IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.08.2023

PRONOUNCED ON : 26.09.2023

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.No.20828 of 2022
and W.M.P.No.19892 of 2022

Madras Society for the Protection
and Care of Animals
(Formerly known as Society for the
Prevention of Cruelty to Animals
Secretary ... Petitioner

vs

1. The Commissioner,
   Greater Chennai Corporation,
   Rippon Buildings,
   Chennai 600 003.

2. The Member Secretary,
   Chennai Metropolitan Development Authority,
   Thalamuthu Natarajan Maligai,
   Egmore, Chennai 600 008. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus for bearing the 1st respondent from demanding and collecting the property tax in respect of second, third and fourth floors which is under lock and seal at premises Old Nos.34 & 35, New Nos.67 & 69/1, Vepery High Road, Chennai- 600 007 pending disposal of the regularization of application submitted to the second respondent CMDA on 10.12.2018.

For Petitioner	: Mr.M.Sampath
For R1	: Mr.Rahul Adithya for Mrs.P.T.Ramadevi Senior Standing Counsel
For R2	: Mr.Y.Bhuvanesh Kumar Standing Counsel

O R D E R

This writ petition has been filed to issue a Writ of Mandamus for bearing the 1st respondent from demanding and collecting the property tax in respect of second, third and fourth floors which is under lock and seal at premises Old Nos.34 & 35, New Nos.67 & 69/1, Vepery High Road, Chennai - 600 007 pending disposal of the regularization of application submitted to the second respondent CMDA on 10.12.2018.

2. The petitioner has put up an unauthorized construction contrary to planning permission given by the first respondent. The property has been under lock and seal.

3. Under these circumstances, the petitioner has approached this Court in the earlier round of litigation. A liberty was given to the petitioner to take steps to regularize the construction under Section 113C of the Tamil Nadu Town and Country Planning Act, 1971.

4. The application for regularizing the deviations / unauthorized construction was filed and the same was pending before the second respondent/Chennai Metropolitan Development Authority from 10.12.2018. Meanwhile, the unauthorized constructions put up by the petitioner in the second, third and fourth floors have been locked and sealed by the authorities.

5. The case was argued at length on previous date i.e, on 28.07.2023 and reserved for passing orders. The case was now listed at the instance of the second respondent/CMDA on 04.08.2023. The

learned Standing Counsel for the second respondent would submit that the writ petition has become infructuous inasmuch as the prayer in the writ petition is for mandamus to forbear the first respondent from demanding and collecting the property tax in respect of second, third and fourth floors of building at premises Old No.34 and 35, New No.67 and 69/1, Vepery High Road, Chennai – 600 007 which is under lock and seal pending disposal of the regularization of application submitted to the second respondent/CMDA on 10.12.2018.

6. It is submitted that the application filed by the petitioner for regularization of the unauthorized construction has been now rejected by the second respondent/CMDA on 26.07.2023 i.e., two days prior to 28.07.2023, after the case was argued at length. Relevant portion of the rejection order of second respondent, CMDA reads as under:-

> "The regularization application received in the reference 1st cited for the regularization of GF+3F Commercial building (Hotel) has been examined.
>
> On perusal of the documents submitted, it is ascertained that the owners of the Hotel M/s The Green City, Business Class Hotel had entered into a Rental Agreement with SPCA only on 01.04.2016, to run a hotel in the above said

> address. Further, approval has been obtained from Greater Chennai Corporation for G+1 floor Commercial building only on 27.03.2008.
>
> The above evidences clearly establish that the building under reference was constructed only after the cut-off date of 01.07.2007. Therefore, the Regularization application under Section 113C for the building under reference is rejected."

7. The learned counsel for the petitioner on the other hand would submit that the order is only confined to property at Old No.34 and New No.67. As far as application for regularization of unauthorized construction in Old No.35 and New No.69/1 is concerned, no order have been passed so far by the second respondent, CMDA.

8. The learned Standing Counsel for the first respondent has drawn attention to Section 105 of the Chennai City Municipal Corporation Act, 1919.

9. It is submitted that the petitioner can opt for remission of tax in accordance with the provisions of Section 105 of the Chennai City Municipal Corporation Act, 1919 which has not been done till date. It is therefore submitted that there is no merits in the present writ petition.

10. It is submitted that the property of the petitioner is liable to property tax in accordance with Section 99 of the aforesaid Act and therefore, the tax has to be paid as emanded in accordance with the provisions of the aforesaid Act.

11. It is further submitted that the request of the petitioner is contrary to the provisions of the Chennai City Municipal Corporation Act, 1919 and therefore the request made by the petitioner cannot be countenanced.

12. That apart, it is submitted that with effect from 13.04.2023, the Chennai City Municipal Corporation Act, 1919, has been repealed and has been substituted with the provisions of the Tamil Nadu Urban Local bodies Act, 1998, wherein a separate method has been prescribed for levying of property tax. It is submitted that there is no provision for remission of tax under the said Act.

13. It is further submitted that the petitioner is also continuing to pay the tax demanded and therefore, even on that score in the present writ petition is liable to be dismissed.

14. The learned Standing Counsel for the second respondent would therefore submit that there is no scope for mandamus as the petitioner is mandatorily required to pay property tax for unauthorised construction though the property is not under occupation.

15. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Standing Counsels for the first respondent and learned Standing Counsel for the second respondent.

16. For the period up to 12.04.2023, the property tax liability is governed by the provisions of the Chennai City Municipal Corporation Act, 1919. Section 99 of the said Act reads as under:-

"99. Description and class of property tax:-

(1) If the council by a resolution determines that a property tax shall be levied, such tax shall be levied on

all buildings and lands within the city save those exempted by under this Act or any other law. The property tax may comprise...

(a) a tax for general purposes;
(b) a [***] drainage tax for the purpose of defraying the expenses connected with the [****] drainage system of the city;
(c) a lighting tax for the purpose of defraying the expenses connected with the lighting of the city;

Provided that where the [***] drainage tax is levied the council shall declare what proportion of the tax is levied in respect of [***] drainage works and the proportion so declared shall also be specified in the notice published under sub-section (2) of section 98-A

(2) Save as otherwise provided in this Act, these taxes shall be levied at such percentage of the annual value of buildings and lands as may be fixed by the council;

Provided that the aggregate of the percentage so fixed shall not, in the case of any land or building, be less that 15½ per cent, or greater than [2][25] per cent of its annual value].

(3) For the purpose of assessing the property tax, the annual value of any building or land shall be determined by the commissioner:

[Provided that the annual value of any building or land the tax for which is payable by the commissioner shall be determined by the Mayor.]"

17. The method for assessing the property tax has been prescribed under Section 100 of the Chennai City Municipal Corporation Act, 1919. As per (2) to Section 100 of the Chennai City Municipal Corporation

Act, 1919, the Annual Value of the buildings shall be deemed to be gross annual rent at which the building may at the time of assessment reasonably be expected to fetch from month to month or from year to year less deduction, in the case of building of 10% of that portion of such annual rent which is attributable to the building alone, a part from their sites and the adjacent lands occupied as an appurtenance thereto and the deduction shall be in lieu of all allowances for repairs or in any other account whatsoever.

18. This Court in W.P.Nos.19880 & 19886 of 2021 by its common order dated 24.11.2021 examined the issue and held the assessment has to be in accordance with proviso to Section 100(2) of the Chennai City Municipal Corporation Act, 1919.

19. Relevant portion of the order of this Court dated 24.11.2021 in W.P.Nos.19880 & 19886 of 2021 reads as under:

> "...
>
> 15. A reading of the aforesaid provisions makes it clear that the Council by resolution may determine the properties, for which, the property tax can be levied. It states that the property tax can be

levied on all buildings and lands within the city save those which are exempted under the Act or any other law. Section 99 of the Act stipulates that the property tax may compromise:-

i. a tax for general purposes;
ii. a drainage tax for the purpose of defraying the expenses connected with the drainage system of the city;
iii. a lighting tax for the purpose of defraying the expenses connected with the lighting of the city:

16. Definition of 'building' within Section 3(4) of the said Act is a wider purport as it includes :-

(a) a house, out-house, stable, latrine, godown, shed, hut, wall (other than a boundary wall not exceeding eight feet in height) and any other structure whether of masonry bricks, mud, wood, metal or any other material whatsoever;
(b) a structure on wheels or simply resting on the ground without foundations; and
(c) a ship, vessel, boat, tent, van and any other structure used for human habitation or used for keeping or storing any article or goods;

17. Section 100 of the Act deals with the method of assessment. It reads as under:-

100. Method of assessment of property tax.----

(1) Every building shall be assessed together with its site and other adjacent premises occupied as

appurtenances thereto unless the owner of the building is a different person from the owner of such site or premises.

(2) The annual value of lands and buildings shall be deemed to be the gross annual rent at which they may at the time of assessment reasonably be expected to let from month to month or from year to year less a deduction, in the case of buildings, of ten per cent of that portion of such annual rent which is attributable to the buildings alone, a part from their sites and the adjacent lands occupied as an appurtenance thereto and the said deduction shall be in lieu of all allowance for repairs or on any other account whatever:

Provided that----

(a) in the case of---

(i) any Government or railway building; or

(ii) any building of a class not ordinarily let the gross annual rent of which cannot in the opinion of the commissioner be estimated the annual value of the premises shall be deemed to be six percent of the total of the estimated market value of the land at the time of assessment and the estimated cost of erecting the building at such time after deducting for depreciation a reasonable amount which shall in no case be less than ten per centum of such cost, and

(b) machinery and furniture shall be excluded from valuations under this section:

Provided further that where the annual value of any land or building is attributable partly to the use of such land or building or any portion thereof for the display of any advertisement or advertisements and tax is levied under this Act in respect of such advertisement or advertisements, the annual value of such land or building for the purpose of assessing then property tax thereon shall be ascertained as if such land, building or portion is not used for the display of such advertisement or advertisements.

(3) The State Government shall have power to make rules regarding the manner in which the person or persons by whom and the intervals at

> which, the value of the land, the present cost of erecting the building and the amount to be deducted for depreciation, shall be estimated or revised in any case or class to cases to which clause (a) of the first proviso to sub-section (2) applies, and they may, by such rules, restrict or modify the application of the provisions contained in Schedule IV to such case or class of cases.

18. A reading of proviso (a)(ii) to Section 100(2) of the Act indicates that any building of a class not ordinarily let out where the gross annual rent of which cannot in the opinion of the Commissioner be estimated, the annual value of the premises shall be deemed to be 6% of the total of the estimated market value of the land at the time of assessment and the estimated cost of erecting the building at such time after deducting for depreciation a reasonable amount which shall in no case be less than 10% of such cost.

19. A cogent reading of Section 99(2) of the Act and the proviso to Section 100(2) of the Act indicates that the Council has empower to identify the buildings, class of building which can be subject to the property tax under the provisions of the aforesaid Act. Section 99(1) of the Act also states that what are the element which may be including for determination of property tax payable under the said Act.

20. The power of the Council under Section 99(2) of the Act also extends to prescribing the rate of tax as is evident from a reading of Section 99(2) of the Act. It uses the expression

percentage of annual value. Same is once again reproduced below for the sake of clarity:-

> **99. Description and class of property tax**.---
>
> **(1)** ....
>
> **(2)** Save as otherwise provided in this Act, these taxes shall be levied at such percentages of the annual value of buildings and lands as may be fixed by the council :
>
> Provided that the aggregate of the percentage so fixed shall not, in the case of any land or building, be less that 15½ per cent, or greater than 25 per cent of its annual value.

21. Thus, the Resolution passed by the Council on 08.12.2010 and 20.09.2018 fixing the different rate of tax for theaters and other buildings in deviation of the method prescribed in proviso to Section 100(2) of the Act would be contrary to law and any demand made by the Commissioner or officers to such power delegate to power and collected tax would be contrary to Article 265 of the Constitution of India.

22. The Hon'ble Supreme Court in **Nagpur Corporation** Vs. **Nagpur Handloom Cloth Market, Co.**, AIR 1963 SC 1192 has considered the scope of definition of 'building' and held as under:-

> **12.** “Building” is defined in the Act by

Section 5(7) as including "a house, outhouse, stable, hut, shed or other enclosure, whether used as a human dwelling or otherwise and shall include verandas, fixed platforms, plinths, doorsteps, walls and the like". **The definition is an inclusive definition, and contains inherent indication that a part of a building would be a building for the purposes of imposition of liability to pay rates, and assessment of such liability. It is manifest that under the scheme of the Act read with the rules, conservancy tax and water rate are to be levied as rates on the gross annual letting value and a rate can only be levied from a person in respect of the tenement or premises occupied as an independent unit.** The assessment rules provide for levy of rate on the gross annual letting value of the building, and inasmuch as the expression "building" according to the definition given in Section 5(7) of the Act would include a part of a building, the Corporation is competent to frame a list in respect of several tenements occupied by different persons treating each tenement as a separate building for levy of tax. That is implicit in Rule 10(*b*) and also in Rule 10(*c*) of the assessment rules.

23. In **Devon Rai Kapur** Vs. **New Delhi Municipality**, AIR 1980 SC 541 also, the Hon'ble Supreme Court held that the assessment

/ revision of property tax shall be only in accordance with provisions of Section 100 of the Act on the annual value to be ascertained and determined on the principles.

24. I therefore do not find any merits in the impugned Final Assessment Orders made by the second respondent demanding the tax in terms of Council Resolution No.543/2010 dated 08.12.2010 and the Council Resolution No.800/2018 dated 20.09.2018.

25. Under these circumstances, the impugned Final Assessment Orders are quashed and the cases are remitted back to the second respondent for proper determination of tax to be paid by the petitioners in accordance with proviso to Section 100(2) of the Chennai City Municipal Corporation Act, 1919.

26. If desired, the respondents may issue a fresh proposal to the petitioners within a period of four (4) weeks from the date of receipt of a copy of this order, wherein, a proper method of calculation may be indicated. If the petitioners accept the same, they shall pay the admitted liability forthwith together with interest for the delayed payment. Otherwise, the petitioners shall reply to the same within a period of four (4) weeks thereafter and thereafter appropriate order may be passed. Entire excise shall be carried out within a period of twelve (12) weeks from the date of receipt of a copy of this order. It is made clear there is no question of passing any provisional assessment order under the Act.

27. These Writ Petitions stand disposed with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed."

20. There is no dispute that the assessment can be made based on the provisions of the Chennai City Municipal Corporation Act, 1919. In respect of the other property in Old No.35, New No.69/1, Vepery High Road, Chennai, application dated 10.12.2018 is said to be pending before the second respondent.

21. Admittedly, the property in the first, second and third floors at at Old Nos.34 & 35, New Nos.67 & 69/1, Vepery High Road, Chennai is not an occupation. The application for regularization of unauthorized construction of the Ground floors to third floors has been rejected by the second respondent, Member Secretary, Chennai Metropolitan Development in the building at Old No.34, New No.67 has been rejected vide order dated 26.07.2023. The provision of the Chennai City Municipal Corporation Act, 1919, allows a owner to seek remission for the payment of property tax under Section 100(2) of the Chennai City Municipal Corporation Act, 1919. As long as the property is not in occupation, the petitioner could be entitled to remission of property tax from the date on which it was the subject to lock and seal.

22. The intention of the legislature is clear to not levy tax where the property is not an occupation. There is vacancy, as admittedly the property is under lock and seal since 23.11.2017. Therefore, the question of subjecting the property to property tax cannot be countenanced.

23. By an order dated 01.09.2023 in W.P.No.25701 of 2022, this Court has allowed remission of tax on the property which was sparsely in occupation in view of large scale disruption caused due Metro Rail Construction work. Same view has to be taken even in the case of a property constructed without authorisation which is under lock and seal and not in occupation. Court is of the view that the petitioner is entitled for remission of property tax for the period during which remains under lock and seal.

24. For the period after 13.04.2023, levy of tax will be governed by Chapter 6 of the Tamil Nadu Urban Local Bodies Act, 1998.

25. Under these circumstances, Court is inclined to allow this writ petition by directing the respondents to not to collect the property tax from the petitioner for the period during which, the property remains under lock and seal. However, liberty is given to the respondents to proceed against the petitioner in accordance with law for the deviation and unauthorized construction in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

26.09.2023

Index : Yes/No
Neutral Citation : Yes/No
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C.SARAVANAN, J.

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To

1. The Commissioner,
   Greater Chennai Corporation,
   Rippon Buildings,
   Chennai 600 003.

2. The Member Secretary,
   Chennai Metropolitan Development Authority,
   Thalamuthu Natarajan Maligai,
   Egmore, Chennai 600 008.

Pre-delivery Order in
20828 of 2022

26.09.2023