IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.1.2023

CORAM

THE HONOURABLE Mr.JUSTICE **N.SATHISH KUMAR**

W.P.No.34826 and 35315 of 2013
and M.P.Nos.2 + 2 of 2013

Sandeep Gopal Services P. Ltd.
Regd. Off. at Construction House
B II Floor, 623 Linking Road,
Khar, Mumbai 400 052 ... Petitioner in W.P.No.34826 of 2013

Ferani Hotels Pvt. Ltd.
Reg. Office at Construction House,
B, 2nd Floor, 623 Linking Road,
Opp Khar Telephone Exchange,
Khar (West) Mumbai ... Petitioner in W.P.No.35315 of 2013

Vs.

The Commissioner,
Coimbatore Municipal Corporation,
Coimbatore. ... Respondent in both Writ petitions

Prayer in both Writ petitions:

The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records of the respondent pertaining to the levy of vacant land tax under Assessment No.7199318 dt. 06.09.13 in respect of the properties situate in T.S. Nos.1440/1 & 2, 1441, 1444/1 & 2 and 1445, Race Course Road, Coimbatore & quash the same.

For Petitioner : Mr.P.Valliappan, Senior Counsel
For Respondent : Mr.K.Magesh

******

COMMON ORDER

Challenge in both the writ petitions are against vacant land tax levied by the respondent Corporation and therefore, both writ petitions are heard together and disposed off by common order.

2. Though impugned notice has been challenged on various grounds including that the Act does not provide for levy of property tax and vacant land tax simultaneously, the learned Senior counsel Mr.P.Valliappan, appearing for the petitioner restricted his submission only with regard to limitation on which the petitioner is liable to pay vacant land tax. According to him, the assessment has been made only on 6.9.2013, only that date on which six years limitation starts as per Sec.168 of the Coimbatore City Municipality Act. According to him, though several other grounds raised, since they are willing to pay tax, the dispute is only with regard to the date on which the petitioners are liable to pay tax. According to him, six years period to be reckoned from 1.4.2007. Whereas the learned counsel appearing for the respondent Corporation submits that show cause notice has been issued on 6.9.2012 assessing the tax and therefore, six years limitation period starts only from 6.9.2012. Counsel appearing for the respondent fairly submitted that though the demand notice to claim tax was issued on 1.4.2005, actually, tax ought to have been levied only from 1.4.2006.

3. Heard the learned Senior Senior counsel appearing for the petitioner and the learned counsel for the respondent Corporation and perused the materials available on record.

4. Though tax has been levied from 1.10.2005, counsel appearing for the respondent Corporation has fairly submits that the above calculation is not correct and at the most, tax ought to have been levied only from 1.4.2006. It is relevant to extract the procedure contemplated under Sec.168 of the Coimbatore City Municipal Corporation Act for levying such escape tax which reads as follows:

> *"168. Power to assess in case of escape from assessment.— Notwithstanding anything to the contrary contained in this Act or the rules made there under, if for any reason any person liable to pay any of the taxes or fees leviable under this Chapter has escaped assessment in any half-year or year or has been assessed in any half-year or year. at a rate lower than the rate at which he is assessable, or in the case of property tax has not been duly assessed in any half-year or year consequent on the building or land concerned having escaped proper determination of its annual value, the Commissioner may, at any time within 1 [six years] from the date on which such person should have been assessed, serve on such person a notice assessing him to the tax or fee due and demanding payment thereof within fifteen days from the date of such service; and the provisions of this Act and the rules made there under shall so far as may be apply, as if the assessment was made in the half-year or year to which the tax or fee relates.*

5. A careful perusal of the above provisions makes it clear that the Commissioner may at any time, *within six years from the date on which such person who have been assessed, serve on such person a notice assessing him to the tax or fee due and demanding payment thereof within fifteen days from the date of such service. The above provisions also makes it clear that such escape tax ought to have been levied or assessed within a period of six years from the date on which such person ought to have been assessed.* Therefore, primary condition for levying escape tax is that assessment ought to have been made within a period of six years. Secondly, notice assessing such person to the tax with the demand of payment of tax within 15 days. Therefore, three essential conditions required for levying escape tax are namely, 1. Assessment within a period of six years; 2. Notice assessing him to the tax; and 3. Demand.

6. Admittedly, in the given case, the tax has been assessed only from 6.9.2013 and finalised. Though much emphasis has been made by the learned counsel appearing for the respondent Corporation, the show cause notice was issued as early as 6.9.2012 and therefore, above date is relevant for reckoning the period of limitation. It is relevant to note that mere issuance of show cause notice will not amount to assessment of the tax. The aforesaid provision of the Act is very clear that the assessment should have been made within a period of six years of the notice demanding assessed tax and granting 15 days time is mandatory, whereas a

careful perusal of show cause notice dated 6.9.2012 shows that it is not a final assessment, but it is only a notice inviting objection for final assessment. The very wording in the notice indicate that the authorities thought to levy tax. Therefore, they sought objection and the final assessment made only in the year 2013 that is on 6.9.2013. Further, notice dated 6.9.2012, there is no whisper about the demand of tax as required under Sec.168 of the Act.

7. Such view of the matter, this Court is of the view that as the final assessment has been made only on 6.9.2013, the period of limitation i.e. Six years can be reckoned from the date of final assessment. Such being the position, the petitioners are liable to pay vacant land tax with effect from 1.4.2007 till date.

8. With the above observations, the writ petitions stand disposed off. The petitioners are directed to pay the entire arrears within a period of eight weeks from the date of receipt of copy of the order. No costs. Connected miscellaneous petitions are closed.

20.1.2023

Speaking/Non Speaking order
Neutral citation: Yes/No
Index: Yes/No
vaan
To
The Commissioner, Coimbatore Municipal Corporation, Coimbatore.

N.SATHISH KUMAR, J.

vaan

W.P.No.34826 and 35315 of 2013
and W.M.P.Nos.2 + 2 of 2013

Dated: 20.1.2023