IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.22298 of 2021 and
W.M.P. No.23524 of 2021

M/s.Shri Gopikrishna Paradise
Rep by its Managing Partner Mr.L.M.Narasimhan
No.13, Muthamman Koil Street,
Ayanavaram, Chennai - 600 023. .. Petitioner

Vs.

1. The Chief Secretary to Government
The office of Revenue and Disaster Management Department,
Fort St. George, Chennai - 600009.

2. The Greater Chennai Corporation
Rep. by its Revenue Officer,
Rippon Building, Chennai 600 003.

3. The Managing Director and Chairman
Chennai Metropolitan Water Supply and Sewerage Board,
No.1,Pumping Station Road,
Chindradripet, Chennai - 600 002.

4. The Assistant Revenue Officer,
Greater Chennai Corporation, Zone - 8,
No.36-B, IICross Street, Pulla Avenue,
Shenoy Nagar, Chennai 600 030.

5. The Senior Accounts Officer,
Chennai Metropolitan Water Supply and Sewerage Board,

No.227, 12th Main Road,
Anna Nagar, Chennai - 600 040. ..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 relating to undated G.C.C.RD Property Tax-Notice for Current Demand and Arrears Demand bearing Zone No.8, Ward No.097 & Bill No.01317 of the 2nd respondent and the consequential demand notice of the 5th respondent bearing notice dated 06.10.2021 and quash the same as it is contrary to G.O.Ms.No.150 of Municipal Administration and Water Supply (MA.IV) Department dated 19.11.2019 and direct the respondents from demanding property tax and water tax and charges for the period of lock down from 17.03.2020 imposed by the Government and authorities as it is against their own procedure to levy the property tax for theatres and direct the respondent 2 to 5 to refund the excess property tax, water tax and charges already collected from the petitioner.

For Petitioner : Mr.V.Tamizhanban

For R1 : Mr.E. Sundaram
Government Advocate

For R2 and R4 : Mr.S.T. Bharath Gowtham
for Ms.K.Aswini Devi

For R3 and R5 : Mr.N.Paul Sunder Singh
Standing Counsel

ORDER

It is submitted by both the learned counsel for the petitioner and the respondents in unison that the issue stands covered by order of this Court in W.P.No.15038 of 2020, wherein orders passed in W.P.Nos.19880 and 19886 of 2021 were followed. The operative portion of the orders in W.P.Nos.19880 and 19886 of 2021 reads as under :

2. ......"2. These Writ Petitions have been filed by the petitioners challenging the demand of property tax on the theater run by them. The demand has been quantified in the respective Demand Notices based on the seating capacity, ticket value, number of shows and number of days.

3. The learned counsel for the petitioners submits that the Final Assessment Orders dated 17.06.2021 are not only contrary to proviso to Section 100 of the Chennai City Municipal Corporation Act, 1919 but also contrary to Section 99(2) of the aforesaid Act.

4. It is submitted that the petitioners had earlier filed Writ Petitions before this Court in W.P.No.3080 & 3084 of 2020 which were allowed by an order dated 06.08.2020. It is submitted that pursuant to the above order dated 06.08.2020, the respondents instead of provisionally determining the tax liability under the provisions of the aforesaid Act, directly proceeded to ask the petitioners to file objections, to which, the petitioners also filed their objections on 12.03.2021 and thereafter, passed the impugned final assessment orders dated 17.06.2021.

5. The learned counsel for the petitioners has placed reliance on the decision of this Court in M/s.Brinda Theatre Vs. The Commissioner, Greater Chennai Corporation, in W.P.No.19859 of 2020, dated 02.07.2021. He further submits that under similar circumstances, this Court had remitted the case back to the respondents to pass fresh orders in accordance with law.

6. The learned counsel for the petitioners further submits that the petitioners- theater was classified as a -Special Building- and that in terms of G.O. (Ms.) No.73, Municipal Administration and Water Supply (MA.IV)

Department, dated 19.07.2018 and G.O. (Ms.) No.76, Municipal Administration and Water Supply (MA.IV) Department, dated 26.07.2018, the power was granted to the Authorities to revise only the value of the property for computation of property tax.

7. It is further submitted that by G.O. (Ms.) No.150, Municipal Administration and Water Supply (MA.IV) Department, dated 19.11.2019, both the above G.Os. have been kept in abeyance. It is submitted that the Proposals Form in the impugned Assessment Orders are liable to be interfered with, notwithstanding the fact the petitioners have an alternate remedy before the Taxation Appeal Tribunal under Rule 12 to Schedule IV of the Act.

8. Defending the impugned Assessment Order, the learned Standing Counsel for the respondents corporation submits that these Writ Petitions are devoid the merits and are liable to be dismissed. She submits that the Council had passed resolution under Section 99(2) of the Chennai City Municipal Corporation Act, 1919 and it is pursuant to the aforesaid resolution of the Council, the assessments were completed and therefore the determination made by the second respondent cannot be interfered with as they were in consonance with the Council Resolution No.543/2010 dated 08.12.2010 and the Council Resolution No.800/2018 dated 20.09.2018.

9. The learned Standing Counsel for the respondents submits that the building of the petitioners falls under the classification of Special Building since the petitioners are running a Cinema Theater. She further submits that the half yearly property tax has been levied based on the annual value taking into account the built up area, usage of occupancy, type of construction and basic rate of tax and as per the provisions of the Chennai City Municipal Corporation Act, 1919 and Taxation Rules.

10. It is submitted that the petitioners are usually giving the cheques for the property tax and used to dishonor them wantonly with a view to escape from payment of property tax and that there were 11 cheques dishonored by the petitioners from 2014 towards the property tax of their theater.

11. The learned Standing Counsel for the respondents submits that pursuant to the order dated 06.08.2020 in W.P.Nos.3080 & 3084 of 2020, the petitioners were called upon for a personal hearing and one Mr.Divyaruban appeared for the personal hearing on behalf of the petitioners. It is submitted that after the considering the objections given by the petitioners, the petitioners were asked to submit documents vide letter dated 16.02.2021, but, the petitioners had again filed only objections and therefore, the second respondent has passed the impugned orders dated 17.06.2021 with liberty to the petitioners to approach the Taxation Appeal Tribunal.

12. The learned Standing Counsel for the respondents also placed reliance on the decision of this Court in The Mehta Multispeciality Hospitals India Pvt. Ltd. Vs. The Commissioner, Corporation of Chennai, in W.P.No.35304 of 2019 etc. batch, dated 03.03.2021. ....

13. I have heard the learned counsel for the petitioners and the learned Standing Counsel for the respondents. I have perused the impugned Final Assessment Orders dated 17.06.2021 passed by second respondent and the two Council Resolutions dated 08.12.2010 and 20.09.2018. I have also perused the orders passed by this Court in W.P.No.19859 of 2020 and in W.P.No.35304 of 2019 etc. batch and the provisions of the Chennai City Municipal Corporation Act, 1919.

14. The power to levy tax under the provisions of the Chennai City Municipal Corporation Act, 1919 is prescribed under Section 99 of the *aforesaid Act which 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 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.

(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.

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 verandahs, 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."

2. In view of the above, this writ petition stands disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

16.11.2023

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

To:

1. The Principal Commissioner of Customs (Chennai-VIII),
   Custom House,
   No.60, Rajaji Salai,
   Chennai - 600 001.

2. The Assistant Commissioner of Customs / Inquiry Officer,
   Chennai-VIII Commissionerate,
   Custom House,
   No.60, Rajaji Salai,
   Chennai-600 001.

MOHAMMED SHAFFIQ, J.

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