IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 27.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.14814 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,
Coonoor Municipality,
Coonoor - 643102. ...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 dated 21.05.2010 in reference No. Na.Ka.No. 1838/2010/A1 and ROC.No.576/2012 dated 18.05.2012 and quash the same. (prayer amended vide order dated 14.06.2012 in M.P.No.2 of 2012 in W.P.No.14814 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 08.10.2010, the second respondent herein had sent a Demand Notice for the property tax arrears of the petitioner's property to the tune of Rs.20,92,224/-, which is for the assessment years 2010-11 and 2011-12. Subsequently, the impugned demand dated 18.05.2012 was sent to the petitioner directing them to pay the aforesaid property tax of Rs.20,92,224/- for the assessment years 2010-11 and 2011-12.

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. It is also seen that when the original assessment order was made, the petitioners were not given prior notice, nor were they called to give their objections with regard to levy of property tax. As stated earlier, among the assessment years 2010-11 and 2011-12 are concerned, the respondents may be entitled to demand property tax only from 19.04.2011, which would fall under the assessment year 2011-12. As such, the demand of property tax for the assessment year 2010-11, cannot be sustained. Even for the assessment year 2011-12, the assessment requires to be re-worked, in view of the respondents entitlement to levy property tax from 19.04.2011 onwards. However, since the original assessment itself was not done without any notice calling for the objections of the respondents herein, it can only deemed to be in violation of the principles of natural justice and therefore, the assessment for this period also requires to be set aside. Under these circumstances, the consequential impugned order cannot be sustained.

6. For all the foregoing reasons, I do not find any legality in the impugned demand made by the second respondent. Hence, the impugned order dated 18.05.2012 stands quashed. In view of the observations made in this order, the respondents herein cannot rely upon the earlier assessment orders referred to in the

present impugned order dated 18.05.2012 for the assessment years 2010-11 and 2011-12. However, if the respondents intend 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.

7. 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,
Coonoor Municipality,
Coonoor - 643102.

+1cc to Mr.G.Sankaran, Advocate, SR.No.74229
+1cc to Mr.K.R.Ramesh Kumar,Vide Sr.No.73857

W.P.No.14814 of 2012
and
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Kak(01.10.2019)