IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2023

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.25316 of 2022
and
W.M.P.Nos.24290 & 24292 of 2022

1.K.S.Faruk Ali
2.K.F.Sarafunisha ... Petitioners

vs.

1.The Commissioner,
Greater Chennai Municipal Corporation,
Ripon Building Complex, Chennai - 03.

2.The Assistant Commissioner,
Greater Chennai Municipal Corporation-Zone-V,
No.61, Basin Bridge Road, First Floor,
Old Washermenpet,
Chennai - 600 021.

3.The Assistant Revenue Officer [North],
Greater Chennai Municipal Corporation,
No.61, Basin Bridge Road, First Floor,
Old Washermenpet,
Chennai - 600 021. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the 3rd respondent in Proceedings in Va.Va.A.Na.Ka.No.R-2/Special/2022, dated 27.06.2022 and consequential sealing of the premises on 11.08.2022 and quash the same as contrary to the provisions of the Greater Chennai Municipal Corporation Act, 1919 and direct the respondents to grant exemption from payment of property tax to the premises bearing Door No.43/23, Purushothaman Buildings, Wallers Road, Chintadripet, Chennai-02.

For Petitioner	:	Mr.M.Venkatakrishnan
For Respondents	:	Ms.Aswini Devi Standing Counsel

O R D E R

This writ petition has been filed challenging the impugned order passed by the third respondent in Va.Va.A.Na.Ka.No.R-2/Special/2022, dated 27.06.2022 and for a consequential direction to the respondents to grant exemption from payment of property tax to the premises bearing Door No.43/23, Purushothaman Buildings, Wallers Road, Chintadripet, Chennai.

2. Heard Mr.M.Venkatakrishnan, learned counsel for the petitioner and Ms.Aswini Devi, learned Standing Counsel appearing for the respondents.

3. The petitioner has challenged the impugned order dated 27.06.2022 passed by the third respondent rejecting the petitioners' request for exemption from payment of property tax on the ground that his property has been remaining vacant for long number of years. According to the petitioners, by total non application of mind to the fact that the petitioners are owners of only one portion in the first floor of the multi storied building, which is now remaining vacant, the third respondent has rejected the petitioner's representation, which is arbitrary and illegal.

4. Learned counsel for the petitioner would submit that the building complex comprises of ground and two floors and consists of various shop portions. According to him, the petitioners are the owners of only one of the

shop portions in the first floor. According to the petitioners, there are 41 shop portions in the entire building complex and in the first floor, there are 6 shop portions, out of which, the petitioners are the owners of only one of them. Therefore, he would submit that by total non application of mind to the aforementioned facts, despite the fact that the property owned by the petitioners is lying vacant, the petitioners' representation was rejected under the impugned order.

5. Learned counsel for the petitioners would also submit on instructions that the petitioners are willing to pay the property tax amount including the arrears up to date. The said undertaking given by the petitioners is recorded.

6. Counter affidavit has also been filed by the respondents stating that only in accordance with the provisions of the Chennai City Municipal Corporation Act, 1919, the impugned order has been passed. The petitioners

had only sought for exemption from payment of property tax, but did not seek for Vacancy Remission as per the provisions of Section 105 of the Chennai City Municipal Corporation Act, 1919 and therefore, according to them, the representation of the petitioners was rightly rejected under the impugned order.

7. Ultimately, the respondents are interested only in the revenue. As the petitioners are willing to pay the property tax demanded by the respondents including the arrears, the interest of the petitioners will have to be protected. As seen from the impugned order, none of the conditions raised by the petitioner in this writ petition as observed *supra*, have been considered. The petitioners seek for vacancy remission as per the provisions of Section 105 of the Chennai City Municipal Corporation Act, 1919. Section 105 of the Chennai City Municipal Corporation Act, 1919 reads as follows:

"**105. Vacancy remission**.—(1) When any building whether ordinarily let or occupied by the owner himself has been vacant and inlet for thirty or more consecutive days in any half-year, the commissioner shall remit so much, not exceeding one-half of such portion of the tax as relates to the building only as is proportionate to the number of days during which the building was vacant and unlet in the half-year.

(2) Every claim for remission under sub-section (1) shall be made during the half-year in respect of which the remission is sought or in the following half-year and not afterwards.

(3) (a) No claim for such remission shall be entertained unless the owner of the building or his agent has previously thereto delivered a notice to the commissioner—

(i) that the building is vacant and unlet ; or

(ii) that the building will be vacant and unlet from a specified date either in the half-year in which notice is delivered or in the succeeding halfyear.

(b) The period in respect of which the remission is made shall be calculated--

(i) if remission is sought in respect of the half-year in which notice is delivered, from the date of delivery of the notice or from the date on which the building became vacant and unlet, whichever is later ; and

(ii) if remission is sought in respect of the half-year succeeding that in which the notice is delivered, from the commencement of the half-year in respect of which remission is sought or from the date on which the building became vacant and unlet, whichever is later.

(c) Every notice under clause (a) shall expire with the half-year succeeding that during which it is so delivered, and shall have no effect thereafter."

8. Since the contentions of the petitioners, which have been raised in this writ petition, have not been considered under the impugned order, the impugned order has to be necessarily quashed, as it is a non speaking order and the matter has to be remanded back to the respondents for fresh consideration on merits and in accordance with law. However, the petitioners will have to be put on terms and the property tax payable for the subject property including the arrears will have to be necessarily paid by the petitioners to enable the respondents to re-consider the issue once again, as to whether the petitioners are entitled for vacancy remission as per the provisions of Section 105 of the Chennai City Municipal Corporation Act, 1919 or not.

9. For the forgoing reasons, the petitioners are directed to pay the property tax for the subject property including the arrears, as claimed by the respondents-Corporation, in two installments within a period of two weeks, i.e, 1st installment shall be paid by the petitioners on or before 05.03.2023 and the 2nd installment shall be paid on or before 05.04.2023. On payment of the aforesaid amounts within the stipulated time, the impugned order passed by the respondents is quashed. The petitioners are directed to file a fresh application seeking for vacancy remission for their property under the provisions of Section 105 of the Chennai City Municipal Corporation Act, 1919, within a period of one week. On receipt of the said application, the respondents shall pass final orders on merits and in accordance with law on the same, after giving due consideration to the contentions raised by the petitioners in this writ petition, within a period of four weeks thereafter.

10. With the above directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

02.02.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
rsi

To

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ABDUL QUDDHOSE, J.

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