

(2011) 12 MAD CK 0102

Madras High Court

Case No: Writ Petition (MD) No. 5321 of 2008

Hotel Agasthiya Private Ltd.

APPELLANT

Vs

The Principal District Court,
Madurai, The Taxation Appellate
Tribunal, Madurai and Madurai
City Municipal Corporation

RESPONDENT

Date of Decision: Dec. 9, 2011

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: A.R.L. Sundaresan, SC for Ms. AL. Ganthimathi, for the Appellant; G.R. Swaminathan for R-3, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Honourable Mr. Justice K. Chandru

1. The petitioner is a hotel represented by its Managing Director. They are running the hotel in the name and style of Hotel Agasthiya Private Limited situated at North Marret Street, Madurai. The hotel has 81 lodging rooms and has restaurant, conference hall and an attached bar. In this writ petition, they have challenged an order dated 21.6.2006 passed by the Principal District Court, Madurai in C.M.A.No.1 of 2003 confirming and modifying the order of the second respondent Taxation Appellate Tribunal, Madurai, dated 23.12.2001 and the demand notice dated 29.04.2008 issued by the third respondent Corporation of Madurai.

2. The writ petition was admitted on 18.06.2008. Pending the writ petition, an interim injunction was granted subject to condition that the petitioner continues to pay Rs.76,000/- per half year. It was brought to the notice of this court on 16.07.2010 that the petitioner has not complied with the condition from 2009 to first half year of 2010 amounting to Rs.2,28,000/-. When the corporation wanted to vacate the

interim order, the learned counsel for the petitioner prayed for extension of time for complying with the interim order. Since the petitioner has not obeyed the interim order without any justification, the interim injunction was vacated and the application for interim injunction was dismissed. The Corporation was given liberty to initiate execution proceedings to recover the amount.

3. It is seen from the records that the Corporation which was initially levied Rs.52,784/- per semester had increased the property tax to Rs.1,11,908/-. The petitioner had filed an appeal before the Taxation Appellate Tribunal, Madurai in Tax Appeal No.1506 of 2000. They contended that it was improper on the part of the Corporation to levy tax in respect of lodging portion as well as bar and the other canteen facilities. They have also calculated 81 rooms as being in occupation, whereas 6 rooms were meant for rest room, manager room and godown. They have not made any alteration in the building. Therefore, having originally levied tax on the basis of the existing rate, now double the amount on general revision of tax was improper. The Tribunal found that the revision of tax made was fully justified. During the year 1996, the lodging house was only on the ground floor and even rooms which are not occupied and used for other purpose may be considered as miscellaneous occupancy liable for tax. Thus, the Tribunal had dismissed the appeal by an order dated 23.12.2001.

4. Thereafter, the petitioner hotel filed further appeal to the Principal District Court, Madurai being C.M.A.No.1 of 2003 challenging the order of Tribunal. The Principal District Court, Madurai on notice to the third respondent Corporation found that it was an admitted fact that six rooms were not occupied. Therefore, a sum of Rs.3150/- should be reduced from the tax. It had rejected the other contention and found that 100% revision was justified. But at the same time, while doubling the tax to Rs.1,05,568/-, the further increase to Rs.1,11,908/- was not proper. These issues were considered by the Tribunal. Therefore, there was no infirmity in the order under appeal. The Principal District Court, the first respondent, had partly allowed the appeal and held that the tax levied for six rooms which are used for personal use also should be deducted and thereafter the tax demand should be made. The corporation was directed to issue a fresh notice on the basis of the order vide order dated 21.6.2006. Pursuant to the order passed by the Principal District Court, a demand notice was issued by the third respondent Corporation calculating the amount as ordered by the Tribunal including deduction on non lodging portion. It is this order which is under challenge.

5. It must be noted that the petitioner's grievance that there was 100% revision cannot be a ground to interfere with the taxing power of the Corporation. The infirmity pointed out by them that after fixing 100% increase, there was no further scope for fixing additional amount was rightly held to be bad by the first respondent Principal District Court. Though the Taxation Appellate Tribunal found no infirmity in the calculation of the property tax even for 81 rooms, the first respondent gave

relief even in respect of those six rooms which are used for non lodging purpose and for personal use of the hotel. The petitioner had luxury of two tier appeal under the Madurai City Municipal Corporation Act and thereafter came to this court for further concession. Even during the pendency of the writ petition, they have not complied with the interim order passed by this court which led to the dismissal of the application for interim injunction.

6. In a writ petition under Article 226 which is an extraordinary remedy, unless there is manifest error or irregularities in the order passed by the court below, the question of this court interfering with the well laid reasoning of the first respondent's order will not arise. This writ petition is misconceived. Accordingly, the writ petition will stand dismissed. However, there will be no order as to costs.