



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR. JUSTICE S SUNIL DUTT YADAV

WRIT PETITION NO.1867 OF 2024 (LB-TAX)

BETWEEN:

SHARIFF CONSTRUCTIONS
A REGISTERED PARTNERSHIP FIRM
HAVING ITS REGISTERED OFFICE AT
SHERIFF CENTRE, 5TH FLOOR
NO.73/1, ST.MARKS ROAD
BENGALURU - 01
REP. BY MANAGING PARTNER
MR. ZIAULLA SHRERIFF
S/O ABDUL GAFFA SHERIFF
AGED ABOUT 22 YEARS.

...PETITIONER

(BY SRI. SYED AKMAL HASAN RAZVI, ADV.,)

AND:

1. BRUHATH BANGALORE MAHANAGAR PALIKE
HAVING ITS OFFICE AT CORPORATION BUILDING
J.C. ROAD, BENGALURU
BY ITS COMMISSIONER.
2. ASSISTANT REVENUE OFFICER
BANGALORE MAHANAGARA PALIKE
LAKSHMIDEVINAGAR, NORTH DIVISION
NO.8/16, J.S. LAKSHMIKANTH COMPLEX
NEAR KANTEERVVA STUDIO SIGNAL
RING ROAD, NANDINI STUDIO SIGNAL
RING ROAD, NANDINI LAYOUT
BANGALORE - 96.

...RESPONDENTS

(BY SMT. SUMANA BALIGA M, ADV., FOR R1 & R2)





THIS W.P. IS FILED UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENTS TO REMOVE THE SEAL FROM THE PETITIONERS OFFICE IMMEDIATELY. QUASH THE NOTICE BEARING NO.W/38/NOV/2023-24/069698 DATED 27/11/2023 PRODUCED AS ANNEXURE-D SINCE THERE CAN BE NO TAX ON LAND WHEN TAX IS BEING ASSESSED AND COLLECTED FOR THE APARTMENTS CONSTRUCTED ON THE LAND & ETC.,

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioner has filed the present writ petition seeking for de-sealing the premises and has further sought for setting aside of the notice at Annexure-D which is the demand notice issued by the respondent – BBMP stipulating the property tax, cesses, interest, penalty, solid waste management cess and total amount due with respect to the year 2019-2020. Petitioner has also sought for refund of excess tax collected from the petitioner.

2. It is noticed that in most of the petitions filed by the property owners, the contention that is taken is that the demand notice raised as well as the show cause notice issued, are not preceded by the procedure



stipulated under the Bruhat Bengaluru Mahanagara Palike Act, 2020 (for short 'the Act') and accordingly, it is submitted that unless there is an inspection in their presence, the consequential notices and orders are required to be set aside.

3. On behalf of the respondent – BBMP it is submitted that inspection has been carried out and the details are ascertained and on the basis of which show cause notices and demand notices have been issued and on the basis of the inspection report, the re-assessment has been done on the material collected at the time of inspection and procedure as provided under Section 144 of the Act, has been complied with. Accordingly, it is submitted that the question of interfering with the impugned demand notice does not arise.

4. In the present case, this Court by order dated 24.01.2024 has passed an order which reads as hereunder:



"Learned counsel for the petitioner submits that the petitioner has been paying taxes in terms of the built-up area and despite petitioner paying taxes regularly, fresh proceedings are initiated insofar as the vacant area contrary to FAQ No.22.

In light of the contentions raised, there would be an inspection to be carried out by the respondent - BBMP in the presence of the petitioner.

Petitioner to be present at the site on 01.02.2024 at 11.00 a.m. Petitioner to furnish all necessary documents as sought for by the BBMP.

A report to be prepared and filed containing all relevant details that may be relating to the proceedings to be initiated by the BBMP to reopen self-assessment.

In light of the assertion regarding the respondent of BBMP having sealed the office of the petitioner, taking note of the contentions raised, the said premises is to be de-sealed forthwith.

Petitioner undertakes to pay all lawful dues as may be raised. The said undertaking is taken note of."

5. Pursuant to such order passed, learned counsel for BBMP has filed a memo enclosing copy of Mahazar at



Annexure-R1 which details the measurement of the plinth area (furnished in square meters) taking note of the construction put up pursuant to the sanction plan.

6. Heard both sides.

7. In light of numerous petitions filed questioning the correctness of the procedure followed by the BBMP while reopening the self-assessment returns, need has arisen to lay down the procedure that is required to be followed in cases of reopening self-assessment where returns are not filed and in cases of random scrutiny.

8. It must be noticed that Section 144 (13) of the Act provides for the procedure in cases of random scrutiny where returns are already filed and in cases where returns are not filed as stipulated under sub-section (7) of Section 144 of the Act, the Chief Commissioner or any person authorized by him may enter, inspect, survey or measure any land or building after giving notice to the owner or occupier. It is the first step as stipulated under Section



144(13) of the Act which would come into play either in case of random scrutiny or in case of evasion where though properties are constructed and liable for tax and returns under self-assessment ought to have been filed, such returns are not filed.

9. In such of the above cases, in terms of Section 144(13) of the Act, the Chief Commissioner or person authorized by him may inspect, survey and take measurement of the building. However, it is clear that such inspection, survey or measurement must be after giving notice to the owner or occupier. Further, in terms of Section 144(13) of the Act, at the time of inspection, owner or occupier is bound to furnish necessary information required, which would be the basis for the purpose of reassessment.

10. It is also clarified that even where there is incorrect self-assessment returns filed by the property



owners, resort to inspection under Section 144(13) of the Act is required to be conducted.

11. At the time of inspection, if the property owner or occupier refuses to allow the authorized officer to inspect the premises even after the officer has given reasonable opportunity, such refusal shall be recorded and the officer shall proceed to assess the property to the "best of his judgment".

It is to be noticed that the power of the officer to proceed on the premise of "best judgment assessment" would also come into play where the property owner refuses to furnish information required, as such information would be only in the knowledge of the property owner. This requirement of furnishing of information in the event of reassessment would arise where there are disputes relating to the year and the month when the property was let out as in many disputes it is found that the self-assessment made declaring portion of the property as self-occupied and tenanted, is disputed



by the respondent – BBMP. However, such necessity of furnishing information will also arise regarding the usage of the premises, i.e., whether the premises is used for residential or non-residential.

12. It is also necessary to note that at the time of inspection, if the Chief Commissioner is seeking to reopen the self-assessment, he is required to ascertain relevant facts making out grounds for reopening of self-assessment including relating to applicable zone.

13. Subsequent to report prepared after the procedure to be followed under Section 144(13) of the Act as referred to above, procedure under Section 144(15) would then come into operation.

14. For the purpose of reopening such assessment in terms of the contingencies referred to above i.e., (i) random scrutiny (ii) where no returns are filed and (iii) where self-assessment is found to be faulty, proceedings under Section 144(15) of the Act will have to be followed.



In terms of the procedure under Section 144(15) of the Act, it is clear that procedure under Section 144(15) (a) to (e) of the Act will have to be followed, in the event on the basis of the physical inspection and information gathered and preparation of report by the officer as contemplated under Section 144(13) of the Act, it is found that reassessment of the self-assessment property tax return is required to be made.

In terms of the reassessment made by the authority on the basis of the report after inspection, the penalty as contemplated under Section 144(15)(b) of the Act will come into play along with interest to be paid on the fresh demand.

15. Right is conferred upon the property owners for notice under Section 144(15)(c) of the Act where the Chief Commissioner or the Authorized Officer is required to issue notice of reassessment to the tax payer demanding that the tax shall be paid within 30 days of service of notice



and after giving tax payer an opportunity of show cause in writing. This opportunity is to enable the occupier to accept the property tax assessed on the basis of the inspection which would be in the nature of reassessment and further it is open for the property owner to accept the penalty levied or object to such reassessment proceedings within a period of 30 days from the date of receipt of copy of the notice under Section 144(15)(c) of the Act.

16. The Chief Commissioner thereupon is required to consider the objections and pass orders confirming or revising such assessment (could also be reassessment) within a period of 60 days from the date of filing of objections and a copy of the order under Section 144(15)(e) of the Act either accepting the objections or rejecting the same, shall be sent to the owner or occupier concerned.

17. This whole procedure that comes out from a plain reading of Section 144(13), (14) and (15) of the Act



is however subject to point of limitation provided under Section 144(16) of the Act.

18. Section 144(16) of the Act provides that assessment or reassessment shall not be made (i) Five years after filing of tax returns under Section 144 of the Act, (ii) Five years after the evidence of facts, sufficient in the opinion of the Chief Commissioner or Authorized Officer justifying making of reassessment comes to such officer's knowledge, whichever is later.

19. The power is also conferred wherever there are disputes as regards to classification of zones, unit area value and class of property, for the Chief Commissioner to clarify, which clarification shall be final. Such power can be exercised simultaneously with passing of an order under Section 144(15)(e) of the Act. However, any such clarification under Section 144(18) of the Act shall be information made to the occupier or property owner to



enable him to take his stand before passing of the order under Section 144(15) (e) of the Act.

20. Once such order is passed in light of the statutory scheme, any challenge to the orders ought not to be entertained by the writ court in a routine manner in light of the law laid down in the case of ***Phoenix ARC Private Limited vs. Vishwa Bharati Vidya Mandir - Civil Appeal No. 257-259/2022***, wherein the Apex Court has stated that intervention by way of writ proceedings cannot be made routinely bypassing the statutory procedure for grievance redressal. Though in exceptional cases at the discretion of the Court when circumstances are so made out, the Court may entertain such petitions. Once an order is passed and as the same would involve factual disputes and other contentions, the orders are open for challenge by way of appeal under Section 179 of the Act. Such appeal under Section 179 would be subject to deposit as contemplated under Section 148(3) of the Act.



21. Insofar as the persons authorized as referred to in Section 144(13) of the Act, a memo filed by the learned counsel for respondent – BBMP dated 22.02.2024 would indicate the officers who are authorized. The same is taken note of. Needless to state, in the event demands made is not subject to challenge by way of appeal or any other legal proceedings, the power is available to the respondent – BBMP to take recourse to measures for recovery as stipulated under Sections 148 (4) and (5) of the Act.

22. The above directions / observations are passed after hearing both sides which would be the procedure to be followed after the inspection report is filed pursuant to directions for inspection as ordered in large number of similar petitions with similar factual matrix.

23. In the present case, report having been filed, procedure as stipulated above are ought to recommence from the stage of post inspection as contemplated under Section 144 (13) of the Act as referred to above.



24. It is also noticed that in many of the matters, the petitioners have challenged the validity of the standard operating procedure as being in violative of the statutory scheme. Wherever the SOP is contrary to the statutory scheme as observed above, the BBMP to take appropriate steps to have the SOP amended so as to bring it in consonance with the statutory scheme as observed above.

25. In light of the above, the impugned demand notice at Annexure-D is set aside and respondent – BBMP is at liberty to take further steps in terms of the procedure stipulated above. All contentions on merit as regards the contents of the inspection report if any are kept open while it is made clear that in the present case, no question can be raised that inspection has been done in the absence of petitioner as admittedly inspection has been done in his presence though the petitioner has not affixed his signature on the mahazar stating that he had certain reservations regarding inclusion of certain areas that



ought to have been excluded while calculating the area that could be the subject matter of measurement to be taken for the purpose of calculating property tax as recorded in the mahazar report.

26. Accordingly, writ petition is disposed off.

**Sd/-
JUDGE**

VP