(2018) 02 MAD CK 0272

In the Madras High Court

Case No : 2294 of 2018

A.Khader Mohideen & Ors. APPELLANT

Vs

The Managing Director & Ors. RESPONDENT

Date of Decision : 02-02-2018

Acts Referred:

Citation : (2018) 02 MAD CK 0272

Hon'ble Judges : T.S.Sivagnanam

Bench : Single Bench

Advocate : S.Santhan, N.Ramesh

Final Decision : Allowed

Judgement

1. Heard Mr.S.Santhan, learned counsel for the petitioner and Mr.N.Ramesh, learned Senior Standing Counsel appearing on behalf of the",,,,

CMWS&S Board /respondents.,,,,

2. The petitioners are tenants in respect of small shops in door no.1, Ponnappa Mudali Street, Purasawalkam, Chennai - 84, owned by the third",,,,

respondent.,,,,

3. The impugned notices have been issued by the respondent board, for recovery of the Water and Sewerage Tax and charges payable, in respect",,,,

of the premises in question. The liability to pay the same rests on the owner of the premises, namely, the third respondent, who has defaulted in",,,,

payment of the same.,,,,

4. In fact, the third respondent had filed the writ petitions before this Court in W.P.Nos.28123 of 2017 and 12879 of 2016. Those writ petitions",,,,

were heard on several dates and the third respondent/petitioner was attempting to evade the court proceedings. Ultimately, the counsel whom he",,,, had engaged did not appear before this Court and the court considering the conduct of the third respondent dismissed the writ petition by a,,,,

common order dated 13.11.2017. The operative portion of the order reads as follows:-,,,,

3.When the writ petition in W.P.No.12879 of 2016 came up for admission on 06.04.2016, the Court while issuing notice of motion granted an",,,,

order of interim stay. When the writ petition in W.P.No.28123 of 2017 came for hearing before me, the learned Standing Counsel for the",,,,

respondent Board accepted notice and submitted that the petitioner has not paid the water and sewerage tax from the year 1997 and as on date,",,,,

the total amount payable is Rs.14,40,817.40. The Court further recorded that the petitioner has paid a sum of Rs.2 lakhs on two dates, viz.",,,,

19.09.2017 and 27.09.2017 which was accepted as part payment. The writ petition was directed to be tagged along with W.P.No.12879 of,,,,

2016 and that is how the matter is before this Court today.,,,,

4.Learned Standing Counsel appearing for the respondents has filed a counter affidavit and a copy of which has been served on the learned,,,,

counsel for the petitioner in W.P.No.28123 of 2017 today. Under normal circumstances, the Court would have granted time to the learned",,,,

counsel for the petitioner to go through the counter affidavit and to give their response. However, considering the suppression of vital facts as made",,,,

by the petitioner in the affidavit filed in support of the writ petition, this Court is not inclined to grant any adjournment. At the request of the learned",,,,

counsel for the petitioner, the matter was passed over and it was taken up in the post lunch session. From the records placed by the learned",,,,

Standing Counsel for the respondents which is a computer generated statement maintained in the official website of the Corporation of Chennai, it",,,,

is seen that the owner of the property has paid the property tax as revised by the Corporation at the rate of Rs.57,930/- upto I/2016-2017 and in",,,,

so far as II/2016-2017 is concerned, the owner of the property has remitted Rs.12,119/-. Thus the statement found in the official website of the",,,,

Corporation of Chennai shows the balance tax and cheque penalty payable is Rs.1,62,671/-. The property has been assessed to tax in the name of",,,,

Mr.Fakrudeen, who is the father of the petitioner in W.P.No.12879 of 2016.",,,,

5. Learned Standing Counsel appearing for the respondent Board produced a

copy of the judgment in O.S.No.3316 of 2010 filed before the XIV,,,,

Assistant City Civil Court, Chennai. The plaintiffs are three in number, namely, A.N.F.Ammanullah, A.N.F.Habeebullah and Iqbal. So far as Iqbal",,,,

is concerned, the cause title given in the judgment does not give his full name or his initial. However, the second plaintiff is A.N.F.Habeebullah who",,,,

appears to be none other than the petitioner in W.P.No.12879 of 2016, whereas he has given his name only as Habeeb. There is one more co-",,,,

owner of the property, namely, A.N.F.Mohamed Iqbal. That apart, there appears to be one other co-owner, A.N.F.Ammanullah and he is the",,,,

first plaintiff in the suit filed by the other plaintiffs and one other counsel along with A.N.F.Mohamed Iqbal is M.I.Javid Nazeem, who is stated to",,,,

be his son. One undisputed fact is that the property continues to remain in the name of original owner Fakrudeen and the plaintiffs and the,,,,

petitioners are all his legal heirs and the property tax assessment record has not been transferred in the name of the petitioners or the plaintiffs.,,,,

However, some of the legal heirs have moved the Civil Court who filed the said suit for the relief of (a) mandatory injunction to direct the",,,,

defendants (CMWSSB) to follow the procedure of law as contemplated under the Tamil Nadu Water Supply and Drainage Board Act, 1970",,,,

(TNWSDB Act) and the Chennai City Municipal Corporation Act, 1919 (CCMC Act) in the matter of collection of water tax and water charges;",,,,

(b) to grant a decree of permanent injunction restraining the defendants from interfering with the peaceful possession of the suit schedule property;,,,,

(c) mandatory injunction directing the defendants to issue fresh notice to the plaintiffs for revision of annual value with the calculations done as,,,,

provided in the CCMC Act and the TNWSDB Act, (d) mandatory injunction directing the defendants to restore metro water supply to the suit",,,,

premises and (e) mandatory injunction to produce working sheet for calculation of annual value and the water tax arrived at by the defendants for,,,,

fixing the rate of water tax for the suit property by the Court on the basis of the said two enactments.,,,,

6. The suit was pending before the Civil Court from the year 2010. Admittedly, there was no order of interim injunction granted. Thus, the",,,,

respondent Board was fully justified in proceeding with the recovery. When a demand notice was sent, the petitioners have filed the present writ",,,, petitions without disclosing about the pendency of the suit. Parallely the suit was being taken up in the Civil Court and ultimately, by judgment and",,,,

decree dated 24.10.2017, the suit has been dismissed. A defence is being raised stating that one of the plaintiff is not a writ petitioner, etc. This",,,,

hardly matters in the present case since the property continues to remain assessed in the name of the original owner Fakrudeen (since deceased).,,,,

Thus all the legal heirs are bound by the judgment and decree that has been passed. The Court is satisfied that the non-disclosure of the matter,,,,

before the Civil Court is fatal to the present proceedings.,,,,

7. Thus, for the above reasons, the writ petitions are dismissed and the interim order granted in W.P.No.12879 of 2016 stands vacated. No costs.",,,,

Consequently, connected miscellaneous petitions are closed.""",,,,

5. Consequent upon the dismissal of the writ petitions filed by the third respondent/owner of the property, the respondent board appears to have",,,,

initiated action for recovery of Water and Sewerage Tax and charges from the tenants/petitioners.,,,,

6. However, it is not clear as to whether the action was first initiated against the owner of the premises, but appears that action was initiated against",,,,

the tenants who are running small business in the shops. The petitioners have moved this writ petition on the ground that they have been,,,,

unnecessarily harassed by the officials of the CMWS&S Board with police force.,,,,

7. The learned counsel appearing for the petitioners made a mention before this Court on 01.02.2018 stating that the writ petition has to be listed,,,,

urgently, as there is a threat of sealing premises occupied by the petitioners.",,,,

S. No.,Cheque No.,Date,"Amount

Rs.",Remarks

1.,170679,20.01.2018,"70,000/-",Billed on 01-02-2018

2.,027956,20.01.2018,"20,000/-",Billed on 01-02-2018

3.,897437,20.01.2018,"3,08,544/-",Billed on 01-02-2018

4.,164495,20.01.2018,"20,000/-",Billed on 01-02-2018

5.,170681,27.01.2018,"3,21,457/-",Billed on 01-02-2018

6.,164497,27.02.2018,"1,00,000/-",Billed on 01-02-2018

7.,170685,20.02.2018,"1,50,000/-",Billed on 01-02-2018

8.,020747,28.02.2018,"1,50,000/-",Billed on 01-02-2018

9.,164461,28.02.2018,"1,46,699/-",Billed on 01-02-2018

