IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No.9919 of 2016
and
W.M.P.No.8904 of 2016

Madras Sanskrit College,
Represented by its Secretary,
Sri.V.Srikanth,
No.84, Royepettah High Road,
Mylapore, Chennai - 600 004. ... Petitioner

Vs

1. Chennai Metro Water Supply and Sewerage Board,
   Rep. by Area Engineer - V,
   No.1 Pumping Station Road,
   Chennai - 600 002.

2. The Senior Accounts Officer,
   Area Office - VI,
   No.1, Dr.Ranga Road,
   Abhiramapuram,
   Chennai - 18.

3. The Commissioner,
   Corporation of Chennai,
   Rippon Buildings, Park Town,
   Chennai - 600 003. ... Respondents

(R3- Impleaded as per Order of this Court
dated 09.03.2018)



Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the Respondent pertaining to the order bearing CMC.No.2938/09/121/07461/000 dated 04/01/2016, and quash the same.

For Petitioner : Mr.S.Rajmakesh
For R1 & R2 : Mr.M.Jothikumar
Standing Counsel
For R3 : Ms.Karthikaa Ashok
Standing Counsel

ORDER

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

2. In this writ petition, the petitioner has challenged the impugned demand notice dated 04.01.2016 seeking to demand an amount of Rs.4,35,344/- as the arrears of water tax for the period commencing from 1st half of 2013 to 2nd half of 2015. The tax has been demanded based on the annual value of the property determined by the Chennai Corporation for the purpose of assessment of property tax of Rs.20,51,693/-. The petitioner has not challenged the levy of water and severage connection charges, in the present writ petition and it is confined only to the demand of water tax under Section 34 of the Chennai Metropolitan Water Supply and Sewerage Act, 1978.

3. The Water Supply and Sewerage Tax was levied on the petitioner. As per sub-clause (2) of Section 34 of the aforesaid Act, the tax shall be levied at such rates as may be prescribed which in the case of water tax shall not be more than 20% and in the case of sewerage tax shall not be more than 10% of the assessed annual value of the premises. Sub-clause 3 to Section 34 grants power to the Government exempt any local area from the whole or portion of the water tax and sewerage tax on the ground that such area is not deriving any or the full benefit from the water supply or sewerage system.

4. Section 35 of the Act, prescribes a method for determination of annual value of the premises. Under Section 35(1) of the Water Act, 1978, the annual value of the premises shall be deemed to be the gross annual rent at which the property may reasonably be expected to let from month to month or from year to year less a deduction in the case of buildings 10% of that portion of such annual rent which is attributable to the buildings alone apart from their sites and the adjacent lands occupied as an appurtenance thereto, and the said deduction shall be in lieu of all allowances for repairs or any other account whatsoever.



5. As per Sub-clause 2, the annual value of the premises for the purposes of levy of taxes mentioned in Section 34 shall be assessed by such authority as may be prescribed. In this connection, the Government shall have power to make rules regarding the manner in which, the person or persons by whom and the intervals at which the total of the estimated value of the premises and the amount to be deducted for depreciation shall be estimated or revised in any case or class of cases to which clause (a) of proviso to sub-section (1) applies. Under Sub Section 3 to Section 35 of the Act, till such time as the annual valuation of the land and buildings is determined under this Act, the annual value of land and buildings for the purposes of this Act, shall be the annual value as assessed by

a Municipal Corporation, Municipality, Panchayat or other like authority.

6. The petitioner had earlier filed a similar writ petition before this Court in W.P.Nos.8958 to 8960 of 2001 for the following relief:-

> "Writ Petition No.8958 of 2001 has been 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 CMC.No.6/096/0613/00-01 being arrears slip of tax & charges dated 25.09.2000 intimating an arrear of water tax of Rs.7385.90 for the period 1/93-94 to 1/2000-01 relating to 7, Royapettah High Road, Mylapore, Chennai and quash the said notice in so far as the demand of the alleged arrear of Rs.7168.05 relating to 1/94-95 to 2/2000-01 is concerned.
>
> Writ Petition No.8959 of 2001 has been 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 CMC.No.6/096/0612/00-01 being arrears slip of tax & charges dated 25.09.2000 intimating an arrear of water tax of Rs.7319.05 for the period 1/93-94 to 1/2000-01 relating to 6, Royapettah High Road, Mylapore, Chennai and quash the said notice in so far as the demand of the alleged arrear of Rs.7120.30 relating to 1/94-95 to 2/2000-01 is concerned.
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> Writ Petition No.8960 of 2001 has been 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 CMC.No.6/096/0142/00-02 being arrears slip of tax & charges dated 25.07.2000 intimating an arrear of water tax of Rs.28,631.80 for the period 2/96-97 to 1/2000-01 relating to 84, Royapettah High Road, Mylapore, Chennai and quash the said notice in so far as the demand of the alleged arrear of Rs.10,449.40 relating to 1/99-2000 to 2/2000-01 is concerned."

7. These writ petitions came to be disposed by a common order dated 27.07.2009, wherein, this Court after considering the decision rendered in Kutty Flush Board and Furnitures Co. Pvt. Ltd., Vs Chennai Metro Water and others, 1995 (2) MLJ, 467 and the decision rendered in Kasi Theatre Vs Chairman, M.M.W.S.S.B. 2002 (2) CTC 219 held as under:-

"15. In view of the said statutory provision as stated above viz. Sections 34 and 35 of the Chennai Metropolitan Water Supply and Sewerage Act, 1978, the impugned demand notices are set aside as no assessment as required under Section 34 of the Chennai Metropolitan Water Supply and Sewerage Act, 1978 has been made by the respondent-Board for all these years while making the impugned demand. When the statute namely Section 34 of the Act mandates the Board to assess the water and sewerage tax in a particular manner it is not open to the respondents to assess the tax on the basis of property tax on property tax assessed earlier by Chennai Corporation. Section 35 permits to rely on property tax assessment which is a stop gap arrangements and the same cannot be continued for years together.

16. It is settled proposition of law that when a statute prescribes to do a particular thing in a particular manner, the same shall not be done in any other manner than prescribed under the law. The said proposition is well recognised as held by the Honourable Supreme Court in the decision reported in AIR 1964 Sc 358 (State of Uttar Pradesh V. Singhara Singh).

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17. Admittedly, there is no limitation to demand metro water and sewerage tax and water charges as per Section 74 of the Chennai Metropolitan Water Supply and Sewerage Act, 1978. In view of the same, it is open to the respondents to properly assess the tax payable by the petitioner. The amount already paid by the petitioner is directed to be adjusted after making proper assessment. The respondents are directed to assess the value of the tax as required under Section 34 of the Chennai Metropolitan Water Supply and Sewerage Act, 1978 and demand the same from the petitioner. On such assessment as already stated, the amount already paid can be given credit to and the arrears if any can be demanded from the petitioner."

8. Challenge to the Impugned Demand Notice issued by the 1st respondent/Chennai Metro Water Supply and Sewerage Board is based on the above reasonings given by the learned Single Judge of this Court vide order dated 27.07.2009 passed in W.P.Nos. 8958 to 8960 of 2001. It is submitted that the law prescribes a particular manner in which tax is to be

determined then, it shall be determined in the aforesaid manner and it is not open to the respondents to rely on the annual value determined by the Corporation of Chennai for the payment of property tax perennially.

9. The learned counsel for the 1st & 2nd respondents submits that for the purpose of determining charges, inspection of the property is contemplated. However, for determination of tax, the annual value as determined by the Corporation of Chennai is relevant and since the annual value of the property was re-determined in 2013, the demand is sustainable.

10. The learned counsel for the 3rd respondent/Commissioner of Chennai Corporation submits that both Section 35 of the Water Act, 1978 and Section 100 of the Chennai City Municipal Corporation Act, 1919 are pari materia and there cannot be any different method of determination of annual value of property. She further submits that the property was inspected at the invitation of the petitioner and the value was determined under the provisions of the Chennai City Municipal Corporation Act, 1919 and therefore submits that there is no merit in the present writ petition.

11. The learned counsel for the 3rd respondent/Commissioner of Chennai Corporation also relied on the decision of this Court rendered in W.P. Nos. 2674 to 2678 of 2016 etc batch, in its order dated 18.12.2017, wherein, the following directions were issued:

> "11. In the result, all the writ petitions are disposed of with the following directions:
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> 1. The respondent/Corporation of Chennai is directed to inspect all the buildings owned by the petitioners after issuing notice to the respective managements, to note down the physical features of the building, the area and occupation, land area, type of construction, category of ownership, the built up area etc. and prepare an inspection report.
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> 2. Based on the inspection report, the respondent Corporation is directed to issue a provisional assessment notice enclosing copy of the inspection report giving the petitioners 15 days time to submit their objections to the competent authority.
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> 3. On receipt of the objections, the competent authority shall afford an opportunity of personal hearing to the authorised representative of the respective petitioners and pass final assessment orders on merits and in accordance with law.

4. If the petitioners are aggrieved by the fixation of the Annual value of the Building as may be fixed by the respondent-Corporation of Chennai, they are at liberty to file appeal to the Taxation Appellate Tribunal and they are not required to pay 50% of the enhanced tax as stipulated under Clause 12 of Part V of Schedule IV of the CCMC Act as the petitioners buildings are exempt from payment of property tax.

5. Till the annual value of the building is fixed in terms of the above direction, the petitioners shall continue to pay the water and sewerage tax as per the pre-revised rates without any default and the impugned demands shall be kept in abeyance.

6. The respondent/Corporation is directed to complete the above exercise within a period of three months from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

12. The learned counsel for the 3rd respondent further submits that both Section 100 of the Chennai City Municipal Corporation Act, 1919 and Section 35 of the Chennai Metropolitan Water Supply & Sewerage Act, 1978 read identically and the procedure for assessment are similar. She further submits that prior to passing of the Chennai Metropolitan Water Supply & Sewerage Act, 1978, the water and sewerage tax has also collected by the Corporation of Chennai and only after the 1978 Act came into force, a separate method for assessment of value has been prescribed.

13. The learned counsel for the 1st & 2nd respondents submits that till such time annual value is determined sub-section (3) to Section 35 of the Chennai Metropolitan Water Supply & Sewerage Act, 1978, the value determined by the Corporation of Chennai is to be adopted. It is therefore submitted that till such time, 1st & 2nd respondents make an independent assessment, the value determined by the Corporation of Chennai will be the value for the purpose of determining the tax to be paid by the petitioner under the provisions of the Chennai Metropolitan Water Supply & Sewerage Act, 1978.

14. By way of Rejoinder, the learned counsel for the petitioner submits that under similar circumstances a final order has been passed in a batch of writ petitions filed by the petitioner in Bentinck Higher Secondary School for Girls, Chennai and others Vs Chennai Metropolitan Water Supply and Sewerage Board, Chennai and others which came to be disposed on 18.12.2017 in W.P.Nos.2674 to 2678 of 2016 etc batch. He further submits that there the Court has given certain

guidelines and submits that if those guidelines were followed, the issue can be resolved.

15. I have considered the arguments advanced by the learned counsel for the petitioner and the respondents.

16. During the period in dispute, the petitioner's buildings were exempted from payment of property tax under the provisions of the Chennai City Municipal Corporation Act, 1919, it being the Central Government School in terms of Section 101(c) of the Chennai City Municipal Corporation Act, 1919. Therefore, there was no necessity for the Corporation of Chennai/3rd respondent herein to carry out the assessment of tax under Section 100 of the aforesaid Act. However, the petitioner applied for assessment in the year 2013. The property of the petitioner was thus inspected and the annual value of the property was determined.

17. Since the buildings of the petitioner is exempted from payment of property tax, there was no necessity for determination of the annual value of the land for granting exemption under Section 101 of the Chennai City Municipal Corporation Act, 1919. The 1st and 2nd respondents are required to independently determine the annual value of the property under Section 35 of the Chennai Metropolitan Water Supply & Sewerage Act, 1978.

18. I therefore direct the 1st and 2nd respondents to determine the annual value of the building/property of the petitioner in terms of Section 35(3) of the Chennai Metropolitan Water Supply & Sewerage Act, 1978 within a period of one month from the date of receipt of a copy of this order. On such determination, the 1st or 2nd respondent shall issue appropriate demand notice and call upon the petitioner to pay the Water Tax. The petitioner shall pay the amount of tax thereafter without further delay.

19. This Writ Petition is disposed of. No costs. Consequently, connected writ miscellaneous petition is closed.



Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

arb

To

1. The Area Engineer - V,
Chennai Metro Water Supply and Sewerage Board,
No.1 Pumping Station Road,
Chennai - 600 002.

2. The Senior Accounts Officer,
   Area Office - VI,
   No.1, Dr.Ranga Road,
   Abhiramapuram,
   Chennai - 18.

3. The Commissioner,
   Corporation of Chennai,
   Rippon Buildings,
   Park Town,
   Chennai - 600 003.

+2cc to Mr.S.Rajmakesh, Advocate, S.R.No.10109.
+1cc to Ms.J.Karthikaa Ashok, Advocate, S.R.No.10482.

W.P. No.9919 of 2016
and
W.M.P.No.8904 of 2016

GPL(CO)
CSR 24.03.2021