**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 21.12.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P. No.8918 of 2021 and**
**W.M.P. No.9451 of 2021**

A.V.M.Charities
Rep. by its Secretary
Mr.M.Balasubramaniam
"Mena Buildings"
No.101, Dr.Radhakrishnan Road,
Mylapore, Chennai 600 004. .. Petitioner

Vs.

1. The Commissioner
   Corporation of Chennai,
   Rippon Building,
   Chennai - 3.

2. The Assistant Revenue Officer
   Greater Chennai Corporation
   No.1, Lake Area 4th Cross Street,
   Nungambakam, Chennai 600 034. ..Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd Respondent in its Demand Notice dated Nil and Ma.A.9/ARO/Na.Ka.No.09843/2020 dated 06.02.2021 and quash the same and consequently direct the respondents to exercise the power of remission insofar as the Rajeswari Kalyana Mandapam belonging to the petitioner at Old Door No.55, New No.97, Dr.Radhakrishnan Salai, Mylapore, Chennai 600 004.

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Ms.Ashwini Devi
Standing Counsel

**ORDER**

The writ petition is filed challenging the order of rejection of the petitioner's application seeking vacancy remission in terms of Section 105 of the Chennai City Municipal Corporation Act, 1919 (in short "Act") on the limited ground that the petitioner has not served the notice indicating vacancy before lodging the claim for remission as contemplated under Section 105(3) of the Act.

2. The petitioner was engaged in letting out Kalyanamandapam. In view of the pandemic, the State of Tamil Nadu invoked Disaster Management Act, 2005, and directed the District Authority to take over the vacant buildings for the purpose of quarantine of covid patients vide notice dated 02.05.2020. It is submitted that in view of the above, the petitioner had to refund a sum of Rs.3.58 crores representing the advance rents received from various clients. The petitioner submitted that they had filed an application seeking remission in terms of Section 105(1) and (2) of the Act. However, the same was rejected by placing reliance on Section 105(3) of the Act while stating that any claim for

remission would not be entertained unless the owner or agent had delivered a notice to the Commissioner that the building would be vacant. In other words, a notice of future vacancy is stated to be a condition precedent for exercise of power under Section 105(1) of the Act.

3. The learned counsel for the petitioner submitted that prior notice under Section 105(3) of the Act would apply to a situation where the owner or agent is aware of the fact that the building would be vacant and a prior notice cannot be understood as a condition precedent to claim remission under all circumstances. Reliance was placed on Section 105 of the Act insofar as it provides that claim for remission shall be made during the half year in respect of which remission is sought for or in the following half year. The very fact that remission claim can be made in the following half year itself would reveal that prior notice is not a condition precedent for claim of remission. It is submitted that remission is sought by the petitioner for the 1st half year of 2021 and 2nd half year of 2021 and the same was filed during the course of the 2nd half year. It is submitted that there is gross non-application of mind insofar as reliance is placed on Section 105(3) of the Act inasmuch as assuming that a notice is condition precedent that requirement also stands satisfied inasmuch as

application / claim was also in relation to the $2^{nd}$ half of 2021. This submission was made without prejudice to the primary submission that two independent and separate notices viz., one informing the taxing authority about the vacancy and unletting or the prospective vacancy or unletting followed by an independent claim of remission is not mandatory.

4. To the contrary, learned counsel for the respondent submitted that sub-section (3) to 105 of the Act contemplates a notice intimating vacancy and an independent claim of remission and that the same is mandatory. It was submitted that issuance of notice intimating vacancy would enable the Authorities concerned to ensure that the buildings are in fact vacant which may not be possible if claim is submitted by the owner of the building subsequent to the half year period in respect of which the remission is claimed.

5. Against this background, the question that arises is as to whether it is permissible to lodge claim for remission through a consolidated notice intimating the vacancy while also including the claim for remission under Section 105(3) of the Act.

6. The above issue has come up for consideration before the Division Bench of this Court in the case of *Ramakrishnan vs. Corporation of Madras* reported in *AIR 1976 Mad 128* wherein it was held that a serving of a consolidated notice containing the information as to vacancy and unletting coupled with the claim of remission would satisfy the requirement of Section 112 of the Act and it may not be open to reject the petitioner's claim only on the premise that an independent notice under Section 105(3) of the Act intimating the vacancy and unletting was not issued prior to the claim for remission. The relevant portion of the above judgment is extracted hereunder:

> ***"16.*** *To continue, the important point to be noticed is that every notice contemplated under S. 105 shall expire with the half year succeeding that during which it is delivered and shall have no effect thereafter. But, S. 108 A enables the Commissioner at his discretion to condone omissions to give notice under S. 105 and other sections referred to therein. The point to be considered is whether, in the light of such statutory provisions two independent and separte notices, as urged by Mr. Thilai Villalan, are necesary under S. 105 of the Act, ore informing the taxing authority about the vacancy and unletting or the prospective vacancy or unletting followed up independently by a claim for remission. When the statue itself provides that the non-issue of notices contemplated under S. 105 can be condoned at the discretion of the Commissioner, then obviously the provision as to delivery of notice contemplated under S. 105(3)(a) is one which is capable of being liberally construed. The main intendment of the sub-Cl. (3)(a)(ii) of S. 105 is that the taxing authority should be put on notice promptly about the vacancy and unletting or the prospective vacancy and that there should be a claim for vacancy remission as prescribed by the Act. The word 'previously' appearing in sub-Cl. (3)(a) of S. 105 of the Act cannot be subject to a rigid interpretation. Taking the above relevant sub-clauses of S. 105 together, we are of the view that about the information as to vacancy and unletting, as*

*also the claim for remission under sub-Cl. (1) of S. 105 being integrated one with the other, can be consolidated in one notice, as the purpose of the provisions is not lost by such a process. The learned counsel for the respondent says that the delivery of the notice regarding the vacancy should precede a claim and these provisions are mandatory. In our view, the word 'previously' used in sub-Cl. (3), (a) of S. 105 can serve only one public purpose. It is obviously intended to put the taxing authorities on notice of such vacancy or prospective vacancy and alert them to make such investigations as they may be inclined to make to test the truthfulness or correctness of such information. If a notice is cumulative in the sense that it is not only informative of the vacancy but also of the claim for remission in consequence thereof, no prejudice is caused to the taxing authority. Viewed in this light, the delivery of a consolidated notice containing information about the vacancy and coupling it with a claim for remission would not, in our view, be a noncompliance with the provisions of S. 105 of the Act, and much less a departure from this provision By way of analogy, the Supreme Court in Somawanti v. State of Punjab, while considering the provisions of the Land Acquisition Act and in a case where the notification under S. 4 and the declaration under S. 6 were contemporaneously made in one notification, expressed the view:*

*"A notification under sub-S. (1) of S. 4 is a condition precedent to the making of notification under sub-S. (1) of S. 6. If the Government, therefore, takes a decision to make such a notification and, thereafter, takes two further decisions, that is, to dispense with compliance with the provisions of S. 5-A and also to declare that the land comprised in the notification is in fact needed for a public purpose, there is no departure from any provisions of the law even though the two notifications are published on the same day."*

*Therefore, the serving of a consolidated notice containing the information as to vacancy and unletting coupling it with the claim for remission would sub-serve the substance of the requirements of S. 105 and would net in any way be a departure from it. As in all cases the substance of the enactment has to prevail over the form, we are of the view, that notice under S. 105(3)(a) and the claim under S. 105(2) could be made in one notice and the inclusion of the claim for remission in the notice informing the authority about the vacancy cannot be equitably, justifiably or even legally be said to the non-Compliance with the substance of the relevant requirements under S. 105.*

***17.** The decision of V. Ramaswami, J. in S.A. 919 of 1971 which was placed before us by Mr. Thillai Villalan, runs as follows:*

*"That section confers power of the Commissioner of the Corporation to remit properly tax. But the right to claim this remission is subjected to certain*

*conditions. The first of such conditions is that the owner of the building shall have previously delivered a notice to the Commissioner intimating the vacancy or informing him that the building would be vacant from any particular specified future date. The other important condition is that the claim for remission should be made during the half year in respect of which the remission is sought or In the following half-year, but not after wards. The third condition that has to be satisfied is that the building has been vacant and unlet for thirty or more consecutive days in any half-year. In order, there, fore, to entitle the owner for remission, he must not only intimate the vacancy but should also specifically make a claim for remission with reference to the particular period. It would not be sufficient compliance with the section if the owner has merely intimated that the building has been vacant from a particular date. Since the remission is to be calculated with reference to the number of days for which the building has been vacant in the particular half-year, the claim therefore must state from what period to what period the building was vacant in order to enable the Commissioner to grant it".*

*We do not think that the learned Judge has expressed that view that both the notice of vacancy and the claim for vacancy remission should be made under independent communications. What is, however, pressed into service is that in the claim for vacancy remission, the landlord must state from what period to what period the building was vacant in order to enable the Commissioner to grant it This question would arise only in cases where there has been a partial vacancy or unletting of the premises during a particular half-year. But if the premises was vacant for the entire half-year, the question may not arise. Even otherwise, S. 105(3)(a) compels the landlord to deliver a notice to the Commissioner stating that the building is vacant and unlet or the building is likely to be vacant from a specified date either in the half-year in which the notice is delivered or in the succeeding half-year. It is only in the enquiry which as we have already stated is a quasi-judicial enquiry which is obviously contemplated under S. 105(3)(b), that the further hypothesis might be required in order to enable the taxing authority to reckon the actual benefit to which the landlord is entitled to in consequence of such vacancy. We are of the view that the landlord could furnish such particulars as to the period during which the building was vacant or is likely to be vacant during the course of such investigation by the taxing authority. If the opinion expressed by V. Ramaswami, J. in the above S.A. was that if the landlord failed to state from what period to what period the building was vacant, when he deliver the notice, then there was no compliance with the norms set out in S. 105, we are unable to share that view."*

7. The above judgment would show that the claim for remission cannot be rejected only for the reason that the notice of vacancy / unletting of the premises and the claim for remission is made in a consolidated notice. It may also be relevant to bear in mind that the vacancies are in view of statutory order passed by the government in the wake of Covid pandemic and was not a voluntary act by the petitioner which is yet another reason as to why the impugned order rejecting the claim of remission cannot be sustained. The impugned order insofar as it rejects the claim for remission on the ground of failure to issue a separate notice intimating the appropriate authority of vacancy stands vitiated.

8. It was pointed out by the learned counsel for the Respondents soon after the orders were pronounced that certain procedural formalities/ requirements ought to be complied with by the petitioner in support of their claim for remission. To which the learned counsel for the petitioner submitted that they had compiled with all the procedural requirements / formalities. In any view, if there are any other procedural requirements / formalities which ought to be complied with, they may be put on notice of the same to enable them to comply with the said requirements.

9. In view of the above, respondents are directed to issue notice indicating any procedural requirements / formalities that may have to be complied with by the petitioner within 2 weeks from the date of receipt of copy of the order and the petitioner shall comply with such requirement within a period of 4 weeks from the date of receipt of any such notice. The respondents would on such compliance examine the claim for remission afresh and dispose of the same within a period of 12 weeks thereof taking into account all relevant factors and after affording the petitioner reasonable opportunity of hearing. The writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

**21.12.2023**

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
Spp

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**MOHAMMED SHAFFIQ, J.**

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