

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.07.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.11311 to 11313 of 2008 & 28441 of 2017

and

M.P.Nos.1, 1 & 1 of 2008

and

W.M.P.Nos.30542 & 30543 of 2017

W.P.No.11311 of 2008

M/s. Airports Authority of India,
Represented by its
Deputy General Manager (Commercial)
Meenambakkam, Chennai – 600 027.

...Petitioner

Vs

1.The Special Commissioner & Commissioner,
Land Reforms, Chepauk,
Chennai – 600 005.

2.The Assistant Commissioner /
Urban Land Tax (Alandur Zone)
163, Karuneeagar Street, Alandur,
Chennai – 600 088.

3.The Tahsildhar,
Urban Land Tax,
Tambaram Taluk, Tambaram,
Chennai – 600 045.

... Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, calling for the records of the respondents, especially the order of the 1st respondent dated 28.03.2008 in Ref.Rc.No.1791/2001A confirming the order of the 2nd respondent dated 22.12.2006 ULT Case No.66(1-24)/1401 and quash the same and further, direct the respondents to treat the lands in Survey No.23/1B, 24, 27A, 28, 29A, 39B, 40A, 42, 44, 45, 46/1B, 47/2, 52A, 53, 54/1B, 55/2, 62A/1, 62A/2, 63/2, 63/1, 65/1, 65/2, 64 and 73 measuring an total extent 717 Grounds 0390 sq.ft of Pazhavanthangal Village, Tambaram Taluk, Kancheepuram District as not taxable under Act 30 of 1966.

W.P.No.11312 of 2008

M/s. Airports Authority of India,
Represented by its
Deputy General Manager (Commercial)
Meenambakkam, Chennai – 600 027.

...Petitioner

Vs

1.The Special Commissioner & Commissioner,
Land Reforms, Chepauk,
Chennai – 600 005.

2.The Assistant Commissioner /
Urban Land Tax (Alandur Zone)
163, Karuneegar Street, Alandur,
Chennai – 600 088.

3.The Tahsildhar,
Urban Land Tax,

Tambaram Taluk, Tambaram,
Chennai – 600 045.

... Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, calling for the records of the respondents, especially the order of the 1st respondent dated 28.03.2008 in Ref.Rc.No.12137/2006(C2) confirming the order of the 2nd respondent dated 31.05.2006 vide ref.Rc.No.1791/2001A in ULT Case No.97(1 to 3)/1401 and quash the same and further, direct the respondents to treat the lands in Survey No.1934/2, 1940 and 1945 measuring an extent of 5287.0990 sq.ft of St.Thomas Mount Village, Tambaram Taluk, Kancheepuram District as not taxable purview of Urban Land Tax Act 1966.

W.P.No.11313 of 2008

M/s. Airports Authority of India,
Represented by its
Deputy General Manager (Commercial)
Meenambakkam, Chennai – 600 027.

...Petitioner

सत्यमेव जयते
Vs

1.The Special Commissioner & Commissioner,
Land Reforms, Chepauk,
Chennai – 600 005.

2.The Assistant Commissioner /
Urban Land Tax (Alandur Zone)
163, Karuneegar Street, Alandur,
Chennai – 600 088.

3.The Tahsildhar,
Urban Land Tax,
Tambaram Taluk, Tambaram,
Chennai – 600 045.

... Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, calling for the records of the respondents, especially the order of the 1st respondent dated 03.04.2008 in Ref.Rc.No.12136/2006(C2) confirming the order of the 2nd respondent dated 17.03.2006 in ULT Case No.104/1401/Cowl Bazaar and quash the same and further, direct the respondents to treat the lands in Survey No.142/2, 143/1B, 148/1B, 148/2B, 148/3B2, 148/4B, 149/2B, 149/3B, 157/2B, 158/2B, 158/3B, measuring an extent of 93.0341 sq.ft of Cowl Bazaar Village, Tambaram Taluk, Kancheepuram District as not taxable purview of Urban Land Tax Act 1966.

W.P.No.28441 of 2017

The Airports Authority of India,
Represented by its Regional
Executive Director,
Southern Region,
Meenambakkam,
Chennai – 600 027.

सत्यमेव जयते

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...Petitioner

Vs

1.The Principal Commissioner & Secretary,
Land Reforms, Chepauk,
Chennai – 600 005.

2.The Assistant Commissioner /
Urban Land Tax (Kundrathur Zone)
163, Karuneeagar Street, Alandur,
Chennai – 600 088.

3.The Tahsildhar,
Urban Land Tax,
Maduravoyal Taluk,
Chennai – 600 053.

... Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, calling for the records of the 1st respondent dated 11.11.2013 in Ref.Rc.No.12042/2008/C2 dated 11.11.2013, confirming the order of the 2nd respondent dated 31.01.2008 and 27.02.2008 in ULT ref ULT Case Nos.452 (a) to 452p/1401/Porur and the consequent demand of the 3rd respondent dated 19.05.2017 in R.C.1207/2017/A4 and quash the same and further direct the respondents to treat the lands in survey Nos.49/1, 50/1, 58, 55, 56, 57, 67, 68/2, 207/4, 362/2, 362/4, 206/95, 319/1, 52/1, 53 and 54 measuring a total extent of 898 grounds 72 sq., ft., of Porur Village, Ambattur Taluk, Thiruvallur District as not taxable under Act 30 of 1966.

For Petitioners

: Mr.V.Ramesh
[in all W.Ps]

For Respondents

: Mr.V.Nanmaran
Government Advocate
[in all W.Ps]

COMMON ORDER

The orders passed by the 1st respondent under the Tamil Nadu Urban Land Tax Act, 1966 [hereinafter referred to as the 'Act'], imposing tax and rejecting the Revision Petition filed by the petitioner / Airport Authority of India are under challenge in the present writ petitions.

2. The learned counsel for the petitioner contended that the petitioner is a Statutory organization under the administrative control of Government of India, Ministry of Civil Aviation. The petitioner manages the Civil Airports and Civil Enclaves at Defence Airports across the country. The petitioner holds certain lands in the Villages of Pazhavanthangal, St.Thomas Mount, Cowl Bazaar and Porur and the said lands were assessed to the second respondent (Alandur Zone). As against the levy of Urban Land Tax by the 2nd respondent, the petitioner filed Revision Petitions before the 1st respondent under Section 30(1) of the Tamil Nadu Urban Land Tax Act 1966. The first respondent rejected the Revision Petitions in orders dated 28.03.2008, 28.03.2008, 03.04.2008 and 11.11.2013 respectively.

3. The main contention raised on behalf of the petitioner is that Section 29 of the Act contemplates Exemptions. Accordingly, nothing in the said Act shall apply to any urban land owned by the State or the Central Government. The petitioner / Airport Authority of India is wholly owned by the Government of India, Ministry of Civil Aviations and therefore, the said exemption clause would be applicable to the petitioner and consequently, the impugned orders, levying tax are in violation of the exemption clause provided under Section 29 of the Act.

4. The learned counsel for the petitioner reiterated that the Airport Authority of India is a creation by an Act of Parliament and the Act provides for transfer and vesting of the undertakings of the International Airports Authority of India and National Airports Authority of India. It was also aimed for the better administration and cohesive management of Airports and Civil Enclaves across the country, where transport services were operated or to be operated and covers all aeronautical communication stations and for the purpose of establishing or assisting in the establishment of Airports. Therefore, the petitioner is a “State” within the meaning of Article 12 of the Constitution of India as its functions are directly controlled

by the Ministry of Civil Aviation.

5. Keeping in mind these parameters, it is contended that the levy of urban land tax by the Assistant Commissioner is directly hit under Section 29(1)(a) of the Tamil Nadu Urban Land Tax Act. The respondents have not considered any of these aspects with reference to Section 29 of the Act and levied tax and the first respondent / Revisional authority also failed to consider the fact that the petitioner is a “State” within the meaning of Article 12 of the Constitution of India and therefore, it is to be construed as Central Government for the purpose of grant of exemption under Section 29 of the Act.

6. In this context, the learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court of India in the case of Housing & Urban Development Corporation Limited, reported in (2001) 1 SCC 455, wherein the Apex Court made an observation that “It is clear from a reading of sub-section (1) of Section 119 that lands and buildings which are the properties of the Union are exempt from property tax” and in paragraph 8, the Hon'ble Supreme Court of India made the following observations:

“8. From the aforesaid discussion, it clearly follows that the land in question being exempt from tax by virtue of Section 119(1) of the Act as it is the property of the Union and furthermore even under Section 120(1) no tax in respect of land could have been levied in the present case on the appellant prior to the same being let to them in 1997.”

7. Accordingly, in the said case, the appeal filed by the Housing and Urban Corporation Limited was allowed. Relying on the said judgment, the learned counsel for the petitioner contended that the same interpretation is to be adopted as far as the Airport Authority of India is concerned and the exemption clause is also contemplated under Section 29 of the Act and thus, the orders impugned are liable to be quashed.

8. The learned counsel appearing on behalf of the respondents disputed the said contentions by stating that the issues are already settled by the Hon'ble Supreme Court of India in the case of ***Municipal Commissioner of Dum Dum Municipality and others Vs. Indian Tourism Development Corporation and others***, reported in ***(1995) 5 SCC 251***. The Hon'ble Supreme Court considered the question, whether the property is

vested in the International Airports Authority of India under the provisions of the International Airports Authority of India Act, 1971 can yet be called the properties of the Union within the meaning of Article 285 of the Constitution of India and therefore, the exemption from all taxes imposed by the State or by any authority within a State.

9. The issue framed by the Hon'ble Supreme Court of India is akin to that of the issue now raised by the petitioner in the present writ petitions. The Hon'ble Supreme Court considered the answer given by the Delhi High Court in respect of the said question and the judgment of the learned Single Judge of the Bombay High Court as well as the view taken by the Calcutta High Court, considering the exemption clause in the respective Statutes and with reference to the question, whether the International Airport Authority of India is exempt from all taxes imposed by the State or by any authority within a State, passed the following observations in the case of ***Municipal Commissioner of Dum Dum (cited supra)***, which reads as under:

“For all the above reasons, we are of the opinion that the International Airports Authority of India is a statutory corporation distinct from the Central Government and that the

properties vested in it by Section 12 of the Act cannot be said to have been vested in it only for proper management. After the date of vesting, the properties so vested are no longer the properties of the Union of India for the purpose of and within the meaning of Article 285. The vesting of the said properties in the Authority is with the object of ensuring better management and more efficient operation of the airports covered by the Act. Indeed that is the object behind the very creation of the Authority. But that does not mean that it is a case of limited vesting for the purpose of better management. The Authority cannot, therefore, invoke the immunity created by Article 285(1) of the Constitution. The levy of property taxes by the relevant municipal bodies is unexceptionable.”

10. The above findings of the Hon'ble Apex Court of India would clear the doubt in respect of the status of the Airport Authority of India. It is ruled in unambiguous terms that the authority cannot therefore invoke the immunity created by Article 285(1) of the Constitution. The levy of property tax by the relevant municipal bodies is unexceptionable.

11. The learned counsel for the petitioner referred the judgment of the High Court of Madras ***dated 11.06.2019 passed in W.P.No.34764 of 2007***

in the case of Chennai Port Trust Vs. The Special Commissioner and Commissioner of Urban Land Ceiling and Urban Land Tax. However, the said judgment of the learned Single Judge was taken by way of Writ Appeal before the Hon'ble Division Bench in Writ Appeal No.1005 of 2020 and a judgment was delivered on 01.12.2020, reversing the findings. The relevant paragraph of the judgment of the Hon'ble Division Bench is extracted hereunder:

“15. Upon examining Section 29(a) of the Urban Land Tax Act, we find that it undoubtedly applies to lands owned by the Central or State Government. The learned counsel for the Respondent did not produce any evidence to prove that the Lands were owned by the Central Government and that the Madras Dock Labour Board was only the ostensible owner. Indeed, the evidence on record indicates that the Madras Dock Labour Board was both the ostensible and real owner. The other factor to be borne in mind is that the Lands were assessed to urban land tax and that the Madras Dock Labour Board paid urban land tax as and when demanded. Moreover, the learned Government Pleader cited the Board Circular dated 30.06.1976 whereby it was expressly provided that lands owned by the Madras Port Trust would not be eligible for the exemption under Section 29(a). In light of the above conclusion that there

is no evidence of ownership by the Central Government, Article 285 of the Constitution does not come to the aid of the Respondent.

16. When the facts are considered cumulatively in light of the statute and the principle laid down in Dilip Kumar, we are of the view that the Chennai Port Trust failed to establish that it is entitled to an exemption under Section 29(a) of the Urban Land Tax Act. Hence, the order of the learned single Judge is not sustainable. Accordingly, we allow this writ appeal by setting aside the impugned order. Consequently, the connected miscellaneous petition is closed. No costs.”

12. With reference to the Chennai Port Trust, the very same contention has been raised that the Chennai Port Trust is a “State” within the meaning of Article 12 of the Constitution of India and therefore, they are entitled for exemption under Section 29 of the Urban Land Taxes Act. The said contentions are rejected by the Hon'ble Division Bench of this Court.

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13. The learned counsel for the petitioner submitted the land details along with the letter issued by the Airport Authority of India dated 13.07.2021. The land details would reveal that the lands were handed over

to Director General of Civil Aviations and the letter would further state that the Director General of Civil Aviations and Airport Authority of India is wholly owned by the Government of India, Ministry of Civil Aviations and therefore, they are entitled to claim exemption under Section 29 of the Tamil Nadu Urban Land Tax Act. However, now the subject lands are vested with the petitioner / Airport Authority of India and the said fact is not in dispute. Question has raised, whether the property is vested in the Airport Authority of India, can yet be called as the properties of Union within the meaning of Article 285 of the Constitution of India and therefore, the exempt from all taxes imposed by the State. The answer to the said question was categorically decided by the Hon'ble Supreme Court of India in the case of *Municipal Commissioner of Dum Dum (cited supra)*.

14. In the case of *International Airport Authority Vs. Municipal Corporation of Delhi*, reported in *AIR 1991 Delhi 302*, the Hon'ble Division Bench of the Delhi High Court categorically considered the similar issue and held that the property in question namely, terminal II of Indira Gandhi International Airport is not the property of the Central Government and is the property of the Authority, and the respondent Corporation is

entitled to levy and realize taxes from the petitioner under Section 113 of the Delhi Municipal Corporation Act. The Delhi High Court also took a same view that a contention was sought to be raised that the municipal tax could not be levied on the property of the company by virtue of Art. 285(1) of the Constitution because the company was owned by the Government. It was held by the Supreme Court that merely because the entire share capital was subscribed by the Government of India, it did not mean that the company did not own the property in question. It was held that the company was a separate legal entity.

15. The principles settled by the Hon'ble Supreme Court of India in the case of *Municipal Commissioner of Dum Dum (cited supra)* would squarely apply to the issues raised in the present writ petition and therefore, the writ petitioner cannot be construed as 'Central Government' within the meaning of exemption clause as contemplated under Section 29 (a) of the Tamil Nadu Urban Land Tax Act, 1966 and consequently, the respondents are empowered to levy the Urban Land Tax under the provisions of the said Act. Thus, there is no infirmity or perversity in respect of the orders impugned in original passed by the second respondent as well as the

Appellate order passed by the first respondent. The petitioner/ Airport Authority of India is liable to pay the Urban Land Tax as applicable and in this view of the matter, all the writ petitions fail and stand dismissed.

16. It is brought to the notice of this Court that the petitioner has already deposited 50% of the demanded tax and the balance tax is to be deposited by the petitioners within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

27.07.2021

Speaking order/Non-speaking order

Internet: Yes/No

Index : Yes/No

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S.M.SUBRAMANIAM, J.

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