



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.04.2022
Pronounced on : 28.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP (NPD) No. 1689 of 2018

J.Anusuya (died)

2. J.Sundeeep Anand, Director
M/s. J.Hotels Pvt., Ltd.,
No.35/37, G.N.Chetty Road,
T.Nagar, Chennai – 600 017. ... Petitioner/Appellant/Appellant

Vs

The Commissioner
Greater Chennai Corporation
Rippon Buildings
Chennai – 600003.

...Respondent/Respondent/Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the Judgment and Decree dated 20.03.2018 passed in M.T.A.No. 7 of 2016 by the learned Principal Judge, City Civil Court at Chennai, thereby confirming the order dated 02.11.2016 passed in T.A.T.No. 15 of 2015 by the learned Judicial Officer, Taxation Appeals Tribunal, Corporation of Chennai.

For Petitioners: Mr. Ashok Menon
For Respondent : Ms. Karthikaa Ashok

**ORDER**

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2. The revision petitioner, Director of M/s. J. Hotels Private Limited., at No. 35-37, G.N.Chetty Road, T.Nagar, Chennai, had filed an appeal before the Taxation Appeals Tribunal in TAT No. 15 of 2015 challenging the final notice No. 10/14-15/8689 dated 20.03.2015 whereby the property, namely, M/s. J. Hotels Private Limited., at No. 35-37, G.N.Chetty Road, T.Nagar, Chennai, had been assessed tax to a sum of Rs.45,09,721/- per half year. The Taxation Appeals Tribunal by an order dated 02.11.2016 had dismissed the appeal. The further Appeal preferred by the petitioner before the Principal Judge, City Civil Court, Chennai in M.T.A.No. 7 of 2016 also suffered an order of dismissal by order dated 20.03.2018. This has necessitated the petitioner to file the present



Revision Petition. Pending this petition, the Director who had initiated the appeals and the revision petition had died and her son, who was also a Director of the hotel had been impleaded as the second petitioner.

3. Heard arguments advanced by Mr.Ashok Menon, learned counsel for the revision petitioner and by Ms. Karthicka Ashok, learned standing counsel for the respondent/Commissioner, Greater Chennai Corporation.

4. The petitioner's property consists of basement floors 1 and 2, ground and 1st floors and 13th floors . Out of the above, the basement floor No.1 and basement floor No.2, the ground floor and the first floor, are used for car parking, shops, restaurant and other non residential / commercial purposes. The 2nd floor to the 12th floor consists of rooms let out to guests. The respondent had assessed the annual rental value for the basement floors 1 and 2, ground and 1st floors and the 13th floor on the basis of basic rate per sq.ft. The respondent assessed the annual value on the basis of room rent excluding luxurious tax.

5. The petitioner had raised objections with respect to calculating the annual value on the basis of the plinth area and the assessment of



annual rental value on the basis of the room rent for the 2nd to 12th floors.

It is thus seen that the method of calculation of the tax has been questioned with respect to adoption of the plinth area for a portion of the property and adoption of annual rental value for the other portion of the property.

6. The respondent had determined the tax at plinth area for the portions which are used for car parking or had been let out for non-residential purpose and had adopted the method of annual rental value for the actual rooms of the hotels where guests are permitted to stay at various rates depending on the facilities provided in each one of the rooms. It is an admitted fact that the petitioner's hotel is a Posh hotel.

7. Mr. Ashok Menon, learned counsel for the petitioner had assailed the tax assessed and claimed that the principle behind Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, as amended, should have been adopted while determining of the fair rent of the premises and took umbrage at the fact that the respondents had adopted G.O.Ms.No. 856, Rural Development and Local Administration Department dated 19.04.1972 for assessment of annual rental value by



taking the rental value for the lodge portions at 10% of the gross income that may be realised on the presumption that all the rooms had been occupied through out the year together with a reasonable lay out value for other portions like restaurant and shops.

8. It is the grievance of the learned counsel that the adoption of the said Government Order had caused much hardship to the petitioner owing to the fact that the respondent had not realised the reality that during the Covid-19 pandemic, the Government had prevented rooms from being let out and had actually directed that hotels must be closed for business. It is therefore contended that the respondent had committed error in not granting any leverage even for the lock down period. The learned counsel stated that the assessment of tax under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 should have been adopted for the basement floors 1 and 2, ground and 1st floor and the 13th floor.

9. It is also contended by the learned counsel that the tax should have been similarly assessed taking the principles under Section 4 of the Tamil Nadu (Buildings Lease and Rent) Control Act, 1960 into consideration even for the 2nd to 12th floors since the facilities provided



were the same. It was also contended that even otherwise, no hotel can claim 100% occupancy through out the year and therefore, some consideration should have been given on that ground.

10. Mr. Ashok Menon assailed the reliance placed by both the Tribunals below on Section 105 of the Chennai City Municipal Corporation Act, 1919 over looking the pronouncement of the Hon'ble Supreme Court wherein it had been held that the Delhi Rent Control Act should be the basis for determining the fair rental value of a commercial premises. The learned counsel also took exemption in the adoption of the methodology suggested in G.O.Ms.No. 856 dated 19.04.1972 for assessment of tax. It had therefore been contended that the assessment of tax should be interfered with by this Court and a direction may be given to the respondent to reassess the methodology in which the tax is to be assessed for the premises owned by the petitioner.

11. Ms. Karthikaa Ashok, learned standing counsel for the respondent however justified the assessment and the orders of both the Tax Appeal Tribunal and the Principal Judge, City Civil Court, Chennai, and stated that the assessment had been fair and in accordance with the



provisions of the Chennai City Municipal Corporation Act, 1919. The learned counsel contrasted the Judgment of the Hon'ble Supreme Court by stating that the Act specifically provides that the property can be assessed to tax on the methodology, determined by the Corporation and stated that this permission gave a window to the respondent to assess the property tax in accordance with the Government Order in G.O.Ms.No. 856 dated 19.04.1972. The learned counsel therefore justified the assessment of the annual rental value of the building and stated that the procedure as required had been followed. Notices had been served and opportunity had been granted and only thereafter was the final assessment order passed. The learned counsel stated that there was no reason to interfere with the well considered orders of both the Tribunals and urged that the Revision should be dismissed.

12. I have carefully considered the arguments advanced and perused the materials available on record.

13. Mr.Ashok Menon, learned counsel for the petitioner, had placed reliance on the following Judgments and it would only be appropriate that I examine the dictum laid down and determine whether they are applicable to the facts of this case.



(i) The Judgment reported in **1978 MLJ 93 [R.R.Dalavai Vs. The Government of Tamil Nadu by the Secretary to Government]**. That was a writ petition questioning the methodology in which the property tax had been assessed with respect to a building at No. 83, Big Street, Triplicane, Chennai. Reliance had been placed by Mr. Ashok Menon on the observations given namely, that the provisions of the Rent Control Act should be adopted. A learned Single Judge of this Court had opined as follows:-

“16. In determining the annual value, the second respondent will also follow the fair rent formula provided for in the Rent Control Act in respect of buildings which are governed by the provisions of the Rent Control Act. Accordingly, there will be a limited direction in this writ petition as set out above. The writ petition is ordered accordingly. ”

(ii) The Judgment of the Hon'ble Supreme Court reported in **AIR 1971 SC 353 [Guntur Municipal Council Vs. Guntur Town Rate Payers' Association & Others]**, wherein the Hon'ble Supreme Court had again examine the determination of property tax in conjunction with Section 81 of the Madras District Municipalities Act 1920 and had held as follows:-



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“6. There is a good deal of confusion in the judgments of the trial court and the first appellate court with regard to the Rent Acts the provisions of which would have to be kept in view for the assessment of valuation for the purpose of S. 82(2) of the Municipalities Act. The decrees which have been granted suffer from the same infirmity. It has been pointed out by the learned counsel for the respondents that according to the rules contained in the fourth schedule to the Municipalities Act the I assessment books have to be revised once in every five years and the quinquennial assessment thus made enures for that period. But it appears from the rules that a procedure has been prescribed for changing the assessment whenever a case is made out for doing so. We are not concerned with the procedural difficulties which may be experienced; we have to declare what the law is and as appears to be well settled. the assessment of valuation for the purpose of tax must be made in accordance with and in the light of the provisions of the Rent Act which would be in force during the period of assessment. ”



(iii) The Judgment of a learned Single Judge of this Court dated

03.11.2020 in C.R.P.Nos. 846 & 848 of 2019 [Adyar Gate Hotel Limited

Vs. Corporation of Chennai], wherein the learned Single Judge of this Court while considering a challenge to the assessment of property tax had noted the grounds raised as follows:-

“12. The primordial contention of the learned counsel appearing for the petitioner hotel is that the respondent Corporation revised the property tax without giving any provisional assessment notice and no opportunity was given to the petitioner to raise their objections. The respondent Corporation has mechanically revised the same based on the tariff rates which was available in the website of the petitioner hotel without following the Rules in proper perspective and also the guidelines issued by the Government relating to assessment of property tax in respect of hotels. However, the same was disputed by the respondent Corporation and it submitted that before issuing final assessment notice, a provisional assessment order was issued and proper opportunity of hearing were given to the petitioner hotel. ”



The learned Single Judge in those circumstances had allowed the revision petition and had finally ordered as follows:-

“17. In the result, both the Civil Revision Petitions are allowed. The orders passed by the Commissioner, Corporation of Chennai dated 11.02.2011 and 19.03.2013 and the consequential orders passed by the Taxation Appellate Tribunal and the lower appellate Court are set aside and the matters are remitted back to the respondent Commissioner for fresh consideration. The respondent Commissioner is directed to conduct a fresh enquiry and pass appropriate orders on merits and in accordance with law after giving sufficient opportunity to the petitioner hotel. The petitioner hotel is permitted to produce whatever material available with them during enquiry before the Commissioner to substantiate their claim. The respondent Commissioner is directed to complete the above said exercise within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed. ”

(iv) The order of a learned Single Judge in *W.P.No. 15071 of 2018*

dated 30.09.2019 in [Spencer and Company Limited., Vs. the



Commissioner, Greater Chennai Corporation, Chennai and another]

wherein again a learned Single Judge had taken note of the objection raises with respect to the assessment of the tax, namely,

“2. that the annual value has to be assessed by taking rental value for lodge portions if all the rooms are occupied throughout the year. Therefore, he wanted to emphasis that it is the duty of the respondent/corporation to specifically ascertain and calculate to whether all rooms were occupied throughout the year.”

In those circumstances, the learned Single Judge had directed the matter to be remitted back to the first respondent for redoing the assessment after considering the objections filed by the petitioner and a direction was issued to pass a speaking order on merits and in accordance with law. It was also stated that the first respondent can seek necessary documents to make an effective assessment based on the objections.

(v) The Judgment reported in ***Civil Appeal Nos. 42 to 44 of 1987 New Delhi Municipal Committee Vs. East India Hotels Limited., and another dated 25.08.1994*** wherein one of the questions raised before the



Hon'ble Supreme Court before the appellate authority was *“whether the annual rental value of the hotel of respondent No.1 can be assessed in accordance with the principles laid down in Section 6 of the Delhi Rent Control Act or the same has to be assessed in accordance with Section 9(4) of the said Act.”*

The Hon'ble Supreme Court had answered that question as follows:-

“As regards the other question dealt with by the appellate authority also we are of the opinion that having regard to the decisions of this Court in Dewan Daulet Raj Kappor etc., Vs. New Delhi Municipal Committee and Anr., etc. (1980 (8) SCR 607) and Dr.Belbir Singh & Ors. etc., Vs. Municipal Corporation of Delhi & Ors. (1985 (2) SCR 439), the appellate authority was right in holding that determination of the annual rental value for the purpose of assessment of property tax should be made in accordance with the principles laid down in Section 6 of the Act. We are unable to hold that in the case of the hotel of respondent No.1 the principles laid down in Section 6 of the Act cannot be applied and, the provisions of Section 9(4) of the Act can be resorted to.”



(vi) The Judgment of a learned Single Judge of this Court reported in **(1992) 2 MLJ 299 [Chellammal Vs. Alandur Municipality]** wherein the learned Single Judge of this Court had again confirmed that an assessment has to be made only in accordance with the fair rent procedure fixed under Tamil Nadu Act 18 of 1960. It had been observed by the learned Single Judge as follows:-

*“11. In these circumstances, it is seen that the courts below have erred in not applying the ratio decidendi of the Supreme Court in **Guntur Municipal Counsel v. Guntur Town Rate Payers' Association**, and in holding that the Municipality can make an assessment on the basis of rent not in accordance with the fair rent fixed under the Tamil Nadu Act 18 of 1960. ”*

14. A careful reading of the propositions laid down in the above Judgments indicate that the Courts had held that to assess a property to tax, the procedure as contemplated under the Rent Control Act and in the State of Tamil Nadu, the procedure under Section 4 of the TamilNadu Buildings (Lease and Rent Control) Act, 1960 should be adopted.

15. It is also seen that necessary assessment for a hotel has to be done by giving due credit to the fact whether the rooms were occupied 100% throughout the year and more particularly whether necessary notices prior to the final assessment.



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16. With respect to the Chennai City Municipal Corporation Act, 1919, Sections 100 provides the method of assessment of property tax.

Section 99 further provides that if the council by a resolution determines that the property tax shall be levied, such tax shall be levied on that building. Both Sections 99 and 100 are extracted below in entirety:-

“99. Description and class of property tax.--- 7[

*(1) If the council by a resolution determines that a property tax shall be levied, such tax shall be levied on all buildings and lands within the city save those exempted by under this Act or any other law. The property tax may comprise--- (a) a tax for general purposes; (b) a 1 [***] drainage tax for the purpose of defraying the expenses connected with the 1 [***] drainage system of the city ; (c) a lighting tax for the purpose of defraying the expenses connected with the lighting of the city: Provided that where the 1 [* * *]. drainage tax is levied the council shall declare what proportion of the tax is levied in respect of 1 [* * *]. drainage works and the proportion so declared shall also be specified in the notice published under subsection (2) of section 98-A. (2) Save as otherwise provided in this Act, these taxes shall be levied at such percentages of the annual value of buildings and lands as may be fixed by the council : Provided that the*



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aggregate of the percentage so fixed shall not, in the case of any land or building, be less than $15\frac{1}{2}$ per cent, or greater than 2 [25] per cent of its annual value.] (3) For the purpose of assessing the property tax, the annual value of any building or land shall be determined by the commissioner: 3 [Provided that the annual value of any building or land the tax for which is payable by the commissioner shall be determined by the Mayor.]

100. Method of assessment of property tax.----

(1) Every building shall be assessed together with its site and other adjacent premises occupied as appurtenances thereto unless the owner of the building is a different person from the owner of such site or premises. (2) The annual value of lands and buildings shall be deemed to be the gross annual rent at which they may 4 [at the time of assessment] reasonably be expected to let from month to month or from year to year 5 [less a deduction, in the case of buildings, of ten per cent of that portion of such annual rent which is attributable to the buildings alone, a part from their sites and the adjacent lands occupied as an appurtenance thereto] and the said deduction shall be in lieu of all allowance for repairs or on any other account whatever: Provided that---- 1 [(a) in the case of-- (i) any Government or railway building ; or (ii)



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any building of a class not ordinarily let the gross annual rent of which cannot in the opinion of the commissioner be estimated the annual value of the premises shall be deemed to be six percent of the total of the estimated market value of the land at the time of assessment and the estimated cost of erecting the building at such time after deducting for depreciation a reasonable amount which shall in no case be less than ten per centum of such cost, and] (b) machinery 2 [and furniture] shall be excluded from valuations under this section : 3 [Provided further that where the annual value of any land or building is attributable partly to the use of such land or building or any portion thereof for the display of any advertisement or advertisements and tax is levied under this Act in respect of such advertisement or advertisements, the annual value of such land or building for the purpose of assessing then property tax thereon shall be ascertained as if such land, building or portion is not used for the display of such advertisement or advertisements.] 4 [(3) The 5 [State] Government shall have power to make rules regarding the manner in which the person or persons by whom and the intervals at which, the value of the land, the present cost of erecting the building and the amount to be deducted for depreciation, shall be estimated or revised in any case or class to cases to which clause (a) of the first proviso to sub-section (2)



applies, and they may, by such rules, restrict or modify the application of the provisions contained in Schedule IV to such case or class of cases.”

Further Schedule-4 Part 1-A Rule 33 is as follows:-

(3) the property tax payable by the owner or the occupier with reference to the guidelines if any issued by the council.”

17. A Perusal of the records as presented reveal that by resolution No. 122 of 2010 dated 26.02.2010, the Chennai Corporation had passed a resolution to adopt G.O.Ms.No. 856 Rural Development and Local Administration Department dated 19.04.1972 to be the basis on which the property tax is to be assessed for hotels among other category of buildings.

18. This in effect means that the method to determine the property tax is governed by the provisions under Government Order in G.O.Ms.No. 856 dated 19.04.1972.

<https://www.mhc.tn.gov.in/judis> 19. That Government Order came to be passed on a representation



by an Association relating to hotels and restaurants, who protested that property tax for hotels and restaurants were abnormally increased and that such increase was arbitrary. It was stated that a methodology should be therefore adopted for assessing the hotels with respect to the property tax. It had been provided in the said Government Order for Posh Hotels and Lodging Houses as follows:-

“1. Post Hotels & Lodging Houses :

Annual value to be assessed by taking rental value for lodge portions at 10% of the gross income that may be realised, if all rooms are occupied throughout the year plus reasonable letting value for other portions like restaurant shops, etc.”

20. The petitioner hotel comes under the category of Posh Hotels. Therefore, the annual value has to be assessed by taking the rental value for the rooms rented out at 10% of the gross income that may be realised if all rooms are occupied throughout the year.

21. The subsequent adoption by the Corporation to follow this



method by resolution No. 122 of 2010 dated 26.02.2010 is a significant fact and therefore, the Judgments relied on by the learned counsel for the petitioner that the provisions of the Rent Control Act should be followed, would not be applicable to the petitioner hotel. With respect to Chennai City and with respect to a hotel in Chennai city, the tax has to be assessed only in accordance with G.O.Ms.No. 856 dated 19.04.1972.

22. Thus the contention of Mr.Ashok Menon that the property tax is to be assessed in accordance with the provisions of Section 4 of the Tamil Nadu Buildings (Lease and Control) Act, 1960 has to be negated by this Court. The ratio in the Judgments quoted are not be applicable to the facts of this case as a hotel which comes under the ambit of Chennai City Municipal Corporation Act, 1919, will have to be assessed to property tax only in accordance with G.O.Ms.No. 856 dated 19.04.1972.

23. The reliance placed by the learned counsel on *Adyar Gate Hotel Ltd.*, referred supra and on *Spencer and Company Limited.*, referred supra, are also misdirected.

24. The learned Single Judge in the *Adyar Gate Hotel Limited* was



concerned with non issue of notice and non determination of provisional assessment. The learned Single Judge in *Spencer and Company Limited.*, was concerned with there not being any finding with respect to the fact whether all the rooms were in occupation throughout the year. Both the Judgments were based on assessment of the property tax in accordance with the provisions of G.O.Ms.No. 856 dated 19.04.1972.

25. In the instant case, the learned counsel for the respondent had produced records to show that Form -7 notice for reverse assessment and the provisional assessment had been prepared on 16.03.2012 and had been issued to the revision petitioner herein. In the said notice itself, it had been stated that an appeal can be preferred to the Commissioner, Corporation of Chennai, within a period of 15 days. The petitioner had, for reasons best known, not preferred such an appeal. This Court cannot come to the rescue of the petitioner if the petitioner takes a conscious decision not to prefer an appeal.

26. Thereafter, a Form-10 assessment which is the final assessment



had been issued on 19.03.2015. A further assessment had been issued on 20.03.2015 which is again an assessment under Form-10.

27. The appeal filed by the petitioner before the Taxation Appeals Tribunal, had been rejected by holding that as a fact, the respondent had not taken the rent from all the rooms as annual rent but that they had taken only 10% of the rent for 365 days. Even on those 10% income, the respondent had given a deduction of further 10% for building maintenance.

28. Even before the First Appellate Authority, the petitioner had not disputed the measurement and the method of calculation made. The only objection was that the property should not be assessed in accordance with the room rent.

29. Before the Principal Judge, City Civil Court, Chennai, a statutory appeal had been filed and a perusal of the order shows that the annual rental value had been determined on the gross annual rent of the property being let out from year to year. The tax was between 15% to 25% of the annual value. It had again been stated that reliance had been made



to G.O.Ms.No. 856 dated 19.04.1972.

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30. With respect to non occupancy of rooms, reliance was made on Section 105, namely vacancy remission.

31. But I would grant a small relief to the petitioner. The annual rental value has to be determined from the lock down period owing to Covid-19 Pandemic in accordance with the various Government Orders which had been passed first closing down all business establishments and later permitting opening of the Hotel with limited business activity. The assessment has to be made with due reference from March 24.03.2020 when the national lock down was announced.

32. I hold that In all other respects, the calculation of the annual rent in accordance with G.O.Ms.No. 856 dated 19.04.1972 is lawful and binding on the petitioner. The only leverage that has to be given is for reassessment of the property tax taking into consideration, the actual occupancy during the lock down period and granting benefit for the same. A direction is given to the respondent to determine the property tax in accordance with the Government Orders issued by the State Government.



The respondent may also seek necessary documents from the petitioner and if documents are sought the petitioner shall handover the same. This concession will only be for the lock down period and not for other periods.

33. In view of the above reasoning, this Civil Revision Petition is partly allowed only to the extent above and specifically dismissed with respect to the assessment of the property tax for the period in which there was no lock down and for the earlier periods of assessment.

34. This Civil Revision Petition is partly allowed as aforesaid. No costs.

28.04.2022

vsg

Index: Yes/No

Speaking order / Non speaking order

To:

1. Principal Judge, City Civil Court at Chennai.
2. The Section Officer,
VR Section,
Madras High Court, Chennai.

C.V.KARTHIKEYAN, J.

Vsg



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