IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NOS.4249, 4254, 4255, 4257,
4259 & 4261 OF 2022
AND
W.M.P.NOS.4389, 4393, 4395, 4397,
4399 & 4401 OF 2022

M/s.Taj Foundations Pvt. Ltd.,
Represented by its Director,
Mr.A.R.Imtiyaz Ahmed,
No.220/1, 1st Floor,
Ennore Express Road,
Thiruvottiyur,
Chennai - 600 019. ... Petitioner in W.P.No.4249 of 2022

Ejaz Tannins Company,
Rep. By A.R.Ejaz Ahmed. ... Petitioner in W.P.Nos.4254, 4255, 4257, 4259 & 4261 of 2022

Vs.

1. The Deputy Commissioner (R&F),
   The Greater Chennai Corporation,
   Rippon Building,
   Chennai - 600 003.

2. The Assistant Revenue Officer,
   Revenue Department,
   Zonal Office - IV,
   Corporation of Chennai,
   No.226, Thiruvottiyur High Road,
   Old Washermanpet,
   Chennai - 600 021. ... Respondents in all W.P's

PRAYER:-

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records culminated in the impugned order dated 19.11.2021 bearing reference No.Z.O.IV/RD.C.No.R3/8957/2019 in respect of Assessment Nos.04-042-03161-000, 04-042-03164-000, 04-042-02594-000, 04-042-03327-000, 04-042-03163-000, 04-042-02666-000 respectively, passed by the 1st respondent and quash the same.

For Petitioner : Mr.K.M.Aasim Shehzad

For Respondents : Ms.S.Vaitheeswari
Standing Counsel

COMMON ORDER

The issue raised in these writ petitions since is one and the same, with the consent of the learned counsel appearing for the petitioners as well as the learned Standing Counsel appearing for the respondent Greater Chennai Corporation, these writ petitions were heard together and are being disposed of by this common order.

2. In respect of the property belongs to these petitioners, there was a proposal for a general revision of property tax, challenging that proposal, these petitioners had approached this Court by filing writ petition in W.P.Nos.1835 of 2019 etc. batch. Those writ petitions were disposed of by a common order of this Court dated 24.01.2019, where, the following orders have been passed.

> "4. Admittedly, as against the impugned proceedings, the petitioner is having a remedy by way of filing an appeal before the authority referred to in the impugned proceedings by raising all the contentions as raised in these writ petitions. Without doing so, the petitioner has approached this Court and filed these writ petitions.
>
> 5. Needless to say that when such remedy is available to the petitioner, they have to first exhaust such remedy by raising all the contentions. Therefore, without expressing any view on the merits of the matter, these writ petitions are disposed of, by granting liberty to the petitioner to file such an appeal before the authority concerned within a period of three weeks from the date of receipt of a copy of this order. If any such appeal is filed, the concerned Appellate Authority shall consider the appeal and pass orders on the same on merits and in accordance with law, without reference to the period of limitation. No

costs. Consequently, the connected miscellaneous petitions are closed.”

3. Pursuant to the said order passed by this Court, these petitioners had filed appeal before the Appellate Authority. However, the Appellate Authority, after considering the appeal and the grounds raised in the said appeal, instead of deciding the appeal, according to the petitioners, have chosen to issue the order in the name of notice dated 19.11.2021 invariably in all these cases seeking an objection within 15 days from the petitioners with regard to the proposed assessment of property tax by considering these properties as a special types building category, where, according to them, Hospitals are located, by invoking Section 137-B of the Chennai City Municipal Corporation Act, 1919 (in short 'the Act).

4. Aggrieved over the same, the present writ petitions have been filed.

5. Mr.K.M.Assim Shehzad, learned counsel appearing for the petitioners would contend that, as per the order passed by this Court referred to above, where, as against the general revision, the petitioners were directed to file appeal, when appeals were filed by these petitioners only in respect of general revision, the Appellate Authority should have considered and decided the appeals on merits either way. However, the Appellate Authority passed the present impugned order in the name of notice stating that, they invoked Section 137-B of the Act.

6. In this context, it is the contention of the learned counsel for the petitioner that, if at all the respondent Corporation wants to invoke Section 137-B of the Act, there must be a separate procedure contemplated under Section 137-B, under which, specific notice to be given, giving 15 days time to the assessee to respond and then only final order shall be passed. Therefore, without re-coursing to such a system of issuing notice under Section 137-B of the Act, now an appeal filed by the petitioners against the general revision since has been converted into 137-B proceedings, which is impermissible. Therefore, for that reason, the impugned orders are liable to be interfered with, he contended.

7. In support of the said ground, the learned counsel relied upon an order passed by a learned Judge in a batch of cases in W.P.No.35304 of 2020 etc. batch in the matter of The Mehta Multispeciality Hospitals India Private Limited Vs. The Commissioner, Corporation of Chennai and others dated 03.03.2021, where, the learned counsel has relied upon the following passage:

"12. In such an event, the proper course of action for the respondents would have been to invoke the provisions of Section 137-B of the Act that vest in them the powers of re-assessment and not undertake a general revision in the light of G.O.Ms.73 of 2018, that has been kept in abeyance by G.O.Ms.No.150 of 2019, pending revamp of the system.

Section 137-B of the Act reads as follows:

'137-B. Power to assess in case of escape from assessment.— Notwithstanding anything to the contrary contained in this Act or the rules made thereunder, if for any reason any person liable to pay any of the taxes or fees leviable under this Chapter has escaped assessment in any half-year or year, or has been assessed in any half-year or year at a rate lower than the rate at which he is assessable or, in the case of property tax has not been duly assessed in any half-year or year consequent on the building or land concerned having escaped proper determination of its annual value, the commissioner may, at any time within six years from the date on which such person should have been assessed, serve on such person a notice assessing him to the tax or fee due and demanding payment thereof within fifteen days from the date of such service; and the provisions of this Act and the rules made thereunder shall so far as may be apply as if the assessment was made in the half-year or year to which the tax or fee relates'."

8. Per contra, Ms.S.Vaitheeswari, learned Standing Counsel appearing for the respondents, on instruction, would submit that, the impugned communication dated 19.11.2021 is a notice under Section 137-B of the Act as contemplated therein and it is not a final order of assessment or demand of property tax for special buildings.

9. She would also submit that, though this order was passed on 19.11.2021, which was subsequently served on the petitioners, instead of filing the objection if any, the petitioners have chosen to approach this Court by filing the present writ petitions challenging the notices, therefore, since it is a settled proposition that notices normally cannot be permitted to be challenged before this Court under Article 226 of the Constitution, on that ground itself, these writ petitions are liable to be rejected.

10. The learned Standing Counsel, on instruction, would further submit that, till date since no final orders have been passed pursuant to the impugned notice dated 19.11.2021, it is open to the petitioners to make a quick re-action by filing an objection as sought for in the said notices and if they made objection, the same would be considered and accordingly, final orders would be passed, she submitted.

11. I have considered the said submissions made by the learned counsel for the parties and have perused the materials placed before this Court.

12. The objection raised by the petitioner side as projected by the learned counsel for the petitioners is that, as against the general revision when they approached the Appellate Authority, that appeal should have been disposed of on its own merits, instead, they converted the said appeal into a proceedings under Section 137-B of the Act which is impermissible.

13. In this context, it is to be noted that, it is a settled proposition of law that, the wrong quoting of a provision or failed to quote the provision of law would not vitiate the proceedings, if the ingredients which are otherwise to be followed by the authorities concerned under the particular provision of law is followed.

14. Here in the case in hand, no doubt they filed an appeal before the Appellate Authority as against the general revision.

15. However, since these buildings which are in question, for which, now the proposed assessment has been made are, according to the respondent Corporation, special type buildings which were used as hospitals or houses, therefore, they are to be assessed as a special buildings, for which, they can very well invoke Section 137-B of the Act, which says that, in the case of property tax has not been duly assessed in any half year or year consequent on the building or land concerned having escaped determination of its annual value, the Commissioner may at any time within six years from the date on which such person should have been assessed, serve on such person, a notice assessing him to the tax or fee due and demanding payment thereof within 15 days from the date of such service.

16. Therefore, it is an enabling provision under Section 137-B of the Act for the Corporation to assess the subject assessment for the special buildings, where, the earlier assessment i.e., the general revision or general assessment made is contemplating a lessor property tax. So, the lesser property tax comparing with the special assessment can be treated as an

escaped tax, for which, the assessment can very well made as an escaped assessment within the meaning of Section 137-B of the Act.

17. In fact, this has been reiterated or indicated in the said judgment of the learned Judge in Mehta Multispeciality Hospitals case cited supra, where, the learned Judge says, the proper course of action for the respondents would have been to invoke the provisions of Section 137-B of the Act that vest in them the powers of re-assessment.

18. Here in the impugned notices, the respondent has stated that, hence there is no bar to assess the properties being used as Hospitals and Nursing Homes under Special Type Buildings category and to revise the property tax under Section 137-B of the CCMC Act, 1919. They further stated that, after the consideration of the above, a reply to the objections along with the calculation sheet are enclosed herewith, provided a time frame of 15 days to provide your objections.

19. Therefore, the present impugned proceedings is nothing but a notice giving 15 days time to the assessees i.e., the petitioners as contemplated under Section 137-B of the Act. Therefore, it cannot be stated that, the appeal has been converted into Section 137-B proceedings, for which, a separate notice should have been issued.

20. If at all the respondent Corporation without issuing this proceedings i.e., dated 19.11.2021 being the notice as contemplated under Section 137-B of the Act and straightaway passed a common final assessment orders with demand, then, such a plea could have been raised by the petitioners, however, here they issued only the present proceedings as a notice within the meaning of Section 137-B of the Act. Therefore, mere absence of quoting the provision at the head of the notice would not vitiate the proceedings itself. As discussed above, the non-quoting of a provision would not vitiate the proceedings.

21. Therefore, the said objection or ground raised on behalf of the petitioners cannot be countenanced, hence, the same is liable to be rejected.

22. Now the learned Standing Counsel for the respondent Corporation, on instruction, since has stated that, the final order is yet to be passed, therefore, even now they can make objection pursuant to the impugned notices, this Court is inclined to dispose of these writ petitions with the following orders:

That the petitioners are permitted to file objection to the impugned notices dated 19.11.2021 in respect of each of the cases separately within a period of 15 days from the date of receipt of a copy of this order and on receipt of such objections, the respondent Corporation shall consider those objections objectively and pass orders on merits and in accordance with law as contemplated under Section 137-B of the Chennai City Municipal Corporation Act, 1919.

23. With this observation and direction, these Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Deputy Commissioner (R&F),
The Greater Chennai Corporation,
Rippon Building,
Chennai - 600 003.

2. The Assistant Revenue Officer,
Revenue Department,
Zonal Office - IV,
Corporation of Chennai,
No.226, Thiruvottiyur High Road,
Old Washermanpet,
Chennai - 600 021.

+1cc to M/s.BFS Legal, Advocate, S.R.No.13845

W.P.NOS.4249, 4254, 4255, 4257,
4259 & 4261 OF 2022

NR(CO)
PBS/27/05/2022