BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.03.2023

Pronounced on : 16.03.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.3430 of 2023
and
WMP(MD)Nos.3188, 3192 & 3193 of 2023

Vindhya Real Estates Pvt Ltd

Rep.by its Authorised Signatory,

No.3, Mangesh Street, T.Nagar,

Chennai – 600 017. ... Petitioners

v.

1.The Corporation Commissioner,
Arignar Anna Maligai, Thallakulam,
Madurai – 625 002.

2.The Director of Municipal Administration,
Urban Administrative Office Campus,
75, Santhome High Road,
Raja Annamalaipuram,
MRC Nagar, Chennai – 600 028. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in impugned demand notice No.BPP/115/2023/100/0000705 dated 15.02.2023 and quash the same insofar as the demands in S.Nos.7, 9 and 10 (ie., "Rain Water Harvesting", "Material

Storage", "Security Deposit") are concerned, and consequently directing the first respondent to release building permit without insisting upon the payment of the demands in S.Nos.7, 9 & 10 of the impugned demand notice.

For Petitioners : Mr.Sathish Parasaran, Senior Counsel for Mr.V.Raguvaran Gopalan

For Respondents : Mr.V.Raghavachari, Senior Counsel for Mr.S.Devasena for R1

Mr.A.K.Manikkam, Special Government Pleader for R2

ORDER

Heard the learned Senior Counsel for the petitioner and the learned Senior Counsel for the first respondent corporation and the learned Special Government Pleader for the second respondent.

2.The petitioner is engaged in the business of hospitality industry and in developing a star hotel near Airport in Madurai. The petitioner has applied to the first respondent corporation for issuance of building permit. The petitioner had already obtained planning permission on 15.02.2022 itself. At this stage, the impugned demand came to be issued calling upon the petitioner to pay a sum of Rs.2,45,33,400/-. The demands had been raised under as many as 11 heads for the arriving at the said figure. The petitioner has objection to pay only rain water harvesting charges, material storage fee and security deposit by cash. The petitioner has no issue as regards payment of fee under the remaining heads. Challenging the demand by the corporation for payment under the aforesaid three heads, the present writ petition came to be filed.

3.The learned Senior Counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. Heavy reliance is placed on the decision of the Hon'ble Supreme Court reported in (2009) 10 SCC 755 (Commissioner of Income Tax v. MCDOWELL & Co. ltd). The learned Senior Counsel called upon this Court to quash the impugned demand and direct the first respondent to issue building permit. The first respondent has filed a detailed counter affidavit and the learned Senior Counsel for the corporation took me through its contents. The stand of the first respondent is that the impugned demand is anchored on Council Resolution passed by the Madurai Corporation and that therefore, the petitioner is obliged to comply with the same for obtaining building permit. He called upon this Court to dismiss this writ petition.

4.I carefully considered the rival contentions and went through the materials on record. The Hon'ble Supreme Court in the decision reported in

(2009) 10 SCC 755 (Commissioner of Income Tax v. MCDOWELL & Co. ltd) had held as follows :

> “21.The 'Tax', 'Duty', 'Cess' or 'fee' constituting a class denotes to various kinds of imposts by State in its sovereign power of taxation to raise revenue for the State. Within the expression of each specie each expression denotes different kind of impost depending on the purpose for which they are levied. This power can be exercised in any of its manifestation only under any law authorising levy and collection of tax as envisaged under Article 265 which uses only expression that no 'tax' shall be levied and collected except authorized by law. It in its elementary meaning coveys that to support a tax legislative action is essential, it cannot be levied and collected in the absence of any legislative sanction by exercise of executive power of State under Article 73 by the Union or Article 162 by the State.
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> 22.Under Article 366(28) "Taxation" has been defined to include the imposition of any tax or impost whether general or local or special and tax shall be construed accordingly. "Impost" means compulsory levy. The well known and well settled characteristic of 'Tax' in its wider sense includes all imposts. Imposts in the context have following characteristics:
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> (i) The power to tax is an incident of sovereignty.
>
> (ii) 'Law' in the context of Article 265 means an Act of legislature and cannot comprise an executive order or rule without express statutory authority.

(iii) The term 'Tax' under Article 265 read with Article 366(28) includes imposts of every kind viz., tax, duty, cess or fees.

(iv) As an incident of sovereignty and in the nature of compulsory exaction, a liability founded on principle of contract cannot be a "tax' in its technical sense as an impost, general, local or special."

The clear implication of the aforesaid ratio is that demand for payment of tax or fee cannot be based on Council Resolutions. There has to be express statutory authorisation for any demand. Merely because the impugned demand has been labelled as "fee", that will not take it out of the sweep of Article 265 of the Constitution of India. Since the legal position is clear, answering the issue raised in the writ petition becomes rather easy I repeatedly called upon the learned Senior Counsel appearing for the corporation to clarify the statutory basis for calling upon the petitioner to pay the rain water harvesting charges. My attention has not been drawn to any provision in the Madurai City Municipal Corporation Act or the Rules framed thereunder. I therefore have to necessarily come to the conclusion that the demand under the head "rain water harvesting" is illegal and without jurisdiction.

5.In order to justify the demand for payment of material storage fee, corporation would state that whatever constructions are put up, invariably the construction material is stacked in the streets and roads. In order to make the builder pay for the usage of public pathway, such charges are levied. This demand presupposes utilisation of public street or road by builder. As rightly pointed out by the learned Senior Counsel appearing for the petitioner, this would amount to administrative acquiescence of temporary encroachment of public streets. In the case on hand, it is specifically undertaken by the petitioner that they would not leave any of their construction material on the public road. An affidavit dated 12.02.2022 has been submitted to this effect. The construction is to come up over an area comprising 7 acres and that the construction material will be stored within the aforesaid campus. That apart, it is pointed out that what is abutting the proposed construction is a National Highway which does not obviously vest in Madurai Corporation. Thus, levy of the aforesaid fee is not only without jurisdiction but also without any quid pro quo. As regards security deposit, it is clearly conceded in the counter affidavit itself that the applicant can furnish bank guarantee or pay the same by cash. There is no compulsion that cash deposit alone should be made. Paragraph 12 of the counter affidavit filed by the corporation is as follows :

> "12.It is submitted that as per the Government Gazettee dated 04.02.2019, the Tamil Nadu Combined Development and Building Rule, 2019 Amendment 35(21), the Security Deposit is also accepted in the Form of Bank Guarantee in the format prescribed by the competent authority for the entire validity period of the planning permission or till the completion certificate is issued."

The petitioner is ready to furnish bank guarantee. The corporation cannot insist that cash deposit alone should be made. Looked at from any angle, the impugned demand is clearly unjustified. The petition mentioned demands are quashed. The writ petition is allowed. The corporation has not raised any other objection for not granting building permit. Since the impugned demands have been set aside, the first respondent is directed to issue building permit forthwith and without any delay subject to fulfilment of any other formalities. No costs. Connected miscellaneous petitions are closed.

16.03.2023

Index : Yes / No
Internet : Yes / No
NCC - Yes or No
MGA

Issue order today 16.03.2023

To

1.The Corporation Commissioner, Arignar Anna Maligai, Thallakulam, Madurai – 625 002.

2.The Director of Municipal Administration,
Urban Administrative Office Campus,
75, Santhome High Road, Raja Annamalaipuram,
MRC Nagar, Chennai – 600 028.

G.R.SWAMINATHAN, J.

MGA

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