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W.P.Nos.281 of 2020 & 12437 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.281 of 2020 & 12437 of 2021 &
WMP.Nos.330 & 329 of 2020 & 13226 & 13227 of 2021

K.Sagunthala
Old.No.5, New No.17/3B,
Kalamman Kail Street,
Koyambedu, Chennai-107

... Petitioner in both WPs

Vs.

- 1.The Chairman & Managing Director,
Chennai Water Supply & Sewerage Board,
No.1, Pumping Station Road,
Chindatripet, Chennai-02
- 2.The Assistant Engineer,
Chennai Water Supply & Sewerage Board,
Area No.1-, Division No.127,
Kalamman Kail Street, Koyambedu,
Chennai-107 ... Respondents in WP.No.281 of 2020
- 1.The Finance Director,
Finance (B&C) Department,
Chennai Water Supply & Sewerage Board,
No.1, Pumping Station Road,
Chindatripet, Chennai-600002.
- 2.The Chairman & Managing Director,
Chennai Water Supply & Sewerage Board,
No.1, Pumping Station Road,
Chindatripet, Chennai-600002.



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3. The Assistant Engineer,
Chennai Water Supply & Sewerage Board,
Area No.1-, Division No.127,
Kaliyamman Koil Street, Koyembedu,
Chennai-107

... Respondents in WP.No.12437 of 2021

Prayer in WP.No.281 of 2020: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of certiorarified mandamus calling for the records of the respondent no.2 in his proceedings undated bearing proceedings No.CMC No.1012707531000 and quash the same and consequentially direct the respondents to receive the water tax and charges in accordance with the provisions of law enabling them to claim.

Prayer in WP.No.12437 of 2021: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of certiorarified mandamus calling for the records of the respondent no.1, in his proceedings Circular No.CMWSSB/Fin/B&C/SPL/2018 dated 28.11.2018 quash the same and consequentially direct the respondents no.2 & 3 to receive the water tax and charges in accordance with the provision of law enabling them to claim and.

In both WPs

For Petitioner : Mr.S.Senthil Nathan

For Respondents : Dr.N.Paul Vasantha Kumar
Standing Counsel

COMMON ORDER

The petitioner is an individual. In WP.No.12437 of 2021, the petitioner challenges Circular No. CMWSSB/Fin/B&C/SPL/2018 dated 28.11.20218 and in WP.No.281 of 2020, the petitioner challenges a demand of property tax in respect of the property at Old No.5, New No.17/3B,



Kaliamman Koil Street, Koyambedu, Chennai-107 (property/property in question) on the ground that the application of the aforesaid circular in her case is incorrect.

2. The basis of challenge is that the property in question partly commercial and partly residential in character and thus Circular dated 28.11.2018, according to the petitioner, is inapplicable, since it relates only to a property that is wholly commercial.

3. At the outset, I may state that the question of classification of the property, whether residential, commercial or partly commercial and residential is a question of fact. It is, thus, that this Court had opined that the property be inspected, and had, on 17.02.2021, issued a direction to R2/Assistant Engineer to inspect the property in the presence of the petitioner and file a report.

4. Thereafter, an Advocate Commissioner was appointed by order of this Court dated 15.02.2022 for the same purpose. By order dated 09.03.2022, this Court records that pursuant to the inspection by the Authority as well as the Advocate Commissioner, a report has been filed by the Advocate Commissioner on 28.03.2022 along with photographs and objections thereto have been filed by the petitioner.



5. The scope of the inspection appears to have been restricted to whether there was any metro water connection to the property and the conclusion of the Advocate Commissioner is that such connection had been so provided.

6. As regards the classification of the property itself, there is yet no clarity, which, in my considered view, is necessary in order to determine the tariff applicable. It is incumbent upon the authorities to inspect the property and ascertain the classification of the property as either residential, commercial or partly commercial and residential and apply the tariff applicable to the category accordingly.

7. The challenge to the Circular fails insofar as it is not the petitioners' case that there is any flaw in the Circular itself. She only challenges the application of the Circular to her case on facts, and on the ground that this Circular applies only to fully commercial properties. W.P.No.12437 of 2021 is dismissed and W.P.No.281 of 2020 stands disposed in the following terms.

8. The inspection of the property and ascertainment of the nature of the property shall be done within a period of four weeks from today. For this purpose, let the authorities visit the property on the 2nd of December,



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2022 in the presence of the petitioner. The demand which is challenged in WP.No.281 of 2020 shall be subject to the result of the inspection to be undertaken as aforesaid. No costs. Connected miscellaneous petitions are closed.

22.11.2022

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Index : Yes/No

Speaking Order/Non speaking Order

To

- 1.The Chairman & Managing Director,
Chennai Water Supply & Sewerage Board,
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DR.ANITA SUMANTH, J.
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