IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2019

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THE HON'BLE DR.JUSTICE ANITA SUMANTH

WP.Nos.33629 & 33634 of 2019
WMP.Nos.34101, 34105 & 34106 of 2019

Bomman. M. Irani ... Petitioner in both W.Ps

/Vs/

1.The Commissioner,
Greater Chennai Corporation,
Rippon Building
Chennai 600073

2.The Managing Director,
Chennai Metro Water Supply and Sewage Board
No.2, Pumping Station Road, Chintatripet,
Chennai 600002

3.The Assistant Engineer/Junior Engineer,
Chennai Metro Water Supply and Sewage Board
Division No.9, No.1, Dr.Ranga Road,
Abhirampuram, Chennai 600081

4.The Assistant Revenue Officer,
IX Zone Corporation of Chennai
4th Street, Lake Area,
Nungambakkam, Chennai 600034

5.The Managing Agent
M-A, Namazee Endowment
No.224, Angappa Naicken Street,
Chennai 600002

6.The Tamil Nadu Wakf Board,
Rep.by its Chief Executing Officer
No.1, Jaffar Sarang Street,
Vallal Seethakathi Nager,
George Town, Chennai 600001 …Respondents in both W.Ps

PRAYER: Petitions filed under Article 226 of the Constitution of India praying for the issuance of writ of Certiorarified, calling for the records of the 3rd respondent water and drainage disconnect demand notice dated 23.01.2019 under receipt No.144 issued in the name of 5th respondent wherein the petitioner doing business under the name and style of " Irani Tea Stall" and "Sweet Corner" and quash the same as illegal and invalid.

For Petitioner : Mr.Ashok Menon
For Respondents : Mr.T.C.Gopalakrishnan
Standing Counsel for R1 & R4
Mr.P.K.Paneerselvam
Standing Counsel for R2 & R3
Ms.S.P.Aarthi for R5
Mr.Mohd.Fiyay Ali for R6

COMMON ORDER

These writ petitions are filed by a petitioner who occupies two shops admeasuring 584 sq.ft of built up area in a property comprising 6375 sq.ft. in ground floor and 6000 sq.f.t in first floor of property at No.231, Old Door No.172, Anna Salai, Thousand Lights, Chennai - 600 006 ('property'/'property in question'). Apart from the petitioner, it is stated that there are three other tenants in the property. The owner of the property, arrayed as a respondent, and duly represented by counsel is admittedly in arrears of water and sewerage taxes in respect of the property in question. A notice for disconnection of water and sewerage connection has been issued to the owner as well as the tenants and only the petitioner before me has chosen to approach this Court challenging the same.

2. All learned counsels have been heard in detail and certain larger issues have also been identified and answered in the paragraphs to follow.

3. Liability as regards water and sewerage tax is concurrent and vests jointly in both the land owner as well as the tenant in terms of Section 62(2) of the Chennai Metropolitan Water Supply and Sewerage Act, 1978 ('Act') and Regulations 24 to 27 of the Chennai Metropolitan Water Supply and Sewerage Boards' Water Tax and Sewerage Tax (Levy and Collection) Regulations, 1991, ('Regulations') extracted below:

Section 62. Obligations of owner and occupier.

....

2. The owner and occupier of the premises shall be jointly and severally liable for payment of all the sums referred to in sections 44, 45, 46, 47, 48, 49, 56 and 57.

Regulations 24 to 27 - Disconnection and Restoration of Water/Sewer Connection

24. If any amount due on account of water tax and sewerage tax as determined under the Act and the regulations is not paid before the due date prescribed by the authorised authority, the Board shall issue a notice for cutting off water or sewer connection or both between any water or sewer works main or pipe line of the Board and the premises to which water is supplied or sewerage is provided giving a further grace time as decided by the competent authority.

25. If the taxes due to the Board are not paid even after the grace time as specified in the notices issued under Regulation 24, the authorised authority shall proceed to cut off water supply or sewerage connection.

26. Restoration of water supply or sewerage cut off under regulation 25 shall be done only after payment of the entire charges due together with a penalty of Rs.50/- (Rupees fifty only) and payment of all disconnection and reconnection expenses incurred by the Board. The authorised authority shall order reconnection after satisfying himself that all payments due have been made. The Board may at its discretion grant time for payment in exceptional cases.

27. Request by tenants that the owners are liable to pay the tax dues and hence disconnection of water supply need not be given effect to shall not be considered. Requests that water supply should not be cut off for non-payment on the plea that such arrears are due by previous owners shall not be considered.

4. Thus, the petitioner before me, though a tenant in the property in question is statutorily bound to remit water tax apart from water charges to the official respondents (See

M/s.ATM Enterprises and Others Vs. The Chairman, Chennai Metropolitan Water Supply and Sewerage Board and others in W.P.Nos.8137 to 8140 of 2008 dated 19.01.2011; Dr.S.Ravindran Vs. Chennai Metro Water Supply & Sewerage in W.P.No.3050 of 2008 dated 27.08.2008; Dr.C.R.Chakravarthy, V Vs. Chennai Metropolitan Water dated 26.04.2002 and K.Chandran Vs. Tahsildar/Deputy Collector in W.P.No.5157 of 2018).

5. It would appear that, in the case of a tenant, the remittance of water and sewerage tax ought to be proportionate to the extent of area occupied by the tenant. A practical problem, however, arises in so far as there is no mechanism by which the official respondents could regulate water supply proportionately to a multi tenanted property. Constraints are expressed in arresting supply qua individual tenants in a multi tenanted property as such regulation is possible only from inside the premises and cannot be undertaken by the officials at the source/point of main supply. However, the provisions of Section 49 of the Act appear, prima facie, to confer wide powers of ingress, inspection and termination of supply. The provision is extracted below for the sake of completion:

Section 49. Power to cut off water supply

1. Notwithstanding anything contained in this Act, the authorised authority may cut off the connection between any water works of the Board and any premises to which water is supplied from such works or may turn off such supply in any of the following cases, namely

a. if the premises are unoccupied

b. if after receipt of written notice from the authorised authority requiring him to refrain from so doing, the owner or occupier of the premises continues to use water or to permit the same to be used in contravention of this Act or any other law or any regulation or other instrument made thereunder.

c. if the owner or occupier refuses to admit any authorised authority into the premises for the purposes of making any inspection relating to water supply or sewerage service, or prevents such authority from making such inspection.

d. if the owner or occupier of the premises fails to fix or prevents the fixing of a meter as required by or under the provisions of this Act, or wilfully or negligently injures or damages the meter or otherwise interferes with any pipe or tap or main or other work conveying water from any works of the Board.

e. if any pipes, taps, works or fittings connected with the supply of water to the premises be found on examination to be out of repair to such an extent as to cause such wastage of water that immediate prevention is necessary.

f. if by reason of a leakage in the service pipe or fittings, damage is caused to a public street and immediate prevention is necessary.

g. if there is any water-pipe situated within the premises to which no tap or other efficient means of turning off the water is attached.

h. if house sewers are maintained without conforming to the provisions of this Act, or such sewers are not constructed or maintained, when required under this Act.

i. if the owner or occupier fails to pay within due time any money due to the Board under this Act, or any regulation or other instruments made thereunder.

j. if there is any default in complying with any requisition made under this Act, or of any provision of this Act or any instrument made thereunder is contravened.

6. Learned Single Judges of this Court have opined that in cases of multi tenanted properties where an association has been formed, liability to outstanding water tax and charges have to be met by the Association promptly and reimbursement sought thereafter from the defaulting tenant (See Cosmo Towers Owners' Association V. Chennai Metropolitan Water Supply and Sewerage Board and others - dated 18.06.2009 in W.P.No.5351 of 2009). However, in the matter before me, it is nobody's case that an Association exists. The liability should thus unquestionably be met by either the owner or the tenants in terms of Sections 62 (2) and 49 of the Act and Regulations 24 to 27 of the 1991 Regulations.

7. A learned Single Judge of this Court in R.Narsimhan Vs. Area Engineer Area IX and another (W.P.No.22892 of 2016 dated 06.07.2016) considered the case of a compliant petitioner where the common water and sewerage connection to the petitioners' apartment was disconnected owing to arrears of water and sewerage charges in the cases of other residents. In such circumstances, the learned Single Judge held that disconnection of a common water/sewerage connection for default in charges by

other apartment owners was not sustainable and directed the respondents to restore water connection immediately. We are, in the present case, concerned with statutory taxes and the said decision will thus not be of any assistance to the petitioner.

8. Though the ideal situation would be to enable supply in multi- tenanted apartments to compliant assesseess alone, such a mechanism is said to be unavailable as of now. Seeing as today, most new constructions are high rises with multiple tenants, it is imperative that the Board conceive of a mechanism to ensure that supply qua defaulting assesses/consumers can be selectively arrested at source such that no hardship is caused to compliant assesses/consumers. Let this issue be addressed by the authorities and steps taken to remedy the situation, expeditiously.

9. As far as this writ petition as concerned, the petitioner and the official respondents have entered into a joint memo of settlement of the entire tax dues, in the following terms:

> 1.The total amount due towards Water and Sewerage Tax and Charges by the 5th Respondent herein in respect of premises bearing Door No.231, Old Door No.172, Anna Salai, Thousand Lights, Chennai - 600 006, as on date is Rs.13,77,653/- (Rupees thirteen lakhs seventy seven thousand six hundred and fifty three only).
>
> 2.The Petitioners herein shall pay the said sum in monthly instalments of Rs.1,00,000/- (Rupees one lakh only) with the first instalment to be paid on or before 30.01.2020 and the succeeding instalments to be paid on or before the last day of every succeeding English Calendar month until the entire sum of Rs.13,77,653/- is thus paid along with the accumulated surcharge at the time of final installment.
>
> 3.In the event of default of any of the above instalments. Respondents can take coercive steps for recovery of dues enforcing the provisions of Revenue Recovery Act.
>
> 4.The future payments of Water and Sewerage Tax and Charges shall be paid by the petitioner as and when it is due.

10. Recording the above, these writ petitions are disposed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner, Greater Chennai Corporation,
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2.The Managing Director,
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+2cc to M/s.Ashok Menon, Advocate Sr.No.103544
+1 cc to M/s.T.C.Gopalakrishnan,Advocate Sr.No. 103791
+2 cc to M/s.S.P.Arthi,Advocate Sr.No. 103861

AKM/17.12.19/7P- 12C /

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