IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2021

CORAM:

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.5595 of 2015
and
M.P.No.1 of 2015

M.A.Kamalakannan,
S/o.M.Arumuga Naicker ...Petitioner

Vs

1. Corporation of Chennai,
   Represented by its Commissioner,
   Rippon Building, Chennai - 600 003.

2. Corporation of Chennai,
   Represented by its Assistant Revenue Officer,
   Zone - 10, having office at No.64,
   NSK Salai,
   Kodambakkam, Chennai - 600 024.

3. Chennai Metropolitan Development Authority,
   Represented by its Member Secretary,
   Having Office at No.1, Gandhi Irwin Road,
   Thalamuthu Natarajan Building,
   Egmore, Chennai - 600 008. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the 2nd respondent in Bill No.05/065/4805/000030 dated 18.07.2014 relating to property bearing No.FD-124, Seemathamman Nagar Sector III, Koyambedu, Chennai - 600 107 and to quash the same in so far it relates to the period beyond the limitation period under the Chennai City Municipal Corporation Act, 1919.

For Petitioner : Mr.M.V.Seshachari
For R1 & R2 : Ms.Karthikaa Ashok
Senior Standing Counsel
For R3 : Ms.P.Veena Suresh

ORDER

The petitioner is the subsequent owner/allottee of the shop alloted by the CMDA(Chennai Metropolitan Development Authority) in Koyambedu Wholesale Market Complex (KWMC) on 31.07.1996. After the petitioner purchased the property, the petitioner has

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been issued with the impugned Bill No.05/065/4805/000030 dated 18.07.2014, wherein, the petitioner has been called upon to pay arrears of property tax of Rs.50,514/-.

2. It is the case of the petitioner in this writ petition that the demand has been made contrary to Section 137B of the Chennai City Municipal Corporation Act, 1919.

3. On the other hand, it is the contention of the learned counsel for the respondents/Chennai Corporation that the case is not covered under Section 137B of the Chennai City Municipal Corporation Act, 1919, inasmuch as the property was assessed in the hand of the original allottee and that of bill dated 18.07.2014 had already been issued and thereafter the subsequent bills were also issued to the said allottee, which were in arrears and therefore the petitioner as the subsequent owner/allottee of the property in Koyambedu Wholesale Market Complex was required to pay the property tax.

4. The learned counsel for the respondents contends that under Section 104 of Chennai City Municipal Corporation Act, 1919, 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 fifteen days after commencement of the half year.

5. Though the ownership in favour of the petitioner/predecessor was transferred belatedly, the liability to pay property tax is justified by the respondents/Chennai Corporation based on copy of the letter dated 31.07.1996 issued to the petitioner vendors, wherein, CMDA has categorically stated that all taxes or any due to the Government and local body for the shop shall be borne by the allottee from the date of the order. The allotment letter of the CMDA to the petitioner/predecessor dated 31.07.1996 also stipulates that all taxes/fees due to Government/Local Body/Authority for the shop shall be paid by the allottee on due dates.

6. I have heard the learned counsel for the petitioner and the learned senior standing counsel for the respondents.

7. Rule 29 of Part VI of Schedule IV to the Chennai City Municipal Corporation Act, 1919, is attracted. It reads as under:-

> "29. If the tax due on account of any building or land remains unpaid in whole or in part at the end of the period in sub-rule (1) of rule 21, the commissioner may if the said tax has not remained unpaid for more than twelve months, require the occupier for the time being of such building or land

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to pay the amount within a specified period not being less than fifteen days and if the occupier fails to comply with such requisition, the commissioner may distrain and sell any movable property found on the building or land and the provisions of the foregoing rules shall mutatis mutandis apply to all distraints and sales effected under this rule:

Provided that no occupier shall be liable to prosecution or to a civil suit in respect of any sum recoverable from him under this rule unless he has wilfully prevented distraint or a sufficient distraint.

29-A. If any tax due from any person remains unpaid in whole or in part at the end of the period specified in sub-rule (1) of rule 21 and if such person has left India or cannot be found, the said tax or such part thereof as remains unpaid together with all sums payable in connection therewith shall be recoverable as if it were an arrear of land revenue.

29-B (1) Every person who is prosecuted under sub-rule (2) of rule 21 shall be liable on proof to the satisfaction of the magistrate that he wilfully ommitted to pay the amount due by him to pay a fine not exceeding twice the amount which may be due by him on account of-

(a) the tax and the warrant fee, if any, and

(b) if distraint has taken place, the distraint fee and he expenses incidental to the detention and sale, if any,of the property distrained.

(2) Whenever any person is convicted of an offence under sub-rule (1), the magistrate shall, in addition to any fine which may be imposed recover summarily and pay over to the corporation, the amounts, if any, due under the heads specified in clauses (a) and (b) of sub-rule (1), and may, in his discretion, also recover summarily and pay to the corporation such amount, if nay, as he may fix as the costs of the prosecution.

29-C. Neither the commissioner nor any municipal officer of servant shall directly or indirectly purchase any property at any sale of distrained property held under the foregoing rules."

8. Section 137B of the Chennai City Municipal Corporation Act, 1919 applies only in case where there is no assessment of tax or tax escapes assessment. The said provision reads as under:-

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"137-B. Power to assess in case of escape from assessment-

Notwithstanding anything to the contrary contained in this Act or the rules made thereunder, if for any reason any person liable to pay any of the taxes or fees leviable under this Chapter has escaped assessment in any half-year or year, [or has been assessed in any half-year or year at a rat lower than the rate at which he is assessable or, in the case of porperty tax has not been duly assessed in any half-year or year consequent on the building or land concerned having escaped proper determination of its annual value], the commissioner may, at any time within [six years] from the date on which such person should have been assessed, serve on such person a notice assessing him to the tax or fee due and demanding payment thereof within fifteen days from the date of such service; and the provisions of this Act and the rules made thereunder shall so far as may be apply as if the assessment was made in the half-year or year to which the tax or fee relates."

9. In this there is assessment. Only there was no payment of tax by the petitioner vendors. That being the case, I do not find any merits challenged in the present writ petition. Therefore, this writ petition filed by the petitioner fails on this count. The petitioner being subsequent owner of the property or allottee is liable to discharge the tax liability on the property.

10. This Writ petition is dismissed with liberty to the petitioner to recover the amounts from the original allottee from whom he bought the shop. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

To
1. The Commissioner,
Corporation of Chennai,
Rippon Building, Chennai - 600 003.

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2. The Assistant Revenue Officer,
   Corporation of Chennai,
   Zone - 10, having office at No.64,
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   Kodambakkam, Chennai - 600 024.

3. The Member Secretary,
   Chennai Metropolitan Development Authority,
   Having Office at No.1, Gandhi Irwin Road,
   Thalamuthu Natarajan Building,
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M.P.No.1 of 2015

SKY(CO)
SP(07/07/2021)

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