IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2023

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No. 28177 of 2016

Meston Education & Development Association P) Ltd.,
New No.10, Old No.33 West Cott Road,
Royapettiah, Chennai 600 014.
rep. by Secretary/Director.

.. Petitioner

Versus

1. Chennai Metropolitan
Water Supply & Sewerage Board,
rep. by its Managing Director,
NO.1 Pumping Station Road,
Chennai 600 002.

2. Assistant Engineer,
Chennai Metropolitan Water Supply & Sewerage
Board, Area No.IX,
NO.1 Dr.Ranga Road,
Abiramapuram, Chennai-18.

.. Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the impugned disconnection notice issued by the 2nd respondent dated 11.01.2016 demanding a sum of rupees Rs.4, 70, 815/- towards the arrears from 1st of 2013-14 to 2nd of 2015-16 quash the same.

For Petitioner : Mr.P.N.George Graham
For M/s. Dev Adason and Sagar

For Respondents : No appearance For RR1 & 2

ORDER

This writ petition has been filed challenging the demand notice issued by the first respondent claiming arrears Rs.4, 70, 815/- towards water and sewerage charges from 1st of 2013-14 to 2nd of 2015-16.

2. It is the case of the writ petitioner that the petitioner is a charitable religious Trust and governed by Tamil Nadu Private Colleges Regulations Act. The petitioner was assessed to Water tax and Sewerage tax in respect of Door No.31A, West Cott Road, Royapettah, at the rate of Rs.495/- as half yearly water and sewerage Tax and Rs.2400/- towards half yearly water charges and sewerage charges. The annual rental value arrived for fixing the amount of tax was Rs.14,141/- The petitioner has been regularly paying the said amount to the respondents and there is no arrears as on date. Such being the position, the petitioner received a notice from the second respondent dated 11.01.2016 demanding a sum of Rs.4,70,815/- towards arrears of tax from 1st of 2013-14 to 2nd of 2015-16. Challenging the said notice, the petitioner has filed the present writ petition.

3. It is the contention of the petitioner that while fixing the water and sewerage tax, the Board uniformly adopted the annual value as fixed by the Chennai Corporation. Whereas no such procedure adopted and demand has been made uniformly without any assessment. In this regard, the learned counsel for the petitioner placed reliance on the decision of this Court reported in ***2002 (1) MLJ 821 in the case of Kasi Theatre by its Proprietor, M.K.M.Madivanan Vs. Chairman, M.M.W.S.S.B., Chennai and others*** *and* ***W.P.No.5722 of 1990 2005, dated 16.03.1995 in the case of M/s.Kutty Flush Doors and Furniture Company Private Limted, Madras Vs. Madras Metropolitan Water Supply and Sewerage Board, Madras and others..***

4. I have perused the entire materials. There is no representation for the respondents. Despite the petition has filed in the year 2016, till date, counter has not filed.

5. On perusal of the impugned notice, it is seen that the Board has demanded a sum of Rs.4,70,815/- toward the arrears of tax from 1st of 2013-14 to 2nd of 2015-16. No details is mentioned in the impugned order

on what basis such assessment is made and there is no material found in the impugned notice. It is relevant to note that in a similar case, the issue involved in the present writ petition is squarely covered by the earlier order passed by this Court reported in ***2002 (1) MLJ 821 in the case of Kasi Theatre by its Proprietor, M.K.M.Madivanan Vs. Chairman, M.M.W.S.S.B., Chennai and others.*** The relevant paragraph is extracted hereunder:

> *"8. Learned counsel for the respondents relied upon the unreported decision made in W.P.No.14392 of 2000, dated 11.10.2001 wherein it has been held* that *the Board is entitled to levy tax based on the revision made in the property tax and no such notices is required. Section 34 of the Act provides for the levy of water tax and sewerage tax, Sec. 35 provides for the method of assessment of annual value. The annual value of the premises for the purpose of levy of taxes mentioned in Sec.34 shall be assessed by such authority as may be prescribed. Till such time as the annual valuation of land buildings is determined under this Act, the annual value of the land and buildings for the purposes of this Act, shall be the annual value as assessed by the local bodies. It is evident that under Section 35, the respondents have to determine the annual value and assess the tax. Though the Board is making the assessment adopting the annual value made by the local*

bodies, the Board has a duty under Section 34 of the Act to levy tax. The respondents have not produced any evidence to show that they have levied tax. I concur with the view taken by the learned Judge in the devision relied on by the petitioner viz., ***M/s.Kutty Flush Doors and Furniture Co., Private Limited V. Madras Metropolitan Water Supply and Sewerage Board and others (1995) 2 MLJ 467*** *and I dissent the view taken by the learned Judge in the decision relied on by the respondents viz., W.P.No.14392 of 2000, dated 11.10.2001. Hence, I come to the conclusion that the impugned notice is unsustainable in law and liable to be quashed.*

6. Such view of the matter, tax has been demanded by the Board without any proper assessment and procedure followed. Hence, the impugned notice is liable to be set aside and the same is set aside. Accordingly, the writ petition is allowed. No costs.

06.01.2023

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Index : Yes / No
Speaking Order : Yes / No

N.SATHISH KUMAR, J.

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