IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.8.2021

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURAGLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

WRIT APPEAL NOS.1864 AND 1865 OF 2021 &
CMP.NOS.11880, 11882, 11883 AND 11885 OF 2021

M/s.Kurios Finvest LLP, Chennai-6
rep.by its Designated Partner
Mrs.Renuka Kumar ...Appellant in both appeals

Vs

The Deputy Collector, Chennai
Metropolitan Water Supply &
Sewerage Board, No.1, T.S.Krishna
Nagar, Ambattur, Chennai-37 ...Respondent in WA.No.1864/2021

The Ambattur Municipality, rep.by
its Commissioner, Ambattur, Chennai ...Respondent in WA.No.1865/2021

APPEALS under Clause 15 of the Letters Patent against the orders both dated 06.7.2021 made respectively in W.P.Nos.6349 of 2017 and 30352 of 2015.

Prayer in W.P.No.6349 of 2017 : This petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the Respondent contained in its demand notice dated 17.10.2016 and all such consequent notices thereto including the notice dated 20.02.2017 and to quash the same as arbitrary unjust and illegal and to consequently direct the Respondent and/or any of its agents to drop any proceedings initiated against the petitioner towards recovery of water and sewerage tax under the Chennai Metropolitan Water Supply and Sewerage Board Act, 1978 in respect of the immovable property located at Plot No.SP 24 (South Phase) Ambattur Industrial Estate, Chennai-600058.

Prayer in W.P.No.30352 of 2015 : This petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the Respondent contained in its impugned order dated 20.10.2010 bearing NA Ka No.735/09/A2 and to quash the same along with all consequential orders passed therefrom as arbitrary unjust and illegal and to therefore direct the Respondent or any of its agents to drop any proceedings initiated against the Petitioner towards recovery of property tax under the Tamil Nadu District Municipalities Act, 1920 for the immovable property located at Plot No. SP 24 (South Phase) Ambattur Industrial Estate, Chennai-600058.

For Appellant	:	Mr.S.Parthasarathy, SC for Mr.Suhrith Parthasarathy
For Respondent in WA.No.1864 of 2021	:	Mr.S.John J.Raja Singh, GA
For Respondent in WA.No.1865 of 2021	:	Ms.Karthika Ashok

COMMON ORDER

(Order of the Court was made by T.S.SIVAGNANAM,J)

We have heard Mr.S.Parthasarathy, learned Senior Counsel appearing on behalf of Mr.Suhrith Parthasarathy, learned counsel on record for the appellant, Mr.S.John J.Raja Singh, learned Government Advocate accepting notice for the respondent in the first writ appeal and Ms.Karthika Ashok, learned Standing Counsel accepting notice for the respondent in the second writ appeal namely Ambattur Municipality since the area in question has now fallen within the jurisdiction of the Chennai Corporation.

2. The appellant is aggrieved by the order dated 06.7.2021 passed in W.P.No.30352 of 2015, by which, the appellant challenged the demand notice dated 20.10.2010 issued by the respondent – Municipality calling upon them to pay property tax. However, the learned Single Judge, by the relevant impugned order, directed the appellant to approach the Taxation Appeal Tribunal.

3. The appellant is also aggrieved by another order of the same date passed in W.P.No.6349 of 2017, by which, the appellant challenged the demand notice dated 20.2.2017 issued by the respondent – Municipality calling upon them to pay water and sewerage tax. However, the learned Single Judge, by the relevant impugned order, disposed of the writ petition on the ground that the property tax assessment is the basis for determination of water tax and in W.P.No.30352 of 2012, by order dated 06.7.2021, the appellant was already directed to approach the Taxation Appeal Tribunal for determination of property tax.

4. The dispute raised in the said writ petitions was that the building was incomplete in the year 2008, that the appellant

has been given a partial completion certificate by the Chennai Metropolitan Development Authority only on 06.12.2018 and that therefore, the property tax could not have been fixed and demanded from 2008.

5. However, the learned Standing Counsel appearing for the respondent – Municipality in the second writ appeal submits that it is the appellant, which had written to the Ambattur Municipality to inspect their property for the purpose of assessing the property to tax, pursuant to which, the property was inspected and half yearly tax was fixed at Rs.22,57,673/- with effect from 01.10.2008.

6. The contention of the appellant herein both before us as well as before the learned Single Judge is that when the building is yet to be completed, the property tax could not have been determined and demanded from October 2008.

7. The learned Single Judge was of the view that the appellant should invoke the remedy available under the Statute and observed that the Taxation Appeal Tribunal could examine the factual position and then come to a conclusion as to whether the grounds raised by the appellant were justifiable or not.

8. After elaborately hearing the learned Senior Counsel appearing for the appellant herein, we are of the view that the order and directions issued by the learned Single Judge would not call for any interference. Admittedly, the grounds raised by the appellant herein both before us as well as in the writ petitions are all factual. It is for the appellant herein to prove that the building was not fully completed in the year 2008 and it will not be possible for a Writ Court to examine such a disputed question of fact based on facts. Therefore, we find that the order and directions issued by the learned Single Judge directing the appellant herein to approach the Taxation Appeal Tribunal is just and proper.

9. For all the above reasons, the above writ appeals are dismissed and the order and directions issued in the said writ petitions stand confirmed. The appellant herein is directed to approach the Taxation Appeal Tribunal within 30 days from the date of receipt of a copy of this common judgment. If the appellant herein does so, the Taxation Appeal Tribunal shall entertain the appeal without reference to the period of limitation and take a decision on merits and in accordance with law. It is made clear that while dealing with the appeal petition, the Taxation Appeal Tribunal shall not be, in any manner, influenced by any observations made by the learned Single Judge or any observations contained in this common judgment. It goes without saying that all the statutory conditions to be complied with by the appellant herein to prefer

the appeal before the Taxation Appeal Tribunal shall be complied with and the only protection we have granted is with regard to the period of limitation alone. So far as water and sewerage tax is concerned, the determination of property tax will have a bearing on the same and it shall also abide by the orders that may be passed by the Taxation Appeal Tribunal in the appeal directed to be filed by the appellant herein. No costs. Consequently, the connected CMPs are also dismissed.

Sd/-
Assistant Registrar (CS-VIII)

// True Copy //

Sub Assistant Registrar

RS

To

1.The Deputy Collector,
Chennai Metropolitan Water Supply &
Sewerage Board,
No.1, T.S.Krishna Nagar,
Ambattur, Chennai-37.

2.The Commissioner,
Ambattur Municipality,
Ambattur, Chennai.

+1cc to M/s.Karthika Ashok, Advocate SR.No.38408

+1cc to M/s.Arun Karthik Mohan, Advocate SR.No.38406

+1cc to the Government Pleader SR.No.38819

WA.Nos.1864 and 1865 of 2021 &
CMP.Nos.11880, 11882, 11883
and 11885 of 2021

VSN-II(CO)
RVM(26/08/2021)