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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NOS.2082, 2083, 2085, 2087,
2090, 2091, 2095, 2099 & 2100 OF 2010

AND

M.P.NOS.1, 1, 1, 1, 1, 1, 1, 1 & 1 OF 2010,
1 OF 2011 & 1 OF 2012

M/s.Reliance Communications Ltd.,
Rep., by its Power of Attorney, N.Seshadri,
Having its registered office at 'H' Block,
1st Floor, Dhirubhai Ambani Knowledge City,
Navi Mumbai 400 710 and having its
Local office at Reliance House,
No.6, Haddows Road, Nungambakkam,
Chennai-600 006.

.. Petitioner in All WPs.

-vs-

1. The State of Tamil Nadu,
Rep., by its Secretary,
Department of Municipal Administration
and Water Supply,
Fort St., Goerge, Chennai-600 009.
2. The Secretary,
Information Technology Department,
Government of Tamil Nadu,
For St., George, Chennai-600 009.

... Respondents 1 & 2 in All WPs.

3. Panapakkam Panchayat,
Rep., by its President,
Thiruvalangadu, Thirutani Taluk,
Thiruvallur District.

.. Respondent 3 in WP.No.2082 of 2010

1. Kolathupalayam Town Panchayat
Rep by its Executive Officer
Tirupur Dt.

... Respondent 3 in WP No.2083 of 2010



1. Velayuthampalayam Panchayat
Rep by its President
Avinashi Panchayat Union
Coimbatore Dt.

... Respondent 3 in WP No.2085 of 2010

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1. Jagathala Town Panchayat
Represented by its Executive Officer
Aruvangadu Udagamandalam District.

... Respondent 3 in WP No.2087 of 2010

1. Mallapuram Town Panchayat
Represented by its Executive Officer
Malapuram, Dharmapuri District.

... Respondent 3 in WP No.2090 of 2010

1. Veerapandi Town Panchayat
Represented by its Executive Officer
Theni District.

... Respondent 3 in WP No.2091 of 2010

1. Emampoondi Panchayat
Rep by its President
Nambiyur Taluk.

... Respondent 3 in WP No.2095 of 2010

1. Karatupalayam Panchayat
Rep by its President
Nambiyur Panchayat Union
Erode Dist.

... Respondent 3 in WP No.2099 of 2010

1. Subbegoundanpudhur Panchayat
Rep by its President
Anamalai Panchayat Union
Coimbatore Dist.

... Respondent 3 in WP No.2100 of 2010



Prayer:-

WP.No.2082 of 2010:-

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records pertaining to the notice dated 18.03.2009, on the file of the 3rd respondent herein demanding tax on Base Transreceiver Station Tower of the petitioner and quash the same.

WP.No.2083 of 2010:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records pertaining to the notice dated 12.10.2009 in proceedings bearing Na.Ka.No.235/2008, on the file of the 3rd respondent herein demanding tax on Base Transreceiver Station Tower of the Petitioner and quash the same.

WP.No.2085 of 2010:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records pertaining to the notice dt 10.3.2009 bearing No.27, on the file of the 3rd respondent herein demanding tax on Base Transreceiver Station Tower of the Petitioner and quash the same.

WP.No.2087 of 2010:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records pertaining to the notice dated 31.08.2009 in proceedings bearing Na.Ka.No.329/2009, on the file of the 3rd Respondent herein demanding tax on Base Transreceiver Station Tower of the Petitioner and quash the same.

WP.No.2090 of 2010:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records pertaining to the notice dated 06.10.2009 in proceedings bearing Na.Ka.No.188/08 A1, on the file of the 3rd Respondent herein demanding tax on Base Transreceiver Station Tower of the Petitioner and quash the same.



WP.No.2091 of 2010:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records pertaining to the notice dated 11.03.2009 in proceedings bearing Na.Ka.No.27/2008, on the file of the 3rd Respondent herein demanding tax on Base Transreceiver Station Tower of the Petitioner and quash the same.

WP.No.2095 of 2010:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records pertaining to the notice dt.24.7.2009, on the file of the 3rd respondent herein demanding tax on Base Transreceiver Station Tower of the Petitioner and quash the same.

WP.No.2099 of 2010:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records pertaining to the notice dated 26.2.2009, on the file of the 3rd respondent herein demanding tax on Base Transreceiver Station Tower of the Petitioner and quash the same.

WP.No.2100 of 2010:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records pertaining to the notice dated 05.12.2008, on the file of the 3rd respondent herein demanding tax on Base Transreceiver Station Tower of the Petitioner and quash the same.

For Petitioner (In all W.Ps.)	:	Mr.J.Ravikumar
For RR1 & 2 (In all W.Ps.)	:	Mr.V.Nanmaran, Government Advocate
For R3 (In W.P.No.2082/2010)	:	Mr.G.Kathirvel
For R3 (In W.P.No.2087/2010)	:	N.Subbarajalu
For R3 (In W.P.No.2090/2010)	:	Mr.A.Arumugam



For R3 : No appearance
(In W.P.Nos.2083, 2085,
2091, 2095, 2099 & 2100/2010)

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ORDER

All these writ petitions are filed challenging the demand notices issued to the writ petitioner to pay licence fee, library fee, advertisement tax and machinery tax.

2.The learned counsel for the writ petitioner made a submission that the petitioner is not liable to pay licence fee, since no licence was granted for construction of Base Transceiver Station Towers (BTS towers) within the jurisdiction of the third respondent.

3.The learned counsel for the petitioner made a submission that the District Collector was designated as an authority competent only in the year 2019 by the Government for erection of BTS towers. However, prior to the year 2019, no licence or permission was granted for construction of BTS towers and therefore, the third respondent is not empowered and have no jurisdiction to recover licence fee by invoking the provisions of the Tamil Nadu Panchayats Act, 1994 (hereinafter referred to as "the Act"). Even under the general provisions regarding the licence and permission, only in the event of grant of licence or permission under the provisions of the Act, then alone licence fee is recoverable. The third respondent could not able to establish that any such licence or permission was granted by the Local Body and in the absence of any such licence or permission, they are not entitled to collect licence fee from the petitioner, who had admittedly erected BTS towers in the jurisdiction of the respective Panchayats.

4.In this regard, the Hon'ble First Bench of this Court passed an order on 24.07.2019 in W.P.No.18442 of 2019 and the relevant paragraphs are extracted hereinbelow:-

"3.The learned Government Advocate fairly submitted that as per the Government Letter dated 26.3.2019, in relation to the erection of BTS Towers, the second respondent ought not to have called for approved plan or issued stop work notice.

4.In view of the submissions made by the learned Government Advocate and in the light of the Government Letter dated 26.3.2019, we are of the view that the notice dated 24.5.2019 issued



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by the second respondent is liable to be set aside and, accordingly, the same is set aside.

In the result, the writ petition is allowed. No costs. Consequently, W.M.P.No.17764 of 2019 is closed.

5.This Court is of the considered opinion that grant of licence and permission under the provisions of the Act are regulated by the Government with effect from the year 2019 and the District Collectors are the competent authorities for grant of licence for erection of BTS towers. However, in respect of the towers which were being operated prior to 2019, the Local Body has no authority or jurisdiction to collect the licence fee, as they have not granted any licence or permission by invoking the provisions of the Act and therefore, the very demand made is without jurisdiction and unsustainable. Therefore, the impugned orders passed by the third respondent are to be quashed. Accordingly, the impugned orders are quashed.

6.It is made clear that in respect of the payment of property tax, the third respondent is empowered to collect the same from the owners and in the event of factual dispute, the petitioner is at liberty to prefer appeal before the appellate authority.

7.In respect of licence fee, library fee, advertisement tax and machinery tax, the petitioner need not pay tax and the third respondent is not empowered to collect or recover the same from the petitioner.

8.In view of the facts and circumstances, the impugned orders are quashed in respect of payment of licence fee, library tax, advertisement tax and machinery tax and in respect of property tax, the owners are liable to pay the same and it is recoverable by the third respondent.

9.With the above observations and directions, these writ petitions are partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

abr



To

1. The Secretary,
The State of Tamil Nadu,
Department of Municipal Administration
and Water Supply,
Fort St., Goerge, Chennai-600 009.
2. The Secretary,
Information Technology Department,
Government of Tamil Nadu,
Fort St., George, Chennai-600 009.
3. The President,
Panapakkam Panchayat,
Thiruvalangadu, Thirutani Taluk,
Thiruvallur District.
4. The Executive Officer
Kolathupalayam Town Panchayat
Tirupur Dt.
5. The President
Velayuthampalayam Panchayat
Avinashi Panchayat Union
Coimbatore Dt.
6. The Executive Officer
Jagathala Town Panchayat
Aruvangadu Udagamandalam District.
7. Executive Officer
Mallapuram Town Panchayat
Malapuram Dharmapuri District.
8. Executive Officer
Veerapandi Town Panchayat
Theni District.
9. The President
Emampoondi Panchayat
Nambiyur Taluk.
10. The President
Karatupalayam Panchayat
Nambiyur Panchayat Union
Erode Dist.



11. The President
Subbegoundanpudhur Panchayat
Anamalai Panchayat Union
Coimbatore Dist.

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+9ccs to Mr.A.V.K.Ezhilmani, Advocate, S.R.No.28593 to 28595,
28601 to 28604, 28609, 28611

+1cc to the Government Pleader, S.R.No.28436

W.P.Nos.2082, 2083, 2085, 2087, 2090,
2091, 2095, 2099 & 2100 of 2010

SKY(CO)
CS/09/08/2021
CS/12/08/2021