

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.07.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR
W.P.No.22447 of 2019
and WMP Nos.21828 & 21829 of 2019

St.Ebba's Girls Higher Secondary School
60, Dr.Radhakrishnan Salai
Mylapore, Chennai - 600 004.
.. Petitioner

vs.

- 1.The Commissioner
Greater Chennai Corporation
Ripon Buildings
Chennai - 600 003.
2. Chennai Metropolitan Water Supply and Sewerage Board

Represented by its Managing Director
No.1, Pumping Station Road
Chindathripet
Chennai - 600 002
- 3.Senior Account Officer
New Area IX Office
No.1, Dr.Ranga Road
Abiramipuram
Chennai - 600 018
- 4.Assistant Engineer/Junior Engineer
Chennai Water Board
No.1, Dr.Ranga Road
Abiramipuram
Chennai - 600 018

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned Demand Notice dated 24.06.2019 in ID

No.09/119/09065/000, on the file of the 3rd respondent, in respect of the petitioner, and quash the same and pass such further or other orders as it may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr. Father
Xavier

Senior Counsel

for M/s.Father Xavier Associates

instructed by Ms.Arul Mary.

For Respondents :

Ms.T.Padma Shalini,

for Mr.T.C.Gopalakrishnan

Standing Counsel for R1

Mr. Mr.Manimaran for

M.Jothikumar

for

Standing Counsel for CMSSB for

R2 to R4

ORDER

Mr.Father Xavier, learned Senior Counsel on behalf of M/s.Father Xavier Associates (Law Firm), instructed by Ms.Arul Mary, is before this Court on behalf of writ petitioner. Ms.Padma Shalini, learned counsel representing Mr.T.C.Gopalakrishnan, learned Standing Counsel for Chennai Corporation on behalf of first respondent, Mr.Manimaran, learned counsel representing Mr.M.Jothikumar, learned Standing Counsel for 'Chennai Metropolitan Water Supply and Sewerage Board' ('CMWSSB' for brevity) on behalf of Respondents 2 to 4 are before this Court.

2. There is no disputation or disagreement between

learned Senior Counsel for writ petitioner on one side and the Standing Counsel for Chennai Corporation and Standing Counsel for CMWSSB on the other side that this writ petition is covered by an earlier order made by this Court in W.P.No.18271 of 2019. For the sake of convenience and clarity, entire earlier order is extracted and reproduced infra:

'Mr.Father Xavier, learned senior counsel on behalf of M/s.Father Xavier Associates (Law Firm), instructed by Ms.Arul Mary, is before this Court on behalf of the writ petitioner. Mr.T.C.Gopalakrishnan, learned Standing Counsel for Chennai Corporation on behalf of first respondent, Mr.Manimaran, learned counsel representing Mr.M.Jothikumar, standing counsel for 'Chennai Metropolitan Water Supply and Sewerage Board' ('CMWSSB' for brevity) on behalf of Respondents 2 to 5 are before this Court.

2. Read this in conjunction with and in continuation of earlier order/ proceedings of this Court dated 05.07.2019, relevant portion of which reads as follows:

'2. Learned senior counsel for writ petitioner, learned Standing Counsel for Chennai Corporation and learned counsel representing the Standing Counsel for CMWSSB were heard for some time.

3.Subject matter of instant writ petition pertains to demand of water and sewerage tax/charges raised on the writ petitioner, which is an educational institution.

4.Learned senior counsel submits that writ petitioner's properties are exempt from payment of property tax. There is no dispute on this. This Court is informed that this is third round of litigation in this regard. On this aspect of the matter, attention of this Court is drawn to an order dated 18.12.2017 made by a Hon'ble single Judge of this Court in a batch of Writ petitions being W.P.No.2674 of 2016 etc., batch. To be noted, the writ petitioner herein is also one of the writ petitioners in the said batch. Trigger for the above said batch was demand of

water and sewerage tax/charges by CMWSSB at an enhanced rate without any basis. A set of 6 directions were made by Hon'ble single Judge in the order dated 18.12.2017 which was passed after full contest. This Court is informed that there is no intra-court appeal against the aforesaid order and that the said order has attained finality and given legal quietus.

5. It is submitted by learned senior counsel for writ petitioner that no assessment has been done by Chennai Corporation in accordance with the said direction as the writ petitioner has not received any notice regarding objection or provisional assessment order regarding assessment.

6. In the absence of any assessment by Chennai Corporation, more so assessment in accordance with the set of directions given by this Hon'ble Court vide order dated 18.12.2017 in W.P.No.2674 of 2016 etc., batch, obviously there cannot be any demand for water and sewerage tax/charges by CMWSSB.

7. To be noted, the existing assessment of Chennai Corporation, which is in vogue for some time as is evident from the case file placed before this Court has pegged the annual value at Rs.4,368/- and half year water and sewerage tax payable is Rs.153/- per half year. Without any disputation, this amount of Rs.153/- towards water and sewerage tax has been paid without delay or default upto the current half year. Impugned demand notice issued by CMWSSB reveals that water and sewerage tax/charges have been claimed at a whopping Rs.1,43,802/- per half year for several half year totalling Rs.25,11,142/-. As of today, as there is nothing before this Court to demonstrate that there was any assessment in accordance with law and in accordance with the directions given by this Court and as learned Standing Counsel for

Chennai Corporation and CMWSSB seek time to get instructions on this aspect of the matter, there shall be an interim stay of operation of the impugned demand dated 07.06.2019 bearing reference 09/125/07126/000 and all further proceedings pursuant to the same subject of course to the writ petitioner continuing paying half-yearly water and sewerage tax/charges at the existing rate of Rs.153/- per half year.

List on 12.07.2019 in the motion list.'

3. Pursuant to the aforesaid proceedings, learned standing counsel for Chennai Corporation, on instructions, submits today that proposal for assessment of property tax has been taken up and that the assessment process is in the anvil. Learned standing counsel submits that the assessment is for the purpose of enabling CMWSSB to levy water and sewerage tax/charges as writ petitioner is exempt from property tax and more importantly, learned counsel submits that assessment shall be in accordance with directions given by a Hon'ble single Judge of this Court vide order dated 18.12.2017 made in W.P.No.2674 of 2016 etc.,

4. As already mentioned in the previous order/proceedings, which has been extracted and reproduced supra, writ petitioner is also one of the petitioners in the aforesaid proceedings i.e., W.P.No.2674 of 2016 etc., and common order dated 18.12.2017 therein. Learned Standing Counsel for Chennai Corporation submits that the proceedings of assessment in accordance with set of directions, more particularly directions adumbrated in Paragraph 11 of aforesaid order dated 18.12.2017 made by another Hon'ble single Judge, will be completed as expeditiously as possible.

5. Be that as it may, learned Standing Counsel for CMWSSB submits that the present half-yearly water and sewerage tax/charges is stated to be Rs.153/- based on an annual value of Rs.4,368/-. This is subject to verification of records of CMWSSB. If there is any variation in the records of CMWSSB in this

regard, it is open to CMWSSB to send a communication to the writ petitioner in this regard setting out all the details and calling for their objections after which the proceedings will take its own course independent of the trajectory in the instant writ petition. If there is no such variation, that would be the end of the matter.

6. After Chennai Corporation completes the assessment, based on the annual value which the Chennai Corporation arrives at, CMWSSB shall raise a separate demand for water and sewerage tax/charges and send a communication to the writ petitioner well in advance.

7. In all other aspects, the earlier proceedings/orders dated 05.07.2019 (relevant paragraphs of which have been extracted and reproduced supra) made in instant writ petition will continue to govern the parties.

With the above directions, instant writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.'

3. In the instant case, learned Standing Counsel for CMWSSB submits that the present half-yearly water and sewerage tax/charges is stated to be Rs.382/- (Rupees Three Hundred and Eighty two only) based on an annual value of Rs.10,920/- (Rupees Ten Thousand Nine Hundred and Twenty only). This is subject to verification of records of CMWSSB is his say. If there is any variation in the records of CMWSSB in this regard, it is open to CMWSSB to send a communication to the writ petitioner in this regard setting out all the details and calling for their objections after which the proceedings will take its own course independent of the trajectory in the instant writ petition. If there is no such variation, that would be the end of the matter.

4. After Chennai Corporation completes the assessment, based on the annual value which the Chennai Corporation arrives at, CMWSSB shall raise a separate demand for water and sewerage tax/charges and send a communication to the writ petitioner well in advance.

5. In the light of the undisputed position before this Court which has been set out supra, the earlier order will govern the instant writ petition also.

6. With the above directions, instant writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsm

To

- 1.The Commissioner
Greater Chennai Corporation
Ripon Buildings
Chennai - 600 003.
- 2.The Managing Director
Chennai Metropolitan Water Supply and Sewerage Board

Represented by its
No.1, Pumping Station Road
Chindathripet
Chennai - 600 002
- 3.Senior Account Officer
New Area IX Office
No.1, Dr.Ranga Road
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Chennai - 600 018
- 4.Assistant Engineer/Junior Engineer
Chennai Water Board
No.1, Dr.Ranga Road
Abiramipuram
Chennai - 600 018

+2ccs to M/s.Father xavier , Advocate SR.No. 65345

+1cc to Mr.T.C.Gopalakrishnan , Advocate SR.No. 65243

W.P.No.22447 of 2019
and WMP Nos.21828 & 21829 of 2019

A.SK(05/09/2019)