IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.129 of 2014

1. The Area Engineer,
   Chennai Metropolitan Water
   Supply and Sewerage Board,
   No.1, M.C.Road, Anna Poonga,
   Chennai - 600 021.

2. The Chennai Metropolitan Water
   Supply and Sewerage Board,
   Represented by its Managing Director,
   No.1, Pumping Station Road,
   Chinthadhiripet,
   Chennai - 600 002. ..Appellants/Defendants

Vs.

B.V.Suresh Kumar ..Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the learned VI Additional Judge, City Civil Court, Chennai, dated 23.04.2013 in A.S.No.385 of 2011, reversing the judgment and decree of the learned II Assistant Judge, City Civil court, Chennai, dated 11.03.2011 in O.S.No.6972 of 2008.

For Appellants : Mr.G.Prakash

For Respondent : Mr.R.Abdulmubeen

J U D G M E N T

The defendants in O.S.No.6972 of 2008 who suffered a decree for injunction, restraining them from collecting enhanced water tax for the period commencing from 1/92 -93 to 2/98-99 and non supply of water for the period from September 2003 till the date of suit and the mandatory injunction for restoration of water supply to the plaintiff's premises has come forward with this second appeal.

2. The suit was laid by the plaintiff /respondent contending that the revision of water tax for the period from 1/92-93 to 2/98-99 is improper in as much as the revision of property tax effected in 1992 was set aside by the Civil Court in O.S.No.9699 of 1992. It is a further claim of the plaintiff that since 2003, there was no water supply to the premises as the line was blocked. Claiming that since there was no water supply, the plaintiff need not pay the water tax and water charges, the plaintiff has come forward with the suit. It is also the contention of the plaintiff that the defendants have illegally disconnected the water on 18.09.2008 without any prior notice.

3. The suit was defended by the appellant Corporation contending that the water tax is fixed on the basis of assessment of property tax. The Chennai Corporation revised the property tax and water tax was raised, based on such revision. According to the board, the Chennai Corporation had revised the annual value of the property, enhancing it from Rs.41,233/- to Rs.1,08,872 with effect from 2/01-02. Therefore, the water tax has also been enhanced from Rs.1,443/- to Rs.3,811/- per half year in view of Sections 34 and 35 (3) of the Chennai Metropolitan Water Supply and Sewage Board Act ,1978. The plaintiff has paid the water and sewage tax at the old rate upto 1/98-99. It is also claimed that the detailed letter was sent to the plaintiff for the revision explaining as to how the tax has been worked out. Therefore, according to the board, a decree for injunction cannot be granted.

4. The trial Court on consideration of evidence on record, concluded that the plaintiff cannot seek for a blanket injunction, in view of the provisions of Sections 34 and 35 (3) of the Chennai Metropolitan Water Supply and Sewage Board Act , 1978. The Board is entitled to levy water tax based on the assessment of property tax by the Corporation. On the said conclusion, the learned trial Judge, dismissed the suit.

5. Aggrieved the plaintiff had preferred an appeal in A.S.No.285 of 2011 before the VI Additional Judge, City civil Court, Chennai. The lower appellate Court on reconsideration of the evidence found that the power of the board, the demand of collecting the water tax would depend on the assessment of property tax by the Chennai Corporation. The lower appellate Court also found that the Chennai Corporation had not revised the property tax and the attempted revision in 1992 has been set aside by the competent Civil Court. Therefore, the lower appellate court concluded that the appellant board cannot demand water tax at the revised rate in the absence of final assessment of property tax by the Chennai Corporation.

6. Aggrieved the Board is on appeal. At the time of admission, the following substantial questions of law have been framed:

1) Whether the lower Appellate Court is right in allowing the application filed by the respondent under Order 41 Rule 27 of the Civil Procedure Code in C.M.P.No.516 of 2012 in A.S.No.385 of 2011 even prior to disposing of the first Appeal when it is settled position that an application filed under Order 41 Rule 27 of the Civil Procedure Code can be disposed of only along with the appeal?

2) Whether the lower Appellate Court is right in allowing the appeal without hearing the appellants herein when the counsel was absent on the date of hearing?
3) Whether in the absence of declaratory relief in respect of the notices issued by the appellants, can the lower Appellate Court grant injunction simplicitor and mandatory injunction?
4) Whether the lower Appellate Court is right in granting injunction against a Statutory Body, which is against the proposition of law settled by this Court reported in 1997 3 CTC 3527?

I do not think that it will be necessary to go into the question of law in view of the subsequent development.

7. I have heard Mr.G.Prakash, learned counsel appearing for the appellants and Mr.R.Abdulmubeen, learned counsel appearing for the respondent.

8. Mr.R.Abdulmubeen, learned counsel appearing for the respondent had produced an order of the Hon'ble Division Bench of this Court made in W.A.No.2536 of 2018, dated 22.11.2018. The said proceedings relate to the assessment of property tax for the premises owned by the respondent. It is seen from the said order that the Division Bench has found that the Chennai Corporation has not finalized the assessment of property tax for the premises in question right from 1992 to 93. The Division Bench had found that apart from issuing notice for revision of assessment, the Corporation has not passed final order by assessment, after considering the objection made by the respondent. Therefore, the Division Bench had issued the following directions in the Writ appeal.

> "17. In the light of the above, the writ appeal is partly allowed and the distraint proceedings/warrant notices shall remain stayed subject to the condition that the appellant pays a sum of Rs.2,50,000/- (Rupees two lakhs and fifty thousand only) within a period of eight weeks from the date of receipt of a copy of this

judgment. If the appellant complies with this condition, the respondent corporation shall issue notice to the appellant, conduct an inspection of the building, measure the property, note down the physical features and based on such inspection, issue a fresh pre-assessment notice, which will cover the entire block period. On receipt of the pre-assessment notice, the appellant shall be granted 15 days' time to submit his objections. After receipt of the objections, the competent Authority of the respondent Corporation shall afford an opportunity of personal hearing to the appellant and pass fresh orders of assessment in accordance with law. In the event the appellant fails to comply with the condition imposed by this Court in this judgment within the time frame stipulated, the Court in this judgment within the time frame stipulated, the benefit of this order will not enure to the appellant and the appeal shall stand automatically dismissed without any further reference to this Court. It is open to the appellant to canvass all the points, which shall be considered by the competent Authority of the respondent Corporation. No costs. Consequently, the connected CMS is closed."

9. From the above observations of the Division Bench, it is clear that the final orders of assessment are yet to be passed. Once the final orders of assessment are passed by the Chennai Corporation, it will be open to the Board to levy the water tax at the rate specified in Sections 34 and 35 (3) of the Chennai Metropolitan Water Supply and Sewage Board Act ,1978. Therefore, the second appeal is disposed of with the following observations:

i. It will be open to the appellant board to re-fix the water tax and water charges based on the Chennai Corporation finalizing the property tax assessment in respect of the property.

ii. The respondent will bound to pay the water tax as fixed by the Board on the basis of assessment made by the Chennai Corporation.

iii. Any amount paid by the respondent pending this appeal, would be adjusted on the amount due after fixation of water tax based on the assessment of property tax made by the Chennai Corporation.

iv. It is stated that the water connection has been restored and the same is now active. Regarding non supply of water, the entire city is suffering water scarcity and therefore once the water resources improve, the respondent would get water supply.

v. It is open to the Board to assess and collect the water tax at the rates specified under Sections 34 and 35 (3) of the Chennai Metropolitan Water Supply and Sewage Board Act , 1978 based on the property tax assessment made by the Corporation after the said assessment is finalized by the Corporation. It is made clear that till such time, the respondent will pay the water tax at the old rate without any default. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The VI Additional Judge,
   City Civil Court,
   Chennai.

2. The II Assistant Judge,
   City Civil court,
   Chennai.

3. The Section Officer,
   VR Section, High Court, Madras.

+3cc to Mr.R.AbdulMubeen, Advocate Sr.79753, 79792
+1cc to Mr.G.Prakash, Advocate sr.80819

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