IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal No.2609 of 2018
and CMP.No.21287 of 2018

M/s.Victory Electricals Limited
rep. By its Managing Director,
Mr.Vaddineni Mahindra, 850/64/B,
Near Royal Enfield Ltd, Thiruvottiyur,
Chennai-19. ... Appellant

Vs.

1. The Commissioner
Corporation of Chennai
Rippon Building, Chennai-3.

2. The Zonal Officer-I
Revenue Department
Corporation of Chennai
Zone-I, Ward No.05
Chennai-19.

3. The Assistant Revenue Officer-I
Revenue Department
Corporation of Chennai
Zone-I, Ward No.5,
Chennai-19. ... Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order of the Learned Judge passed in W.P.No.5055 of 2014 dated 07.09.2018.

Petition filed under Article 226 of the Constitution of India seeking for on issuance of Writ of Certiorarified Mandamus calling for the records of the respondent relating to the impugned notice dated 7.2.2014 issued by the 2nd respondent under section 379(a) (1) of Chennai City Municipal Corporation Act IV of 1919 to M/S.Hackbridge Hewittic and Easun Ltd. and quash the same and directing the respondents to remove the lock and seal put up by him in the premises of the petitioner company at No.850/64/B Near Royal Enfield ltd. Thiruvottiyur Chennai-19 so as to enable them to carry on their repair and service work of transformers thereat.

For Appellant : Mr.K.Koteswara Rao.

For Respondents: M/s.Narmadha Sampath
Additional Advocate General
Asst. by R.Arulmozhi.

JUDGMENT

(Judgement of the Court delivered by T.S.Sivagnanam, J.)

This appeal is directed against the order in W.P.No.5055 of 2014 dated 07.09.2018. The said writ petition was filed by the appellant, challenging the notice issued by the second respondent under Section 379 (A) of the Chennai City Municipal Corporation Act, 1919 [for brevity 'the Act'].

2. We have heard Mr.K.Kootteswara Rao, learned counsel appearing for the appellant and M/s.Narmadha Sampath, Additional Advocate General, assisted by Mr.R.Arulmozhi, learned counsel appearing for the respondent/corporation.

3. The above notice came to be issued, on the ground that the appellant was carrying on business activities/transformer work without obtaining the license from the corporation. The appellant was given 24 hours time to restore the premises to the original state. Immediately, thereafter the premises were sealed. The appellant rushed to this Court and filed the writ petition in W.P.No.5055 of 2014. The writ Court by interim order dated 21.02.2014 directed the respondent to remove the seal and lock, if the appellant is not carrying on any manufacturing activity, but was carrying on only service and repair work. The interim order has been implemented and the lock and seal has been removed.

4. It is the submission of the learned counsel appearing for the appellant that as of now, the appellant is having only an office and there is no repair or service work also. Be that as it may, in the impugned order, the writ Court, while rejecting the prayer sought for, primarily on the ground that the impugned order in the writ petition is only a show cause notice issued, issued further directions to the appellant to pay property tax to the tune of Rs.1,41,14,432/-. Admittedly, the appellant is only a lessee in the premises, and not the owner of the premises. It is not clear as to whether any proceedings have

been initiated by the respondent/corporation against the owner of the premises and in any event, the direction could not have been issued to the appellant to pay the property tax that too when he had approached the Court by filing the writ petition, challenging notice under Section 379(A) of the Act. When the writ petition was heard, the prayer sought for in the writ petition has become infructuous, since the seal has been already removed and no further directions have taken against the appellant. That apart, there was no demand notice served on the appellant in the capacity of an occupier of the premises making him liable to pay the property tax. Under the provisions of the Act, the respondent/corporation is empowered not only to issue demand notice on the owner of the premises for payment of property tax, but also on the occupier in the event of default committed by the owner.

5. The learned Additional Advocate General has drawn our attention to the rental agreement dated 03.02.2018 between the appellant and the Hackbridge Hewittic and Easun Limited and Clause 6 of the agreement states that property tax shall be paid by the lessee namely the appellant. Admittedly, no separate notice has been issued against the appellant in the capacity of an occupier and the final warrant notice dated 05.09.2013 had been issued in the name of M/s. Hackbridge Hewittic and Easun Ltd. Further, the proceedings which were impugned in the writ petition was a notice under Section 379 A and it is not a notice in the strict sense but it is an order by itself since it directs the appellant to restore the premises to its original condition, in other words to desist from carrying on any activity in the premises which according to the respondent/corporation, there was a manufacturing activity. The appellant was granted 24 hours time and it is the case of the appellant that within the said 24 hours period, the premises was sealed.

6. Thus, we do not agree with the observations made by the learned Writ Court that the impugned proceedings is not only a show cause notice but it is an order of closure of the appellants business. Thus for the above reasons, we are of the considered view that the writ petition should not have been rejected and there could not have been a direction in the writ petition filed by the appellant to pay property tax, payable by the owner of the premises that too without any notice on the appellant in the capacity of an occupier.

7. Thus, the order and directions issued in the writ petition call for interference. In the result, the writ appeal is allowed and the order passed in the writ petition set aside. No costs. Consequently, the connected miscellaneous petition is

closed. It is made clear that any observations made in this order will not in any manner affect the rights of the respondent/corporation for recovery of the property tax in terms of the Provisions of the act.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

1. The Commissioner
   Corporation of Chennai
   Rippon Building, Chennai-3.

2. The Zonal Officer-I
   Revenue Department
   Corporation of Chennai
   Zone-I, Ward No.05
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   Revenue Department
   Corporation of Chennai
   Zone-I, Ward No.5,
   Chennai-19.

+2cc to Mr.H.Mohammed Farook, Advoate Sr.13277
+1cc to Mr.R.Arunmozhi, Advocate Sr.13611

W.A.No.2609 of 2018
C.M.P.No.21287 of 2018

ks[co]
srg 14/03/2019