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W.P. No.14324 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.14324 of 2021

and

W.M.P. Nos.15216 and 17217 of 2021

M/s.M.A.K.Hotels and Resorts Private Limited,
Rep. By its Executive Assistant Manager
Mr.Meeran Farook Ali, No.1, GST Road, Sai Srivari Nagar,
S.P.Koil, Maraimalai Nagar, Chennai-603 209,
Chengalpet Taluk and District. .. Petitioner

Vs.

The Municipal Commissioner,
Maraimalai Nagar Municipality,
MMDA Compled, 2nd Floor,
Adigalar Salai, Maraimalai Nagar,
Chennai-603 209. .. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records relating to the orders of the Respondent vide reference Na.Ka.No.569/2016/A1 dated 06/2021 signed on 18.06.2021 and quash the same as illegal, ultra vires and unconstitutional and consequently direct the Respondent to rehear the taxation appeal filed by the petitioner by providing sufficient opportunities to the petitioner to produce additional documents and details.

For Petitioner : Mr.S.Mugesh
for Mr.S.Giritharan
Advocate
For Respondent : Mr.L.P.Maurya
Standing Counsel



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ORDER

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The present writ petition is filed challenging the impugned order of the Respondent dated 18.06.2021 on the limited premise that the same has been made without affording a reasonable opportunity to the petitioner thereby violating the principles of natural justice.

2. An assessment in Assessment No.19774 dated 01.10.2014 was made enhancing the property tax. A suit in O.S.No.240 of 2016 was admittedly filed for a declaration that Assessment No.19774 dated 01.10.2014 is null and void. Thereafter, a writ petition was filed in W.P.No.7887 of 2021 for issuance of Writ of Prohibition, prohibiting the respondents from demanding the arrears of property tax for the period 2018–19 to 2020-21 until a suit in O.S.No.240 of 2016 is decided. However, a preliminary objection is raised by the respondent that the suit itself may not be maintainable in the light of Section 124 of the Tamil Nadu District Municipalities Act, 1920. The learned Judge permitted filing of an appeal vide interim order dated 26.03.2021 which reads as under:

“4. Since the civil suit is stated to have been filed on account of non-functioning of the Taxation Appellate Committee at the relevant point of time, such appeal (as in para-3 above), if filed prior to the next date of hearing, shall be taken on file by the registry of the Taxation Appellate Committee without reference to limitation. Let this fact be reported to Court by the next date of hearing.”



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3. Pursuant thereto, the suit in O.S.No.240 of 2016 was withdrawn and an appeal was filed along with the stay application before the Taxation Appellate Committee on 20.04.2021. This Court was pleased to direct the said committee to dispose of the interim application within a period of 8 weeks from 21.04.2021, while disposing of the writ petition in W.P.No.7887 of 2021 vide order dated 21.04.2021.

4. Thereafter, a notice was issued on 28.04.2021 calling upon the petitioner to furnish documents within 7 days. However, the same was served on the petitioner only on 31.05.2021. The petitioner was thus unable to respond to the notice. The petitioner vide letter dated 04.06.2021 requested 3 weeks time to enable his client to produce the documents called for due to the prevailing restrictions imposed on account of Covid-19 pandemic. The impugned order was passed on 18.06.2021 without considering the same. It is thus submitted by the learned counsel for the petitioner that the impugned order is made in violation of principles of natural justice and thus arbitrary and cannot be sustained.

5. Mr.L.P.Maurya, learned Standing Counsel for the Respondent that the



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impugned order has been made after granting adequate opportunity and in any view an appeal would lie in terms of Rule 26B of the Fourth Schedule to the Tamil Nadu District Municipality Act before the District Court. In view of the above statutory remedy which is available, the writ petition ought not to be entertained.

6. Heard both sides, perused the materials on record.

7. That the impugned order is made without even referring much less considering the letter dated 04.06.2021 by the Respondent, is not in dispute. The petitioner's request for 3 weeks ought to have been considered by the Respondent before passing orders. Failure to consider the above request results in violation of principles of natural justice.

8. This Court is conscious of the fact that writ petition under Article 226 of the Constitution of India would not be entertained normally if statutory remedy is available. However, existence of alternate remedy is not an absolute embargo or an absolute bar to exercise power under Article 226 of the Constitution of India but a self-imposed restriction and the following circumstances viz., violation of principles of natural justice or lack of



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jurisdiction or error apparent on the face of the record are some of the exceptions carved out to the rule of alternate remedy for exercise of discretion under Article 226 of the Constitution of India.

9. In the circumstances the impugned order is liable to be set aside inasmuch as the same is made in violation of principles of natural justice. The following course was suggested and not seriously objected to by either side viz., that the petitioner shall appear before the Respondent on 26.02.2024 and the Respondent shall dispose of the appeal within a period of 8 weeks in accordance with law after granting a reasonable opportunity to the petitioner.

10. The writ petition stands disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

05.02.2024

Speaking (or) Non-Speaking Order

Index: Yes/No

Neutral Citation: Yes/No

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MOHAMMED SHAFFIQ, J.

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