IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

W.P.No.3516 of 2012
and
MP.No.2 of 2012

Urban Edge Hotels
Private Limited represented
By its Senior Vice President (Finance),
No.9, C.I.T. Colony 1st Main Road,
Mylapore, Chennai-600 004. .. Petitioner

Vs.

1.The State of Tamilnadu rep.
By its Secretary, Local Administration,
Fort St. George, Chennai-600 009.

2.The Commissioner,
Corporation of Coimbatore,
Coimbatore.

3.The Assistant Commissioner,
Coimbatore Corporation,
Coimbatore. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records leading to the impugned demand no.34994 of Rs.81,57,463/- being the vacant land tax and consequently quash the same in so far as the demand for vacant land tax for the period 01.10.2007 to 31.03.2008 and from 01.04.2009 to 31.03.2011 is concerned and to forbear the respondents from in any manner demanding or levying vacant land tax for the period 01.10.2007 to 31.03.2008 and from 01.04.2009 to 31.03.2011.

For Petitioner : Mr.T.V.Ramanujam, Senior Counsel, assisted by Mr.Aravind Srivatsan for M/s.T.V.Krishnamachari

For Respondent : Mr.R.P.Pratap Singh (for R1) Government Advocate

Mr.R.Sivakumar (for R2 & R3) Standing Counsel

O R D E R

The petitioner challenges the assessment/demands of Vacant Land Tax (in short VLT) in respect of the property at S.No.391/1, 391/2 in Kamaraj Salai, Uppilipalayam Village, Coimbatore South Taluk, Coimbatore District, Coimbatore, admeasuring an extent of 1 acre and 55.27 cents (in short 'property in question').

2.The admitted facts are that the property in question was purchased by the petitioner on 19th March 2008 under a registered sale deed. Till 15th March of 2008, the property had housed land and building in respect of which the property tax had been paid by the vendor. Thereafter it appears that the petitioner had sought planning sanction that had been issued on 25th March 2009, valid for a period of two years. The existing building was demolished and construction completed within the time granted by the authority, i.e. Assistant Commissioner, Coimbatore Corporation.

3.The petitioner states that the land in question is exempt from the levy of Corporation tax placing reliance on an order passed by the Commissioner, Coimbatore Corporation, dated 17.04.2004 to the following effect:

> 'ORDER
>
> Attention is invited to the Resolution first cited, in which the Council has resolved to implement the tax of 1% on the capital value of the land as per the G.O. 2nd cited in the reference. Hence all Assistant Commissioners are hereby instructed to follow the section 2(d) of the G.O.Ms.No.775 in which it has been clearly stated that the Vacant Land Tax shall be levied in the entire Corporation are as 1% per half year on the capital valued of the Land.
>
> The Corporation is granting permission for construction of building for a two year period. Hence in order to facilitate the public to construct the building, the construction period of 2 years is hereby exempted from the levy of Vacant Land Tax as per the Council Resolution first cited. All the Assistant Commissioners are hereby instructed to follow this guideline strictly. If the construction period is prolonged and the construction is not completed within 2 years, then Vacant Land Tax will be levied for the delayed period.
>
> Vacant Land Tax is to be levied for the area greater than the three time of the constructed area. However, the field staff and the Assistant Commissioners should verify the construction is a real one or a ambious structure put up to evade the VLT and it is subject to the condition that

the built up area is used for some useful purpose of commercial or residential nature. The assessing authority should ensure that the built up area is not put only to overcome the levy of VLT.'

4.Thus according to the petitioner, the land would be exempt from the levy of vacant land tax in respect of the period when the land was covered by a planning permission.

5.The contention of the Revenue is that order dated 17.04.2004 has neither been accepted nor notified by the Government. Reference is made to the provisions of Section 121 (4) of the Coimbatore City Municipal Corporation Act in terms of which order dated 21.04.2004 has been passed. Section 121 (4) of the Act states as follows:

"121.Description of property tax. - (1) ....

(2) .....

(3) ....

(4) Clause (a) substituted by Tamil Nadu Act No.15 of 2009 [(a) save as otherwise provided in clause (b), the council shall, in the case of lands which are not used exclusively for agricultural purposes and are not occupied by, or adjacent and appurtenant to buildings, levy property tax on such lands at such rates as it may fix, having regard to its location and subject to the minimum and maximum rates per square feet as may be prescribed by the Government.]"

6.Thus the Council is empowered to levy tax upon such lands that are not used exclusively for agricultural purposes and are not occupied by, or adjacent and appurtenant to buildings.

7.The Council, in my view has exceeded its jurisdiction by granting exemption from tax, since in the present case, the property in question is not used exclusively for agricultural purposes. It is neither occupied by a building nor is it adjacent or appurtenant to one, and is a standalone vacant piece of land. It is perhaps for this reason that the Government has dis-avowed the order dated 17.04.2004. The assessment of property tax is confirmed to this extent. However, as regards the assessment for the 1st half of 2007-2008, it is admitted that the property in question has suffered property tax till such time it was in the possession of the vendor.

8.Learned counsel for the respondent would attempt to persuade, stating that the character of the land as on

31.03.2009 will determine the levy of VLT. I disagree. In my view, there can be no double levy for the same period and the levy of VLT for the first half of 2007-08 is set aside.

9.This writ petition is disposed in the aforesaid terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//
Sub Assistant Registrar

vs
To

1.The Secretary,
Local Administration,
Fort St. George, Chennai-600 009.

2.The Commissioner,
Corporation of Coimbatore,
Coimbatore.

3.The Assistant Commissioner,
Coimbatore Corporation,
Coimbatore.

+1cc to Mr.R.Sivakumar, Advocate SR.80458
+1cc to M/s.T.V.Krishnamachari, Advocate SR.80507
+1cc to the Government Pleader, SR.80728

W.P.No.3516 of 2012
and
MP.No.2 of 2012

GP(CO)
CB(05/12/2019)