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Madras High Court

Case No: Writ Appeal Nos. 1333 to 1342 of 2014, M.P. Nos. 1 of 2014 in W.A. No. 1333 of 2014 and M.P. Nos. 1 and 2 in W.A. Nos. 1334 to 1342 of 2014

The Commissioner Corporation of Chennai	APPELLANT
Vs	
M. Banazir Sulthana	RESPONDENT

Date of Decision: Nov. 21, 2014

Acts Referred:

- Madras City Municipal Corporation Act, 1919 - Section 100, 98A

Hon'ble Judges: Satish K. Agnihotri, J; K.K. Sasidharan, J

Bench: Division Bench

Judgement

1. The Chennai Municipal Corporation originally assessed the buildings owned by the private respondents as residential and collected building tax. Thereafter, assessment was revised treating the accommodation as commercial which made the private respondents to file writ petitions in W.P.Nos. 4179 of 2011, 17752 of 2011, 17753 of 2011, 17903 of 2011, 19488 of 2011, 19489 of 2011, 19584 of 2011, 20413 of 2011, 20414 of 2011 and 21033 of 2011.

2. The learned Single Judge, having found that the assessees were not heard before revising the assessment, allowed the writ petitions. The learned Single Judge set aside the Resolution No. 288 of 2009 dated 31.07.2009 and directed the appellant to follow the procedure contemplated under Section 98-A and 100 of the Chennai City Municipal Corporation Act (the Act for short) and pass final orders on merits. Feeling aggrieved by the common order dated 21.09.2011, the Corporation of Chennai is before us.

3. The learned Additional Advocate General contended that Corporation made an attempt only to levy a new rate of tax. However, it was construed by the learned Single Judge as a new tax and the same resulted in issuing a direction to comply with the procedure under Section 98-A of the Act. According to the learned Additional Advocate General, the Corporation has passed a resolution treating the occupation as tenant commercial

instead of tenant occupation and levied a new rate of tax. The said classification was treated as change in the nature of tax, accepting the contentions taken by the assessees.

4. The learned Senior Counsel appearing for the assessees supported the order passed by the learned Single Judge.

5. The respondents are stated to be the owners of buildings which are otherwise known as mansions. These buildings are given on rent. The Corporation earlier treated the nature of building as tenant occupation and levied tax. The Corporation, thereafter, found that the assessees were all doing business by giving rooms in the mansions on rent and as such, the occupation should be treated as tenant commercial. This made the Corporation to pass Resolution No. 288 of 2009 on 31.07.2009.

6. The only question that arises for consideration is as to whether the re-classification of the buildings as tenant commercial instead of tenant occupation would change the classification as such or it is only a simple levy of a new rate of tax.

7. There is no dispute that the appellant assessed the buildings as tenant occupation originally and levied tax accordingly. The assessees were paying the tax at the rate prescribed for buildings shown as tenant occupation. It was, for the first time, the Corporation changed the assessment as tenant commercial by passing a resolution. By changing the nature of assessment, not only the rate of tax is changed, but, even the classification is changed. We are not in a position to accept the argument on the side of the Corporation that only the rate of tax was changed and not the assessment. The very resolution shows that the nature of assessment was completely changed. The assessees, therefore, were correct in their contention that before making such a substantial change in the classification, notice should have been issued to them. This aspect was rightly considered by the learned Single Judge and resultantly, the resolution was quashed. We do not find any reason to take a different view in the matter.

8. The appellant is given liberty to issue notices to the assessees to change the classification as tenant commercial instead of tenant occupation. They should be given reasonable time to submit their response. It is open to the Corporation thereafter to pass appropriate orders on merits and as per law.

9. The learned Senior Counsel for the assessees submitted that re-assessment on retrospective basis should not be made by the Corporation. We do not propose to make any observation either with regard to the change of assessment or with regard to the effective date of implementation of new classification. It is for the Corporation to take a decision in the matter on merits and in accordance with law.

10. The intra-Court appeals are dismissed with the aforesaid observation. No costs. Connected Miscellaneous Petitions are closed.