IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 27.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.14813 of 2012
and
M.P.No.1 of 2012

The Bharat Sanchar Nigam Limited,
Rep. by its Asst. General Manager (Admn),
Shri P.Thiyagarajan,
Office of the General Manager,
Bharat Sanchar Nigam Limited,
Nilgiris SSA., Coonoor - 643101. ...Petitioner

-Vs-

1. The Secretary to Government,
Municipal Administration and
Water Supply Department,
Secretariat, Chennai.

2. The Commissioner,
Udhagamandalam Municipality,
Udhagamandalam. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records of the second respondent in reference No.Naa.Kaa.A4/5110/2007 dated 07.07.2011 and quash the same. (prayer amended vide order dated 14.06.2012 in M.P.No.3 of 2012 in W.P.No.14813 of 2012)

For Petitioner : Mr.K.R.Ramesh Kumar

For Respondents: Mr.A.Zakir Hussain,
Govt. Advocate for R1

Mr.G.Sankaran for R2

O R D E R

On 07.07.2011, the second respondent herein had sent a Demand Notice for the property tax arrears of the petitioner's property to the tune of Rs.43,88,212/-, which is for the assessment period 2000-01 to 2011-12. Subsequently, the impugned demand dated 23.04.2012 was sent to the petitioner stating that the aforesaid property tax of Rs.43,88,212/- for the assessment years 2000-01 till 2011-12, is converted into Service Tax and accordingly, the second respondent had directed the petitioner to pay the same within 3 days.

2. The learned counsel for the petitioner submitted that the property was physically handed over to the petitioner only with effect from 19.04.2011. A Division Bench of this Court, in its decision dated 21.12.2018, passed in Review Application (MD) Nos.77 to 84 of 2018 in W.A.(MD) Nos.328 to 335 of 2018, had held that no property tax can be demanded from the petitioner, prior to 19.04.2011, since the petitioner therein had the protection under Article 285 of the Constitution of India.

3. The learned counsel for the second respondent submitted that the demand made in the impugned order is only property tax arrears, which are payable from 01.10.2000. I am unable to accept the contentions put forth by the second respondent for two reasons.

4. Firstly, the petitioner will not be liable to pay any property tax arrears prior to 19.04.2011, since they were protected by exemption from levy of any tax, in view of Article 285 of the Constitution of India. This position has also been reiterated by the Division Bench in the order dated 21.12.2018, referred above. As such, the demand itself, prior to 19.04.2011, cannot be sustained. If at all property tax can be demanded, it can only be after 19.04.2011 and not earlier.

5. Secondly, the impugned order does not refer to a demand of property tax, but has stated therein, in clear terms, that the property tax has now been converted into service tax. Therefore, the contention of the learned counsel for the second respondent that the demand made in the order dated 23.04.2012 is only property tax, cannot be sustained. No further explanation is required to state that the demand is not a property tax, since the order in the subject column as well as the body states that the property tax demand has been converted into Service Tax. Incidentally, the demand of Rs.43,88,212/- for the assessment period 2000-01 to 2011-12 is in conformity with the earlier demand of Rs.43,88,212/-, made by the second respondent for the property tax arrears for the same period and same amount.

6. There is absolutely no justification in the impugned order as to how such a conversion has been made without following the procedures for service tax. The petitioner was also not put on prior notice before such a service tax was demanded, neither were they given any opportunity of having their objections considered, when the demand was made and as

such, the order itself is in violation of the principles of natural justice. On this ground also, the petitioner is entitled to succeed.

7. For all the foregoing reasons, I do not find any legality in the impugned demand made by the second respondent. Hence, the order dated 07.07.2011 stands quashed. If the respondents are of the view that they are entitled to collect property tax from 19.04.2011 onwards, it is always open to them to do so, by following the procedures contemplated and by conducting proper assessment proceedings, after giving due opportunity to the petitioner to put forth their objections to the same.

8. Accordingly, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

hvk

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1. The Secretary to Government,
Municipal Administration and
Water Supply Department,
Secretariat, Chennai.

2. The Commissioner,
Udhagamandalam Municipality,
Udhagamandalam.

+1cc to Mr.G.Sankaran, Advocate, SR.No.74227
+1cc to Mr.K.R.Ramesh Kumar, Vide Sr.No.73856
+1cc to the Govt.Pleader, Vide Sr.No.74022

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Kak(01.10.2019)