IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.6561 of 2016

The Principal,
Madras Christian College,
Tambaram, Chennai-600 059. ... Petitioner

Vs

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

2.The Chennai Metro Water & Sewerage Board,
Rep. by its Managing Director,
Pumping Station Road,
Chindatripet, Chennai-600 002.

3.The Area Manager,
Chennai Metro Water Supply & Sewerage Board,
No.227, II Avenue, 12th Main Road,
Anna Nagar West, Chennai-600 040.

4.The Divisional Engineer,
Chennai Metro Water & Sewerage Board,
No.227, II Avenue, 12th Main Road,
Anna Nagar West, Chennai-600 040.

5.The Senior Accounts Officer,
Chennai Metro Water Supply & Sewerage Board,
New Area-08-Office,

No.227, II Avenue, 12th Main Road,
Anna Nagar West, Chennai-600 040.

6.The Corporation of Chennai,
Rep. by its Commissioner,
Ripon Building, Chennai-600 003. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned Notice issued by 5th respondent in Area/Division/Bill/Sub Code No.08/107/07281/000 dated 24.11.2015 and the consequent Letter issued by the 5th respondent in Lr.No.CMWSSB/B&C/007625/ dated 30.11.2015 and the resultant Notice issued by the 3rd and 4th respondents in Notice No.10343 dated 08.02.2016, quash the same.

For Petitioner : Ms.Abisha Isaac
for Mr.Isaac Mohanlal

For Respondents : Mrs.C.Sangamithirai (for R1)
Special Government Pleader

Mr.M.Vijayakumar (for R2 to R5)
Standing Counsel

Ms.Kaarthika Ashok (for R6)

O R D E R

The petitioner challenges a notice issued by the officials of the Chennai Metropolitan Water Supply and Sewerage Board (in short 'Board') levying water and sewerage tax at 7% of the annual value as fixed by the

Corporation of Chennai under Section 34 of the Chennai Metropolitan Water Supply and Sewerage Act, 1978.

2.The property in question is at P.B.No.2579, 78-86, Harington Road, Chetpet, Chennai-600031 (‘property in question’) and houses the Madras Christian College School. Being an aided school, it is exempt from the levy of property tax. However, for the purposes of levy of water and sewerage tax in terms of the Chennai Metropolitan Water Supply and Sewerage Act, 1978 (‘Act’ or ‘CMWSSB Act’), a notional assessment of property tax is to be made fixing the annual value of the property seeing as the water and sewerage tax is fixed as a percentage of such annual value.

3.Thus, notwithstanding that the property in question is exempt for the purposes of levy of property tax, an assessment of property of annual value has necessarily to be made for the purposes of determining liability under the CMWSSB Act. To be noted that the CMWSSB Act grants exemption only in terms of Section 34(3) of the Act to a local area on the ground that such area does not derive any, or full benefit from water supply or sewerage system. Thus, the question of exempting any specific unit from assessment to water and sewerage tax does not arise.

4.The relevant provisions under the Act are Section 34, which is the charging section under which water and sewerage taxes are levied, Section 35, which deals with the assessment of annual value and Rule 11 of the Chennai Metropolitan Water Supply and Sewerage Regulations, 1991, ('Regulations') deals with the adoption of annual value by the Board.

5.Each of the provisions as well as their interplay are discussed as follows. Section 34 deals with the powers of the board to levy water and sewerage tax at no more than 20% in the case of water tax and no more than 10% in the case of sewerage tax of the assessed annual value of the premises in question. The assessment of annual value is, by virtue of Section 35, deemed to be the gross annual rent which the property might reasonably be expected to fetch from month to month or year to year, less a deduction in the case of buildings, of 10% on that portion of annual rent, which is attributable to the buildings alone, apart from the sites and adjacent lands occupied as appurtenant. Such deduction, as aforesaid, shall be granted in view of all other allowances for repairs or any other allowances whatsoever.

6.Sub-sections (2) and (3) present some difficulty insofar as the annual value of the premises is to be determined by such authority, in the manner as 'may be prescribed'. The Government has also been vested with power to make rules regarding such assessment. However and admittedly, till date there is no authority, prescribed for this purpose.

7.Sub section (3) states that *'till such time the annual valuation of land and buildings is determined under this Act, the assessment of annual value by the Corporation/Municipality/Panchayat/Other Authority may be adopted to form the basis of the water and sewerage tax'*.

8.In light of the fact that there has been no prescribed authority to make an assessment under the CMWSSB Act, despite the Act being of 1978 vintage, the prescription under Sub-section (2) becomes entirely unworkable. It is the assessment by the Corporation that holds the field. This is also made clear from the fact from Regulation-11, by virtue of which the Board is granted the leeway to dispense with maintenance of assessment books or any other particulars for determination of annual value.

9.In such circumstances, I am at loss to understand why at all the relevant statute, that is, the CMWSSB Act, requires the authorities under that Statute, to conduct the process of valuation and assessment. The process of assessment of immovable property requires specialised personnel and machinery, both for the purposes of valuation as well conduct of process of assessment. Upon enquiry, I am given to understand that the CMWSSB does not have a valuation wing or officers possessing the required skills to conduct and determine valuation of immovable property.

10.Furthermore, there can be only one assessment of annual value qua a particular property and thus, the necessity of the State putting in place two separate departments, one in the Corporation and another in CMWSS Department for assessment and determination of annual value seems superfluous and rather unnecessary. Perhaps it is for this reason that the provisions of Section 35 (2) have not been given effect to till date, and no prescription available to carry into fruition its provisions.

11. This issue has also engaged the attention of this Court on three earlier instances in the cases of:

(1) *Kutty Flush Board and Furnitures Co. Pvt. Ltd., vs. Chennai Metro Water and Others* (1995 (2) MLJ 467);

(2) *Kasi Theatre vs. Chairman, M.M.W.S.S.B., Chennai and two others* (2002 (2) CTC 219);

(3) *Madras Sanskrit College, Represented by its Secretary, Sri V.Srikanth, No.84, Royepettah High Road, Mylapore, Chennai-600 004 vs. Chennai Metro Water Supply and Sewerage Board, Rep. by Area Engineer-*

V, No.1, Pumping Station Road, Chennai-600 002 and two others (WP.No.9919 of 2016 dated 19.02.2021); and

(4) *Bentinck Higher Secondary School for Girls, Rep. By its Head Mistress, 47, Jermiah Road, Vepery, Chennai – 600 007 vs. Chennai Metropolitan Water Supply and Sewerage Board, Represented by its Managing Director, No.1, Pumping Station Road, Chindathripet, Chennai-600 002 and others* (WP.Nos.2674 to 2678 of 2016 dated 18.12.2017).

12.In the case of *Bentinck Higher Secondary* (supra), a series of directions have been issued to the authorities of the Corporation to inspect the property and arrive at an annual assessment whereas in the cases of *Madras Sanskrit College* (supra) and *Kutty Flush Board* (supra), learned single Judges have directed that an assessment to be made in the context of Section 35(2).

13.In light of the discussions as above, particularly the admitted position that the Board just does not have the capacity for the conduct of an assessment of the property, directions to the CMWSS Board to frame an assessment would be an exercise in futility. Thus, it is the Corporation, which shall call upon the petitioner, fix a date for the inspection, inspect the property and arrive at a determination of annual value, which shall be supplied to the petitioner and to the officials of the Board for assessment of water and sewerage tax. Let this exercise be carried out within a period of twelve (12) weeks from today.

14.This writ petition stands disposed as above. No costs.

30.06.2022

vs
Index : Yes
Speaking Order

To

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& Water Supply,
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DR.ANITA SUMANTH, J.

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