IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.07.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.18623, 18624 & 18625 of 2012

M/s.Tower Vision India Pvt.Ltd.,
AMG Tower, 2^{nd} Floor, 2B, No.28,
Lawyer Jagannathan Street, Chennai,
Represented by its Authorized Signatory,
Mr.Subhas Chandra Saha

..Petitioner in W.P.No.18623/2012

M/s.Viom Networks Limited,
(Formerly M/s.Wireless TT – Info Services Ltd.,)
Celestial Point, No.45,
Damodaran Street, South Usman Road,
T.Nagar, Chennai – 600 017,
Rep.by its Authorized Signatory,
Mr.N.Senathipathi

..Petitioner in W.P.No.18624/2012

M/s.Indus Towers Ltd.,
No.5 (NP), Espee IT Park, 5^{th} floor,
Jawaharlal Nehru Road, Ekkatuthangal,
Chennai – 600 032, Rep.by its Authorized Signatory,
Mr.D.Harikrishnan.

..Petitioner in W.P.No.18625/2012

Vs

1. The Secretary,
   Municipal Administration and Water Supply Department,
   Govt. of Tamil Nadu,
   Fort St.George, Chennai – 600 009.

2. The Secretary,
   Revenue Department,
   Government of Tamil Nadu,
   Fort St.George, Chennai – 600 009.

3. The Commissioner of Municipal Administration,
   Commissionerate of Municipal Administration,
   “Ezhilagam”, Chepauk, Chennai – 600 005.

..Respondents 1 to 3 in all WPs.

4. The Commissioner,
   Bodinayakannur Municipality,
   Bodinayakannur, Theni District.

5. The Panchayat Secretary,
   Oddaipatty Panchayat,
   Oddaipatty, Dindigul District.

... Respondents 4 & 5 in W.P.No.18623/2012

6. The Commissioner,
   Kodaikanal Municipality,
   Kodaikanal, Pin – 624 101.

7. The Commissioner,
   Bodinayakannur Municipality,
   Bodinayakannur, Theni District.

... Respondents 4 & 5 in W.P.Nos.18624 & 18625/2012

COMMON PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, calling for the records of the 3rd respondent culminating in the impugned Circular in Roc.No.68985/05/TP3, dated 01.12.2005 and quash the same being illegal, malafide and in derogation of the statutory provisions.

For Petitioners : Mr.Om Prakash, Senior Counsel assisted by Mr.P.Elaya Rajkumar for M/s.Ramalingam and Associates

For Respondents : Mr.V.Nanmaran Government Advocate for R1 to R3

Mr.P.Srinivas for R4 & R5

...in all Wps.

COMMON ORDER

The writs on hand are filed challenging the Circular dated 01.12.2005, issued by the third respondent.

2. The impugned order states that some of the Municipalities are not levying property tax on towers erected by I.T.Companies. In view of the above situation, it is now clarified that the towers erected for telecommunication by various I.T.Companies are all subject to levy of property tax. Hence, all the Executive Authorities are directed to assess the towers erected by the Companies without any omission.

3. The learned Senior Counsel appearing on behalf of the petitioners mainly contended that the petitioners were permitted to erect the towers, which is a temporary structure and as per the provision of the Act, the Property Tax is to be levied on the owners of the building or land. In the present case, the petitioners are neither lessees nor tenants and therefore, they are not liable to pay the Property Tax directly to the Corporation. The issue regarding the payment of property tax by the owners with reference to the provisions of the Chennai City Municipal Corporation Act, this Court passed an order on 16.04.2014 in W.P.Nos.21040 to 21044 of 2010 and 10809 of 2012 and the relevant paragraphs are extracted hereunder:

> “3. It is further contended that the BTS Towers are installed either in a vacant land or in a concrete building or otherwise. The annual income derived from and out of the BTS Towers differs from one Tower to another Tower and as per the provisions contemplated, the annual income derived from and out of the 'building', is to be taken into consideration for determination of property tax. Thus, the method in which the property tax assessed by the respondent is in violation of the provisions of the Act.
>
> 4. The writ petitioners have raised a point that the BTS Towers installed are not 'building' within the meaning of CCMC Act, 1919. However, the issue, in this regard, is settled by various High Courts. It is relevant to extract Section 3(4) of CCMC Act, 1919, which defines 'Building' as under:-
>
> “Building.--- “Building” includes ---
>
> (a) A house, out-house, stable, latrine, godown, shed, hut, wall (other than a boundary wall not exceeding eight feet in height) and any other structure whether of masonry bricks, mud, wood, metal or any other material whatsoever ;
>
> (b) A structure on wheels or simply resting on the ground without foundations; and
>
> (c) A ship, vessel, boat, tent, van and any other structure used for human habitation or used for keeping or storing any article or goods.”
>
> 5. Accordingly, any superstructure whether be constructed by bricks, mud, metal or any other material is a 'Building'.

6. The Cell Phone Towers are the metal structure erected either on the 'land' or the 'Building' or on the 'Concrete Building' and the foundation bed to the Tower is constructed and on the foundation, the Towers are erected. Thus, the Cell Phone Towers are falling within the scope of the definition of 'Building' as defined under Section 3(4) of the CCMC Act, 1919.

7. When the BTS Towers are falling under the definition of 'Building', then the Corporation is empowered to levy property tax by determining the same and by following the procedures contemplated under the relevant provisions of the CCMC Act, 1919.

8. The grievances of the writ petitioners are that no such procedures, as contemplated, were followed and an unilateral decision was taken without providing opportunity to the writ petitioners and further, a standard tax of Rs.15,000/- is fixed for all the Cell Phone Towers, which is improper.

9. Thus, the Authorities Competent are bound to follow the relevant provisions of the CCMC Act, 1919 for assessment and determination of property tax. The procedures contemplated are to be followed scrupulously by providing opportunity to the assessees and in this regard, the impugned order is non-speaking and therefore, the respondent-Corporation had not followed the principles of natural justice and passed an order without adhering the mandatory procedures contemplated under the relevant provisions of the CCMC Act, 1919.

10. This being the lapses committed by the respondent-Corporation, they are bound to follow the procedures contemplated and thereafter, determine the property tax to be collected and communicate the said order to the respective assessees, who in turn is liable to pay the same. In view of the fact that the order impugned is passed in violation of the relevant provisions of the Act and in violation of the principles of natural justice, all these writ petitions are to be considered.

11. In view of the facts and circumstances, the following order is passed:-

(1) The impugned circular with reference to uniform fixation of property tax alone stands quashed;

(2) In respect of assessment of property tax,

the respondent-Corporation has to follow the mandatory procedures as contemplated under the relevant provisions of the CCMC Act, 1919 and accordingly, redetermine the property tax in respect of the BTS Towers installed in the premises of the respective writ petitioners by affording opportunity to them and pass appropriate orders on merit and in accordance with law, within a period of four months from the date of receipt of a copy of this order, enabling the writ petitioners to settle their property tax;

(3) For making reassessment of property tax under the relevant provisions of the CCMC Act, 1919, the writ petitioners are directed to submit copies of the lease agreement, license and other relevant documents, to the respondent-Corporation, within a period of four weeks from the date of receipt of a copy of this order along with objections or representations, if any."

4. In view of the orders passed in the above case cited supra, all these writ petitions stands allowed-in-part. Accordingly, the respondents are directed to extend the said orders in favour of the petitioners.

5. Accordingly, the impugned Circular in Roc No.68985 / 05 / TP3, dated 01.12.2005, is quashed and these writ petitions stand allowed-in-part. No costs.

Sd/-
Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

Pns

To

1. The Secretary,
   Municipal Administration and Water Supply Department,
   Govt. of Tamil Nadu,
   Fort St.George, Chennai - 600 009.

2. The Secretary,
   Revenue Department,
   Government of Tamil Nadu,
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3. The Commissioner of Municipal Administration,
   Commissionerate of Municipal Administration,
   "Ezhilagam", Chepauk, Chennai – 600 005.

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   Bodinayakannur, Theni District.

5. The Panchayat Secretary,
   Oddaipatty Panchayat,
   Oddaipatty, Dindigul District.

6. The Commissioner,
   Kodaikanal Municipality,
   Kodaikanal, Pin – 624 101.

+6ccs to Mr.Ramalingam & Associates, Advocate,
S.R.No.30871,30872,30873

+1cc to the Government Pleader, S.R.No.31159

W.P.Nos.18623, 18624 & 18625 of 2012

KV(CO)
SU(05/08/2021)