IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.14253 of 2020
&
W.M.P.Nos.17728 & 17731 of 2020

K.M.Zareena Beevi ... Petitioner

Vs

1.The Chennai Metropolitan Water Supply and Sewerage Board,
Represented by its Chairman,
No.1, Pumping Station Road,
Chindadripet, Chennai.

2.The Area Engineer X,
The Chennai Metropolitan Water Supply and Sewerage Board,
New Area 10 Office,
No.9, Muthukrishnan Street,
T.Nagar, Chennai-17. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the 2nd respondent ending with Lr.No.CMWSSB/Area-X/B&C/D-136/11377/2020 dt 27/1/2020 and quash the same.

For Petitioner : Mr.N.A.Nassir Hussain

for Mr.N.A.Nissar Ahmed

For Respondents : No appearance

ORDER

The petitioner challenges a communication issued by R2/Area Engineer-X, Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB) calling upon her to pay the arrears due to the Board forthwith.

2.The petitioner is on a second round of litigation and had challenged, in WP.Nos.10297 to 10306 of 2015, a notice calling upon the occupier to remit water, sewerage tax and charges for the first half of 1993 to the second half of 2014.

3. The distraint proceedings impugned therein were set aside and the petitioner was permitted to appear before the authorities on a specific date along with her submissions in regard to the demands raised. Respondents were directed to take note of the contentions and pass orders within a period of four weeks from date of conclusion of personal hearing.

4.Inter alia, this Court has recorded the petitioner's submission that there was no water connection provided by the State. In conclusion, I had stated that those submissions gave rise to a question of fact that would have to be determined in the course of enquiry ordered.

5.Consequent upon that order, the petitioner had appeared before the authority and the impugned order records that barring the assurance of the petitioner that water tax and charges would be settled in full, there was no other submission made before the authority. Though a tentative attempt is made to state that was not what had transpired, a discussion on this aspect of the matter is irrelevant.

6.As held by this Court in the case of *Bentinck Higher Secondary School for Girls v. CMWSSB and others* (WP.Nos.2674 to 2678 of 2016 dated 18.12.2017), and learned counsel for the petitioner does not dispute this position, water and sewerage tax would have to be paid irrespective of whether there was a connection provided.

7. However, he would draw my attention to the provisions of Regulation 19 of the Chennai Metropolitan Water Supply and Sewerage Board's Water Tax and Sewerage Tax (Levy and Collection) Regulations, 1991, that provides for 'Escaped Assessment' stating that there is a limitation provided therein for such levy.

8. Regulation 19 reads thus:-

> *"19.Escaped Assessment.- Notwithstanding anything to the contrary contained in the Act or these regulations made thereunder, if for any reason any person liable to pay any of the taxes under these regulations has escaped*

assessment in any half year or a 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 water and sewerage 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 authorized authority may at any time within two years from the date on which such person should have been assessed, serve on such person a notice assessing him to the taxes due and demanding payment thereof within fifteen days from the date of such service, and the provisions of the Act and the regulations made thereunder 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."

9. The provision permits reassessment within two years from the date on which such person should have been assessed. In the present case, the demand relates to the period 1993 to 2015. The demand notice is dated 27.01.2020, and thus, prima facie extends far beyond the period of limitation set out in Section 19. However, it is unclear as to whether any notice has been sent within, the time provided under Regulation 19 prior to the present impugned notice.

10. Hence, let the petitioner appear before the Assessing Authority on Wednesday, 12th of April 2023, where this aspect of the matter shall be looked into specifically and the impugned order modified, if need be.

11. This Writ petition is disposed in terms of the aforesaid. No costs. Connected Miscellaneous petitions are closed.

05.04.2023

mpl
Index : Yes/No
Speaking Order/Non speaking Order
Neutral Citation:Yes/No

DR.ANITA SUMANTH,J.
mpl

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