

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.02.2019

CORAM

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

Writ Appeal No.2654 of 2018
and CMP.No.21700 of 2018

Chennai Public School
Rep. By its Chairman,
A-80, 3rd Avenue,
Anna Nagar,
Chennai- 600 102.

... Appellant

Vs.

1. The Commissioner,
Corporation of Chennai,
Chennai-600003.
2. The Managing Director
Chennai Metropolitan Water Supply
and Sewerage Board,
No.1, Pumping Station Road,
Chennai-600 002.
3. The Area Engineer VII,
Chennai Metropolitan Water Supply,
and Sewerage Board,
No.1, T.S.Krishna Nagar,
Mogappair, Chennai-600037.

... Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order passed in W.P.No.13179 of 2015 dated 12.09.2018. Praying to issue a writ of certiorari mandamus calling for the records pertaining to the impugned order of demand dated 21.11.2014 issued by the 3rd respondent followed by the disconnection notice dated 5.2.2015 in Ref.No. 07/089/07023/000 issued by 3rd respondent and quash the same.

For Appellant : Mr.V.R.Kamalanathan

For Respondents : Mrs.Karthika Ashok
for R1.
Mr.Jothi Kumar
for R2 and R3.

JUDGMENT

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

This appeal filed by the Chennai Public School is directed against the order passed in W.P.No.13179 of 2015 dated 12.09.2018.

2. The said writ petition was filed by the appellant, challenging the demand notice issued by the Chennai Metropolitan Water Supply and Sewerage Board dated 05.02.2015 demanding the total amount of Rs.10,68,672/- as arrears of water and sewerage tax. The appellants case before the Writ Court as well as before us is that no prior opportunity was given before the third respondent/CMWSSB issued the demand notice dated 05.02.2015. Further, it is contended that there has been no revision of the annual value of the building which was determined for the first time on 06.09.2015 fixing the annual value at Rs.76,33,370/- , the half-yearly tax on the same was arrived at Rs.6,526,60/-. Since at the relevant time, the educational institutions were exempted from payment of property tax, notice in Form No. 7 dated 06.09.2015 clearly stated that the assessment is only for the collecting water and sewerage tax by CMWSSB from the second half year 2017-2018. The exemption enjoyed by the educational institutions have been withdrawn and the statute has been accordingly amended.

3. In such a situation, it goes without saying that the revision of the annual value of the building could not have been done without issuing notice in Form No.7, which has to be preceded by an inspection of the building.

4. Admittedly, the building has not been inspected after 2014. Even as per the inspection report conducted in 2014, it is seen that one of the floors of school building is a semi permanent structure, which is impermissible. Even though the appellant institution is not an aided institution, coming under the control of the State Government, yet safety of the students cannot be compromised. The "Kumbakonam incident" should be a lesson to educational institutions.

5. Be that as it may, since there has been substantial revision of the annual value of the appellant's building without notice to the appellant and the CMWSSB has demanded water and sewerage tax at 7% of the half-yearly tax fixed by the

Corporation of Chennai, the appellant is definitely entitled to an opportunity to put forth his objections. We make it clear that the appellant has to continue to pay water and sewerage tax at the pre-revised rate that is calculated based on the half-yearly tax of Rs.6,52,660/-. So far as the property tax is concerned, since the benefit of exemption is no longer available to the appellant institution, we issue the following direction to the first respondent corporation. The original files were produced before us and Mr.M.Kannan, Zonal Officer, Ambattur, Zone-7 is also present in Court.

6. In the light of the above, the appeals stands disposed of by modifying the order passed in the writ petition on the following terms:

(i) The appellant shall continue to pay water and sewerage tax based on the half-yearly property tax which was arrived at Rs.6,52,660/- in terms of the new assessment Notice No.06 dated 06.09.2015. The learned counsel for the appellant submitted that the substantial amount has been paid by the appellant without prejudice to their rights. If the same is true, then the said payment shall be reckoned towards the payment of water and sewerage tax and water and sewerage tax at 7% of the enhanced property tax shall not be demanded till fresh assessment is done on the property by the Chennai Corporation.

(ii) The officials of the Corporation of Chennai are directed to inspect the appellant's building after notice to the appellant, measure the constructed area, also verify whether the construction is in accordance with the sanctioned plan, whether any classes are functioning in the temporary accommodation or semi permanent structures and after conducting a thorough inspection, issue a notice in Form No.7 to the appellant along with a copy of the inspection report. The appellant if aggrieved, is entitled to submit their objections to the said notice in Form No.7 and thereafter final assessment has to be made by the respondent corporation by passing an order in Form No.10.

7. It is submitted by the learned counsel for the appellant that on account of pressure exerted by the Officials, the appellant has also paid property tax without prejudice to their right and contentions. If such payment has been made, the same shall abide by the fresh assessment to made by the respondent/Corporation in terms of the above directions. The above directions be complied with within a period of six weeks from the date of receipt of copy of this order.

8. In the result, the writ appeal stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

ssb/mrm

To:

1. The Commissioner,
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Chennai-600003.
2. The Managing Director
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and Sewerage Board,
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3. The Area Engineer VII,
Chennai Metropolitan Water Supply,
and Sewerage Board,
No.1, T.S.Krishna Nagar,
Mogappair, Chennai-600037.

+1cc to Mr.VR.kamalanathan, Advocate SR.No.12717

+1cc to Mrs.Karthikaa Ashok, Advocate SR.No.12455

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SV (CO)
GMY (23/03/2019)

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