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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-08-2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.33239 to 33246 of 2017

and

W.M.P.Nos.36652 to 36659 of 2017

M/s.Gupta & Co.,
Represented by its Proprietor Dr.S.K.Gupta,
No.84, G.N.Chetty Road,
T.Nagar,
Chennai - 600 017. ...Petitioner in WP 33239/2017

M/s.Class Weave,
Represented by its Proprietor Dr.S.K.Gupta,
No.21, Yogambal Street,
T.Nagar,
Chennai-600 017. ...Petitioner in WP 33240/2017

M/s.French Knot Clothing Company,
Represented by its Proprietor Dr.S.K.Gupta,
No.13, Ponniammam Koil Street,
Saligramam,
Chennai-600 093. ...Petitioner in WP 33241/2017

M/s.Sawan Enterprises,
Represented by its Partner Puneet Guptha,
No.6, Thiyagaraya Road,
T.Nagar,
Chennai-600 017. ...Petitioner in WP 33242/2017

M/s.Guptha Garments,
Represented by its Partner Puneet Guptha,
No.6, Thiyagaraya Road,
T.Nagar,
Chennai-600 017. ...Petitioner in WP 33243/2017

M/s.All Times Fashions and Sportswear,
Represented by its Proprietor Dr.S.K.Gupta,
No.13, Ponniammam Koil Street,
Saligramam,
Chennai-600 093. ...Petitioner in WP 33244/2017

M/s.Village Craft,
Represented by its Partner Puneet Guptha,
No.6, Thiyagaraya Road,
T.Nagar,
Chennai-600 017. ...Petitioner in WP 33245/2017



M/s.Centre Fold Fashion,
Represented by its Partner Puneet Guptha,
No.6, Thiyagaraya Road,
T.Nagar,
Chennai-600 017.

...Petitioner in WP 33246/2017

Vs

The State of Tamil Nadu,
Represented by its Secretary,
Municipal Administration and Water
Supply Department,
Fort St.George,
Chennai - 600 009.

...R-1 in all Wps

The Commissioner,
Pallavaram Municipality,
Chromepet,
Chennai - 600 044.

... R-2 in all WPs

WP 33239 of 2017 is filed Under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, calling for the records of the second respondent in order dated 31.07.2017 in reference Na.Ka.No. 5978/13/A1-8, and quash the same.

WP 33240 of 2017 is filed Under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, calling for the records of the second respondent in order dated 31.07.2017 in reference Na.Ka.No. 5978/13/A1-5, and quash the same.

WP 33241 of 2017 is filed Under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, calling for the records of the second respondent in order dated 31.07.2017 in reference Na.Ka.No. 5978/13/A1-6, and quash the same.

WP 33242 of 2017 is filed Under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, calling for the records of the second respondent in order dated 31.07.2017 in reference Na.Ka.No. 5978/13/A1-4, and quash the same.

WP 33243 of 2017 is filed Under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, calling for the records of the second respondent in order dated 31.07.2017 in reference Na.Ka.No. 5978/13/A1-1, and quash the same.



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WP 33244 of 2017 is filed Under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, calling for the records of the second respondent in order dated 31.07.2017 in reference Na.Ka.No. 5978/13/A1-7, and quash the same.

WP 33245 of 2017 is filed Under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, calling for the records of the second respondent in order dated 31.07.2017 in reference Na.Ka.No. 5978/13/A1-3, and quash the same.

WP 33246 of 2017 is filed Under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, calling for the records of the second respondent in order dated 31.07.2017 in reference Na.Ka.No. 5978/13/A1-2, and quash the same.

For Petitioner in all WPs : Mr.AR.L.Sundaresan,
Senior Counsel
for Mr.Abishek Jenasenar
For Respondent No.1 in all WPs: Mr.V.Nanmaran,
Government Advocate.

For Respondent No.2 in all WPs: Mr.P.Srinivas

C O M M O N O R D E R

The Property Tax Demand Notices in respect of the vacant lands possessed by the petitioners passed in proceedings dated 31.07.2017 are under challenge in all the present writ petitions.

FACTS OF THE CASE:

2(a) W.P.No.33239 of 2017: The petitioner is the absolute owner of the land comprised in S.No.36(part), 37(part), 38/2(part) and 39/4B(part) and situated at Pallavaram and measuring a total extent of about 43,600 sq.ft. The subject property falls within the Municipal limits of Pallavaram Municipality / second respondent, which is an authority constituted under the provisions of the Tamil Nadu District Municipalities Act, 1920[hereinafter referred to as the 'Act']. The petitioner originally received a notice dated 24.01.2012 from the second respondent, demanding that the petitioner to pay property tax on vacant land, which was assessed as Rs.14,74,841/- (fourteen lakhs seventy four thousand eight hundred and forty one only). The petitioner states that without giving any details regarding the demand, the notice was issued. Questioning the said demand notice, the petitioner filed W.P.No.14306 of 2012 before this Court and to quash



G.O.Ms.No.151 dated 20.08.2009. Vide order dated 02.12.2014, the order was passed, quashing the demand notice and granted liberty to the second respondent to issue pre-assessment notice for vacant land tax demand, enabling the petitioner to raise its objections in accordance with law. Pursuant to the orders of this Court, the second respondent issued pre-assessment notice along with the working sheets, fixing the assessment of vacant land tax for two periods namely from 2nd half year 2005-06 to 1st half year of 2009-10 and for the period from 2nd half year 2009-10 to 2nd half year of 2011-12. While fixing of the vacant land tax for the first period, it was done on the basis of the value of the land as mandated under the earlier un-amended Section 81 (3)(a) of the Act. For the latter period, it was done on the basis of the amended Section 81(3)(a) of the Act. The petitioner submitted its detailed representation on 22.05.2015 to the 2nd respondent, raising various objections. However, the 2nd respondent rejected the objections in proceedings dated 03.08.2015. The petitioner filed an appeal under Rules 25 and 26 of the Schedule IV of the Municipalities Act before the Taxation Appeals Committee constituted under the Act. However, the 2nd respondent thereafter issued an order dated 29.01.2016, stating that the appeal filed by the petitioner has been rejected because the same had been presented without paying the entire vacant land tax imposed by the second respondent. The second respondent thereafter issued an order dated 10.02.2016, calling upon the petitioner to remit a total sum of Rs.4,40,71,231/- as vacant land tax dues of not only the petitioner's property but also seven other adjoining properties belongs to the petitioner.

2(b) W.P.No.33240 of 2017: The petitioner is the absolute owner of the land comprised in S.No.38/2(part) and 39/4B(part) and situated at Pallavaram and measuring a total extent of about 43,600 sq.ft. The subject property falls within the Municipal limits of Pallavaram Municipality / second respondent, which is an authority constituted under the provisions of the Tamil Nadu District Municipalities Act, 1920. The petitioner originally received a notice dated 24.01.2012 from the second respondent, demanding that the petitioner to pay property tax on vacant land, which was assessed as Rs.14,74,841/- (fourteen lakhs seventy four thousand eight hundred and forty one only). The petitioner states that without giving any details regarding the demand, the notice was issued. Questioning the said demand notice, the petitioner filed W.P.No.14304 of 2012 before this Court and to quash G.O.Ms.No.151 dated 20.08.2009. Vide order dated 02.12.2014, the order was passed, quashing the demand notice and granted liberty to the second respondent to issue pre-assessment notice for vacant land tax demand, enabling the petitioner to raise its objections in accordance with law. Pursuant to the orders of this Court, the second respondent issued pre-assessment notice



along with the working sheets, fixing the assessment of vacant land tax for two periods namely from 2nd half year 2005-06 to 1st half year of 2009-10 and for the period from 2nd half year 2009-10 to 2nd half year of 2011-12. While fixing of the vacant land tax for the first period, it was done on the basis of the value of the land as mandated under the earlier un-amended Section 81 (3)(a) of the Act. For the Latter period, it was done on the basis of the amended Section 81(3)(a) of the Act. The petitioner submitted its detailed representation on 22.05.2015 to the 2nd respondent, raising various objections. Thereafter, the petitioner did not hear anything from the 2nd respondent and assumed that the matter was still under consideration. In such circumstances, the petitioner received information that one another concern by the name of Gupta & Co., which owns land adjoining to those owned by the petitioner and is also facing similar vacant land tax issues, had received orders, rejecting its representations against the pre-assessment notices and also rejecting its appeal filed under Rules 25 and 26 of Schedule IV of the Act against the said order on the ground that it had not remitted the entire vacant land tax amount due along with the appeal. On 10.02.2016, the said Gupta & Co., had also received order from the 2nd respondent, threatening distraint proceedings upon non-payment of vacant land tax. To the shock and surprise of the petitioner, the assessment relating to the property owned by the petitioner had also been demanded from the said Gupta & Co., in order dated 10.02.2016 without any intimation to the petitioner and without even rejecting the representation submitted by the petitioner.

2(c) W.P.No.33241 of 2017: The petitioner is the absolute owner of the land comprised in S.No.39/4B(part), 37(part) and 38/2(part) and situated at Pallavaram and measuring a total extent of about 43,600 sq.ft. The subject property falls within the Municipal limits of Pallavaram Municipality / second respondent, which is an authority constituted under the provisions of the Tamil Nadu District Municipalities Act, 1920. The petitioner originally received a notice dated 24.01.2012 from the second respondent, demanding that the petitioner to pay property tax on vacant land, which was assessed as Rs.14,74,841/- (fourteen lakhs seventy four thousand eight hundred and forty one only). The petitioner states that without giving any details regarding the demand, the notice was issued. Questioning the said demand notice, the petitioner filed W.P.No.14305 of 2012 before this Court and to quash G.O.Ms.No.151 dated 20.08.2009. Vide order dated 02.12.2014, the order was passed, quashing the demand notice and granted liberty to the second respondent to issue pre-assessment notice for vacant land tax demand, enabling the petitioner to raise its objections in accordance with law. Pursuant to the orders of this Court, the second respondent issued pre-assessment notice



along with the working sheets, fixing the assessment of vacant land tax for two periods namely from 2nd half year 2005-06 to 1st half year of 2009-10 and for the period from 2nd half year 2009-10 to 2nd half year of 2011-12. While fixing of the vacant land tax for the first period, it was done on the basis of the value of the land as mandated under the earlier un-amended Section 81 (3)(a) of the Act. For the latter period, it was done on the basis of the amended Section 81(3)(a) of the Act. The petitioner submitted its detailed representation on 22.05.2015 to the 2nd respondent, raising various objections. Thereafter, the petitioner did not hear anything from the 2nd respondent and assumed that the matter was still under consideration. In such circumstances, the petitioner received information that one another concern by the name of Gupta & Co., which owns land adjoining to those owned by the petitioner and is also facing similar vacant land tax issues, had received orders, rejecting its representations against the pre-assessment notices and also rejecting its appeal filed under Rules 25 and 26 of Schedule IV of the Act against the said order on the ground that it had not remitted the entire vacant land tax amount due along with the appeal. On 10.02.2016, the said Gupta & Co., had also received order from the 2nd respondent, threatening distraint proceedings upon non-payment of vacant land tax. To the shock and surprise of the petitioner, the assessment relating to the property owned by the petitioner had also been demanded from the said Gupta & Co., in order dated 10.02.2016 without any intimation to the petitioner and without even rejecting the representation submitted by the petitioner.

2(d) W.P.No.33242 of 2017: The petitioner is the absolute owner of the land comprised in S.No.33/2(part), 36(part) and 37(part) and situated at Pallavaram and measuring a total extent of about 19,888 sq.ft. The subject property falls within the Municipal limits of Pallavaram Municipality / second respondent, which is an authority constituted under the provisions of the Tamil Nadu District Municipalities Act, 1920. The petitioner originally received a notice dated 24.01.2012 from the second respondent, demanding that the petitioner to pay property tax on vacant land, which was assessed as Rs.50,60,862/-. The petitioner states that without giving any details regarding the demand, the notice was issued. Questioning the said demand notice, the petitioner filed W.P.No.14801 of 2012 before this Court. Vide order dated 02.12.2014, the order was passed, quashing the demand notice and granted liberty to the second respondent to issue pre-assessment notice for vacant land tax demand, enabling the petitioner to raise its objections in accordance with law. Pursuant to the orders of this Court, the second respondent issued pre-assessment notice along with the working sheets, fixing the assessment of vacant land tax for two periods namely from 2nd half year 2005-06 to 1st half year of



2009-10 and for the period from 2nd half year 2009-10 to 2nd half year of 2011-12. While fixing of the vacant land tax for the first period, it was done on the basis of the value of the land as mandated under the earlier un-amended Section 81(3)(a) of the Act. For the latter period, it was done on the basis of the amended Section 81(3)(a) of the Act. The petitioner submitted its detailed representation on 22.05.2015 to the 2nd respondent, raising various objections. Thereafter, the petitioner did not hear anything from the 2nd respondent and assumed that the matter was still under consideration. In such circumstances, the petitioner received information that one another concern by the name of Gupta & Co., which owns land adjoining to those owned by the petitioner and is also facing similar vacant land tax issues, had received orders, rejecting its representations against the pre-assessment notices and also rejecting its appeal filed under Rules 25 and 26 of Schedule IV of the Act against the said order on the ground that it had not remitted the entire vacant land tax amount due along with the appeal. On 10.02.2016, the said Gupta & Co., had also received order from the 2nd respondent, threatening distraint proceedings upon non-payment of vacant land tax. To the shock and surprise of the petitioner, the assessment relating to the property owned by the petitioner had also been demanded from the said Gupta & Co., in order dated 10.02.2016 without any intimation to the petitioner and without even rejecting the representation submitted by the petitioner.

2(e) W.P.No.33243 of 2017: The petitioner is the absolute owner of the land comprised in S.No.33/2(part), 36(part) and 37(part) and situated at Pallavaram and measuring a total extent of about 43,600 sq.ft. The subject property falls within the Municipal limits of Pallavaram Municipality / second respondent, which is an authority constituted under the provisions of the Tamil Nadu District Municipalities Act, 1920. The petitioner originally received a notice dated 24.01.2012 from the second respondent, demanding that the petitioner to pay property tax on vacant land, which was assessed as Rs.1,10,94,825/-. The petitioner states that without giving any details regarding the demand, the notice was issued. Questioning the said demand notice, the petitioner filed W.P.No.13798 of 2012 before this Court. Vide order dated 02.12.2014, the order was passed, quashing the demand notice and granted liberty to the second respondent to issue pre-assessment notice for vacant land tax demand, enabling the petitioner to raise its objections in accordance with law. Pursuant to the orders of this Court, the second respondent issued pre-assessment notice along with the working sheets, fixing the assessment of vacant land tax for two periods namely from 2nd half year 2005-06 to 1st half year of 2009-10 and for the period from 2nd half year 2009-10 to 2nd half year of 2011-12. While fixing of the vacant land tax for the first period, it was done on the basis of the value of the land



as mandated under the earlier un-amended Section 81(3)(a) of the Act. For the Latter period, it was done on the basis of the amended Section 81(3)(a) of the Act. The petitioner submitted its detailed representation on 22.05.2015 to the 2nd respondent, raising various objections. Thereafter, the petitioner did not hear anything from the 2nd respondent and assumed that the matter was still under consideration. In such circumstances, the petitioner received information that one another concern by the name of Gupta & Co., which owns land adjoining to those owned by the petitioner and is also facing similar vacant land tax issues, had received orders, rejecting its representations against the pre-assessment notices and also rejecting its appeal filed under Rules 25 and 26 of Schedule IV of the Act against the said order on the ground that it had not remitted the entire vacant land tax amount due along with the appeal. On 10.02.2016, the said Gupta & Co., had also received order from the 2nd respondent, threatening distraint proceedings upon non-payment of vacant land tax. To the shock and surprise of the petitioner, the assessment relating to the property owned by the petitioner had also been demanded from the said Gupta & Co., in order dated 10.02.2016 without any intimation to the petitioner and without even rejecting the representation submitted by the petitioner.

2(f) W.P.No.33244 of 2017: The petitioner is the absolute owner of the land comprised in S.No.38/2(part) and 39/4B(part) and situated at Pallavaram and measuring a total extent of about 31392 sq.ft. The subject property falls within the Municipal limits of Pallavaram Municipality / second respondent, which is an authority constituted under the provisions of the Tamil Nadu District Municipalities Act, 1920. The petitioner originally received a notice dated 24.01.2012 from the second respondent, demanding that the petitioner to pay property tax on vacant land, which was assessed as Rs.10,61,883/-. The petitioner states that without giving any details regarding the demand, the notice was issued. Questioning the said demand notice, the petitioner filed W.P.No.14303 of 2012 before this Court and to quash G.O.Ms.No.151 dated 20.08.2009. Vide order dated 02.12.2014, the order was passed, quashing the demand notice and granted liberty to the second respondent to issue pre-assessment notice for vacant land tax demand, enabling the petitioner to raise its objections in accordance with law. Pursuant to the orders of this Court, the second respondent issued pre-assessment notice along with the working sheets, fixing the assessment of vacant land tax for two periods namely from 2nd half year 2005-06 to 1st half year of 2009-10 and for the period from 2nd half year 2009-10 to 2nd half year of 2011-12. While fixing of the vacant land tax for the first period, it was done on the basis of the value of the land as mandated under the earlier un-amended Section 81(3)(a) of the Act. For the Latter period, it was done on the basis of the



amended Section 81(3)(a) of the Act. The petitioner submitted its detailed representation on 22.05.2015 to the 2nd respondent, raising various objections. Thereafter, the petitioner did not hear anything from the 2nd respondent and assumed that the matter was still under consideration. In such circumstances, the petitioner received information that one another concern by the name of Gupta & Co., which owns land adjoining to those owned by the petitioner and is also facing similar vacant land tax issues, had received orders, rejecting its representations against the pre-assessment notices and also rejecting its appeal filed under Rules 25 and 26 of Schedule IV of the Act against the said order on the ground that it had not remitted the entire vacant land tax amount due along with the appeal. On 10.02.2016, the said Gupta & Co., had also received order from the 2nd respondent, threatening distraint proceedings upon non-payment of vacant land tax. To the shock and surprise of the petitioner, the assessment relating to the property owned by the petitioner had also been demanded from the said Gupta & Co., in order dated 10.02.2016 without any intimation to the petitioner and without even rejecting the representation submitted by the petitioner.

2(g) W.P.No.33245 of 2017: The petitioner is the absolute owner of the land comprised in S.No.33/2(part), 36(part) and 37(part) and situated at Pallavaram and measuring a total extent of about 41,501 sq.ft. The subject property falls within the Municipal limits of Pallavaram Municipality / second respondent, which is an authority constituted under the provisions of the Tamil Nadu District Municipalities Act, 1920. The petitioner originally received a notice dated 24.01.2012 from the second respondent, demanding that the petitioner to pay property tax on vacant land, which was assessed as Rs.1,05,60,696/-. The petitioner states that without giving any details regarding the demand, the notice was issued. Questioning the said demand notice, the petitioner filed W.P.No.14802 of 2012 before this Court. Vide order dated 02.12.2014, the order was passed, quashing the demand notice and granted liberty to the second respondent to issue pre-assessment notice for vacant land tax demand, enabling the petitioner to raise its objections in accordance with law. Pursuant to the orders of this Court, the second respondent issued pre-assessment notice along with the working sheets, fixing the assessment of vacant land tax for two periods namely from 2nd half year 2005-06 to 1st half year of 2009-10 and for the period from 2nd half year 2009-10 to 2nd half year of 2011-12. While fixing of the vacant land tax for the first period, it was done on the basis of the value of the land as mandated under the earlier un-amended Section 81(3)(a) of the Act. For the Latter period, it was done on the basis of the amended Section 81(3)(a) of the Act. The petitioner submitted its detailed representation on 22.05.2015 to the 2nd respondent, raising various objections. Thereafter, the petitioner did not



hear anything from the 2nd respondent and assumed that the matter was still under consideration. In such circumstances, the petitioner received information that one another concern by the name of Gupta & Co., which owns land adjoining to those owned by the petitioner and is also facing similar vacant land tax issues, had received orders, rejecting its representations against the pre-assessment notices and also rejecting its appeal filed under Rules 25 and 26 of Schedule IV of the Act against the said order on the ground that it had not remitted the entire vacant land tax amount due along with the appeal. On 10.02.2016, the said Gupta & Co., had also received order from the 2nd respondent, threatening distraint proceedings upon non-payment of vacant land tax. To the shock and surprise of the petitioner, the assessment relating to the property owned by the petitioner had also been demanded from the said Gupta & Co., in order dated 10.02.2016 without any intimation to the petitioner and without even rejecting the representation submitted by the petitioner.

2(h) W.P.No.33246 of 2017: The petitioner is the absolute owner of the land comprised in S.No.33/2(part), 36(part) and 37(part) and situated at Pallavaram and measuring a total extent of about 41,711 sq.ft. The subject property falls within the Municipal limits of Pallavaram Municipality / second respondent, which is an authority constituted under the provisions of the Tamil Nadu District Municipalities Act, 1920. The petitioner originally received a notice dated 24.01.2012 from the second respondent, demanding that the petitioner to pay property tax on vacant land, which was assessed as Rs.1,06,14,146/-. The petitioner states that without giving any details regarding the demand, the notice was issued. Questioning the said demand notice, the petitioner filed W.P.No.13797 of 2012 before this Court. Vide order dated 02.12.2014, the order was passed, quashing the demand notice and granted liberty to the second respondent to issue pre-assessment notice for vacant land tax demand, enabling the petitioner to raise its objections in accordance with law. Pursuant to the orders of this Court, the second respondent issued pre-assessment notice along with the working sheets, fixing the assessment of vacant land tax for two periods namely from 2nd half year 2005-06 to 1st half year of 2009-10 and for the period from 2nd half year 2009-10 to 2nd half year of 2011-12. While fixing of the vacant land tax for the first period, it was done on the basis of the value of the land as mandated under the earlier un-amended Section 81(3)(a) of the Act. For the latter period, it was done on the basis of the amended Section 81(3)(a) of the Act. The petitioner submitted its detailed representation on 22.05.2015 to the 2nd respondent, raising various objections. Thereafter, the petitioner did not hear anything from the 2nd respondent and assumed that the matter was still under consideration. In such circumstances, the petitioner received information that one another concern by the

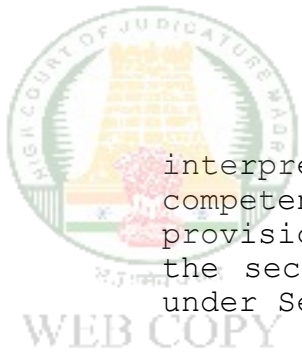


name of Gupta & Co., which owns land adjoining to those owned by the petitioner and is also facing similar vacant land tax issues, had received orders, rejecting its representations against the pre-assessment notices and also rejecting its appeal filed under Rules 25 and 26 of Schedule IV of the Act against the said order on the ground that it had not remitted the entire vacant land tax amount due along with the appeal. On 10.02.2016, the said Gupta & Co., had also received order from the 2nd respondent, threatening distraint proceedings upon non-payment of vacant land tax. To the shock and surprise of the petitioner, the assessment relating to the property owned by the petitioner had also been demanded from the said Gupta & Co., in order dated 10.02.2016 without any intimation to the petitioner and without even rejecting the representation submitted by the petitioner.

3. The learned Senior counsel for the petitioner made a submission that the manner, in which, the vacant land tax demanded by the respondents is not in consonance with the provisions of the Act. It is contended that even for the period falling prior to the Amendment of the Act, the amended rate is to be applied. In other words, it is contended that the amendment came into force in the year 2011 and for the Assessment Years 2005 and 2006 also, the amended rate must be applied and in this regard, the respondent has committed an error in issuing demand notice.

4. The learned Senior Counsel, appearing on behalf of the petitioners, referred to Section 117A of the Tamil Nadu District Municipalities Act [hereinafter referred to as the 'Act', in short] and contended that the power granted to the Commissioner to issue notice assessing the tax and calling upon the person to pay the same can be invoked only if the person is liable to pay tax escaped assessment at a rate lower than the rate at which he is assessable. However, in these cases, the petitioners' property were never assessed for the purpose of payment of vacant land tax and therefore, there is no question of petitioners having escaped assessment at a rate lower than the rate at which the petitioners were assessable. In view of the said position, the second respondent has committed an error invoking the provisions of Section 117A for the purpose of issuing the impugned order confirming the pre-assessment notice. Particularly in the case of any alleged dues of property tax, the powers conferred under Section 117A can be invoked only if the tax has not been duly assessed consequent on the building or land concerned having escaped proper determination of its annual value.

5. The learned Senior Counsel for the petitioners reiterated that the fundamental principle of statutory interpretation that any taxing statute/provision has to be



interpreted in the strictest sense and therefore the authorities competent are bound to act within the four corners of the provisions of the Tax Law. Thus, the impugned orders passed by the second respondent in purported exercise of powers conferred under Section 117A lack jurisdiction.

6. Assuming that the second respondent has the power to call upon the petitioners to remit vacant land tax for six years prior to the issuance of the first notice, on the date of issuance of notice, the amended Section 81(3)(a) of the Act, came into force under which the vacant land tax is to be calculated only on square feet basis subject to the maximum and minimum rates fixed by the State Government. In such circumstances, the said amended provision is to be applied to calculate a vacant land tax due and not the provisions of the unamended Section 81(3)(a) that existed prior to 01.09.2009 which provided for calculation of vacant land tax based on capital value. Thus, the impugned orders are liable to be set aside.

7. In support of the said contention, the learned Senior Counsel relied on the judgment of the Hon'ble Supreme Court of India in the case of Zile Singh vs. State of Haryana [(2004) 8 SCC 1], wherein the effect of amendment by way of substitution is elaborate in paragraphs-24 and 25 are extracted as under:-

"24. The substitution of one text for the other pre-existing text is one of the known and well-recognised practices employed in legislative drafting. "Substitution" has to be distinguished from "supersession" or a mere repeal of an existing provision.

25. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision (see Principles of Statutory Interpretation, *ibid.*, p. 565). If any authority is needed in support of the proposition, it is to be found in *West U.P. Sugar Mills Assn. v. State of U.P.* [(2002) 2 SCC 645], *State of Rajasthan v. Mangilal Pindwal* [(1996) 5 SCC 60], *Koteswar Vittal Kamath v. K. Rangappa Baliga and Co.* [(1969) 1 SCC 255] and *A.L.V.R.S.T. Veerappa Chettiar v. S. Michael* [AIR 1963 SC 933]. In *West U.P. Sugar Mills Assn. case* [(2002) 2 SCC 645] a three-Judge Bench of this Court held that the State Government by substituting the new rule in place of the old one never intended to keep alive the old



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rule. Having regard to the totality of the circumstances centring around the issue the Court held that the substitution had the effect of just deleting the old rule and making the new rule operative. In Mangilal Pindwal case [(1996) 5 SCC 60] this Court upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute which had ceased to exist and held that the substitution would have the effect of amending the operation of law during the period in which it was in force. In Koteswar case [(1969) 1 SCC 255] a three-Judge Bench of this Court emphasised the distinction between "supersession" of a rule and "substitution" of a rule and held that the process of substitution consists of two steps: first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place."

8. In the case of Commissioner of Income Tax vs. Vatika Township Private Limited [(2015) 1 SCC 1], the Hon'ble Supreme Court held that where benefit offered by amendment presumption is retrospective effect and the relevant paragraph-30 reads as under:-

"30. We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators' object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In Govt. of India v. Indian Tobacco Assn. [(2005) 7 SCC 396] , the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in Vijay v. State of Maharashtra [(2006) 6 SCC 289] . It was held that where a law is



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enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. However, we are (sic not) confronted with any such situation here."

9. In paragraph-41.2 of the abovesaid judgment, the Hon'ble Supreme Court held that there can be no imposition of tax without the authority of law and if ambiguous or vague, interpretation which favours the subject, as against the Revenue, has to be preferred and the relevant paragraph-41.2 reads as under:-

"41.2 At the same time, it is also mandated that there cannot be imposition of any tax without the authority of law. Such a law has to be unambiguous and should prescribe the liability to pay taxes in clear terms. If the provision concerned of the taxing statute is ambiguous and vague and is susceptible to two interpretations, the interpretation which favours the subjects, as against the Revenue, has to be preferred. This is a well-established principle of statutory interpretation, to help finding out as to whether particular category of assessee is to pay a particular tax or not. No doubt, with the application of this principle, the courts make endeavour to find out the intention of the legislature. At the same time, this very principle is based on "fairness" doctrine as it lays down that if it is not very clear from the provisions of the Act as to whether the particular tax is to be levied to a particular class of persons or not, the subject should not be fastened with any liability to pay tax. This principle also acts as a balancing factor between the two jurisprudential theories of justice – Libertarian theory on the one hand and Kantian theory along with Egalitarian theory propounded by John Rawls on the other hand."

10. The learned Single Judge of this Court in the case of P.R.P. Exports vs. Corporation of Madurai [2020 SCC OnLine Mad 20737], in paragraphs-5 and 6 observed as under:-

"5. The learned Senior counsel appearing for the petitioner pointed out that the property of the petitioner was levied for the first time only after the



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aforesaid statutory provision was amended. If the said property had earlier been assessed on capital value basis, then the petitioner would of-course, be liable to pay the tax at the previous rate. But the assessment itself was made for the first time only on 30.11.2009. The amendment came into force on 01.09.2009.

6. I find considerable force in the stand of the petitioner's Senior Counsel that a beneficial amendment will have to be given its fullest effect. In-fact, the Commissioner of Administration had been issued a clarification, in this regard, vide circular bearing Na.Ka. No. 57811/09/R-1, dated 30.11.2009. Of-course, the learned Standing Counsel would draw my attention to another circular, dated 19.03.2010. The question that arises for my consideration is whether the petitioner's case will have to come under the amended provision or un-amended provision. I have no doubt that whatsoever in my mind that the amended provision will have to be applied to the case on hand. The subsequent circular issued by the Director of Municipal Administration, deals with the lands that have already been assessed under the un-amended provision. The case on hand is therefore, covered by the first circular and not the subsequent one."

11. Relying on the abovesaid judgment, the learned Senior Counsel, appearing on behalf of the petitioners, reiterated that the manner in which the assessment made applying the pre-amendment provisions of the Act is improper and further, there was an enormous delay as the property tax assessment was not made prior to issuing of the notice by the second respondent. For all these reasons, the writ petitions are to be allowed.

12. The learned counsel appearing on behalf of the second respondent made a submission that as per Section 86 of the Act, "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 thirty days after the commencement of the half-year". When the petitioners were identified as the owners of the vacant land, the second respondent has initiated action and issued demand notices. Though the demand notices were issued in the year 2012, the petitioners are dragging the matter by one way or the other on



certain flimsy grounds and have not paid the vacant land tax for the past about nine years.

13. Earlier, the writ petitioners have filed WP Nos.5790 to 5797 of 2016 and this Court passed a common order on 30.09.2016, setting aside the property assessment notices as well as the orders rejecting the appeal petitions filed by the petitioners and remanded the matter back to the respondent-Municipality for fresh consideration.

14. Pursuant to the orders passed by this Court in a batch of writ petitions, the procedure of issuing the details for the assessment of tax for the relevant periods was started and accordingly the detailed pre-assessment notice with the relevant enclosure i.e., the working sheets for the two separate periods were issued requiring the petitioners to submit their objections to the same. Accordingly, notices were issued for the two distinct periods upto 2009 and after 2009. The difference being that the provisions of the Act were amended in 2009 in regard to the method of assessment of the vacant land tax. By the amendment, the method of assessment for the vacant land tax was changed from the previous capital value method to the square foot based value basis method. Under the method that was in force upto 2009, the capital value of the property was to be ascertained and on that basis, the tax was to be calculated on the rate fixed by the Municipality. Accordingly, the applications of the petitioners for the building permission, which was the stage at which the second respondent was made aware of the details of the owners of the building, was commenced on the basis of the powers under Section 177A of the Act. Under the said provisions only the power to assess the tax that had been left out from assessment of that which had been assessed to a lower value can be carried out.

15. In the case of the petitioners, the tax was not assessed previously and the property had entirely escaped the assessment. According to Section 117A of the Act, the tax that was not assessed already during the relevant half year has to be assessed for a retrospective period of 6 years or 13 half years on the same basis on which the tax would have been payable if it had been paid during the relevant point of time. As per the provisions of the Act, the tax is payable within a period of 15 days from the commencement of the half year that is from 1st of April or 1st of October of each year. Accordingly, the tax that is due in respect of the particular half year is to be calculated in the same manner as it would have been done in that particular half year. Thus, the tax that is to be assessed and recovered retrospectively is in respect of the property of the petitioners as on 2011 was from the II half year of 2005-2006 commencing from 01.10.2005 and the tax was thus to be calculated



on the basis of the method that was applicable at that point of time. Therefore, the tax is assessed in the capital value method for the period upto 2009, from when the amended provisions came into force and the flat rates on the basis of the square footage of the property was adopted.

16. Subsequent method of calculation based on the square feet value fixed by G.O.Ms.No.151 is not applicable prior to the period 2009 i.e., from the date of the Amendment Act. Accordingly, two separate assessments were done and separate working sheets were issued in respect of two separate periods as set out in the relevant proceedings. The said separate assessments are done as per the Circular of the Commissioner of Municipal Administration dated 19.03.2010. By the said amendment that was issued on 28.09.2009, the rate of tax was applicable from the next half year that commenced on 01.10.2009 and therefore, there are two distinct rates of tax that are applicable by view of efflux of time.

17. The tax that is payable is to be paid within 15 days of the commencement of the half year and for any delay in payment, there is no provision for levy of interest, as the said payment is statutorily payable in that period. Further, the tax being payable every half year is to be assessed in such manner as was assessable on that particular half year. Therefore, the case of the petitioners, as if the assessment should be made on the basis of the Amended Act that came into force in 2009, is to be done is totally erroneous and is liable to be rejected.

18. Pursuant to the pre-assessment notice, the petitioners submitted their objections on various dates and personal hearings were also provided. After holding an enquiry, including personal hearing, on various dates and finally on 28.06.2017, final orders fixing the tax were passed on 31.07.2017, confirming the tax as assessed in the pre-assessment notices. The said order was served on the petitioners on 23.11.2017.

19. The learned counsel for the second respondent reiterated that under the Rules in Schedule IV, the petitioners have an effective alternate/remedy by filing an appeal before the Taxation Appeals Committee in the Municipality and as against the order of the Committee, However, the petitioners have approached this Court by filing writ petitions without exhausting the appellate remedy available under the provisions of the Act. Thus, the writ petitions are liable to be rejected.

20. Considering the arguments, the prime question raised is that whether the amended Section 81(3)(a) of the Act, can be applied with retrospective effect, so as to re-assess the



property tax in the case of the petitioners. Secondly, under Section 117A of the Act, the power to assess in case of the escape from assessment, empowers the authorities to make assessment even in cases where no vacant land tax was paid previously.

21. Section 81 of the District Municipalities Act stipulates description of classes of property tax. Sub-sections (2) and (3) (a) read as under:-

"81. Description and classes of property tax -

(1)

(2) Save as otherwise provided in this Act, these taxes shall be levied at such percentages of the annual value of buildings, or lands which are occupied by, or adjacent and appurtenant to, buildings or both, as may be fixed by the Municipal Council, subject to the provisions of Section 78.

(3) (a) Save as otherwise provided in clause (b), the Municipal Council shall, in the case of lands which are not used exclusively for agricultural purposes and are not occupied by, or adjacent and appurtenant to, buildings, levy property tax on such lands at such rate as it may fix, having regard to its location and subject to the minimum and maximum rates per square feet as may be prescribed by the State Government."

22. Section 86 of the Act contemplates property tax when payable. Accordingly, "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 thirty days after the commencement of the half-year". Therefore, the property tax shall be levied every half-year and the owner of the assessed premises has to pay the property tax within 30 days after the commencement of the half-year.

23. In this regard, the petitioners were identified as the owners of the subject vacant land and after such identification, the second respondent had initiated action and issued notices. Though demand notices were issued in the year 2012, by way of continuous litigations, the matters are prolonged one way or the other and the petitioners for the past about 9 years have not paid the vacant land tax on the ground of pending litigations. May that it be, this Court is of the considered opinion that the interim order was granted on the basis that the petitioners have given bank guarantee.



24. The contention of the second respondent was that as per the required norms under Section 81(3)(a) of the Act, the tax is levied at a proportion of the capital value of the lands. Though the capital value has not been defined, it has been simply taken in its literal and common sense and the value of lands as available with the Registration Department as the guideline value is adopted for the purpose of determining the capital value. It is contended that more often than not, the value of the lands as given in the Registration Department guidelines is lesser than the actual value of sale for any land and the owner of the land stands to gain by the rate fixed based on the said lesser values.

25. After the amendment of Section 81(3)(a) in 2009, by incorporating the maximum and minimum to be prescribed by the State Government, the State Government has issued G.O.Ms.No.151, dated 20.08.2009, fixing the rate of tax per square feet for the vacant lands based on the type of the local body and the location of the lands. Accordingly, from 2009, the said rates have been adopted by the respondent-Municipality also.

26. The respondent-Municipality contended that regarding the applicability of the amendment of Section 81(3)(a) for the period prior to the same, cannot be applied retrospectively for the reason that under Section 117A of the Act, the assessment of taxes that had not been levied or that had been levied at a lesser rate than at which it should have been levied has to be done retrospectively for a period of six years from the date of assessment and while doing so, the said tax has to be assessed as if the assessment was made on the particular year on which the tax should have been assessed. Therefore, the manner and method of assessment has to be done retrospectively as per the applicable provisions as on the particular assessment years that were in force. Under these circumstances, the subsequent amendments cannot be given retrospective applicability.

27. The learned counsel for the second respondent drawn the attention of this Court that the extracted Section 117A of the Act in the ground (A) of the petitioners' affidavit has suffered from the mistake in printing, wherein an entire line from the original provision of law has been taken out and this provision without the left out portion is sought to be interpreted in an entirely different light. The purport of Section 117A is that where no tax has been assessed when it was due or when the tax was assessed at a lesser rate than it should have been assessed, can be assessed at a later point of time with a limitation of six years retrospectively. Therefore, the interpretation of the petitioners' in ground (A) is entirely misconceived due to the erroneous printing of the provision in



amendment of 2009, the petitioners have not moved a single finger towards making the payment of the tax even as per the amended provision. This only shows that the petitioners are bent upon defeating the public revenue and perpetuating their illegal actions in defaulting the payment of the property tax.

30. As far as the judgments cited on behalf of the petitioners are concerned, in view of the specific provision under Section 117A of the Act, the said principles cannot be applied. Further, in the case of Zile Singh (cited supra), the Hon'ble Supreme Court no doubt considered the distinction between the 'supersession' of a rule and 'substitution' of a rule. However, the distinction would not have any implication with reference to the facts and circumstances of the case is concerned. Even perusal of the said judgment, the Supreme Court has not held regarding the retrospective application of such substitution with reference to the Tax Law. Therefore, the judgment cited is not applicable regarding the facts and circumstances of the present case.

31. In common parlance, if any such benefit of property tax is extended by way of amendment subsequently, the said amendment would take effect only from the date on which it has been given effect to. As rightly pointed out, the Tax Law is to be interpreted in the strict sense, the amendment must be given effect to from the date on which it was given effect to. The Courts, by interpreting the word 'substitution', cannot grant retrospective effect of such amended provisions, so as to cause revenue loss to the State. Such retrospective application would have disastrous consequences as the Assessee already paid the vacant land tax based on the existing provision would also claim refund of the tax from the Municipality concerned. Thus, the very contention raised in this regard on behalf of the petitioners is untenable. The consequences of such retrospective application of amended provision would drastically affect the interest of the Revenue. The Government also not intended for such retrospective effect regarding the assessment of property tax. Thus, the interpretation offered on behalf of the petitioners is far beyond its reach and untenable and thus, stands rejected.

32. The petitioners had successfully prolonged the litigation for about 11 years and having owned such a valuable land in Pallavaram, the Municipality nearby Chennai, has not paid any vacant land tax right from the acquisition of ownership of the subject land.

33. The petitioners originally filed WP Nos.13797 of 2012 etc. batch, challenging the notices, this Court allowed the writ petitions by quashing the notices and granted liberty to



the Municipality to issue pre-assessment notice. Pursuant to the directions issued by this Court on 02.12.2014, pre-assessment notices were issued. By challenging the pre-assessment notices, again the petitioners filed WP Nos.5790 to 5797 of 2016 and once again this Court allowed the writ petitions on 30.09.2016, setting aside the pre-assessment notices and the consequential impugned demand and orders rejecting the appeal and further remanded the matter back to the respondent-Municipality for fresh consideration. Again the respondent-Municipality provided opportunity to the petitioners to submit their objections and on receipt of objections, an enquiry was conducted and an opportunity of personal hearing was also offered to the petitioners. Thereafter final decision is taken and accordingly, the impugned orders in these writ petitions are passed.

34. The very conduct of the petitioners would apparently reveal that they are prolonging and protracting the issue in order to evade payment of vacant land tax. They are filing writ petitions after writ petitions, merely raising certain untenable grounds, which have not caused any prejudice and the matters are remanded back twice, which caused longevity in settling the issues. The ultimate result is that the Revenue lost its interest for more than 10 years.

35. Therefore, the petitioners deserve no more consideration as they have not even paid the vacant land tax even as per the amended provisions of the Act. This apart, the petitioners have not made out any acceptable ground for the purpose of considering the relief and the respondents have assessed the tax and issued notices and provided opportunity and passed orders by following the procedures as contemplated and thus there is no infirmity as such.

36. Accordingly, all the writ petitions stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

Svn

To

1. The Secretary,
State of Tamil Nadu,
Municipal Administration and Water
Supply Department,



Fort St. George,
Chennai - 600 009.

2. The Commissioner,
Pallavaram Municipality,
Chromepet,
Chennai - 600 044.

+10 Ccs to Mr. Abishek Jenasenan, Advocate sr 42454
+1 CC to Mr.P. Srinivas, Advocate sr 42024.

W.P.Nos.33239 to 33246 of 2017

GPL(CO)
SP(08/09/2021)