IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 27.09.2023	**Pronounced on:** 31.01.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.1260, 1283 & 1313 of 2023
and
W.M.P.Nos.1276, 1277, 1312, 1313, 1358 & 1361 of 2023

M/s.Express Infrastructure Private Limited,
Rep. by Authorized Signatory,
Bhagyalakshmi Madhavudu,
Hicks Bungalow, Express Estates,
Mount Road, Chennai – 600 002. .. Petitioner (in all cases)

Vs.

1.Greater Chennai Corporation,
Rep. by its Commissioner,
Ripon Buildings,
Chennai – 600 003.

2.Chennai Metropolitan Water Supply and
Sewerage Board,
Rep. by its Managing Director,
No.1, Pumping Station Road, Chintadripet,
Chennai – 600 002. .. Respondents (in all cases)

Prayer in W.P.No.1260 of 2023: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the Impugned Notice issued by the 1st respondent in Notice No.1 : The Property Tax General Revision in

No.II/22-23/054520, dated 08.06.2022 revising the Property Tax pertaining to the Petitioners' Mall Property at Woods Road and Whites Road, Royapettah, Chennai – 600 014 and quash the same as illegal and further for a direction, directing the 1st respondent to re-fix the Half Yearly Tax by adopting the correct, Basic Street Rate applicable to the Property and re-assess the Property Tax prospectively with the limitation of 25% of the Annual Value of the Property as per Section 99 of the Chennai City Municipal Corporation Act, 1919, considering the Petitioners' Representation dated 12.10.2022.

Prayer in W.P.No.1283 of 2023: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the Impugned Notice issued by the 1st respondent in Notice No.1 : The Property Tax General Revision in No.IV/22-23/1295810, dated 12.09.2022 revising the Property Tax pertaining to the Petitioners' Theatre Property at Woods Road, Whites Road, Royapettah, Chennai – 600 014 and quash the same as illegal and further for a direction, directing the 1st respondent to re-fix the Half Yearly Tax after taking correct measurement by adopting the applicable Basic Street Rate and re-assess the Property Tax prospectively with the limitation of 25% of the Annual Value of the Property as per Section 99 of the Chennai City Municipal Corporation Act, 1919, considering the Petitioners' Representation dated 12.10.2022.

Prayer in W.P.No.1313 of 2023: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the Impugned Notice issued by the 1st respondent in Notice No.1 : The Property Tax General Revision in No.IV/22-23/1295809, dated 12.09.2022 revising the Property Tax pertaining to the Petitioners' Hotel Property at Pattullos Road, Whites Road, Royapettah, Chennai – 600 014 and quash the same as illegal and further for a direction, directing the 1st respondent to re-fix the Half Yearly Tax by adopting the Basic Street Rate applicable to PATTULLOS Road and re-assess the Property Tax prospectively with the limitation of 25% of the Annual Value of the Property as per Section 99 of the Chennai City Municipal Corporation Act, 1919, considering the Petitioners' Representation dated 12.10.2022.

(In all cases):

For Petitioner	:	Mrs.Karthikaa Ashok
For R1	:	Mr.P.S.Raman, Senior Counsel for Mr.E.C.Ramesh, Standing Counsel and Ms.K.Aswini Devi, Standing Counsel
For R2	:	Mrs.K.Vasanthamala, Standing Counsel

COMMON ORDER

By this common order, all the three Writ Petitions are disposed of.

2.These three writ petitions have been filed by the same writ petitioner. In these Writ Petitions, two petitioner has challenged the property tax demanded from the petitioner for the period enhancing from second half of 2020 enhancing tax pursuant to a Notification vide

G.O.Ms.No.53, Municipal Administration and Water Supply (MA-IV) Department dated 30.03.2022.

3.The existing and revised half yearly and yearly tax in the respective Writ Petitions are tabulated below as follows:-

WP. No.	Address	Existing		Revised	
		Annual Value (in Rs.)	Half yearly Tax (in Rs.)	Annual Value (in Rs.)	Half Yearly Tax (in Rs.)
1260 of 2023	2 and 4/1 (49 and 50/1), Whites Road, Royapettah, Royapettah, Chennai – 600 014.	10,07,60,484/-	1,24,94,300/-	25,19,01,210/-	3,12,35,750/-
1313 of 2023	2 and 4/2 (49 and 50/2), Whites Road, Royapettah, Royapettah, Chennai – 600 014.	93,86,088/-	11,63,875/-	2,34,65,220/-	12,81,915/-
1283 of 2023	2 and 4/3 (49 and 50/3), Whites Road, Royapettah, Royapettah, Chennai – 600 014.	67,94,884/-	8,42,570/-	4,19,87,210/-	6,17,875/-

4.The challenge to the above Notification vide G.O.Ms.No.53, Municipal Administration and Water Supply (MA-IV) Department dated 30.03.2022 was a subject matter of a batch of writ petition before this

Court. By a detailed and a well considered decision, a learned Single Judge of this Court has upheld the validity of G.O.Ms.No.53, Municipal Administration and Water Supply (MA-IV) Department dated 30.03.2022 vide common order dated 23.12.2022 in W.P.No.18534 of 2022 and etc., batch. It has neither been stayed nor set aside.

5.Relevant portion of the aforesaid order dated 23.12.2022 upholding G.O.Ms.No.53, "Municipal Administration and Water Supply (MA-IV) Department dated 30.03.2022 reads as under:-

> *“165. A reading of the aforesaid decisions lead to the following propositions alongside which I have penned my conclusion on this issue well:*
>
> *i.Where the enactments concerned, stipulate a specific method for arriving at the value of the property, such method must be applied by the State. The statutory method stipulated is the ARV and this must form the basis of levy of property tax.*
>
> *ii.Where the specific methodology for determination of the ARV is set out either in the Statute. concerned or connected Rules and Regulations, the authorities are bound to follow the same.* ***In the present case, there is no such stipulation, and hence the authorities are vested with the discretion to arrive at the proper methodology to determine ARV*, such as BSR** application of the formula under the Rent Control Act or any other, for that matter.***
>
> *iii.Such methodology as applied must be one which is normally accepted as being a reasonably accurate method for determination of annual value and must not present difficulties in the mode of computation involved.*
>
> *iv.Any change in methodology, assuming that the governing enactment provides for the same, must*

be carried out in strict compliance with the statutory provisions and in compliance with the principles of natural justice. ***In the present case, the respondents have applied BSR** in property tax assessments since 1998 and hence such a situation, of change in methodology, does not arise.***"

*Annual Rental Value
**Basic Street Rate

6.Therefore, the revision of the property tax based on the aforesaid Government Order cannot be the basis of challenge before this Court in these Writ Petitions.

7.The petitioner has however challenged the computation of tax payable by the petitioner primarily on the ground that the method adopted by the respondent while computing the tax for the **Mall**, **Theaters** and **Hotels** in its Mall were arbitrary and contrary to Section 12 of the Tamil Nadu Public Libraries Act, 1948, in so far as levy of library cess is concerned. The Computation demand for deducting cess is also questioned by the petitioner on the ground that the computation is contrary to the charging Section 34 of the Madras Elementary Education Act, 1920.

8.It is submitted that library cess can be calculated only at the rate of 3 Naya Paisa for the property tax or the house tax levied under the Tamil Nadu Chennai City Municipal Corporation Act, 1919.

9. It is submitted that there is no previous sanction obtained for levying and collecting an Educational cess under the provisions of the aforesaid act as is contemplated under Section 34 of the Madras Elementary Education Act, 1920. Therefore, it is submitted that on this count also the proposal has to be dropped.

10.It is further submitted that the maximum levy of education tax / cess cannot exceed 25% of the taxation levied in the municipality under the law for the time being in force.

11.It is submitted that the demand has been quantified on the value of the property instead of the tax that was payable by the petitioner as Property tax.

12.The learned counsel for the petitioner further submits that the property of the petitioner is spread over 9 acre and 59 cents of land which is in the shape of peninsula with three roads surrounding it viz., Pattulos Road, Woods Road and Whites Road.

13.It is submitted that the entry to the hotel is from the Pattulos Road while the entry to the Theatre and the Mall is from the Woods Road and the exit is through the Whites Road.

14.It is submitted that only the Administrative Office of the petitioner is located at the Whites Road and therefore, adoption of the Basic Street Rate of the entire property on the Basic Street Rate (BSR) of the Whites Road is improper.

15.It is submitted that either there has to be a Pro Rata determination in absence of a rule, or in the alternative, for each of the properties the tax has to be quantified based on the entry and exit point.

16.The learned counsel for the petitioner submits that there is no scope for demanding property tax retrospectively from first half of 2022-2023. It is submitted that the demand has to be only prospective from second half of 2022-2023.

17.The learned Senior Counsel for the respondents on the other hand would submit that the address given by the petitioner in the Sale

Deed describes the property as Whites Road.

18.It is submitted that the application filed before the Chennai Metropolitan Development Authority (CMDA) for building approval / plan also gives the address of the petitioner's property as Whites Road.

19.It is submitted that completion certificate issued by CMDA to the petitioner for the entire property also gives the address of the property as Whites Road, Triplicane, Chennai-600 014.

20.That apart, the learned Senior Counsel for the respondents submits that even at the time of inauguration of the newly constructed complex at Express Avenue, the petitioner also gave the address as Whites Road, Chennai - 600 014. Therefore, it is not open for the petitioner to contest that adoption of Basic Street Rate (BSR) of Whites Road was incorrect while computation and determination of the tax liability of the petitioner.

21.As far as retrospective levy is concerned, the learned Senior Counsel for the respondents submit that the issue is now covered by the decision of the learned Single Judge of this Court vide order dated

23.12.2022 in W.P.No.18534 of 2022.

22.It is submitted that as far as prospective levy for the period starting from first half of 2023-2024 is concerned, it has to be in accordance with the provisions of Tamil Nadu Urban Local Bodies Act, 1998 with effect from 01.04.2023.

23.The learned Senior Counsel for the respondents also drew attention to the notification issued by the Education Department dated 23.04.2008 in G.O.Ms.No.92. It is submitted that it is pursuant to the aforesaid Government Order, the library cess has been collected at 10 Naya Paisa.

24.That apart, the learned Senior Counsel for the respondents submits that the petitioner has an alternate remedy under the provisions of the Chennai City Municipal Corporation Act, 1919.

25.The learned Senior Counsel for the respondents submits that the petitioner may be directed to submit a fresh representation regarding the basis of the demand that has been issued to the petitioner.

26.It is further submitted that the petitioner's representation will be considered and disposed on merits and in accordance with law within the provisions of the aforesaid Act.

27.By way of rejoinder, the learned counsel for the petitioner submits that the petitioner has paid the tax under protest.

28.It is submitted that in case the tax was not payable but has been demanded and collected from the petitioner, the same may be adjusted against future levy.

29.I have considered the arguments advanced by the learned counsel for the petitioner, learned Senior Counsel for the 1st respondent and the learned Standing Counsel for the 2nd respondent.

30.The provision relating to Taxation of properties in Greater City of Chennai is governed by the provisions of the Chennai City Municipal Corporation Act, 1919. Chapter – V deals with taxation. Section 98 of the Chennai City Municipal Corporation Act, 1919 empowers the council to levy different types of taxes with the previous sanction of the State Government.

31.Section 98-A of the Chennai City Municipal Corporation Act, 1919 stipulates that the council may pass any resolution for imposing tax or duty for the first time. Before passing such resolution, it has to direct the Commissioner to publish a notice in the official gazette and in the local newspapers of its intention and fix a reasonable period not being less than one month from the date of publication of the notice in the official gazette for submission of objections. The Council has to thereafter determine the tax or duty as the case may be by a resolution after considering the objection.

32.The resolution is required to specify the rate of tax, the date from which and the period of levy, if any. There are other stipulations in Section 98-A of the Chennai City Municipal Corporation Act, 1919 with which we are not concerned with this case.

33.Section 98-A of the Chennai City Municipal Corporation Act, 1919 is reproduced below for easy reference:-

"98-A. Powers of control of State Government.----

(1) Before the council passes any resolution imposing a tax or

duty for the first time, it shall direct the commissioner to publish a notice in the Official Gazette and in the local newspaper of its intention and fix a reasonable period not being less than one month from the date of publication of such notice in the Official Gazette for submission of objections. The council may, after considering the objections, if any, received within the period specified, determine by resolution to levy the tax or duty. Such resolution shall specify the rate at which, the date from which and the period of levy, if any, for which such tax or duty shall be levied.

(2) when the council shall have determined to levy any tax or duty for the first time or at a new rate, the commissioner shall forthwith publish a notice in the manner laid down in sub-section (1) specifying the date from which, the rate at which and the period of levy, if any, for which such tax or duty shall be levied.

(3) Any resolution abolishing an existing tax or duty or reducing the rate at which any tax or duty is levied shall not be carried into effect without the sanction of the State Government, but such sanction shall not be necessary for a resolution reducing the rate at which property tax is levied: Provided that such reduction does not contravene the proviso to subsection (2) of section 99.

(4) Where any resolution under this section has taken effect for a particular year, no proposal to alter the rates or the date fixed in such resolution so far as that year is concerned shall be taken into consideration by the council without the sanction of or a direction from the State Government."

34.As far as Property Tax is concerned, it is Section 99 & 100 of the Chennai City Municipal Corporation Act, 1919. Section 99 of the Chennai City Municipal Corporation Act, 1919 contemplates description and class of property tax and Section 100 of the Chennai City Municipal Corporation Act, 1919 prescribes the method for assessment of property tax. They read as under:-

99. Description and class of property tax.---	**100. Method of assessment 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 15 ½ 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	(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

99. Description and class of property tax.---	**100. Method of assessment of property tax.----**
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.	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.”

35.As per Section 99(2) of the Chennai City Municipal Corporation Act, 1919, tax has to be levied at such percentage of the annual value of the building and the lands as may be fixed by the Council. As per proviso to Sub-Section (2) to Section 99 of the Chennai City Municipal Corporation Act, 1919, the aggregate of the percentage so fixed shall not, in the case of any land or building, be less than 15 ½ per cent, or greater than 25 per cent of its annual value.

36.Thus, it is the “annual value” of the building that is relevant for determining the property tax. As far as the rates are concerned, it is the duty of the Council to fix the rate. The rate has been fixed by Notification vide G.O.Ms.No.53, Municipal Administration and Water Supply (MA-IV) Department, dated 30.03.2022.

37.Sub-Section (2) to Section 100 of the Chennai City Municipal Corporation Act, 1919 states that 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.

38.A reading of the above provision would indicate that the Property Tax is to be levied together with its site and other adjacent premises occupied as appurtenances unless the owner of the building is a different person from the owner of such site or premises.

39.There cannot be any challenge to the basic rates applied to the Property Tax payable by the petitioner in respect of the above mentioned properties in Express Avenue Mall.

40.However, adoption of same Basic Street Rates (BSR) applicable to properties situated on the Whites Road cannot be the basis for computation of tax uniformly for all the three assessments particularly when these three properties are part of a massive single complex having same compound wall and are surrounded by three roads viz., Whites Road, Pattulos Road and Woods Road. Therefore, adoption of Basic Street Rate (BSR) of Whites Road for the three assessments is arbitrary. Basic Street Rate (BSR) has to be averaged or value has to be re-compounded on the actual rentals received for similar properties in Express Avenue Mall.

41.The annual value of the property has to be therefore re-determined as otherwise it will result in disproportionate collection of property tax which is not the intention of the law maker under the Chennai City Municipal Corporation Act, 1919.

42.Otherwise, the calculation of tax would be arbitrary and illegal. Therefore, the impugned Assessment Orders are liable to be set aside and the cases are to be remitted back to the Assessing Officer to re-do the Assessment.

43.Therefore, these Assessment Orders are set aside and the cases are remitted back to the respondents to re-do the computation of tax by either averaging the Basic Street Rate (BSR) of three streets, viz., Whites Road, Pattullos Road and Woods Road and / or adopt the rent paid for similar property in the Express Avenue Mall and thereafter re-determine the correct "annual value" for each of the property under each of the Assessments, so that there is a proper collection of Property Tax from the petitioner in accordance with the Act. This exercise shall be carried out by the respondents within a period of three months from the date of receipt of a copy of this order.

44.With the above observations, these Writ Petitions are disposed of. Consequently, the connected Miscellaneous Petitions are closed. No costs.

31.01.2024

krk

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

To

1.Greater Chennai Corporation,
Rep. by its Commissioner,
Ripon Buildings,
Chennai – 600 003.

2.Chennai Metropolitan Water Supply and
Sewerage Board,
Rep. by its Managing Director,
No.1, Pumping Station Road, Chintadripet,
Chennai – 600 002.

C.SARAVANAN, J.

krk

W.P.Nos.1260, 1283 & 1313 of 2023

31.01.2024

W.P.Nos.1260,1283 & 1313 of 2020

C.SARAVANAN,J.

This case is listed under the caption " For being mentioned", at the instance of the learned counsel for the Petitioner . Learned counsel for the Petitioner and the learned Advocate General are present.

2. The learned counsel for the Petitioner would submit that issue relating to levy of Library Cess under the provisions of the Tamil Nadu Public Libraries Act, 1948 and levy Education Cess under the provisions of the Madras Elementary Education Act, 1920 has not been dealt with the order.

3. Having considered the submissions of the learned counsel for the Petitioner and the learned Advocate General for the Respondents, following paragraph is directed to be inserted after paragraph 43 of the order dated 31.01.2024:-

> 43(a)"While re-computing the tax liability of the petitioner, the respondents are directed to re-determine the Library Cess and Education

C.SARAVANAN, J.

kkd

> Chess payable under the provisions of the Tamil Nadu Public Libraries Act, 1948 and under the provisions of the Madras Elementary Education Act, 1920 respectively as amended from time to time."

4. Registry is directed to insert para 43(a) with the above paragraph.

15.03.2024

kkd

W.P.Nos.1260,1283 & 1313 of 2023