IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.25701 of 2022 and
W.M.P.No.24741 of 2022

AVM Rajeswari Theratre,
Represented by its propreitrix,
Padmavathi Kumaran,
No.19 (6-A), Arcot Road,
Saligramam, Chennai – 600 093. .. Petitioner

Vs.

1.The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai – 600 003.

2.The Revenue Officer,
Corporation of Chennai,
Rippon Building,
Chennai – 600 003.

3.The Assistant Revenue Officer,
Corporation of Chennai,
Zonal Office X,
No.117, NSK Salai, Kodambakkam,
Chennai – 600 024. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records leading to the impugned notice styled as 'Notice No.7-Revised Assessment' dated

02.01.2019 and the consequential demand notice dated 28.04.2022 issued by the respondents in Z.O.10.R.D.C.No.R1/SPL/2022 and quash the same.

For Petitioner : Mr.C.Jagadish

For Respondents : Mr.E.C.Ramesh
Standing Counsel

O R D E R

The petitioner has challenged the impugned notice dated 02.01.2019 in Notice No.7 titled as Revised Assessment seeking to payment of a sum of Rs.2,49,375/- as half yearly tax for the period starting from first half of 2018-2019 from the petitioner.

2.The impugned Notice No.7 has also accompanied a demand notice dated 28.04.2022, wherein, a sum of Rs.16,11,475/- has been demanded as arrears of property tax due from the petitioner for the period upto first half of 2022-2023.

3.The learned counsel for the petitioner submits that the impugned order seeking payment of amount was without finalizing the assessment and is as such bad in law. That apart, the method adopted for demand notice No.7 is also contrary by the law settled by this Court in W.P.Nos.19880 and 19886 of 2021 by the order dated 24.11.2021.

4.The learned Standing Counsel for the respondents would submit that the Writ Petition has become infructuous in the light of subsequent development. The petitioner has been issued with final assessment in Notice No:10, wherein a sum of Rs.2,44,095/- has been demanded for the first half of 2018-2019. Consequently, the petitioner is required to pay the arrears of property tax on the aforesaid amount after deducting the amount paid by the petitioner.

5.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

6.Almost an identical issue came up for consideration before this Court in W.P.Nos.19880 & 19886 of 2021, which was disposed of by a common order of this Court dated 24.11.2021. The Court examined the issue and has held the assessment has to be in accordance with proviso to Section 100(2) of the Chennai City Municipal Corporation Act, 1919.

7.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 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."

8.I do not find any reasons to defer with the said ratio which has been followed in several other cases. In view of the above order of this Court dated 24.11.2021 in W.P.Nos.19880 & 19886 of 2021, impugned notice styled as Notice No.7-Revised Assessment dated 02.01.2019 is quashed and the matters are remitted back to the respondent to re-do the exercise by issuing proper determination of tax due from the petitioner for the period commencing from first half of 2018-2019. Needless to state, the petitioner shall be heard before such orders are passed. The said exercise shall be completed by the respondents preferably within a period of three months from the date of receipt of a copy of this order.

9.The Writ Petition stands allowed with the above observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

01.09.2023

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

C.SARAVANAN, J.

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To

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