IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2024

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.15959 of 2022
and
W.M.P.Nos.15274, 15275 and 15277 of 2022

BBCL Developers India Private Limited,
Represented by its Director, Mr.Vummidi Barath,
No.20, Mylai Ranganathan Street,
T.Nagar,
Chennai – 600 017. ... Petitioner

Vs.

1. The Principal Secretary / Commissioner
Greater Chennai Corporation,
Rippon Building,
Chennai – 600 003.

2. District Revenue Officer cum Zonal Officer,
Zone 8, Greater Chennai Corporation,
No.36B, Pulla Avenue,
Chennai – 600 030.

3. Sameera Hotels Pvt. Ltd.,
Represented by its Authorised Signatory,
No.47, Anna Salai, Chennai – 600 002. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari to call for the impugned order vide dated 12.05.2022 and consequent letter dated 01.06.2022 issued by the Respondent Corporation and quash the same as illegal, unconstitutional and in violation of the provisions of the Chennai City Municipal Corporation Act, 1919.

For Petitioner	: Mr.Avinash Krishnan Ravi
For R1 and R2	: Mr.A.S.Ragul Adhithya for M/s.P.T.Ramadevi
For R3	: No Appearance

ORDER

In this Writ Petition the Petitioner has challenged the Impugned Recovery Notice issued by the 2nd Respondent under Section 390A of the Chennai City Municipal Corporation Act, 1919.

2. The Petitioner after taking over the company from the 3rd Respondent demolished the hotel building and constructed a multistorey residential apartments and sold to various buyers/residents.

3. It is submitted that after the purchase was made all the tax due under the aforesaid Act has been paid by the Petitioner and by the subsequent buyers of UDS (Undivided Share) in the land together with the property

developed by the Petitioner.

4. It is submitted that under the Share Purchase Agreement dated 16.10.2015, the 3rd Respondent has agreed for the following terms which is under the heading Indemnification:-

> *"8.1.3 Appeals pending if any before the Tax/Appellate authorities for the Sellers and the Company. Any other forms of taxation, duties, cess, imposts, levies, and rates whether existing, whenever created or imposed and whether of India or elsewhere, and all penalties and interest payable in respect of these and make good for the Losses and all incidental costs incurred in respect of such tax, loss etc., suffered directly / indirectly by the Purchaser."*

5. It is submitted that tax liability if any has to be borne only by the 3rd Respondent who was the owner of the property during the period in dispute namely 2008-2014.

6. The 1st and 2nd Respondents have filed a common counter wherein in Paragraph 9, Section 390A of the Chennai City Municipal Corporation Act, 1919 has been extracted as under:-

> *"9. I respectfully submit that as per Section 390A of the Chennai City Municipal Corporation Act, 1919 the period of limitation for any claim, proceeding or action for the recovery of taxes is 12 years and the arrears of property tax*

claimed is only prior to 2014 i.e., 8 years. I further submit that the period of limitation of 12 years has not been barred in the said case.

> ***390-A Limitation for recovery of dues-***
> *No distraint shall be made, no suit shall be instituted and no prosecution shall be commenced in respect of any sum due to the corporation under this Act after the expiration of a period of twelve years from the date on which distraint might first have been made, a suit might first have been instituted or prosecution might first have been commenced as the case may be, in respect of such sum."*

7. In paragraph 10 of the aforesaid Counter, it has been stated as follows:-

> *"I respectfully submit that even after several reminders for the past 9 years, a notice was issued to the Petitioner on 12.05.2022 to remit the arrears of property tax in Bill.No.08/103/06175-00. I further submit that there was no reply on part of the Petitioner to the above notice and hence a subsequent notice dated 01.06.2022 was issued reminding to pay the pending arrears of property tax for the period I/2008-09 to II/2013-14 that sums up to Rs.70,83,773/-."*

8. On the other hand, the 3rd Respondent has stated as follows:-

> *"7. I am advised to submit that as per Section 390-A of the Chennai City Municipal Corporation Act, 1919 there is a specific bar to institute any recovery or*

prosecution for any sum due to the Corporation after expiry of three years. The relevant portion is extracted hereunder for ready reference:

Section 390 A – Limitation for recovery of dues. - No distraint shall be made, no suit shall be instituted and no prosecution shall be commenced in respect of any sum due to the corporation under this Act after the expiration of a period of three years from the date on which distraint might first have been made, a suit might first have been instituted or prosecution might first have been commenced as the case may be, in respect of such sum.

8. I submit that the 2nd Respondent apart from issuing the revised demand in the year 2014 has not taken action against this Respondent. Even the Appeal proceedings which this Respondent had initiated against the revised demand was not adjudicated and no orders were passed on the same. Since there was no response forthcoming from the Corporation of Chennai and also there is a specific bar not to take any coercive action after three years this Respondent assumed that the matter was closed. Also since the management of the Company was transferred to the Petitioner herein and no communication from the 2nd Respondent on the outstanding has been sent to them so far, now this belated action by the 2nd Respondent is hopelessly barred by limitation and cannot be sustained legally and not binding on this Respondent."

9. Having considered the submissions made by the learned counsel for

the Petitioner, 1st Respondent and the 2nd Respondent and having perused the materials/affidavit filed by the 3rd Respondent, I am of the view that this Writ Petition is devoid of merits.

10. Limitation in Section 390A of the Chennai City Municipal Corporation Act, 1919 is twelve (12) years and not three (3) years as has been stated by the 3rd Respondent.

11. The tax liability if any has to be recovered by the Petitioner from the 3rd Respondent. The Petitioner cannot delay the payment of property tax due to the 1st Respondent and 2nd Respondent.

12. Under these circumstances, I am inclined to dismiss this Writ Petition with liberty to the Petitioner to proceed against the 3rd Respondent in accordance with clause (8) of the share Purchase Agreement dated 16.10.2015. Writ Petition stands dismissed with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

30.08.2024

Index : Yes/No
Speaking/Non-speaking Order
Neutral Citation :Yes/No
rgm

To

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   Greater Chennai Corporation,
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C.SARAVANAN, J.

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