IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.11.2020
CORAM
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU
W.P. No. 20012 of 2016

Mahalaxmi Inn Pvt. Ltd.,
A Company incorporated under the Companies Act,
Registered Office at No. 112, Chamiers Road,
Nandanam, Chennai - 600 035
Represented by its Director R. Sumerchand Bafna.
... Petitioner

-vs-

1.The Managing Director,
Chennai Metropolitan Water Supply and Sewerage Board,
No. 1,Pumping Station Road
Chindatripet Chennai - 600 002.

2.The Senior Accounts Officer - IX,
Chennai Metropolitan Water Supply and Sewerage Board,
Area - IX, No. 1, Dr. Ranga Road,
Alwarpet, Chennai - 600 018.

3.The Area Engineer,
Chennai Metropolitan Water Supply and Sewerage Board,
Area - IX, No. 1, Dr. Ranga Road,
Alwarpet, Chennai - 600 018. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondents pertaining to the assessment of Water Tax and Sewerage Tax of the property of the Petitioner in Assessment Number Old CMC No: 08/116/0503/000000-09/122/01825/000 and to quash the Proceedings of the Second Respondent dated 23.03.2016 as regards the levy of Water Tax and Sewerage Tax and consequently to direct the Respondents to forbear from levying or demanding or collecting additional Water Tax and Sewerage Tax till the finalization of the assessment of property tax of the Petitioner in accordance with law.

For Petitioner : Mr. T.M.Hariharan

For Respondents: Mr. M.Jothikumar, Standing Counsel

O R D E R
(through video conference)

Heard Mr. T.M.Hariharan, Learned Counsel for the Petitioner and Mr. M.Jothikumar, Learned Special Government Pleader for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition has been filed challenging the Demand Notice dated 23.03.2016 issued by the Second Respondent for levying water tax and sewerage tax for the property owned by the Petitioner and to consequently forbear the Respondents from levying, demanding and collecting additional water tax and sewerage tax till the finalization of the assessment of property tax of the Petitioner in accordance with law.

3. Learned Counsel for the Petitioner has brought to notice of this Court in respect of property tax for the same building, the Petitioner had filed the Writ Petition in W.P. No. 14472 of 2011 before this Court, which was disposed by order dated 12.09.2018 and in the appeal against that order in W.A. No. 2718 of 2018, the Division Bench of this Court by an order dated 18.12.2018, passed the following order:-

> "This appeal by the writ petitioner is directed against the order dated 12.9.2018 passed in W.P.No.14472 of 2011.
>
> 2. We have heard the learned counsel for the appellant and Mr.R. Arunmozhi, learned Standing Counsel accepting notice for the respondents.
>
> 3. The appellant is a company incorporated under the Indian Companies Act and is running a hotel, which, according to the appellant, is a posh hotel and is to be classified as a star category hotel.
>
> 4. The appellant filed the said writ petition challenging the order passed by the Commissioner, Corporation of Chennai dated 26.5.2011 demanding property tax at the rate of 20% of the gross income of the appellant classing the appellant as 'A' category hotel.
>
> 5. Earlier, the appellant approached this Court by filing W.P.No.17096 of 2009 challenging the warrant notice issued by the respondent Corporation. In that writ petition, several grounds were raised by the appellant including the contention that in spite of change of classification of the appellant's hotel

as 'S' category hotel, which, according to the appellant, is a star hotel status, the property tax has been charged by classifying it as 'A' category hotel. The said writ petition was allowed by order dated 09.10.2009 and the respondent Corporation was directed to consider the objections filed by the appellant, hear them and issue a final order in accordance with law within a time frame. The impugned order in the present writ petition is purported to have been passed pursuant to the directions issued in the said writ petition.

6. However, we find that the grounds raised by the appellant in their objections were not specifically dealt with in the impugned order in the present writ petition and the classification was appended to the impugned order classifying the appellant as 'S' category hotel, which, according to the appellant, is a star hotel status. Though the calculation sheet showed that the property tax is computed on 10% of the gross income, the demand was arrived at on 20% of the gross income. Therefore, the appellant filed the present writ petition namely W.P.No.14472 of 2011 challenging the demand dated 26.5.2011.

7. At the time when W.P.No.14472 of 2011 was entertained, an order of interim stay was granted and it was in force for eight years. However, the respondent Corporation did not file a counter affidavit. When the case was heard finally, the learned Single Judge of this Court noted that the appellant's name did not find a place in the list of star hotels produced by the respondent Corporation before the Court.

8. The contention of the appellant was that the requirement to be listed as a star hotel was not contemplated in terms of G.O.Ms.No.856 Rural Development and Local Administration Department dated 19.4.1972, which only classified hotels as posh hotels and lodging houses. The learned counsel for the appellant submitted that the appellant might be granted an opportunity to apply to the Competent Authority for obtaining such a star category certification.

9. However, the learned Single Judge was not inclined to accept such a submission and ultimately rejected the writ petition and the appellant was directed to pay the entire arrears of property tax. It was also made clear that in the event the appellant did not do so, there was a direction to the respondent Corporation to initiate further action by following the procedure contemplated under law. There was no reasonable explanation given by the respondent Corporation as to why for eight long years, they did not file a counter affidavit nor moved the learned Single Judge for vacating the interim order.

10. The learned counsel for the appellant has drawn the attention of this Court to the information obtained under the Right to Information Act wherein the Information Officer had given a reply dated 02.11.2018.

11. To one of the queries pertaining to list of star category hotels, which have been assessed to property tax by the respondent Corporation and charged to tax at the rate of 10% of gross income, the Information Officer furnished a list of eight hotels. It is not in dispute that those eight hotels did not find a place in the list of star hotels, which was produced before the learned Single Judge at the time of hearing the present writ petition.

12. The learned counsel for the appellant has also drawn our attention to another list of hotels, which are not included as star category hotels by the various Departments and it is the case of the appellant that those hotels were also charged at the rate of 10% of the gross income.

13. Thus, in our considered view, the respondent Corporation has not complied with the directions issued in the earlier writ petition in W.P.No. 17096 of 2009 dated 09.10.2009 in its letter and spirit. No reasons were assigned by the respondent Corporation for rejecting the appellant's contention. Therefore, we are of the view that the matter required to be considered afresh. However, such a concession is coupled with a condition.

14. Admittedly, the appellant would contend that they are liable to pay property tax only at the rate of 10% of the gross income as against the demand made at the rate of 20% of the gross income. Therefore, this Court is of the view that the following directions would meet the ends of justice and it will protect the interests of both the appellant as well as the revenue of the respondent Corporation.

15. The writ appeal is disposed of with a modification of paragraph 12 of the order passed by the learned Single Judge dated 12.9.2018. The appellant is directed to pay the arrears of property tax at 10% of the gross income less the tax already paid by the appellant. The amount shall be paid by the appellant in instalments, but within a period of eight weeks from the date of receipt of a copy of this judgment. The appellant is at liberty to apply to the Competent Authority for certifying their hotel as a star category hotel.

16. However, the learned counsel for the appellant submits that there is one impediment, that the respondent Corporation has not renewed their trade licence and that therefore, the appellant is unable to apply to the Competent Authority for certification.

17. It is made clear that on the appellant complying with the condition mentioned above, the respondent Corporation shall renew their trade licence to facilitate the appellant to apply to the Competent Authority for certification. The appellant is granted three months time to obtain the requisite certification and then approach the respondent Corporation along with a representation, which shall be considered in accordance with law.. If the appellant complies with the said condition, the demand in respect of the remaining amount shall be stayed. It is also made clear that if the appellant fails to comply with the condition imposed in this judgment, the benefit of this order will not enure to the appellant, the respondent Corporation is at liberty to initiate further action and the writ appeal would stand dismissed automatically without any further reference to this Court. No costs. Consequently, the connected CMP is closed."

Learned Counsel for the Petitioner submits that the assessment of water tax and sewerage tax for the same building would have to be be made by the Respondents following the same valuation adopted for property tax in respect of the relevant periods and the Respondents would have to carry out that exercise in this case.

4. Having regard to the aforesaid submissions made, which deserves acceptance, it would be incumbent upon the Petitioner in terms of the order dated 18.12.2018 in W.A. No. 2718 of 2018, to remit the entire amount claimed towards water charges in addition to the water tax and sewerage tax calculated at the old rate along with 10% of the differential amount remaining payable in the impugned demand notice, by 31.01.2021. If the said condition is satisfied within that time limit, the Respondents shall await for conclusion of the determination of the proceedings for assessment of property tax for same building during the relevant periods and on the date of receipt of copy of such assessment proceedings from the Corporation of Greater Chennai, the corresponding amount of water tax and sewerage tax shall be assessed by conducting enquiry affording full opportunity of personal hearing to the Petitioner and the decision taken shall be communicated to the Petitioner under written acknowledgment. It is made clear that if the amount towards property tax in terms of the order dated 18.12.2018 in W.A. No. 2718 of 2018 or the amount stipulated in this order, have not been remitted within the time limits fixed, the Respondents are not precluded from recovering the entire amount of dues under the impugned order in the manner recognized by law without any further reference to this Court.

In the result, the Writ Petition is disposed on the aforesaid terms. No costs.

Sd/-
Asst.Registrar (CS VI )

/true copy/

Sub Asst. Registrar



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To

1.The Managing Director,
Chennai Metropolitan Water Supply and Sewerage Board,
No. 1, Pumping Station Road
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Chennai - 600 002.

2.The Senior Accounts Officer - IX,
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3.The Area Engineer,
Chennai Metropolitan Water Supply and Sewerage Board,
Area - IX, No. 1, Dr. Ranga Road,
Alwarpet, Chennai - 600 018.

4. The Commissioner,
Greater Chennai Corporation,
Chennai - 600003.

+1 cc to M/s.T.M.Hariharan Advocate sr375/13

W.P. No. 20012 of 2016

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