of 10% of the gross income as against the demand made at the rate of 20% of the gross income. Therefore, this Court is of the view that the following directions would meet the ends of justice and it will protect the interests of both the appellant as well as the revenue of the respondent Corporation :

15. The writ appeal is disposed of with a modification of paragraph 12 of the order passed by the learned Single Judge dated 12.9.2018. The appellant is directed to pay the arrears of property tax at 10% of the gross income less the tax already paid by the appellant. The amount shall be paid by the appellant in instalments, but within a period of eight weeks from the date of receipt of a copy of this judgment. The appellant is at liberty to apply to the Competent Authority for certifying their hotel as a star category hotel.

16. However, the learned counsel for the appellant submits that there is one impediment, that the respondent Corporation has not renewed their trade licence and that therefore, the appellant is unable to apply to the Competent Authority for certification.

17. It is made clear that on the appellant complying with the condition mentioned above, the respondent Corporation shall renew their trade licence to facilitate the appellant to apply to the Competent Authority for certification. The appellant is granted three months time to obtain the requisite certification and then approach the respondent Corporation along with a representation, which shall be considered in accordance with law.. If the appellant complies with the said condition, the demand in respect of the remaining amount shall be stayed. It is also made clear that if the appellant fails to comply with the condition imposed in this judgment, the benefit of this order will not enure to the appellant, the respondent Corporation is at liberty to initiate further action and the writ appeal would stand dismissed automatically without any further reference to this Court. No costs. Consequently, the connected CMP is closed.

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Sd/-
Assistant Registrar(Admin II)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner, Corporation of Chennai, Rippon Buildings, Chennai-3.

2.The Assistant Revenue Officer, Corporation of Chennai, Zone VIII,
NSK Salai, Chennai-24.

+1cc to M/S.ArunaGanesh, Advocate sr.87717
+1cc to M/S.R.Arunmozhi, Advocate sr.88751

WA.No.2718 of 2018 &
CMP.No.22359 of 2018

srg 28/12/2018

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