IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.4203 of 2022
and
W.M.P.Nos.4355 & 4356 of 2022

Futura Polyesters Limited,
Mumbai and having its registered office
at Paragon Centre,
Pandurang Budhkar Marg,
Mumbai 400 013 and represented by
its Authorized Signatory Power Agent
M.Nirmal Raj ... Petitioner

vs.

1.The Commissioner,
Corporation of Chennai,
Chennai 600 003.

2. The Regional Deputy Commissioner (North)
Corporation of Chennai,
O/o.The Regional Deputy Commissioner (North),
No.61, Basin Bridge Road,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.

3. Chennai Metropolitan Development Authority,
Represented by its Member Secretary,
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.

4. The Assistant Executive Engineer,
   Corporation of Chennai,
   AmmaMaligai, Ripon Building,
   Chennai 600 003.

5. The Superintending Engineer,
   (Electricial & Planning)
   Works Department,
   Greater Chennai Corporation,
   Amma Maligai, 5th Floor C Wing,
   Chennai 600 003. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the Superintending Engineer (Electrical and Planning) Works Department, Greater Chennai Corporation, Amma Maligai, 5th Floor C Wing, Chennai 600 003 and made in W.D.C.No.D1/SD/WDDCN03/00568/2018 dated nil.09.2021, signed on 23.09.2021, the fifth respondent and quash the same insofar with respect to the demand made towards vacant land tax to the tune of Rs.445,02,868/0 and consequently direct the first respondent to issue necessary sanction plan to the petitioner pursuant to the part revision of the layout approval granted by the third respondent in Lr.No.L1/18228/2018 dated 15.10.2018 as Approval No.PPD/LO.No.63/2018 in favour of the petitioner with respect to the properties comprised in Plot No.70 to 149, comprised in S.Nos.22, 23, 24, 25 etc ChinnaSekkadu Village, Thiruvottiyur Taluk, Thiruvallur District.

For Petitioner : Mr.V.Karthick
Senior Counsel.

For R1,R2,R4 & R5 : Ms.P.T.Ramadevi
Standing Counsel.

ORDER

After hearing the learned Senior Counsel for the petitioner and the learned Standing Counsel for the respondents, this writ petition is being disposed.

2. The case of the petitioner is that the petitioner is the owner of the property bearing Survey Nos.21/1 to 25/1, 27/1, 26/2, 27/3, 37/1 and 38/2 at Chinnasekkadu Village, Madhavaram Taluk, Tiruvallur District total measuring an extent of 208.85 acres with buildings. Earlier an industry under the name and style of the Indian Organic Chemical Limited, Mumbai was operating which was renamed as Futura Polysters Limited, Mumbai. Pursuant to amalgamation with the petitioner, the loans from various banks were secured by mortgaging the lands and

building for running the industry. Due to stagnation in the said industry, the petitioner was forced to close the manufacturing activity. That apart from the various Government Departments attached the properties for non-payment of statutory dues and have been contemplated further course of action. Hence, the petitioner company decided to plot the properties for Industrial Purposes by establishing an Industrial Park known as " Futura Business Park".

3. It is the specific case of the petitioner that the petitioner company had executed Power of Attorney in favour of Mr.M.Nirmal Raj for various purpose including for getting lay out approval plan from the third respondent herein as well as the from the Local Authority.

4. It is further submitted that the third respondent viz., CMDA had declared the relevant zone as a special and hazardous industrial zone. Thereafter, the petitioner had applied to the third respondent dated 08.07.2015 for approval of the Industrial Layout and the same was forwarded by the third respondent to the first respondent. The first respondent granted an approval for the layout on 19.08.2015.

5. It is further submitted that after obtaining the layout approval, the petitioner was able to sell only few plots approved in the original plan, approved by the third respondent. Therefore, the petitioner applied to the third respondent for a revised sub-division of the plots by converting the plots into smaller plots.

6. It is submitted that on 15.10.2018, the third respondent also approved the revised layout subject to the conditions as mentioned in the approved layout plan. After the grant of approval by the third respondent, the same was forwarded to the first respondent.

7. During the interregnum, the petitioner received the impugned demand advice dated 14.11.2018 from the fourth respondent, by directing the petitioner to pay the scrutiny fee, CMDA development charges and vacant land tax. The petitioner has no objection for remitting the scrutiny fees and the development charges but questioned the demand for vacant land tax.

8. It is further case of the petitioner that the Assistant Revenue Officer, Zone III, Corporation of Chennai had issued a demand dated 28.11.2014, by claiming a sum of Rs.78,89,321/- to be paid by the petitioner towards the property tax due with respect to the present property upto 2013-2014 and the same was remitted by the petitioner.

9. Aggrieved by the said impugned demand advice, the petitioner sent a reply dated 07.12.2018 to the first respondent for approval is only a revised subdivision of the original plan which was already approved by the third respondent and the first respondent. Since there was no reply from the first respondent, the petitioner filed W.P.No.11266 of 2019 to quash the said impugned demand advice dated 14.11.2018. The said writ petition was disposed on 02.08.2021 with the following observation:-

10. The petitioner claims to have paid a sum of Rs.58,89,322/- by way of two D.Ds amounting for a sum of Rs.29,44,661/- each. It is submitted that the above said payments made by the petitioner towards arrears of the property tax has been duly acknowledged by the Assistant

Revenue Officer, Zone-3, Corporation of Chennai on 30.06.2015 which was addressed to the petitioner. After receipt of the property tax arrears for the said property, the fifth respondent has now calculated the arrears of vacant land tax from the year 1998 to 2014 and has demanded an amount of Rs.3,17,66,868/- from the petitioner. The said calculation said to have been made merely on the statement made by the Assistant Director of Local Audit Tiruvallur without any basis. Hence, the petitioner has filed the present writ petition.

11. Opposing the prayer, the learned Standing Counsel for the respondent 1, 2 ,4 and 5 submits that the impugned communication of the fifth respondent is a mere communication and there is no final determination. It is further submitted that the arrears of vacant land tax has been proposed based on the audit objection of Local Fund Auditor, Tiruvallur when the property was within the jurisdiction of Chinna Sekkadu Village, Town Panchayat. It is further submitted that 208 acres of land was a vacant land and therefore the petitioner is liable to pay vacant land tax at the rate specified in the notification. It is further submitted that the impugned communication is a mere notice and it is for

the petitioner to give a suitable reply to distance itself from liability and therefore the writ petition is pre-mature.

12. That apart, the learned counsel for the respondent Corporation has also relied on the decision of the Division Bench of this Court in W.A(MD)No.13 2012 in the case of **S.Kannan vs. The Commissioner, Nagercoil Municipality, Nagercoil, Kanyakumari District** dated 17.07.2012. It is submitted that the very same Government orders which has been cited in the impugned communication was fully considered and the Division Bench has categorically negatived submission of the assessee under similar circumstances.

13. That apart, it is submitted that in terms of Part 1, Part 1-A and Part VI of schedule IV of the Chennai City Municipal Corporation Act, 1919 particularly apart from Part 1-A of Schedule IV of the said Act the property tax is payable by the petitioner or the occupier of any land or building with reference to guidelines issued by the Council Resolution.

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

15. The impugned communication is ambiguous and anomalous. It does not clearly spell out whether it is a show cause notice or whether it is a final determination of liability. If there is a final determination, it would be contrary to the order passed by the learned Single Judge of this Court in W.P.No.11266 of 2019 dated 02.08.2021. On the other hand, if it is construed as a show cause notice, it has not clearly spelt out the manner in which, a demand sought to be worked out.

16. Under these circumstances, I am inclined to hold that the impugned communication cannot be either treated as a final demand or as a show cause notice issued to the petitioner. I therefore, direct the fifth respondent to issue corrigendum to the impugned communication. It shall thereafter be treated as a show cause notice. The corrigendum shall give details as to why the demand specified in the impugned communication should not be demanded from the petitioner. It should

give all particulars based on the provisions of the Chennai City Municipal Corporation Act, 1919 and explain how the petitioner is liable to vacant land tax on the property. This exercise shall be carried out by the fifth respondent, within a period of six weeks from the date of receipt of a copy of this order. Thereafter, the petitioner shall give a reply. The first respondent or fifth respondent whoever is competent shall pass appropriate orders on merits and in accordance with law, preferably within a period of 90 days thereafter.

17. Needless to state before passing such order, the petitioner shall be heard.

18. This writ petition stands disposed with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

20.06.2022

Index : Yes/No
Internet : Yes/No
kkd

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C.SARAVANAN, J.

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