IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **14.03.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.31223 of 2023
&
WMP No.30851 of 2023

M.Kamala ... Petitioner

vs

1. Managing Director,
   Chennai Metropolitan Water Supply & Sewerage Board,
   No.1, Pumping Station Road,
   Chintadripet,
   Chennai-600 002.

2. Chief Accounts Officer,
   Chennai Metropolitan Water Supply & Sewerage Board,
   No.1, Pumping Station Road,
   Chintadripet,
   Chennai-600 002. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records relating to the Demand Notice, in Ref. No.Notice No.GR/22-23/086/7789, dated 08.09.2022 and issued by the First Respondent herein and the Demand Notice, dated 18.08.2023 issued by the Second Respondent herein and quash the same and consequently forbearing the respondents herein and their subordinates from in any manner levying and demanding the water and sewer taxes with respect to the premises of the petitioner herein bearing Plot No.96, second Floor, Gothavari Salai First Main Road, I.C.F.Employees Colony, Athipet, Chennai-600 058.

For Petitioner : Mr.N.Damodaran

For Respondents : Mrs.V.Vijayalakshmi,
Standing Counsel (CMWSSB)

ORDER

A demand notice dated 18.08.2023 from the second respondent is challenged in this writ petition.

2. The petitioner is the owner of the premises bearing Plot No.96, Second Floor, Gothavari Salai, First Main Road, I.C.F. Employees Colony, Athipet, Chennai-600 058. The petitioner asserted that the Chennai Metropolitan Water Supply and Sewerage Board (the CMWSSB) has not provided either a connection for water supply or sewerage to the petitioner's property. Consequently, it is stated

that the petitioner draws water from a bore well. The demand notice from the CMWSSB is therefore challenged on the ground that the petitioner is not liable to pay water and sewerage tax in the absence of a connection.

3. Learned counsel for the petitioner submits that the Chennai Metropolitan Water Supply and Sewerage Service Charges (levy and collection) Regulations 1998 (the CMWSS Service Charges Regulations) defines the expression 'consumer' as a person drawing water supply from the Board and/or having sewerage connections provided by the Board. Since the petitioner's premises has not been provided with a water or sewerage connection, he submits that the petitioner is not in a position to draw water supply or use the sewerage connection. He also points out that Section 34(3) of the Chennai Metro Water Supply and Sewerage Act, 1978 (the CMWSS Act), enables the Board to exempt any local area from the payment of water tax and sewerage tax on the ground that such area is deriving any or the full benefit from the water supply or sewerage

system.

4. Learned standing counsel for the CMWSSB countered these contentions by pointing out that water tax and sewerage tax are leviable by the Board on any premises situated within its area. Since the premises of the petitioner is admittedly situated within the area over which the CMWSSB has authority, it is contended that the petitioner is liable to pay water and sewerage tax unless she obtains exemption in terms of sub-section 3 of Section 34. Learned standing counsel also pointed out that a person who does not receive water supply is not required to pay water charges or sewerage charges, whereas water tax and sewerage tax has to be paid unless an exemption is granted.

5. Section 34 of the above mentioned enactment is as under:

> "***34. Taxes leviable by the Board****.- (1) For the purposes of this Act, the Board shall levy on premises situated within its area -*
>
> *(a) a water tax; and*

(b) a sewerage tax.

(2) The taxes mentioned in sub-section (1) shall be levied at such rates as may be prescribed, which in the case of water tax shall not be more than twenty per cent and in the case of sewerage tax shall not be more than ten per cent of the assessed annual value of the premises.

(3) The Board may, with the sanction of Government exempt any local area from the whole or portion of the water tax and sewerage tax on the ground that such area is not deriving any or the full benefit from the water supply or sewerage system, or the Board may remit a portion of such taxes not exceeding one half on the ground that the premises concerned has remained vacant.

***Explanation**- For the purposes of this chapter the expression "premises' shall mean any land or building. "*

6. From the text of Section 34, it is evident that the Board is entitled to levy water tax and sewerage tax on premises situated within its area. The Explanation to the Section makes it clear that the expression 'premises' shall mean any land or building. As contended by learned counsel for the petitioner, sub-section 3 of Section 34 enables the Board to grant an exemption with the sanction of the Government. In this case, the petitioner has not applied for such

exemption.

7. The reliance by the petitioner on the definition of 'consumer' in the CMWSS Service Charges Regulations is misplaced inasmuch as the said regulations constitute subordinate legislation and, in any event, deal with consumption. As regards payment of water charges and sewerage charges, undoubtedly, such payment is contingent on utilization of water or sewerage facilities. Therefore, 'consumer' is defined for those purposes as a person who draws water supply or has sewerage connection. The definition of consumer in the above mentioned regulation has no impact on the liability to pay water and sewerage tax, which is required to be determined in accordance with the CMWSS Act.

8. It should, however, be recognized that the petitioner asserts that he does not have a water connection or sewerage facilities. In those circumstances, it is just and appropriate that the petitioner be permitted to carry a representation to the respondents and to the

Government seeking exemption until such water connection or sewerage facilities are provided.

9. Therefore, W.P.No.31223 of 2023 is disposed of by permitting the petitioner to submit a representation to the respondents and to the Government seeking an exemption in terms of sub-section 3 of Section 34 of the CMWSS Act. If such representation is received, the respondents and the Government are directed to consider and dispose of the same within maximum period of two months from the date of receipt thereof. Consequently, connected miscellaneous petition is closed. No costs.

14.03.2024

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

To

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SENTHILKUMAR RAMAMOORTHY J.

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