IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-04-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP Nos.21040 to 21044 of 2010 and 10809 of 2012
And
MP Nos.2,2,2,2 and 2 of 2010 and 1 and 2 of 2012

Shri M.N.Nithyanandam .. First Petitioner in WP 21040/2010

M/s.Viom Networks Ltd.,
(Formerly known as Wireless TT
TT Info Services Ltd),
Celestial Point,
No.45, Dhamodharan Street,
T.Nagar,
Chennai-600 017. .. Second Petitioner in WP 21040/2010

Shri S.S.Rajesh .. First Petitioner in WP 21041/2010

M/s.India Telecom Infra Ltd.,
Represented by its Constituted
Attorney, Mr.Santhosh Kumar,
at Old No.52, New No.54,
Butt Road,
St. Thomas Mount,
Chennai-600 016. .. Second Petitioner in WP 21041/2010

Shri J.Ravichandran .. First Petitioner in WP 21042/2010

M/s.Indus Towers Limited,
Represented by its authorised signatory,
No.5, Espee IT Park, 5th Floor,
Jawaharlal Nehru Road,
Ekkattuthangal,
Chennai-600 097. .. Second Petitioner in WP 21042/2010

G.Chandrababu .. First Petitioner in WP 21043/2010

M/s.GTL Infrastructure Limited,
Represented by its authorised signatory
Mr.S.Subbaiah, at Alsa Towers,
6th Floor, No.186/187,
Poonamallee High Road,
Kilpauk,
Chennai-600 010. .. Second Petitioner in WP 21043/2010

Shri S.Sankar .. First Petitioner in WP 21044/2010

M/s.Tower Vision India Private Ltd.,
Represented by its authorised signatory,
K.K.Vishwanathan,
Registered Office at No.C 56,
Neeti Bagh,
New Delhi-110 049 and having Circle Office
at No.180, Kodambakkam High Road,
Chennai-600 034. .. Second Petitioner in WP 21044/2010

N.V.Ramakrishnan .. Petitioner in WP 10809/2012

vs.

The Commissioner,
Corporation of Chennai,
Revenue Department,
Ripon Buildings,
Chennai-600 003. .. R-1 in WPs 21040 to 21044/2010
and
Respondent in WP 10809/2012

The State Government of Tamil Nadu,
Represented through its Secretary,
Housing and Urban Development Department,
Fort St. George,
Chennai-600 009. .. R-2 in WPs 21040 to 21044/2010

WP 21040 of 2010 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the first respondent in Resolution No.406 of 2009, bearing subject No.60 dated 29.10.2009 and consequential circular No.Va.Thu. Na.Ka. No.G.1/ 15592/07 dated 12.11.2009 and New Assessment dated 27.04.2010 bearing No.6/10-11/1741 and quash the said Resolution and consequential circular and New Assessment made since the levy of property tax on Telecom Towers is in derogation of the Chennai

City Corporation Act, 1919 and further being arbitrary, unjustified, illegal and against the principles of natural justice.

WP 21041 of 2010 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the first respondent in Resolution No.406 of 2009, bearing subject No.60 dated 29.10.2009 and consequential circular No.Va.Thu. Na.Ka. No.G.1/ 15592/07 dated 12.11.2009 and New Assessment dated 17.05.2010 bearing No.6/10-11/3500 and quash the said Resolution and consequential circular and New Assessment made since the levy of property tax on Cell Phone Towers is in derogation of the Chennai City Corporation Act, 1919 and further being arbitrary, unjustified, illegal and against the principles of natural justice.

WP 21042 of 2010 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the first respondent in Resolution No.406 of 2009, bearing subject No.60 dated 29.10.2009 and consequential circular No.Va.Thu. Na.Ka. No.G.1/ 15592/07 dated 12.11.2009 and New Assessment dated 13.04.2010 bearing No.6/10-11/0553 and quash the said Resolution and consequential circular and New Assessment made since the levy of property tax on Cellphone Towers is in derogation of the Chennai City Corporation Act, 1919 and further being arbitrary, unjustified, illegal and against the principles of natural justice.

WP 21043 of 2010 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the first respondent in Resolution No.406 of 2009, bearing subject No.60 dated 29.10.2009 and consequential circular No.Va.Thu. Na.Ka. No.G.1/ 15592/07 dated 12.11.2009 and New Assessment dated 14.05.2010 bearing No.6/10-11/3273 and quash the said Resolution and consequential circular and New Assessment made since the levy of property tax on Cellphone Towers is in derogation of the Chennai City Corporation Act, 1919 and further being arbitrary, unjustified, illegal and against the principles of natural justice.

WP 21044 of 2010 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the first respondent in Resolution No.406 of 2009, bearing subject No.60 dated 29.10.2009 and consequential circular No.Va.Thu. Na.Ka. No.G.1/ 15592/07 dated 12.11.2009 and New Assessment dated 13.04.2010 bearing No.6/10-11/0572 and quash the said Resolution and consequential circular and New Assessment made since the levy of property tax on Cellphone Towers is in derogation of the Chennai City Corporation Act, 1919 and further being arbitrary, unjustified, illegal and against the principles of natural justice.

WP 10809 of 2012 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the respondent in respect of the Notice dated 07.03.2012 under No.7-110-2031-900 by virtue of the said notice, the respondent is claiming the alleged arrears of tax at Rs.75,000/- and quash the said notice since the New Assessment made since the levey of property tax on Cell Phone Tower is in derogation of the Chennai City Corporation Act, 1919 and further being arbitrary, unjustified, illegal and against the principles of natural justice.

For Petitioner in
WPs 21040 to 21044/2010 : Mr.R.Subramanian for
Mr.P.J.Rishikesh.

For Petitioner in WP 10809/2012: Mr.S.Sridhar

For Respondent-1 in : Ms.Karthikaa Ashok,
WPs 21040to21044/2010 Senior Standing Counsel for
and WP 10809/2012 Chennai Corporation.

For Respondent-2 in
WPs 21040to21044/2010 : No Appearance

C O M M O N   O R D E R

The uniform fixation of property tax in respect of BTS Towers, commissioned by the writ petitioners, are under challenge in these writ petitions.

2. The respective learned counsel appearing on behalf of the writ petitioners mainly contended that the procedures contemplated under the provisions of the Chennai City Municipal Corporation Act, 1919 (hereinafter referred to as 'CCMC Act' in short), had not been followed by the Authorities Competent and an unilateral decision was taken in fixing uniform property tax of Rs.15,000/- for all the BTS Towers, which is improper and not in consonance with the procedures contemplated under the Statute and the Rules.

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.

12. With the above directions, all the writ petitions stand allowed in part. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

Svn

To

1.The Commissioner,
Corporation of Chennai,
Revenue Department,
Ripon Buildings,
Chennai-3.

2.The Secretary,
State Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St. George,
Chennai-9.

+1cc to Ms.Karthikaa Ashok, Advocate SR.No.23059

+5ccs to Mr.P.J.Rishikesh, Advocate SR.No.23199, 23198, 23197, 23195, 23196

WP Nos.21040 to 21044 of 2010
And
WP No.10809 of 2012

SKY(CO)
GMY(28/06/2021)