IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NOS.2084, 2086, 2088, 2089, 2092,
2093, 2094, 2096, 2097 & 2098 OF 2010
AND
M.P.NOS.1, 1, 1, 1, 1, 1, 1, 1, 1 & 1 OF 2010,
1 & 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,
Fort St., George, Chennai-600 009.

.. Respondents 1 & 2 in All WPs

3. Soorampatti Municipality,
Rep., by its Executive Officer,
Surampatti, Erode District-11.

.. Respondent 3 in
WP.No.2084 of 2010

1 Manalmedu Town Panchayat
Rep by its Executive Officer
Nagapattinam Dt.

... 3rd Respondent in WP No.2086 of 2010

1 Avalpoonthurai Town Panchayat
Represented by its Executive Officer
Erode District.
... 3rd Respondent in WP No.2088 of 2010

1 Santhavasal Panchayat
Represented by its President
Thiruvannamalai District.

... 3rd Respondent in WP No.2089 of 2010

1 Pochampalli Panchayat
Rep by its President
Erode District.
... 3rd Respondent in WP No.2092 of 2010

1 Thumbal Panchayat
Rep by its President
Athur Taluk, Salem District.

... 3rd Respondent in WP No.2093 of 2010

1 Vellithirupur Panchayat
Rep by its president
Bhavani Taluk, Erode District.

... 3rd Respondent in WP No.2094 of 2010

1 Nagojanahalli Town Panchayat
Rep by its Executive Officer
Krishnagiri District.
... 3rd Respondent in WP No.2096 of 2010

1 Melsimangalam Panchayat
Rep by its President
Cheyyar Taluk, Tiruvannamalai Dist.

... 3rd Respondent in WP No.2097 of 2010

1 Kadathur Town Panchayat,
(Selection Grade)
Rep.by its Executive Officer,
Dharmapuri District.

... 3rd Respondent in WP No.2098 of 2010

Prayer:-

WP.No.2084 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 14.10.2009, in proceedings bearing Na.Ka.No.745/09 A2, on the file of the 3rd respondent herein demanding tax on Base Transreceiver Station Tower of the petitioner and quash the same.

WP No.2086 of 2010:-

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari to call for the records pertaining to the notice dt 26.10.2009 in proceedings bearing Na.Ka.No.5/2007 (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.2088 of 2010:-

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari to call for the records pertaining to the notice dated 09.07.2009 in proceedings bearing Na.Ka.No.25/2009, on the file of the 3rd Respondent herein demanding tax on Base Transreceiver Station Tower of the Petitioner and quash the same.

WP No.2089 of 2010:-

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari to call for the records pertaining to the notice dated 01.03.2009, on the file of the 3rd Respondent herein demanding tax on Base Transreceiver Station Tower of the Petitioner and quash the same.

WP No.2092 of 2010:-

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari to call for the records pertaining to the notice dt.3.3.2009 bearing No.12159, on the file of the 3rd respondent herein demanding tax on Base Transreceiver Station Tower of the Petitioner and quash the same.

WP No.2093 of 2010

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari to call for the records pertaining to the notice dt.3.1.2009, on the file of the 3rd respondent herein demanding tax on Base Transreceiver Station Tower of the Petitioner and quash the same.

WP No.2094 of 2010:-

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari to call for the records pertaining to the notice dt.10.2.2009, on the file of the 3rd respondent herein demanding tax on Base Transreceiver Station Tower of the Petitioner and quash the same.

WP No.2096 of 2010:-

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari to call for the records pertaining to the notice dt.8.10.2009 in proceedings bearing Na.Ka.No.312/2009 (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.2097 of 2010:-

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari to call for the records pertaining to the notice dated 27.1.2009, on the file of the 3rd respondent herein demanding tax on Base Transreceiver Station Tower of the Petitioner and quash the same.

WP No.2098 of 2010:-

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari to call for the records pertaining to the notice dated 08.04.2009 in proceedings bearing Na.ka.No.84/2009, on the file of the 3rd respondent herein demanding tax on Base Transreceiver Station Tower of the Petitioner and quash the same.

For Petitioner : Mr.J.Ravikumar
(In all W.Ps.)

For RR1 & 2 (In all W.Ps.)	:	Mr.V.Nanmaran, Government Advocate
For R3 (In W.P.No.2084/2010)	:	Mr.M.Raja Madhivanan
For R3 (In W.P.No.2086/2010)	:	Mr.S.Sounthar
For R3 (In W.P.No.2088/2010)	:	Mr.R.Neelakandan
For R3 (In W.P.No.2089/2010)	:	No appearance
For R3 (In W.P.No.2092/2010)	:	No appearance
For R3 (In W.P.Nos.2093, 2096 & 2098/2010)	:	Mr.A.Arumugam
For R3 (In W.P.No.2094/2010)	:	No appearance
For R3 (In W.P.No.2097/2010)	:	No appearance

COMMON ORDER

All these writ petitions are filed challenging the demand notices for payment of property tax for the Base Transreceiver Station Towers (BTS Towers) erected by the petitioner-company.

2.Admittedly, the petitioner had erected BTS Towers in many locations strategically to provide service to the public at large more specifically, to operate mobile phones, internet etc.

3.The learned counsel appearing on behalf of the petitioner strenuously contended that the third respondent has no jurisdiction to levy property tax, as the erection of BTS Towers cannot be termed as a building within the meaning of the statutes, nor there is any specific provision under the Act or Rules regulating these BTS Towers. Thus, the third respondent cannot suo motu regulate his powers in the absence of any provisions under the Act and Rules and consequently, the impugned demand of property tax is void, ab initio and liable to be set aside.

4.The petitioner states that in the State of Gujarat, Local Authorities Laws were amended and suitable provisions were made to regulate these BTS Towers and property tax was collected and the said position was confirmed by the Hon'ble Supreme Court of India in a batch of cases. However, the facts are different in the State of Tamil Nadu and no such amendments are made in the statutes and in the absence of any such provision, it cannot be appropriate on the part of the authorities to collect property tax more specifically, from the petitioner-company, who are only service provider and not the owner of the property. In other words, it is contended that the owners of the property are liable to pay property tax and the petitioner-company, being not the owner of the property and commissioning only the BTS Towers, are not liable to pay property tax to the local authorities.

5.In respect of the said contention, the learned counsel for the petitioner cited a judgment of the Hon'ble Supreme Court of India in the case of Ahmedabad Municipal Corporation vs. GTL Infrastructure Ltd., & Ors (2017) 3 SCC 545 wherein, the Hon'ble Supreme Court considered the amended provisions of the Gujarat Local Authorities Laws and observed as follows:-

> "10.Section 145A (inserted by the Gujarat Local Authorities Laws (Amendment) Act, 2011) provides for tax on mobile towers at rates not exceeding those prescribed by order in writing by the State Government. Such tax which is levied on mobile towers is to be collected from persons engaged in providing telecommunication services through service towers. Section 145A is in the following terms:-
>
> 145A Tax on mobile towers:-
>
> (1) A tax at the rates not exceeding those prescribed by order in writing by the State Government in this behalf from time to time shall be levied on mobile towers from the person engaged in providing telecommunication services through such mobile towers.
>
> (2) The Corporation shall from year to year, in accordance with Section 99, determine the rates at which the tax shall be levied.
>
> 11.By the aforesaid Gujarat Local Authorities Laws (Amendment) Act, 2011 similar provisions for levy of tax on mobile towers have been inserted in

the Gujarat Municipalities Act, 1963 and also the Gujarat Panchayats Act, 1993."

6.Relying on the above observations of the Hon'ble Supreme Court, the learned counsel for the petitioner reiterated that no similar provisions are made available either in the Tamil Nadu District Municipalities Act, 1920 (hereinafter referred to as "the 1920 Act") or in the Tamil Nadu Panchayats Act, 1994 (hereinafter referred to as "the 1994 Act") in the State of Tamil Nadu and therefore, levy of property tax on the petitioner-company is impermissible, as the said BTS Towers cannot be construed as building so as to recover property tax.

7.The learned counsel for the petitioner solicited the attention of this Court with reference to various provisions regulating the levy of property tax and its assessment as well as the procedures contemplated and made a submission that none of these provisions clarify that these BTS Towers are covered under the procedures or the method of assessment and in the absence of any such reflection in any of the provisions, the property tax demanded by the third respondent is untenable.

8.The respective learned counsel appearing on behalf of the respondents disputed the said contention by stating that on an application from the petitioner-company, licence was granted for erection of BTS Towers for business activities. Admittedly, the petitioner-company have commissioned the BTS Towers for their business activities and services are provided to the public at large more specifically, for usage of mobile phones, internet etc. This being the nature of business activity, the petitioner-company are liable to pay tax to the local authorities, since the respective Local Body passed a resolution granting permission and consequently, licences were issued to run the business activity in a particular building or in a land by constructing the BTS Towers. In view of the fact that the nature of business is independent and the BTS Towers are wholly owned by the petitioner-company, for all purposes, they have become the owner of the property, viz., the BTS Towers and therefore, they are liable to pay property tax. This apart, the annual value derived from and out of the BTS Towers is capable of assessing the petitioner-company and therefore, the local authorities have assessed the annual value derived from the business activity done through such BTS Towers and consequently, assessed the tax and made a demand to pay the same. Thus, there is no irregularity as such.

9.The learned counsel for respondents 1 and 2 referred to Section 3(3) of the 1920 Act wherein, "building" is defined. 'Building' is defined so as to cover all such affixtures including the BTS Towers. For the BTS Towers erected by the petitioner either in a vacant land or in a terrace of a concrete building or in any other locality wherever it is possible to erect such BTS Towers, permission is being granted by the local authority to erect such BTS Towers. Some BTS Towers are erected in a building belongs to the petitioner and some BTS Towers are erected by entering into a sale agreement with the original owners of the vacant land or the building. In either of the case, there was an agreement between the original owner and the petitioner for commissioning of the BTS Towers and to conduct business activity. In both the cases, the lease agreement itself is for commissioning of the BTS Towers and running the business activity. Commissioning of BTS Towers is not done by the original owner of the property, but by the petitioner, who have obtained lease permission or otherwise for commissioning of BTS Towers and by commissioning BTS Towers, they are conducting the business activities. Thus, the nature of activity between the original owner as well as the petitioner cannot be compared with the normal rental agreement. The clauses are independent and the BTS Towers erected are wholly owned by the petitioner-company and without their permission, even the original owners have no right to dismantle or deal with such towers and this being the nature of agreement between the petitioner and the original owner, the local authorities formed an opinion that if it is a commission in a property belongs to some other person, the land in which the tower is erected is to be treated as an independent property, as the ownership vest with the petitioner-company to commission the BTS Towers and under those circumstances, property tax cannot be levied on the original owners, as they are not the owners of the BTS Towers erected.

10.Considering the complex nature of construction of the BTS Towers in a property belongs to a third person, the authorities competent made two assessments in one case for the building in which the tower is erected and another for the BTS Tower; and in other case for the land of the original owner and another for the tower erected. In either of the circumstances, the fact remains that the petitioner became the absolute owner of the BTS Towers constructed. They retain their right of ownership all along till it is dismantled either on expiry of the agreement or as per the terms and conditions of the lease.

11.This being the nature of business activity being carried on by the petitioner, let us now consider the definition of 'building' in the 1920 Act. Section 3(3) defines 'building', which includes a house, out-house, stable, latrine, shed, hut, wall (other than a boundary wall not exceeding eight feet in height) and any other such structure, whether or masonry, bricks, wood, mud, metal or any other materials whatsoever. 'Building' is defined in a wider manner so as to cover all the pictures in a building for the purpose of assessing the annual value and for the purpose of determining the property tax to be recovered. The value of the building is to be assessed in connection with all facts and circumstances which all are capable of valuation. In the present case, the BTS Towers are erected by the petitioner-company and the ownership of the towers is exclusively retained by the petitioner-company. Under those circumstances, this Court is of the opinion that the BTS Towers are capable of being valued independently and there is no error as such in valuing the BTS Towers in an independent manner.

12.Section 81 of the 1920 Act provides "description and classes of property tax". Sub-Section (1) of Section 81 stipulates that if the Council by resolution determines that a property tax shall be levied, such tax shall be levied on all buildings and lands within municipal limits save those exempted by or under the Act or any other law. Thus, the property tax shall be levied on all the buildings and lands within municipal limits.

13.Section 86 of the 1920 Act states "property tax when payable". The property tax shall be levied every half-year and shall, save as otherwise expressly provided in Schedule IV, be paid by the OWNER of the assessed premises within thirty days after the commencement of the half year.

14.Section 124I of the 1920 Act denotes "appeal" to be preferred by an aggrieved person. Sub-Section (1) of Section 124I enumerates that "any person or employer aggrieved by any order or decision of the Executive Authority in relation to the payment of tax (including penalty, fee and interest) may, within such time as may be prescribed appeal to the Taxation Appeals Committee". Sub-Section (2) of Section 124I contemplates that the decision of the Taxation Appeals Committee shall be final and shall not be questioned in any Court of law. Proviso to Section 124I provided that no such decision shall be made except after giving the person affected a reasonable opportunity of being heard. Thus, the Taxation Appeals Committee is the authority before whom the petitioner ought to have gone for redressal of their grievances. However, the learned counsel for the petitioner made a submission that there is no provision to charge property tax on the petitioner who all are not the owner of the property. In other words, there is no legal authority for the third respondent to issue the demand notices and thus, they have chosen to file the writ petitions.

15.This Court in W.P.Nos.21040 to 21044 of 2010 has considered similar issue and passed on order dated 16.04.2021 and the relevant paragraphs are extracted hereinbelow:-

"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 respondentCorporation 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 respondentCorporation, 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."

16.As far as the writ petitions on hand are concerned, the facts are not similar. In certain cases, the cell phone towers are constructed in a concrete building and in certain cases, in a vacant land and otherwise. Thus, the ownership or otherwise are to be decided based on the particular facts and circumstances prevailing. Undoubtedly, the owners of the properties are liable to pay property tax under the 1920 Act. The owner is liable to pay property tax and in the event of non-payment of property tax by the owner, the procedures to be followed for recovery of property tax, are to be considered with reference to the facts and circumstances of each case and such facts are to be established by filing documents and evidences before the appellate authority. Such a rowing enquiry cannot be conducted under Article 226 of the Constitution of India. As far as the payment of property tax is concerned, the provisions of the 1920 Act are unambiguous that the property tax is to be paid by the owner of the property and in the event of non-payment by the owner, procedures are contemplated for recovery of tax dues under Section 344 of the 1920 Act. Therefore, the question of facts are to be established by the writ petitioner with reference to the cell phone BTS towers constructed and operated.

17.This Court is of the considered opinion that without adjudicating the factual matrix, in all these writ petitions, recovery may not be possible. The writ petitioner claims that they are not the owner of the property. As stated in the aforementioned paragraphs, the 1920 Act contemplates definition for “building” and the judgments cited supra also reveal the meaning for “building”. However, whether the particular BTS towers are falling within the meaning or not and the ownership regarding the towers constructed are to be adjudicated by the competent appellate authority with reference to the documents and evidences available. Exhausting the appellate remedy is of paramount importance in these cases.

18.High Court cannot go into the disputed facts and circumstances which all are to be established with reference to the documents and evidences. However, payment of property tax cannot be disputed and in the present case, the petitioner claims that they are not the owner of the property however, admitted that they have constructed BTS towers by entering into lease agreements with the owners of the properties. The factor to be ascertained as to whether the ownership is retained by the person or not is a fact to be enquired into. If that is so, then alone the authority competent shall be in a position to form an opinion, who is the owner of the property within the meaning of the provisions of the 1920 Act and thereafter, shall recover the property tax dues. Even a person claims that he is a tenant, then also the procedures are to be followed for recovery.

19.As per the provisions, owner is liable to pay property tax at the first instance and the mode of recovery of dues is also contemplated under the 1920 Act. Considering the provisions of the 1920 Act, this Court is of an opinion that exhausting the appellate remedy with reference to the disputed facts are certainly imminent and therefore, the petitioners are bound to prefer an appeal before the Taxation Appeals Committee under Section 124I of the 1920 Act and under the relevant provisions of the 1994 Act.

20.The Statutes provide appeal for an aggrieved person. The appellate remedy is not only efficacious, but they are empowered to call for the original files, provide opportunity to the parties concerned, adjudicate the mixed question of fact and law and pass an order. Such a valuable opportunity for an aggrieved person need not be dispensed with by the High Court in a routine manner. Exhausting the appellate remedy is the rule. Entertaining a writ petition is only an exception. Even in respect of the legality of the notice, an aggrieved person is entitled to raise the legal grounds as well as the factual aspects. When such being the scope of the appeal to be preferred before the Taxation Appeals Committee, the High Court need not entertain a writ petition at the initial stage and the aggrieved persons must be allowed to exhaust the appellate remedy which has got significance and relevance in the matter of adjudication of disputed facts and circumstances.

21.The power of judicial review under Article 226 of the Constitution of India is to scrutinise the processes through which the decision is taken by the competent authority by following the provisions of law and not the decision itself. Therefore, the High Court may not be in a position to give an effective finding in respect of such disputed facts in a writ proceedings.

22.Under these circumstances, this Court is of an opinion that property tax is to be recovered from the owner of the property and the ownership or otherwise are to be decided based on the facts of each case with reference to the provisions of the statutes.

23.With the above observations, the writ petitioner is at liberty to approach the appellate authorities under the provisions of the 1920 Act within a period of four weeks from the date of receipt of a copy of this order an on receipt of any such appeal from the aggrieved person, the appellate authority shall entertain the same, adjudicate the issues and pass orders on merits and in accordance with law and by affording opportunity to all the parties.

24.With the above observations, these writ petitions stand disposed of. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

abr

To

1. The Secretary to Government,
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., Goerge,
Chennai-600 009.

3. The Executive Officer,
Soorampatti Municipality,
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11 The President
Melsimangalam Panchayat
Cheyyar Taluk,
Tiruvannamalai Dist.

12 The Executive Officer,
Kadathur Town Panchayat,
(Selection Grade)
Dharmapuri District.

+10ccs to Mr.A.V.K.Ezhilmani, Advocate, S.R.Nos.28596 to 28600,
28605 to 28610

+1cc to Mr.S.Sounthar, Advocate in Sr.No.28472

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

W.P.Nos.2084, 2086, 2088, 2089, 2092,
2093, 2094, 2096, 2097 & 2098 of 2010

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