courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 10/09/2026

(2009) 04 MAD CK 0313

In the Madras High Court

Case No : Writ Petition No. 501 of 2005

A.V.M. Murugan APPELLANT

Vs

The Chennai Metropolitan, Water Supply and Sewerage Board RESPONDENT

Date of Decision : 23-04-2009

Acts Referred:

Chennai Metropolitan Water Supply and Sewerage Board Act, 1978 — Section 34, 34(1), 34(2), 35, 74

Citation : (2009) 04 MAD CK 0313

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : C. Hanumantha Rao, for the Appellant; G.S. Mohan, for the Respondent

Judgement

V. Dhanapalan, J.—The writ petition has been filed challenging the impugned demand notice in M.M.C. No. 129/2859/2000 dated 30.11.2004 of the second respondent which was enclosed along with the 3rd respondent''s notice dated 23.12.2004 and seeks to quash the same.

2. The petitioner is the owner of the premises at No. 7-A, Arcot Road, Saligramam, Chennai-600 093 and the said property was assessed to the property tax of Rs. 2,544.65 on the basis of annual valuation of the building at Rs. 21,294.00. By notice dated 13.8.1992, annual valuation was sought to be raised to Rs. 1,23,068.00. The said notice was opposed by the petitioner on the main ground that the building is situate in the premises of A.V.M. Complex and surrounded by other properties and has no electricity, water or sewerage connection and the premises is being used as a black and white cine film processing Laboratory and the property cannot be used for any other purpose.

3. Further, the petitioner filed objection before the Assistant Revenue Officer, Corporation of Madras and further made an appeal to the Taxation Appeal committee. Thereafter, the annual value was reduced only to Rs. 98,280.00 and the tax thereon was fixed at Rs. 11,744.50. On further appeal to the City Civil

Court, Chennai, by judgment dated 30.12.1999 in M.T.A. No. 39 of 1995, the rental value was re-fixed at Rs. 8,500/- per month from 1/92-93 and the Corporation of Madras was directed to fix the annual value on this basis. Thereafter, the petitioner preferred C.R.P. No. 1080 of 2000 against the aforesaid judgment contesting the arbitrariness of the fixation. That C.R.P., was admitted by this Court on 18.4.2000 and in C.M.P. No. 5643 of 2000, this court granted interim stay on condition that the petitioner pays half of the tax computed i.e. Rs. 5,500/- per half year. The petitioner is also regularly paying property tax at that rate.

4. However, by order dated 30.11.2004, the second respondent has demanded water sewerage tax and water charges in a total sum of Rs. 1,11,222.90 and further levied surcharge thereon at Rs. 90,859.00 thereon and thus demanded a total sum of Rs. 2,02,081.90 for the period 1/1992-93 to 2/2004-2005. The petitioner sent representations to the first respondent stating that pursuant to the order in C.M.P. No. 5643 of 2000, they are paying property tax at the rate of Rs. 5,500/- and the Corporation of Madras has not made any further assessment and that there is no water and sewerage connection to the property.

5. The third respondent, by notice dated 23.12.2004, demanded Rs. 2,32,524.90 adding a sum of Rs. 30,443.00 and intimated that on failure to make the payment as demanded, attachment of properties will be effected. Challenging the same, the present writ petition is filed.

6. The respondents have filed counter affidavit and submitted that the petitioner''s property has been assessed under CMC.No.129/2859/00 with an annual value of Rs. 200928/- w.e.f.2/98-99, for which water and sewerage tax works out to Rs. 7033/- per half year.

7. It is further submitted that as per the Respondent Board''s record, the petitioner''s premises at No. 7A Arcot Road and 6 more premises at Nos. 7/1, 7/2, 7/3, 7/4, 7/5 and 7/6 are also located in one complex and the entire complex has one common sewer connection and the property tax is levied by the Chennai Municipal Corporation based on the Annual value fixed by them.

8. It is further stated in the counter affidavit that the as per Sections 34 and 35 of Chennai Metrowater Supply and Sewerage Act, 1978, (hereinafter referred to as Act) the Respondent Board is empowered to levy water and sewerage tax at 7% p.a., on the annual value as fixed by Corporation of Chennai. According to the annual value particulars received from the Corporation of Chennai, the annual value of the petitioner''s premises has been fixed at Rs. 200928/- w.e.f. 2/98-99, for which water and sewerage tax works out to Rs. 7033/- PHY from 2/98-99. According to the respondents, if the petitioner files any appeal for the reduction of increased annual value/Property tax before the Taxation Appeal Committee, the petitioner shall pay water and sewerage tax to the respondent Board at the old rate of tax which was prevailing prior to the disputed period plus 50% of the difference of tax between old and new tax till the disposal of the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/avm-murugan-appellant-hash-the-…

appeal. It is further stated that the petitioner''s premises was in accumulated arrears of tax and sewerage service charges for Rs. 2,32,604.60 and after taking into account the part payment, he was served with distraint notice under Revenue Recovery Act as follows and it is in order as per Section 74 of the Act.

--- Period Water and Period Sewerage Service Sewerage Tax Charges. 1/92-93 to 1/98-99 2597x13 33761.00 1/97-98 150.00 ------------------------------------- -- 2/98-99 to 2/01-02 5322.70x7 37258.90 2/97-98 300.00 -- --- 1/02-03 6286.70 1/98-99 300.00 ------- ---

2/02-03 6327.00 2/98-99 to 3600.00 1/02-03 450 x 8 --------------------------- -- 1/03-04 6605.00 2/02-03 2175.00 --- ---------------------- 2/03-04 6698.00 1/03-04 to 15600.00 2/04-05 3900 x 4 22125.00 -- -------------- 1/04-05 7033.00 SC 8318.00 --- --- 2/04-05 7033.00 ---------- ----------- 30443.00 111302.60 ---------- SC upto 90859.00 Dec.2004 ----------- 202161.60 ----------- -- --------------------------------------- 9. According to the respondents, water and sewerage tax demand claimed based on the annual value of Rs. 200929/- is in order and not contrary to the provisions of the Act. It is further submitted that water and sewerage tax is a component of property tax. It is also submitted that the respondent Board is empowered to levy surcharge for belated payment of Tax as provided u/s 81(2)(j) of the Act. It is further stated that since the petitioner did not come forward to pay water and sewerage tax as per the distraint notice dated 23.12.2004, u/s 74 of the Act, revenue recovery notice was issued.

10. Heard Mr. C. Hanumantha Rao, learned Counsel for the petitioner and Mr.G.S.Mohan, learned Counsel for the respondents 1 to 3.

11. Learned Counsel for the petitioner would contend that the impugned notice cannot be sustained as the respondent-Board has not shown any details as to how they have arrived at the said amount of Taxes, levies and surcharges. He would also contend that as per Section 34(2), the taxes shall be levied at such rates as may be prescribed which in the case of water tax shall not be more than thirty-five percent and in the case of sewerage tax shall not be more than fifteen per cent of the property tax, however, the respondents have levied taxes contrary to the Act.

12. Per contra, learned Counsel for the respondents would contend that as per Sections 34 and 35 of the Act, the Respondent Board is empowered to levy water and sewerage tax at 7% on the annual value as fixed by Corporation of Chennai. He would further contend that the respondent Board is empowered to levy

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/avm-murugan-appellant-hash-the-…

surcharge for belated payment of tax as provided u/s 81(2)(j) of the Act and this levy of surcharge is at 2% per month. He also contended that there is no infirmity in the calculation and assessment made in the impugned notice.

13. I have considered the rival submissions and perused the material documents on record.

14. It is not in dispute that the petitioner is in occupation of the above mentioned premises and 6 more premises at Nos. 7/1, 7/2, 7/3, 7/4, 7/5 and 7/6 are also in one complex and the entire complex has one common sewer connection and the property tax is levied by the Chennai Municipal Corporation based on the annual value fixed by them. As per Section 34 of the Act, the Board shall levy water tax and sewerage tax on the premises situated within its area and Clause (2) provides that 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 thirty-five percent and in the case of sewerage tax shall not be more than fifteen per cent of the property tax. For better understanding, Section 35 of the Act is also extracted hereunder:

Section 35: Assessment of annual value-(1) For the purposes of Section 34 the annual value of the premises shall be deemed to be the gross annual rent at which they may reasonably be expected to let from month to month or from year to year less a deduction in the case of buildings of a ten percent of that portion of such annual rent which is attributable to the buildings alone apart from their sites and the adjacent lands occupied as an appurtenance thereto, and the said deduction shall be in lieu of all allowances for repairs or any other account whatsoever.

15. Section 81(2)(j) of the Act clearly states about the manner of and the basis on which taxes shall be levied, the manner of and determining consumption of water, the charges therefor, the rent or other amount of charge for meters, and the time, place and manner of payment of taxes, rates charges and surcharges, fees, rents and other amounts.

16. It is seen that the second respondent by order dated 30.11.2004, demanded water sewerage tax and water charges in a total sum of Rs. 1,11,222.90 and further levied surcharge thereon at Rs. 80,859.00 and thus demanded a total sum of Rs. 2,02.081.90 for the period 1/1992-93 to 2/2004-2005. It is also seen that by order dated 23.12.2004, the third respondent demanded Rs. 2,32,524.90 adding a sum of Rs. 30,443.00. The petitioner preferred a Civil Revision Petition against the judgment of the City Civil Court made in M.T.A. No. 39 of 1995 before this Court and pursuant to the order of this Court in C.M.P. No. 5643 of 2000 in C.R.P.No.1080 of 2000, the petitioner was regularly paying property tax at Rs. 5,500/- per half year. However, the said C.R.P., was dismissed by this Court by order dated 27.3.2008, confirming the order passed by the Principal Judge, City Civil Court, Chennai. Thereby, the Corporation of Madras was directed to fix the annual value at Rs. 8,500/- per month from 1/92-93.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/avm-murugan-appellant-hash-the-…

17. The details of the entire assessment are not given in the counter. The manner and basis of levying the tax and the impugned demand made are also not disclosed in the counter. No opportunity of hearing was given to the petitioner. As stated above, Section 81(2)(j) of the Act explains the manner of and the basis on which taxes shall be levied, the manner of and determining consumption of water, the charges therefor, the rent or other amount of charge for meters, and the time, place and manner of payment of taxes. In the case on hand, the consumption of water has not been properly determined and levying of surcharge for belated payment of tax has to be decided based on the above mentioned determining factors.

18. In the above circumstances, the impugned assessment cannot be allowed to proceed with. Since, the petitioner has not filed any objections, the petitioner is directed to file his objections to the demand notice within a period of two weeks from the date of receipt of a copy of this order and the respondent-Board is also directed to consider those objections and pass orders explaining the determination of tax levied by them within a period of four weeks thereafter after giving an opportunity of hearing to the petitioner and taking into consideration the order made in M.T.A. No. 39 of 1995 as well as order in C.R.P. No. 1080 of 2000.

The writ petition is disposed of with the above observation. No costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/avm-murugan-appellant-hash-the-…