BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.04.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD).No.2547 of 2022
and
W.M.P(MD).No.2241 of 2022

Saral Resorts and Hotels Private Limited,
Rep. by its Managing Director,
V.S.Arunachalam,
S/o.S.Subbiah,
New No.42/42A, Shenkottai Road,
Coutralam,
Tenkasi District. ... Petitioner

(Petitioner cause title amended vide Court order dated 04.03.2022 in W.M.P(MD).No.3344 of 2022)

Vs.

1.The Additional Chief Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Fort St.George,
Chennai-600 009.

2.The Director of Town Panchayat,
7th and 8th Floor, Urban Administration Building,
Chennai-600 028.

3.The Collector,
Tenkasi District,
Tenkasi.

4.The Assistant Director of Town Panchayat,
Tirunelveli Zone,
Tirunelveli.

5.The Executive Officer,
Special Grade Town Panchayat,
Courtralam, Tenkasi District.

6.The Tahsildar,
Tenkasi Taluk,
Tenkasi District. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the fifth Respondent in order dated 05.04.2019 in Pro.Roc.No. 60/2015/A1 and the order dated 15.07.2020 in Roc.No. 60/2020-21-A1 and quash the same as illegal and contrary to the orders of the Government of Tamil Nadu in G.O.Ms.No.110 Municipal Administration and Water Supply Department dated 23.06.2008 issued as a clarification to G.O.Ms.No.150 Municipal Administration and Water Supply (E) Department dated 12.11.2007 read with Section 82 of Tamil Nadu District Municipalities Act and Schedule IV Taxation Finance Rules and Consequently forbearing the fifth Respondent from demanding or collecting the revised property tax from M/s Saaral Resorts and Hotels Private Limited, Coutralam in respect of properties bearing Door Nos.42, 42A and 42/1 (42/1 to 42/15) Shenkottai Road, Coutralam, Tenkasi District without adhering to the guidelines and circular issued by the second respondent pursuant to the above Government orders.

For Petitioner	: Mrs.W.Pamelin
For R1 to R4, R6	: Mr.M.Prakash Additional Government Pleader
For R5	: Mr.J.K.Jayaselan Government Advocate

ORDER

This writ petition has been filed for a writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the fifth Respondent in order dated 05.04.2019 in Pro.Roc.No. 60/2015/A1 and the order dated 15.07.2020 in Roc.No. 60/2020-21-A1 and quash the same as illegal and contrary to the orders of the Government of Tamil Nadu in G.O.Ms.No.110 Municipal Administration and Water Supply Department dated 23.06.2008 issued as a clarification to G.O.Ms.No.150 Municipal Administration and Water Supply (E) Department dated 12.11.2007 read with Section 82 of Tamil Nadu District Municipalities Act and Schedule IV Taxation Finance Rules and Consequently forbearing the fifth Respondent from demanding or collecting the revised property tax from M/s Saaral Resorts and Hotels Private Limited, Coutralam in respect of properties bearing Door Nos.42, 42A and 42/1 (42/1 to 42/15) Shenkottai Road, Coutralam, Tenkasi District without adhering to the guidelines and circular issued by the second respondent pursuant to the above Government orders.

2. The petitioner had earlier filed two writ petitions in W.P.(MD).Nos.3616 of 2009 and 7354 of 2016. These writ petitions are filed for the following relief:

> "*W.P(MD).No.3616 of 2009: This writ petition has been filed for a writ of Certiorarified Mandamus, calling for*

the records in Na.ka.No.884/2007/A1 dated 04.03.2009 on the file of third respondent and quash the same and further directing the third Respondent to assess the property tax in accordance with the guidelines and circular issued by the second respondent pursuant to G.O.Ms.No.150 Municipal Administration and Water Supply (Elec) Department dated 12.11.2007 read with Section 82 and Schedule IV of the Tamil Nadu District Municipalites Act.

(Prayer amended as per order of this court dated 08.06.10 in MP(MD).No.2/2009 in WP(MD).No.3616/2009)

W.P.(MD).No.7354 of 2016: This writ petition has been filed for a writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings, dated 12.02.2016 in Na.Ka.No.60/2015 A1 on the file of the third respondent as well as the consequential proceedings dated 26.02.2016 in Na.Ka.Ka4/9306/2016 on the file of the second respondent and the final consequential impugned proceedings 09.03.2016 in Na.Ka.No.686/2015/A1 on the file of the third respondent and quash the same and further directing the respondents 2 & 3 to process the application made by the petitioner for planning and building approval dated 19.10.2015 on the basis of their own recommendation in proceedings in Na.Ka.No.686/2015/A1 dated 20.10.2015."

3. W.P(MD).No.3616 of 2009 was allowed in the light of the subsequent development that the petitioner therein, namely, Managing Director of the petitioner herein wanted to demolish the earlier superstructure to construct a new complex. W.P.(MD).No.7354 of 2016 was closed as infructuous by observing that there was no further orders required in the light of subsequent orders to put up a new construction. As far as W.P.(MD).No.3616 of 2009 was concerned, the matter was remitted back to the respondents, since the order impugned therein was passed purportedly without following principles of natural justice.

4. Pursuant to the aforesaid order, the petitioner was issued with a notice dated 05.04.2019, followed by another notice dated 18.03.2020 and 15.07.2020 to which the petitioner replied with a request to assess the tax that were being charged on commercial properties during 2008-2009. The reply dated 03.06.2019 reads as under:

"*With reference to the subject we wish to finalize and close the pending taxation issue. Our entire premises come under Door No.42, 42A, on Senghottai Road. But then in your property assessment it has been assessed as different properties from 42/2 to 42/15. As you know we are running a* *hotel in this premises and it not individual residences or office. So we kindly request consider this matter and change our assessment to our actual address. Regarding the assessment we request you put tax as per other commercial premises you have charged during that period 2009-2010 (eg:Kurunji Hotel, Thalavai Hotel, Sengottai Lodge, K.R.Residency, Kumar Lodge etc.). We have paid a deposit amount of Rs.50,00,000/- towards the same, kindly assess it as per rate you have charged other hotel property tax fixation during the 2008-2009 periods as mentioned. If that assessed value falls less than our deposit amount kindly deduct it from our excisiting taxation amount, if it exceeds compared to other hotel we will bear it. Do charge us the same that yout have charged other commercial properties in Courtrallam. We would like to close this issue as soon as possible, as per Hon'ble Chennai High Court Madurai Bench order wide Case No.7354/2016, Case No.3616/2019 Case No.1504, 1678 and 6179/2016 and M.D.No.1/2009. Kindly do the needful."*

5. In the last mentioned order dated 15.07.2020, the respondents had demanded a sum of Rs.22,66,176/- for Door Nos.42/2 to 42/15.

6. The learned counsel for the petitioner submits that demand has been confirmed without considering the reply of the petitioner and therefore, the impugned order is liable to be quashed.

7. Opposing the prayer, the learned counsel for the respondents submits that earlier the petitioner had two door numbers namely, 42 and 42 A. Thereafter, the petitioner had put up about 14 different constructions in the form of cottages and therefore there was a proposal for increasing the corresponding property tax under the provisions of the Tamil Nadu District Municipalities Act, 1920. Later, the Managing Director of the Petitioner's company, namely, V.S.Arunachalam, who was the Proprietor of the hotel, decided to sell the land in favour of the petitioner.

8. I have considered the arguments advanced by the learned counsel for the petitioner, and the Additional Government Pleader appearing for the first to fourth and sixth respondents, and the Government Advocate appearing for the fifth respondent.

9. Prior to the aforesaid period, the 14 different constructions came up in Door Nos.42/2 to 42/15, which were demolished now and new multistoried building has been constructed. The tax in respect of Door Nos.42/2 to 42/15 have not been paid either as the proprietor or as the Managing Director of the petitioner's company. Thereafter, the petitioner took over the liabilities of the proprietary concern of its Managing Director. It

is further noticed that even as on date, the petitioner is paying tax on the old construction in Door No.42, 42A and 42/1. However, the petitioner has not come forward to produce any additional documents to substantiate the case regarding tax to be paid on additional constructions which were later demolished.

10. As per the order of this Court in an earlier round on 30.11.2018, the petitioner was obliged to furnish all the requisite documents with particulars to enable the third respondent to re-do the exercise and pass necessary orders. However, the reply to the three notices issued to the petitioner which have been referred to supra does not demonstrate that the petitioner has given any documents to substantiate the case. Therefore, there is no merits in the present writ petition. Therefore, the writ petition filed by the petitioner is liable to be dismissed. However, considering the fact that the petitioner has an alternate and efficacious remedy, I am inclined to direct the petitioner to file a statutory appeal before the concerned Appellate Authority.

11. The writ petition stands disposed of by giving liberty to the petitioner to file a statutory appeal under the provisions of the Tamil Nadu District Municipalities Act, 1920 before the Appellate Authority against the impugned demand. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Additional Chief Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Fort St.George,
Chennai-600 009.

2.The Director of Town Panchayat,
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3.The Collector,
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4.The Assistant Director of Town Panchayat,
Tirunelveli Zone,
Tirunelveli.

5.The Executive Officer,
Special Grade Town Panchayat,
Courtralam, Tenkasi District.

6.The Tahsildar,
Tenkasi Taluk, Tenkasi District.

+1 CC to M/s.SPL. GP (SR-22977[F] dated 29/04/2022)

W.P(MD).No.2547 of 2022
28.04.2022

KG(CO)
GC(30.05.2022) 6P 8C