IN THE HIGH COURT OF JUDICATURE AT MADRAS

( Special Original Jurisdiction )

Friday, the Twenty Fifth day of February Two Thousand Twenty Two

PRESENT

THE HON`BLE MR.JUSTICE C.SARAVANAN

WMP.NOS.29029 AND 29030 OF 2021

IN WP.NO.27502 OF 2021

L.R.RAJA [PETITIONER IN BOTH THE PETITIONS]

Vs

1 THE COMMISSIONER [RESPONDENTS IN BOTH THE PETITIONS]
GREATER CHENNAI CORPORATION,
RIPPON BUILDING, CHENNAI-600 003

2 THE EXECUTIVE ENGINEER
GREATER CHENNAI CORPORATION ZONE-XIV,
PERUNGUDI, NO.6/64,PUZHUTHIVAKKAM MAIN ROAD,
CHENNAI-600 091

3 THE ASSISTANT ENGINEER
GREATER CHENNAI CORPORATION ZONE-XIV
PERUNGUDI, NO.6/64,PUZHUTHIVAKKAM MAIN ROAD,
CHENNAI-600 091

4 THE ASSISTANT REVENUE OFFICER
GREATER CHENNAI CORPORATION ZONE-XIV,
PERUNGUDI, NO.6/64,PUZHUTHIVAKKAM MAIN ROAD,
CHENNAI-600 091

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to stay all further proceedings pursuant to assessment and demand made in online notice and notice affixed on wall dated 03.09.2021 in a sum of INR 15,28,380/- (WMP.NO.29029/2021) pending disposal of the WP.NO.27502/2021 and;

ii) To direct the respondents 2 to 4 to return the sum of INR 2,16,680/- paid by the petitioner on account of property tax for II-2013-2014 and I-2014-2015 vide receipt Nos.18313 dated 11.11.2013 and 102449 dated 30.09.2014 respectively, (WMP.NO.29030/2021) pending disposal of the WP.NO.27502/2021.

Order : This Miscellaneous petitions coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.C.JOHNSON, Advocate for the petitioner in both the petitions, the court made the following order:-

The petitioner had applied for constructing a commercial complex with the erstwhile Ulnagaram Puzhuthivakkam Municipality on 16.06.2011. The petitioner was also given a planning permission by the Puzhuthivakkam Panchayat. Subsequently,Puzhuthivakkam Panchayat came within the purview of Chennai Corporation in the year 2013 and therefore the construction put up by the petitioner came within the purview of the CMDA. On inspection, the CMDA found that the petitioner had deviated and made additional construction of 600 Sq.ft in the 3rd floor, though the permission granted on 16.06.2011 was stilt plus two floors.

2.The learned counsel for the petitioner submits that on 19.09.2013 the property was put on lock and seal and demolition notice was issued by the CMDA. It is submitted that the petitioner had also approached this Court in W.P.No.33418 of 2013 which came to be disposed, pursuant to which the petitioner preferred an Appeal before the Government and further the appeal is stated to be pending before the appropriate Authority.

3.The learned counsel for the petitioner submits that though the petitioner opted to get property assessed and paid property tax for the 2nd half of 2013-14 and 1st half of 2014-15, it is submitted that the property has been under lock and seal since 19.09.2013 and therefore, the property cannot be subjected to tax after the property was put under lock and seal with effect from 18.11.2013 pursuant to lock and seal notice dated 19.09.2013 of CMDA.

4.The learned counsel for the petitioner submits that the property is not fetching any rent, though it was intended to lease to ICICI Bank for a sum of Rs.1,00,00,000/- during 2013. It is submitted that as per Section 100 of the Chennai City Municipal Corporation Act, 1919 tax is to be paid on the Gross Annual rent at which at the time of assessment and since the property is under lock and seal since 2013 there is no justification in taking property tax from the petitioner.

5.The learned counsel for the petitioner has drawn attention to Regulation 20 of the Tamil Nadu Combined Development Building Rules 2019. It is submitted that till approval is granted, question of imposing property tax under the provisions of the Chennai City Municipal Corporation Act, 1919 does not arise.

6.It is submitted that the petitioner has paid the amount as property tax for the 2nd half of 2013-14 and 1st half of 2014-15 under the *bona fide* belief that the petitioner is liable to pay tax. It is submitted that there is no estoppel in tax and therefore, the petitioner cannot be fastened with with tax on a property which is under lock and seal.

7.The learned counsel for the petitioner therefore prayed for a interim direction to the respondent to refund a sum of Rs.2,16,680/- already paid vide Receipt Nos.18313 and 102449, dated 11.11.2013 and dated 30.09.2014 respectively, together with applicable interest and to stay further recovery.

8.Opposing the prayer, the learned counsel for the respondent submits that the petitioner is indeed liable to pay tax as the property in question qualifies has ''building'' within a meaning of Section 3(4) of the Chennai City Municipal Corporation Act, 1919. It is submitted that the petitioner opted for assessment of the property tax even though lock and seal notice dated 19.09.2013 was issued to the petitioner.

9.It is further submitted that under Section 99 of the aforesaid Act, the property tax is to be paid by the petitioner read with Section 100 of the Act. It is submitted that till notice is issued under Section 107 of the aforesaid Act, the petitioner is required to pay tax.

10.It is submitted that reference to Rule 20 of the Tamil Nadu Combined Building Rules 2019, which was drawn by the learned counsel for the petitioner is no consequences as it is intended for cover a situation where a person is required to comply with the Rules for getting water connection and electricity connection. It is therefore, prayed for dismissal of the writ miscellaneous petitions.

11.I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents. There is no dispute that the petitioner has built a property which appears to be in violation of the Building Control Rule, approved plan and the provisions of the Tamil Nadu Town and Country Planning Act, 1971.

12.*Prima facie*, the petitioner is liable to pay tax under the Chennai City Municipal Corporation Act, 1919, an owner of the building is liable to pay tax on the building. Merely, because the property is under lock and seal ipso facto does not mean the said property is not liable to tax.

13.Therefore, I find no merits in the submission of the learned counsel the petitioner that the respondents should be either directed to refund the amount paid by the petitioner as tax voluntary for the period during 2nd half of 2013-14 and the 1st half of 2014-15 merely because the properties under lock and seal or there should be a stay of the order.

14.It is for the petitioner take steps to expedite the appeal before the appropriate authority against the order putting the property under lock and seal and against the proposed action for demolishing of the property. As long as the property exists, irrespective of the fact that it is not put use or not on account of any factor, cannot absolve an owner from discharging tax liability under the provisions of the Chennai City Municipal Corporation Act,1919.

15.The respondents have also not filed their counter affidavit. This case requires a detailed consideration at the time of final hearing. Therefore, I am not passing any final order in the writ petition.

16.For the reasons given above, I am not inclined to allow the above Miscellaneous Petitions filed either for refund of the amount paid by the petitioner voluntary or for staying the operation of the impugned order. Since the respondents have not filed their counter affidavit, there shall be no coercive collection of property tax during the pendency of the present writ petition with a liberty to approach the Court for modification of the order, in case, against recovery after a counter affidavit is filed. In case, the writ petition is eventually dismissed, the petitioner shall in addition to tax will also be liable to pay surcharge for delayed payment of tax. W.M.P.Nos.29029 and 29030 in 2021 filed by the petitioner for interim relief are therefore liable to be dismissed. The respondents are therefore directed to file their counter affidavit in the main writ petition within a period of four weeks from the date of receipt of a copy this order.

17.In the result, W.M.P.Nos.29029 and 29030 in 2021 filed in the above writ petition are dismissed with the above observation.

Registry is directed to list the main Writ Petition for counter and final hearing on 21st March, 2022.

-sd/-
25/02/2022

/ TRUE COPY /

Sub Assistant Registrar ( Statistics / C.S. )
High Court, Madras - 600 104.

TO

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C.C. to MR.C.JOHNSON, Advocate SR.NO.1295/2022

Order
in
WMP.NOS.29029 AND 29030 OF 2021

IN WP.NO.27502 OF 2021

Date :25/02/2022

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