IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.02.2021

PRONOUNCED ON : 11.06.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.31057 of 2017

Ayanavaram Vigneswara Recreation Centre
Rep.by its Secretary
No.73/2, Thiruvalluvar Salai,
Ramapuram, Chennai 600089. .. Petitioner

vs.

1. The Secretary to Government,
   Home Prohibition and Excise Department,
   Fort St.George,
   Chennai 600 009.

2. The Commissioner,
   Prohibitiobn and Excise,
   Ezhilagam, Chepauk,
   Chennai 600 005.

3. The District Collector,
   Tiruvallur District,
   Tiruvallur.

4. The District Collector,
   Chennai District,
   No.62, Rajaji Salai, Fourth Floor,
   Chennai 600 001.
   (R4 impleaded vide order dated 14.09.2020
   made in WMP.No.14535/2020) ... Respondents

Prayer: Writ petition filed under A0rticle 226 of the Constitution of India praying for issuance of a writ of Certiorari calling for the records pertaining to the 2nd respondent proceedings in R.C.No.P&E 2(4_/3780/2016 dated 27.09.2017 and quash the same.

For Petitioner : Mr.J.Saravanavel

For Respondents : Mr.N.Inbanathan
Addl.Govt.Pleader.

O R D E R

In this writ petition, the petitioner has challenged the impugned demand notice dated 27.09.2017 of the second respondent seeking to demand a differential privilege fee of Rs.16,00,000/- from the petitioner for the period between 2014-2015 and 2017-2018.

2. The demand proceeds on the premises that the Chennai City Corporation was expanded by a notification G.O.Ms.No.97, Municipal Administration and Water Supply (Election), dated 19.07.2011 under Section 45(1) of Chennai City Municipal Corporation Act, 1919 and since there was a short payment and collection of privilege fee from the petitioner for the aforesaid period, the petitioner was liable to pay same.

3. The impugned demand is challenged by the petitioner primarily on the ground that the aforesaid notification vide G.O.Ms.No.97, Municipal Administration and Water Supply (Election), dated 19.07.2011 was issued for a limited purpose to delineate the electoral constituencies for election of the councillors and that the said notification did not permit the respondents herein to alter the revenue divisions for collection of the privilege fee from the petitioner by treating the petitioner's recreation/club within Chennai Revenue District.

4. The impugned demand notice relies on the G.O.Ms.No.23, Home, Prohibition & Excise (VIII) Department, dated 10.04.2013, as per which, theprivilege fee of Rs.10,00,000/- was fixed for Chennai City and Rs.6,00,000/- for other areas by amended Rule 17(b)(ii)(II) of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981.

5. Rule 17(b)(ii) after the amendment, i.e. w.e.f. 01.04.2012, reads as under:-

> “The privilege and the licence in Form F.L.2 shall be issued by the Commissioner on payment of an annual privilege fee of Rs.10,00,000/- (Rupees ten lakhs only) for Chennai City and Rs.6,00,000/- (Rupees six thousand only) for the other areas, a licence fee of Rs.5,000/- (Rupees five thousand only and an application fee of Rs.1,000/- (Rupees one thousand only) on an application made in Form F.A. 1-2 by the Honorary Secretary of club concerned.”

6. It is submitted that the petitioner's club came within the jurisdiction of the third respondent (District Collector, Thiruvallur) and therefore the petitioner had correctly paid the privilege fee of Rs.6,00,000/- vide G.O.Ms.No.27, Home, Prohibition and Excise (VIII) Department, dated 26.06.2012 read with G.O.Ms.No.23, Home, Prohibition and Excise (VIII) Department, dated 10.04.2013.

7. It is submitted that privilege fee in terms of G.O.Ms.No.23, Home, Prohibition and Excise (VIII) Department, dated 10.04.2013, in Form F.L.2 licenses issued by the commissioner for Chennai City was only Rs.10,00,000/- and Rs.6,00,000/- for other areas. It is submitted that the petitioner's recreation club being situated at Ramapuram Panchayat in theMaduravoyal Taluk fell within the Tiruvallur District and it therefore was within "others area" and not within "Chennai City".

8. The learned counsel for the petitioner submits that only in the year 2018, Ramapuram Taluk in the Maduravoyal Taluk, of the Tiruvallur District was merged with the jurisdiction of "Chennai City" for the purpose of collection and levy of privilege fee payable under the provisions of the Tamil Nadu Prohibition Act, 1937 and Tamil Nadu Liquor (License and Permit) Rules, 1981.

9. It is submitted that all through the period up to 2018, the petitioner's recreation club fell under "other areas" as per G.O.Ms.No.23, dated 10.04.2013, as has been admitted by the fourth respondent in their counter as well.

10. It is further submitted that the entire demand vide impugned demand notice of the 2nd respondent was on account of the audit objection of the Accountant General and the Government itself had also pointed out that the audit objection was incorrect as G.O.Ms.No.97 dated 19.07.2011 was meant only for delineating the wards for the purpose of election of councillors and it did not delineate the Revenue District. Therefore, it is submitted that the impugned demand was contrary to even the understanding of the respondents.

11. It is further submitted that the renewal application under the rules has to be routed only the District Collector namely the 3rd respondent and renewal was made by the 2nd respondent Commissioner of Prohibition. Therefore, there is no basis on which the demand can be sustained.

12. The learned counsel for the petitioner further submits that the 2nd proviso, Rule 17-B of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, specifically brought within the limit of Chennai City for the purpose of collection of privilege fee

under the provisions of the Tamil Nadu Prohibition Act, 1937. It is further submitted that the demand was contrary to the well settled principles of law due to promissory estoppel.

13. In this connection, attention was invited to the decision of the Hon'ble Supreme Court in the following cases:-

> " i. State of Punjab Vs Nestle India Ltd., and another, (2004) 6 SCC 465.
>
> ii.Mahabir Vegetable Oils (P) Ltd., and another Vs State of Haryana and others, (2006) 3 SCC 620.
>
> iii. Manuelsons Hotels Private Limited., Vs State Kerala and others, (2016) 6 SCC 766."

14. The learned counsel for the petitioner also submitted that a delegated legislation cannot take away or confiscate rights in the light of the fact that the petitioner was required to pay only Rs.6,00,000/- per annum as privelege fee as in terms of G.O.Ms.No.23 dated 10.04.2013. He further submitted that the delegated legislation cannot alter the rules and demand amounts, contrary to the rules.

15. The learned counsel for the petitioner also relied on the averments in the counter filed by the fourth respondent, wherein, it has been specifically admitted that previously the address of the petitioner's recreation / club fell within the jurisdiction of the third respondent/District Collector, Tiruvallur and consequent to expansion of Chennai City Corporation in the year 2011, the government had issued G.O.Ms.No.1, Revenue and Disaster Management Department dated 04.01.2018 and have expanded the limits of the boundaries of the Chennai City Revenue Unit and made it co-terminus with the Greater Chennai Corporation's limits.

16. It is submitted that in the counter, the fourth respondent has tacitly admitted that the Revenue Department was physically expanded only with effect from 16.08.2018. He therefore submits that the impugned demand has to go.

17. Finally, the learned counsel for the petitioner also submitted that the impugned demand notice has been made without following the principles of natural justice inasmuch as neither the Show Cause Notice was issued to the petitioner nor a personal hearing. He therefore submits that even on this count the impugned order has to go.

18. Defending the impugned order, the learned counsel for the respondents submits that the petitioner has been paid tax with the Chennai Corporation all through the period during the

period in dispute. Therefore, it is not open for the petitioner to rely wrongly on G.O.Ms.No.23 dated 10.04.2013.

19. Previlege fee of Rs.6,00,000/- was applicable only for areas other than those within the Chennai City. He submitted that the petitioner's club was located within the Revenue District of Chennai City right from 2011. Therefore, the petitioner was liable to pay the privilege fee in accordance with G.O.Ms.No.97 dated 19.07.2011 read with G.O.Ms.No.23 dated 10.04.2013 as was made applicable to other similarly placed persons located in the Chennai City.

20. The learned counsel for the respondents also submits that this is a policy decision of the Government to include the areas surrounding

the Chennai City within the Chennai City limits and therefore there is no basis on which the impugned demand notice can be quashed.

21. It was further submitted that the respondents are willing to pass orders on merits, in case, the Court is inclined to remit the case back to the respondent to pass fresh orders on merits after hearing the petitioner.

22. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents. The petitioner's recreation club fell within the revenue District Tiruvallur all along.

23. On 17.5.2017, an Audit Report for the Year Ended 31.3.2016 of the Accountant General was generated The impugned demand is based on the aforesaid Audit Report. It pointed out Short Collection of Privilege Fee from various persons under the Provisions of the Rule 1 (b) of the Tamil Nadu Liquor (License and Permit) Rules, 1981apart from short collection of royalty under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957.

24. The, second respondent in response to the above Audit Report dated 17.5.2017, by the impugned communication dated 27.9.2017 has thus called upon the petitioner to pay a sum of Rs.16,00,000/- for the period commencing from 1 April, 2012 in terms of amendment to the Rule 17(b) of the Tamil Nadu Liquor (License and Permit) Rules, 1981.

25. The petitioner has not challenged the amendment to Rule 17 (b) of the Tamil Nadu Liquor (License and Permit) Rules, 1981 vide G.O.(Ms) No.23, dated 10.4.2013 before this Court.The petitioner has indeed accepted the amendment to the provisions of the aforesaid rules, but has questioned the applicability of the privilege fee of Rs.10,00,000/- on the ground that the petitioner's recreation club fell outside the "Chennai city ".

26. The license order dated 17.7.2001 issued to the

petitioner is addressedas" Ayanavaraam Vigneswara Recreation Centre, 73/2,Thiruvalluvar Salai, Ramapuram, Chennai-60008.

27. For all practical purpose the location of the petitioner's club was within the jurisdiction of the Chennai City and the City of Chennai grew exponentially in the last two decades. However, many of the areas still continued to remain outside the bounds of Corporation of Madras.

28. Initially, the petitioner's club was subjected to a privilege Fee of Rs.2,00,000/- per annumlicense order dated 17.7.2001. Later this amount was periodically enhanced which was also paid by the petitioner from time to time.

29. The petitioner has paid a privilege fee of Rs.6,00,000/- on the assumption that the recreation club of the petitioner fell outside “Chennai City”. The second respondent also accepted payment of Rs.6,00,000/- towards “privilege fee” from the petitioner during the subsequent renewals in terms of amendment brought to Rule 17 (b) of the Tamil Nadu Liquor (License and Permit) Rules, 1981.

30. In the year 2009, a proposal was placed before the Government of Tamil Nadu for expanding the jurisdiction of the Chennai Corporation considering the fact that the boundary of the Chennai Corporation was last drawn in the year 1978, and that almost 30 years had lapsed since then and that there was a rapid urbanisation and a necessity arose for expanding the jurisdiction of the Chennai Corporation and therefore a detailed study was conducted.

31. The study was examined and the recommendations were notified by G.O.(Ms) No.256 dated 26.12.2009. Relevant portion of the translated version of proposals/recommendations in the above notification read as under:-

6. The Committee, after discussion of the various alternatives, suggestions and alternative opinions from all the parties, recommend the following two Action plan for final decision of the Government:

(i)	Action plan A	Extend the area of Chennai Metropolitan covering the area of 800 sq.km. This may be Chennai Greater Metropolitan City.
(ii)	Action plan B	Extend the area 426 sq.km of Chennai corporation which includes the Municipality of Thiruvottiyur, Madhavaram, Ambadhur and Alandur; and to create two new Corporations with the headquarters (capitals) of Avadi (168 Sq.km) and Tambaram (218 Sq.km).

7. Detailed discussions were held on various features of the above Action plan. It is considered that creation a large Corporation would give the following advantages:

i. A total plan can be carried out for the development of infrastructural facilities. Growth can be planned to make the right use of all resources including finance.

ii. The proposed areas, which are to be merged with the Chennai corporation would get the identity of "Chennai". This identity will get importance to attract investment and for economic development.

iii. The growth ratio of urbanization in the boundaries of Chennai corporation, is on the increase. These areas are capable to attract more investment. It's easy for a large local body to streamline and regulate these investments.

iv.In India, cities are ranked by their population. This rank is considered to be important to attract the financial investment and obtain further finance.

8. The Government, on the basis of the above opinion and after careful consideration take the following policy decision and accordingly order:

i. The recommendation of the Committee to set up further extension of Chennai Metropolitan, in its report of July 2009, on "Action plan B", is approved. In respect of the proposed new corporations viz., Chennai-avadi, and Chennai - Tambaram, the decision will be taken later.

ii. On this basis, the following local bodies to be merged with the Chennai Corporation and to be expanded:

(a) Municipalities

……………………

(b) Town panchayats

……………………

(c) Panchayats

Sl.No.	Panchayat	Panchayat Union	District
13	Ramapuram	Villivakam	Tiruvallur

iii. A new Corporation may be formed after the end of term of the current elected local body representatives in 2011 and without affecting the existing setup of local bodies.

iv. The new wards of proposed Corporation may be divided on the basis of population. The current wards of Chennai Corporation may also be changed and setup on population basis.

9. Further, the Corporation of Chennai may follow the procedure carried out with regard to recently formed new Corporations, and take action to determine the ward boundaries of the areas to be merged, setting up zones, modifying the existing wards and all related works.The government accords sanction to the Commissioner of Chennai Corporation to appoint/designate, Officer on Special Duty, if necessary. The Government also order that the Officer on Special Duty to submit his report within 6 months.”

32. Pursuant to G.O.(Ms)No.256 dated 26.12.2009, G.O.(Ms) No.97, Municipal Administration and Water Supply (Election) dated 19.7.2011 was issued. This notification was issued in the exercise of power conferred under section 45 (1) of the Chennai City Municipal Corp Act, 1919.

33. By the Said Notification the Government of Tamil Nadu, Divided the City of Chennai into 200 Territorial Divisions and fixed the boundaries of the 200 Divisions. For the purpose of the said notification, the recreational club of the petitioner fell within serial numbers:-

Division No.	Boundaries North West - Clock wise.	Existing Local Body	Existing Ward / Division No.	Assembly Constituency
151	Karambakkam Village, Arcot Road, Madhuravoil Municipality, Arcot Road, Valasaravakkam Municipality, ArcotSalai, Ramapuram Village, Mogalivakkam Village, Wireless Station Road, Mount Poonamalli Road (NH-54).	Porur	1, 2, 3, 4, 5, 6, 7, 8	Madhuravoil
154	Valasaraswakkam Municipality, SRM Dental-Medical College, Ramapuram Village Panchayat Office, Eswaran Koil Street, G.S.Nagar Main Road, Santhi Nagar Main Road, Anuratha Paint Company Road, Mogalivakkam Village Panchayat, Mount Poonamalle Road (Companies), Porur Town Panchayat, Boothapedu Road	Ramapuram	1, 2	Madhuravoil

155	Alwarthiru Nagar Arcot Road, K.K.Ponnuranga Naicker Road, Annai Sathya Nagar, Kannadasan Nagar, Corporation of ChennaiNesapakkam, Amman Nagar, KalasanthAmmanKoil land, Chellammal Nagar, Manapakkam Village Panchayat, MIOT Hospital.	Ramapuram	3, 4, 5	Madhuravoil

157	Ramapuram L and T Mc-Nail Company, D.L.F.(Sivaji Garden), Mugalivakkam Ashram Complex, Sagaraj Enclave L and T Service Centre, MugalivakkamChiristian Burial Ground, C.R.RamakrishnapuramManapakkam Unit-6, C.R.RamakrishnapuramMugalivakkam Unit-7, Big Colony, Thiruvalluvar Nagar, Kavya Garden, RGL.Colony Complex Mugalivakkam end, Kolappakkam Limit end, DharmarajapuramManappakkam, Chennai Airport Extension Part, (Mecro-Marvel Phase-II), Adyar Junction, Brick Industries Part, Ravichandran Garden, Causeway (OTA), River View Colony, Check-Dam (Nandambakkam), Bridge Mount-Poonamalle Road, Jayanth touch Park, Parry Choclate Company, MIOT Hospital Ramapuram, Sathiya Nagar, Ramapuram Burial Ground, J.J.Nagar, MGR Garden, Adco India Limited.	Manappakkam	All wards	Alandur

34. G.O(Ms).No.97, Municipal Administration and Water Supply (Election) dated 19.7.2011 was issued only for the purpose of delineation of the boundaries under Section 45(1) of the Chennai City Municipal Corporation Act, 1919.

35. Section 45(1) of the Chennai City Municipal Corporation Act, 1919 is under Chapter III of the said Act which specifically deals with "Election Appointment of Councillors, Qualification and Disqualifications of Voters , Candidates and Councillors".

36. Relvant Portion of Section 45(1) reads as under:-

"45. Two hundred divisions.-

(1) For the purposes of the election of the two hundred councillors referred to in sub-section (1) of section 5, the city shall be divided into two hundred territorial divisions the boundaries of which shall be fixed by the State Government by notification."

37. G.O.(Ms).No.27, dated 26.6.2012 was not intended for making any changes in the revenue administration. It merely amended Rule 17 (b) of the Tamil Nadu Liquor (License and Permit) Rules, 1981 and provided for 2 different rates of Privilege Fee and the License Fee in Form FL2 f for a sum of Rs. 10,00,000 and Rs. 6,00,000 within city of Chennai and outside, Chennai in Tamil Nadu respectively .

38. Section 3(9) of the Chennai City Municipal Corporation Act, 1919 defines the expression "Chennai city" as follows:-

"3.Definitions.-

(1)…………..

(9) City of Chennai.- "City of Chennai or "city" means the area declared by the State Government by notification to be the city of Chennai, but excludes Fort St.George with the glacis:"

39. The demarcation of boundary of the Greater Chennai Corporation was expanded from 178 km² to 426 km² in the year 2018 vide G.O.Ms.No.1 dated 04.01.2018 Revenue and Disaster Management, Revenue Administration Wing [RA 1(1)], dated 04.01.2018 for Revenue Administration – Jurisdiction – Expansion of Chennai Revenue District. It added Revenue Villages from Kancheepuram and Thiruvallur Districts with jurisdiction that

were co-terminus with that of Greater Chennai Corporation – Orders. It has accepted the recommendation of District Revenue Officer & District Collector (i/c) Chennai vide Letter No.A1/17305/2016, dated 10.08.2016 and that of the Principal Secretary / Commissioner of Revenue Administration, vide Letter No.Ser.VI(3)/31663/2016, dated 11.08.2016 and has included the Ramapuram within the Revenue District of Chennai City.

40. Approximately 67 revenue villages from, Kancheepuram District and Thiruvalluvar were merged with the Chennai city. Till then " Chennai City" had only approximately about 55 villages. About 122 villages were grouped under 3 revenue zones-North, Chennai, Central Chennai and South, Chennai vide G.O.Ms.No.1 dated 04.01.2018 Revenue and Disaster Management, Revenue Administration Wing [RA 1(1)], dated 04.01.2018 for Revenue Administration – Jurisdiction – Expansion of Chennai Revenue Distric.t

41. Thus, what is evident is that the petitioner's club situated in Ramapuram within the Madhuravoyal Taluk, Tiruvallur District merged with the Chennai Revenue District Madhuravoyal Taluk, Zone II of the Corporation of Chennai only in 2018 vide G.O.Ms.No.1 dated 04.01.2018 Revenue and Disaster Management, Revenue Administration Wing.

42. It is consequent to the above notification dated in the January 4, 2018, 67 Revenue Villages of Kancheepuram and Thiruvallur Districts merged with the Chennai District. Thus only from the year 2018, the petitioner came within the Chennai Revenue District and was therefore liable to pay previlege fee applicable to FL2 Licence at the rate prescribed for such licensee in Chennai City. Therefore, there is no legal basis on which the impugned demand can be sustained.

43. In the light of the above, the writ petition deserves to be allowed and accordingly, this writ petition is allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkd

To

1. The Secretary to Government,
   Home Prohibition and Excise Department,
   Fort St.George,
   Chennai 600 009.

2. The Commissioner,
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   Chennai District,
   No.62, Rajaji Salai, Fourth Floor,
   Chennai 600 001.

+1cc to Mr.J.Saravanavel, Advocate, S.R.No.27645

W.P.No.31057 of 2017

JPL(CO)
CT/28/07/2021