IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.06.2019

CORAM

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.34764 of 2007 and
M.P.No.1 of 2007

Chennai Port Trust,
rep. By its Estate Officer,
No.1, Rajaji Salai,
Chennai – 600 001 ..Petitioner

Vs

1.The Special Commissioner and
Commissioner of Urban Land Ceiling and
Urban Land Tax, Ezhilagam, Chepauk,
Chennai – 600 005

2. The Assistant Commissioner,
Urban Land Tax,
Ezhilagam, Chepauk, Chennai – 600 005

3. The Special Tahsildar,
Fort – Tondiarpet Taluk,
Chennai – 600 003 .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus forbearing the respondents from demanding payment of urban land tax in respect of the lands comprised in 4035/1, 4035/3, 4036/3 and 3870/1 of Tondiarpet Village measuring an extent of 52,248, 23,528, 2,381, 6,579 sq. meters respectively and direct the respondents to refund the sum of Rs.11,29,116/- paid by the petitioner under protest for the period from 01.07.2003 to 30.06.2006.

For Petitioner : Mr.P.M.Subramaniam

For Respondents : Mr.J.Ramesh
Additional Government Pleader

ORDER

The present Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus forbearing the respondents from demanding payment of urban land tax in respect of the lands comprised in 4035/1, 4035/3, 4036/3 and 3870/1 of Tondiarpet Village measuring an extent of 52,248, 23,528, 2,381, 6,579 sq. meters respectively and direct the respondents to refund a sum of Rs.11,29,116/- paid by the petitioner under protest for the period from 01.07.2003 to 30.06.2006.

2. It is represented on behalf of the petitioner / Chennai Port Trust that originally one Madras Dock Labour Board, which was in existence till 23.05.2001 was a Tripartite Statutory Body constituted under Section 5A of Dock Workers Regulation of Employment Act, 1948 and the said Board was administering four statutory schemes framed by the Central Government under Section 4 of the said Act. Subsequently, on requisition of the stevedoring employers, who were licenced by Chennai Port Trust to carry on their stevedoring operations at the Chennai Port and Dock, it

supplied labour to them from the separate pools of labour administered under the statutory schemes. The said Dock Labour Board was concerned with regulating the employment of dock workers. The Chennai Port Trust was completely functioning under the control of Ministry of Surface Transport and Shipping. Further, the Madras Dock Labour Board was the Central Government and the properties acquired by it during its existence was with the sanction and approval of Central Government and such properties were used for the purposes to which the Central Government sanctioned and approved. Hence the properties of the Madras Dock Labour Board including lands and buildings are that of the Central Government, though they stood in the name of Madras Dock Labour Board. The said lands were acquired through the funds of the Central Government.

3. Further, the petitioner / Chennai Port Trust is constituted under the provisions of Major Port Trust Act, 1963 and the Central Government Ministry and Shipping is used to appoint the Chairman of the Port Trust as the Chairman of the erstwhile Madras Dock Labour Board. Also, the entire Port and Dock area is under the control and management of the Chennai Port Trust. It is an admitted fact that Chennai Port Trust is exempted from the provisions of Tamil Nadu Urban Land Tax Act, 1966 under Section 29

of the said Act. As the landed properties of the Chennai Port Trust belong to Central Government, no tax under the said Act could be levied on Chennai Port Trust.

4. Apart from the above, it is contended on behalf of the petitioner that as contemplated under Section 3 of the Central Act 31 of 1997, the Management of Madras Dock Labour Board, the Workers of Madras Dock Labour Board and Management of Chennai Port Trust entered into a settlement under Section 12(3) of the Industrial Disputes Act, 1947 and the Central Government issued a Gazette Notification dated 29.05.2001 making the Dock Workers (Regulation of Employment) Act, 1948 inapplicable to Chennai Port and Dock and the Dock Workers (Regulation of Employment) Act, 1948 ceased to apply to Chennai Port Trust. As per Section 4 of Central Act 31 of 1997, from 28.05.2001, all the properties, assets and funds vested in the Madras Dock Labour Board immediately vested with the Chennai Port Trust. Thus, the landed properties of the Central Government, which stood in the name of Madras Dock Labour Board statutorily got vested with the Chennai Port Trust and there is no Madras Dock Labour Board.

5. According to the petitioner, though the entire lands are vested with the Central Government and also exempted from the provisions of Tamilnadu Urban Land Tax Act, 1966, the 3rd Respondent was raising demands for the payment of tax threatening coercive steps. When the demands were raised for payment of Rs.11,29,116/- in respect of the aforesaid lands, the petitioner paid the same for the period from 01.07.2003 to 30.06.2006. Thereafter, the petitioner / Chennai Port Trust came to know that the properties are vested with the Central Government, in which the State Government should not have collected the Urban Land Tax from them. Hence the petitioner has come forward with the present Writ Petition with the prayer mentioned supra.

6. The learned counsel for the petitioner would submit that the entire issue involved in this case is covered by the decision of this Court in **C.R.P.Nos.4550 of 1982 etc., batch dated 21.08.1996 between the Assistant Commissioner, Urban Land Tax, Madras North, now Assistant Commissioner, Urban Land Tax Tondiarpet V. Trustees of the Port Trust of Madras.**

7. Though the learned Additional Government Pleader appearing for the respondents had filed a counter, on instructions, would submit that if

the land belongs to Central Government or State Government, they were exempted from the payment of Tamilnadu Urban Land Tax Act, 1966, however, in the present case, there is no proof to show that the properties owned by the Chennai Port Trust were vested with the Central Government, accordingly, he prays for dismissal of the Writ Petition.

8. Admittedly, as rightly pointed out by the learned counsel for the petitioner, the entire issue is covered by the decision of this Court in **C.R.P.Nos.4550 of 1982 etc., batch dated 21.08.1996 between the Assistant Commissioner, Urban Land Tax, Madras North, now Assistant Commissioner, Urban Land Tax Tondiarpet V. Trustees of the Port Trust of Madras** and for the purpose of clarity, the relevant Paragraph Numbers, viz., 14 to 20 are extracted hereunder:-

> *'14. The Kerala High Court also had occasion to consider Section 29 of the Major Port Trusts Act, 1963, in regard to Cochin Port. The decision is reported in 1974 K.L.T.200) Darragh Smail & Co. (India) Ltd., and others v. Corporation of Cochin and others). In that case, a Division Bench of the Kerala High Court said that 'the expression 'vests' used in Municipal Statutes has received judicial interpretation and it has been ruled that the scope and ambit of the term should be gathered from the context and purpose of the statute, and consistent with these, the vesting may only be for the villagers or others. If this*

be the import and the significance of the term 'Vests' occurring in the two statutes, namely, the Port Trusts Act and the Municipal Corporations act, we see no clash between the provisions of the two statutes if roads and public streets are vested in the Port Trust for the limited purpose of administering the port as envisaged by the Port Trusts Act, and in the Corporation for purpose of municipal administration.

15. It is clear from the above that the more use of the word vesting does not follow hat absolute ownership is conveyed or obtained under the statute. It has to be understood in the context in which the enactment is passed and also the purpose of the enactment.

16. With the above guidelines, let us see how far Section 29 of the Major Port Trusts Act is to be interpreted.

17. The Preamble of the Act says: "An act to make provision for the constitution of port authorities for certain major ports in India and to vest the administration, control and management of such ports in such authorities and for matters connected therewith." In the preamble itself, it is made clear that the intention is to vest the administration, control and management of such ports. The other salient provisions also make it clear that the Port Trust has no ownership of the properties. It is an autonomous body intended to manage the day-do-day administration of the Port. What the Central Government was doing earlier in managing the affairs alone is now delegated to the Board constituted under this Act. Nowhere in the Statute it is said that the Port Trust is the owner of all the assets, that has vested in it under Section 29.

18. The Tribunal has exhaustively dealt with the powers of the Board and has come to the conclusion that Section 29 of the Major Port Trusts Act is enacted only for the convenient management of the properties and the Central Government still continues to be the owner thereof. The Tribunal has also referred to the case regarding Kandla Port, which was decided by the Gujarat High Court wherein the Statute regarding the Port of Madras was also taken into consideration. Finally, the Tribunal said that the Urban Land Tax Act has no application so far as the Port Trust is concerned.

19. When these Revisions were filed, the petitioner moved the Supreme Court to transfer all these Revisions before the Supreme Court, since Civil Appeal no.2446 of 1980 pertaining to Kandla Port was pending before it. Their Lordships only stayed the final disposal of these Revisions.

20. It is not disputed that the decision in respect of the Kandla Port Trust was confirmed by the Supreme Court. That means, the decision of the Gujarat High Court holding that the 'vesting' under Section 29 of the Major Port Trust Act is only for the purpose of administration and management is correct. In view of the legal interpretation given for the word 'vesting', and in view of the decision in the Kandla Port Case, I do not think that the Tribunal went wrong in holding that it has no application, and that under Section 29(a) of the Urban Land Tax Act, 1966, properties of the Madras Port are exempted from the purview of that Act.'

9. A perusal of the above said decision makes it clear that as per

Section 29 of the Major Port Trusts Act, all the properties owned by the Chennai Port Trust is vested with the Central Government and further, this Court has held that the Urban Land Tax Act has no application in so far as Port Trust is concerned. Further, this Court has also held in the aforementioned case that "the Hon'ble Supreme Court has confirmed the decision of Gujarat High Court in Kandla Port Trust case wherein 'Vesting' under Section 29 of the Major Port Trusts act is only for the purpose of administration and management is correct".

10. Considering the facts and circumstances of the case, taking note of the legal interpretation given by the Hon'ble Supreme Court and in view of the categorical decisions, which were discussed above, I have no hesitation to hold that the petitioner/ Chennai Port Trust is exempted from Tamilnadu Urban Land Tax and the petitioner is also entitled for refund, as per Section 21 of Tamilnadu Urban Land Tax Act, 1966 without any interest. For ready reference, Sections 21 and 29 of the Tamilnadu Urban Land Tax Act, 1966 are extracted hereunder:-

> ***Chapter – IV - 21.Refund:*** *(1) Where as a result of any order passed in appeal or other proceedings under this Act-*
>
> *(a) refund of any amount becomes due to the assessee,*
>
> *(b) any further amount of tax is due from the assessee, such amount shall be collected in accordance with the*

provisions of this Act.

(2) Where under any of the provisions of this Act a refund is due to any person, the Urban Land Tax Officer may in lieu of payment of the refund set off the amount to be refunded or any part of that amount against the sum, if any, remaining payable under this Act by the person to whom refund is due after giving an intimation in writing to such person of the action proposed to be taken under this Section.

Chapter VII – Exemptions:

29. Exemptions – *Nothing in this Act shall apply to -*

(a) any urban land owned by the State or the Central Government;

(b) any urban land owned by -

(i) the Corporation of Madras ;

(ii) a Municipal Council constituted under the [Tamil Nadu] District Municipalities Act, 1920 (Tamilnadu Act V of 1920)

(iii) a Municipal Council constituted under the Mettur Township Act, 1940, (Tamilnadu Act XI of 1940) the Courtallam Township Act, 1954 (Tamil Nadu Act XVI of 1954), the Bhavanisagar Township Act, 1954 (Tamilnadu Act XXV of 1954) or Sectio 4 of the [Tamilnadu] Panchayats Act, 1958 (Tamil Nadu Act XXXV of 1958) or under any other law for the time being in force.

(iv) a Panchayat or Panchayat Union Council constituted under any law for the time being in force;

[c] any urban land owned by a religious institution, which is set apart for public worship and is actually so used, including

any urban land owned by such institution and which is appurtenant thereto but not including any urban land owned by such institution and -

(i) which is vacant, or

(ii) in which buildings from which income is derived have been constructed;]

[(d) (i) any urban land on which hospitals maintained by -

(a) the Government, any local authority or such other authority specified by the Government in this behalf; or

(b) by any private institution which is in receipt of grant either from the Central Government or from the State Government;

have been constructed and any urban land appurtenant to such hospitals; or

(ii) any urban land used for purposes directly connected with such hospitals, but not including any urban land -

(i) which is vacant, or

(ii) in which buildings from which income is derived have been constructed;]

Explanation – For the removal of doubts, it is hereby declared that the urban land on which staff quarters including nurses quarters or any other buildings directly connected with the purpose of the said hospitals have been constructed shall be deemed to be urban land used for purposes directly connected with the said hospitals;]

(e) any urban land solely used for purposes connected with the disposal of the dead;

(f) roads or urban lands used for communal purposes;

(g) any urban land used for public purposes, provided that no rent is charged for, or no remuneration is derived from, such user;

[(h) any urban land used by schools, colleges or universities for purposes directly connected with education, but not including any urban land owned by such educational institutions and -

(i) which is vacant, or

(ii) in which buildings from which income is derived have been constructed.

Explanation I – For the purpose of this clause, schools or colleges shall mean only such schools or colleges which are educational institutions recognised either by the Government or by any University, as the case may be.

Explanation II – For the removal of doubts, it is hereby declared that the urban land on which schools, colleges or universities or staff quarters or hostels or other buildings used for the welfare of the students, have been constructed, or used as playgrounds attached to such schools, colleges or universities, shall be deemed to be urban land used for the purposes directly connected with education;]

[(i) any urban land used for public parks, public libraries and public museums;]

(j) any urban land used -

(i) for charitable purposes of sheltering destitute persons or animals;

(ii) for orphanages, homes and schools for the deaf and dumb and for the infirm and diseased;

(iii) for asylum for the aged and for fallen women;

[(k) subject to the provisions of this section, any urban land actually used for religious, charitable or philanthropic purposes by such religious, charitable or philanthropic institutions, as the Government may, by notification, specify, but not including any urban land owned by such institutions and

(i) which is vacant, or

(ii) in which buildings from which income is derived have been constructed;]

(l) any urban land used for the preservation of ancient monuments.

In view of the above, the Writ Petition is allowed and the concerned respondent is directed to refund the amount, viz., Rs.11,29,116/- to the petitioner / Chennai Port Trust, which was paid by them under protest during the period from 01.07.2003 to 30.06.2006 within a period of twelve weeks from the date of receipt of copy of a order. Consequently, connected miscellaneous petition is closed. No costs.

11.06.2019

Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
ssd

M.DHANDAPANI.J.,

ssd

To

1.The Special Commissioner and
Commissioner of Urban Land Ceiling and
Urban Land Tax, Ezhilagam, Chepauk,
Chennai – 600 005

2. The Assistant Commissioner,
Urban Land Tax,
Ezhilagam, Chepauk, Chennai – 600 005

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