IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 16-04-2021
CORAM
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP Nos.27969 to 27972 of 2010 and 11213 to 11215, 16225 of 2011
And
MP Nos.2,2,2 and 2 of 2010 and 1, 1, 1 and 2 of 2011

G.Ramesh .. Petitioner in WPs 27969, 27970 & 27972/2010

R.Padmavathy .. Petitioner in WP 27971/2010

P.Srinivasan .. Petitioner in WP 11213/2011

P.Ramadoss .. Petitioner in WP 11214/2011

B.Mohanasundaram .. Petitioner in WP 11215/2011

G.Mohan Ram .. First Petitioner in WP 16225/2011

M/s.Bharat Sanchar Nigam Ltd.,
Represented by its Divisional Engineer (Legal),
O/o.Chief General Manager,
No.78, Purasawalkam High Road,
Chennai-600 010. .. Second Petitioner in WP 16225/2011

vs.

The Commissioner,
Corporation of Chennai,
Revenue Department,
Ripon Buildings,
Chennai-600 003. ..R-1 in WPs 27969 to 27972/2010 and Respondent in WPs 11213 to 11215/2011, 16225/2011

The State Government of Tamil Nadu,
Represented through its Secretary,
Housing and Urban Development Department,
Fort St. George,
Chennai-600 009. ..R-2 in WPs27969 to 27972/2010 And in WP 16225/2011

WP 27969 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.6/10-11/3339 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 27970 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.6/10-11/3332 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 27971 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.6/10-11/3353 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 27972 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.6/10-11/3301 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 11213 of 2011 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 pertaining to the order dated 01.03.2011 bearing Message ID 29453-26045-1 with reference to Bill No.10-153-9775-900 on the file of the respondent herein and quash the same.

WP 11214 of 2011 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 pertaining to the order dated 01.03.2011 bearing Message ID 29453-27184-1 with reference to Bill No.10-153-9709-900 on the file of the respondent herein and quash the same.

WP 11215 of 2011 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 pertaining to the order dated 01.03.2011 bearing Message ID 29453-25759-1 with reference to Bill No.09-141-6904-900 on the file of the respondent herein and quash the same.

For Petitioner in WPs 27969 to 27972/2010	:	Mr.S.Ramachandran
For Petitioner in WPs 11213 to 11215/2011	:	Mr.J.Ravikumar for Mr.M.Murugan
For Petitioner in WP 16225/2011	:	Mr.K.R.Rameshkumar
For Respondent-1 in WPs 27969 to27972/2010 and for respondent in WPs 11213 to 11215/2011 and R-1 in WP 16225/2011	:	Ms.Karthikaa Ashok, Senior Standing Counsel for Chennai Corporation.
For Respondent-2 in WPs 27969 to 27972/2010 and WP 16225/2011	:	No Appearance

W.P.16225/2011 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 1st Respondent in Resolution No.406/2009, bearing subject No.60 dated 29/10/2009 and consequential circular No.Va.Thu.Na.Ka.a 1/ 15592/ 07 dated 12.11.2009 and New Assessment Notice No.6/10-11/3251 dt.14.5.2010 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.

COMMON ORDER

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

//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.
+1 cc to Mr.Karthikaa Ashok, Advocate, SR.No.23058

WP Nos.27969 to 27972 of 2010
And
WP Nos.11213 to 11215 and 16225 of 2011

PMK(CO)
NS(04/05/2021)