IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.02.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.15644 of 2018 and 29390 of 2019

and WMP Nos.18581 of 2018 and 29230 of 2019

S.M.Anand Vel ...Petitioner in both W.Ps

Vs

1.The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai-3. ...1st respondent in W.P. No.15644 of 2018

...4th respondent in W.P. No.29390 of 2019

2.The Assistant Revenue Officer,
Corporation of Chennai,
Zone - 7, PH Road,
Chennai - 10 ...2nd respondent in W.P. No.15644 of 2018
... 5th respondent in W.P. No.29390 of 2019

3.The Chairman/Managing Director,
Chennai Metropolitan Water Supply and
Sewerage Board, (CMWSSB),
No.1, Pumping Station Road,
Chennai -2. ... 3rd respondent in W.P. No.15644 of 2018
... 1st respondent in W.P. No.29390 of 2019

4. The Area Engineer,
Area VIII, CMWSSB,
227, II Avenue, near 125h Main Road,
Anna Nagar,
Chennai -40. ... 4th respondent in W.P. No.15644 of 2018
... 2nd respondent in W.P. No.29390 of 2019

5.The Tashildar/Deputy Collector,
Chennai Metropolitan Water Supply and
Sewerage Board, (CMWSSB),
Area VIII, CMWSSB,
227, II Avenue, Near 12the Main Road,
Anna Nagar,
Chennai - 40 ... 3rd respondent in W.P. No.29390 of 2019

6. The Regional Deputy Commissioner,
Central Zone -8,
Chennai. ...5th respondent in W.P. No.15644 of 2018
... 6th respondent in W.P. No.29390 of 2019

Prayer in W.P. No.15644 of 2018: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari, to call for the records pertaining to impugned demand notice issued by the second respondent directing the petitioner to pay Rs.8,77,797/- as arrears of property tax under Z.O.VIII.R.D.C.No.R2/1549/2017, 09/08/2017 received by RPAD on 25.05.2018 and quash the same.

Prayer in W.P. No.29390 of 2019: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari, to call for the records pertaining to impugned distrait cum demand notice dated 19.09.19 on the file of the second and third respondent directing the petitioner to pay Rs.13,27,064/- as arrears of water and sewerage tax and quash the same.

For Petitioner in both WPs. : Mr.P.Sidharthan

For Respondents in W.P. No.15644 of 2018

for R1, R2 & R5 : Mr.T.C.Gopalakrishnan,
Standing Counsel

for R3 & R4 : Mr.N.Ramesh,
Standing Counsel

For Respondents in W.P. No.29390 of 2019

for R1 to R3 : Mr.Paneerselvam,
Standing Counsel

for R4 to R6 : Mr.T.C.Gopalakrishnan,
Standing Counsel

COMMON ORDER

W.P.No.15644 of 2018 challenges a demand notice issued by the Zonal Officer, Zone – 8, Corporation of Chennai dated 09.08.2017 calling upon the petitioner to settle the arrears of property tax forthwith. The communication also states that all relevant records in relation to the aforesaid demand, such as general revision notice, assessment order, enhancement revision order, general survey notice, property tax calculation sheet for the period 1993-2017, property tax payments/adjustments statement and details of balance payable were enclosed with the letter.

2. The petitioner admittedly is the owner of the premises at C-43 II Avenue, Anna Nagar Weat, Chennai - 40 (in short 'property in question'). He has filed a suit as against the Chennai Corporation seeking a declaration to the effect that notice dated 07.03.2001 was null and void. The suit was decreed on 21.04.2004 leaving it open to the Corporation to initiate fresh proceedings. On 30.01.2009, a notice was issued raising a demand of property tax to which a reply was filed by the petitioner objecting to the retrospective revision without an opportunity of personal hearing.

3. Since the proceedings for assessment of property tax also impacted the levy and demand of water and sewerage tax, W.P.Nos.30574 to 30576 of 2016 were filed seeking a direction from the Commissioner to furnish full details in regard to the tax liability of the petitioner in respect of the property in question and an order was passed by this Court on 01.09.2016 disposing the Writ Petitions finally and directing the respondent Corporation to furnish full details to the petitioner in regard to the assessment after hearing the petitioner personally as well as furnishing the documents that he required. As far as the challenge to the order of assessment dated 26.08.2009 was concerned, this Court left it open to the petitioner to question the general revision notice dated 26.08.2009 after he obtained full details from the respondent. The orders of assessment were not quashed.

4. Pursuant to the aforesaid order and after exchange of some communication inter se the parties, on 22.06.2017, the Zonal Officer, Zone - 8 supplied the existing building measurements, revised building measurements, assessment orders and payment statement. The Officer also stated that if any objections were raised by the petitioner in regard to the aforesaid details by way of representation filed within one week, the same shall be considered, failing which it would be taken that the petitioner has no objection in regard to the assessments proposed.

5. The petitioner, on 14.05.2018, sought an opportunity of personal hearing referring to his letter dated 06.05.2016. The opportunity was granted as per counter filed by the Corporation, on 25.11.2016 at 11.00 a.m. It is only pursuant thereto, that the impugned communication has been issued referring to all the details already supplied in regard to the property tax assessments and calling upon the petitioner to make good the arrears.

6. In W.P.No.29390 of 2019, the petitioner challenges the distraint-cum-notice issued by the Chennai Metropolitan Water Supply and Sewerage Board.

7. W.P.No.15644 of 2018 came up on 27.06.2018 when this Court recorded specifically that relevant records have been

furnished to the petitioner. The petitioners' grievance however is that though records have been furnished, no opportunity of personal hearing was granted prior to completion of assessment. At that juncture, Ms.Karthika Ashok has accepted notice for the Corporation and Mr.Ramesh had accepted notice for the board.

8. W.P.No.29390 of 2019 came up on 15.10.2019 for admission and was directed to be listed along with the earlier Writ Petition for hearing. Both matters were listed separately before the Court till they were directed to be clubbed on 15.10.2019. On 09.12.2019, I passed the following order:

> 'WP.No.15644 of 2018
>
> There is no representation for the Corporation. There have been multiple directions to Ms.Karthika Ashok, learned Standing Counsel, who has accepted notice for Corporation on 27.06.2018 to produce the files. However the files are also not produced before the Court. List on 20.12.2019 to enable the presence of the Corporation counsel along with the files.
>
> WP.No.29390 of 2019
>
> At request of Mr.Panneerselvam, learned counsel for the respondents 1 to 3 (R1 to R3) and Ms.Padma Shalini for Mr.Gopalakrishnan, learned counsel for the Corporation (R4 & R5) to file counter, list on 20.12.2019
>
> 3.A letter dated 11.11.2019 is placed on file by the petitioner today, initialed by the SAO-VIII and Area Engineer-VIII, stating the CMWSS Board has no knowledge of issue of impugned notice dated 19.09.2019 by Mr.Xavier, former Depot Manager, who has retired from service on 30.06.2019.
>
> 4.Let the records/back files be produced. Mr.Panneerselvam, learned counsel for R1 to R3 is directed to ensure that the two officers who have initialed letter dated 11.11.2019 are present on the next date of hearing.
>
> 5.List on 20.12.2019.'

9. The direction at paragraph 4 above was specifically made in the light of the communications withdrawing the statutory demand of Water and Sewerage tax that was initialled by two officials on 11.11.2019.

10. When the matter came up on 20.12.2019, the following order was passed in the presence of both learned counsel:

> 'The petitioner has been repeatedly approaching this Court challenging property tax assessments and alleging non-adherence with the provisions of natural justice.

2.Thus, and in order to ensure a finality to the issue, particularly since the petitioner is stated to be a senior citizen, let the petitioner appear before the Regional Deputy Commissioner, Central, Zone-8, Chennai, since he is stated to be the officer having jurisdiction in the matter. (suo moto impleaded). 3.The petitioner will appear before the aforesaid officer on Wednesday, the 8th January, 2020 at 10.30 a.m., without expecting any further notice in this regard. After hearing the petitioner specifically on the aspects of (i) measurements of the property in question, (ii) usage of the property and (iii) occupier of the property, let a report of assessment of the property tax upon the property in question be filed by the aforesaid officer.

4.List on 28.01.2020'

11. This order was uploaded on the website on 02.01.2020, dispatched to the respondents on 08.01.2020 and Mr.T.C.Gopalakrishnan, learned Standing Counsel for the Corporation has received the order on 09.01.2020. No copy application has been made by the petitioner. On 28.01.2020, when the matter was called, the petitioner was called absent. Ms.Karthika Ashok, who appears for the Corporation sought some time to produce order passed after the hearing on 08.01.2020.

12. When the matter was listed for hearing today, counsel for the Corporation states that orders have not been passed till date. She produces an interim report containing details of inspections conducted on 25.01.2020 and consequent valuation of the property. She also states that the petitioner has not appeared before the Officer on 08.01.2020 as directed. There is no explanation as to the non-compliance of order dated 08.01.2020 passed in the presence of both learned counsel in Court.

13. As early as on 27.06.2018, a learned single Judge has recorded that the relevant records have been furnished to the petitioner under cover of communications dated 22.06.2017 and 09.08.2017. The Zonal Officer, Zone - 8, Greater Chennai Corporation has also, under cover of letter dated 22.06.2017, stated that any objection by the petitioner to the details furnished can be brought to the officers' attention within a weeks' time. No representation appears to have been filed in this regard.

14. On 14.05.2018, the petitioner again writes to the Corporation referring to his letter filed in 2016 seeking a personal hearing. It is solely to mitigate this grievance of the petitioner this Court afforded a hearing, by fixation of a specific date that too fixed after consulting both learned counsel as to the convenience of the respective parties. This

is also not availed. I thus seen no reason to keep these Writ Petitions pending any further.

15. Let orders of assessment be passed in the light of the details available on record and be duly communicated to the petitioner.

16. As far as the demands of water and sewerage tax are concerned, this Court takes exception to the conduct of the two officers in issuing communication dated 11.11.2019 to the following effect:

> 'Thiru.Xavier former Depot Manager has retired from service on 30.06.2019. it is clarified that CMWSS Board has no knowledge of issue of this notice dated 19.09.2019. Hence, the said notice stands withdrawn.
>
> The inconvenience caused is highly regretted.
>
> Sd/- Sd/-
>
> SAO-VIII Area Engineer - VIII'

17. Notice dated 19.09.2019 is a distraint-cum-demand notice issued in terms of the provisions of the Chennai Metropolitan Water Supply and Sewerage Act, 1978. The SAO VIII and Area Engineer VIII were directed to be present in Court to explain their conduct in withdrawing a statutory notice. Though both were present in Court on 20.12.2019, one of the Officers, viz., Ms.Revathy, SAO, Chennai Metropolitan Water Supply and Sewerage Board, did not appear on the subsequent dates of hearing, ostensibly for medical reasons. No evidence is filed to substantiate the aforesaid.

18. In counter, the Area Engineer states, supported by oral submissions of the learned standing counsel to similar effect, that the demand notice was properly issued but withdrawn on 11.11.2019, since a contempt notice was issued by the petitioner for violation of order of this Court dated 15.10.2019. The withdrawal of the notice is however, without prejudice to the rights and interests of the Board.

19. The sequence of events is recorded for the purposes of completion of the narration and no other reason. Demands of water and sewerage tax will be consequent upon the assessments of property tax to be made as per paragraph 15 of this order. Let this exercise be completed within a period of two (2) weeks from date of receipt of a copy of this order.

20. These Writ Petitions are closed as are the connected Miscellaneous Petitions. No costs.

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Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

To

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

2.The Assistant Revenue Officer,
Corporation of Chennai,
Zone - 7, PH Road, Chennai - 10

3.The Chairman/Managing Director,
Chennai Metropolitan Water Supply and
Sewerage Board, (CMWSSB),
No.1, Pumping Station Road,Chennai -2.

4. The Area Engineer,
Area VIII, CMWSSB,
227, II Avenue, near 125h Main Road,
Anna Nagar, Chennai -40.

5.The Tashildar/Deputy Collector,
Chennai Metropolitan Water Supply and
Sewerage Board, (CMWSSB),
Area VIII, CMWSSB,227, II Avenue,
Near 12the Main Road,Anna Nagar,
Chennai - 40.

6. The Regional Deputy Commissioner,
Central Zone -8, Chennai.

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and WMP Nos.18581 of 2018 and 29230 of 2019

ak (C.O.)
mst (26.05.2020)