IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.26575 of 2015 &
M.P.Nos.1 & 2 of 2015

P.J.Sudhakar .. Petitioner

Vs.

1 The Commissioner
Corporation of Chennai
Rippon Building, Chennai - 3.

2 The Zonal Officer
Zone-XI (Ward No.144)
Corporation of Chennai, .. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorari Calling for records relating to the first respondent order made in No.7/14-15/4332 dated 27.12.2014 (in Z.O.XI/C.No.122/2014-15) to quash the same and consequently direct the respondents to continue to accept the previous assessed tax for the petitioner premises

For petitioner : Mr.L.Chandrakumar

For respondents : Mr.V.C.Selvasekaran

ORDER

The petitioner has come forward with this writ petition to quash the impugned demand notice issued by the respondents.

The facts of the case are as follows:-

2. 1 Petitioner company registered under the Companies Act, 1956, is the owner of the building situated at Door No.1 &2/A, VGP Amudha Nagar, Maduravayal, Chennai - 600 095. Pursuant to the construction way back in 1996-1997, the property was assessed by the then Municipality and property tax was arrived and fixed and the petitioner was paying the property tax regularly. Subsequently, during general revision by the then Maduravayol Municipality, with effect from 1.4.2008, revised

assessment as well as tax for the said property was fixed at Rs.35,244/- on the basis of general revision of property tax as per G.O.Ms.No.150, dated 12.11.2007 and G.O.Ms.No.110 MAWS dated 23.6.2008. The petitioner has been complying with by regularly paying the property tax dues without any default as such, there are no arrears due on the side of the petitioner.

2. 2 The petitioner submitted that consequent upon the Municipality being converted to that of the respondent Corporation, the regular property tax, water tax and other applicable revenue dues has been assessed and arrived at are being paid regularly by the petitioner. While so, consequent upon the Corporation taking over of the Municipality, in and by proceedings dated 27.12.2014, without giving any opportunity to the petitioner, revision of assessment has been made with effect from 1st half- year of 2008-2009 and the petitioner's revised property tax is arrived at Rs.1,26,005/- for the half year vide order dated 26.12.2014.

2. 3 The petitioner further submitted that when the Municipality having assessed and revised during general revision with effect from 1.4.2008, which also received the tax due thereto, the inherent non-application of mind in quantifying the revised assessment from a date when the Corporation had no say, made the petitioner to come before this Court, by challenging the said notice on the ground of lack of jurisdiction.

3. The learned counsel for the petitioner submitted that in spite of the submission of objections to the impugned notice, the respondents issued notice for payment of property tax for current demand and arrears without considering the same. Moreover, no opportunity of personal hearing is given to the petitioner. It is further submitted that the respondents has no power of retrospective enhancement of property tax under the Act. Learned counsel also contended that the impugned notice cannot be allowed to proceed as the said notice is issued without making proper assessment and calculation and they are not in conformity with the provisions of law.

4. Learned standing counsel for the Chennai Corporation contended that the assessment made is in conformity with Section 137(B) of the Chennai City Municipal Corporation Act, 1919 and hence in the case of property tax has not been duly assessed in any half year or year consequent on the building or land concerned having escaped proper determination of it annual value, the Commissioner may, at any time, from the date on which such person should have been assessed, serve on such person a notice assessing him to the tax or fee due and demanding payment thereof within fifteen days from the date of such service. Therefore, there is no infirmity with the impugned proceeding in this case. The respondent has followed the procedure and there is no contravention of any provision of law. It is also open to the respondents to consider the objection including the retrospective effect.

5. Heard both sides and perused the materials.

6. Having regard to the facts and circumstances of the case, this court after considering the submissions of learned counsel on either side, perused the notice and found that it is not in dispute that impugned notice dated 27.12.2014 was sent to the petitioner proposing to revise the tax. The provisional notice does not provide sufficient details on the mode of fixing and calculating the Annual Rental Value, the basic rate, the monthly rental value, deductions and discounts applied in connection with the revised assessment. In the absence of essential details, the petitioner submitted that the provisional notice is arbitrary, incomplete, invalid and against the provisions of the Chennai Municipal Corporation Act,1919 and Rules thereunder and further the demand of current tax and arrears of tax were made even before considering the objections and without affording an opportunity of hearing to the petitioner. Therefore, the issuance of notice by the 1st respondent informing him about a new provision to make payments of property tax online and enclosing unsigned notice for current demands and arrear demands with retrospective effect from 2008-09 is not only without jurisdiction but also impermissible and hence, the same cannot be sustained.

7. In view of the above, the impugned demand notice is quashed. The matter is remitted back to the respondents to pass appropriate orders afresh on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order after considering the objections and after affording an opportunity of personal hearing to the petitioner. In the meantime, the respondents are restrained from taking any coercive steps against the petitioner to collect the tax amount pursuant to the demand notice. It is needless to mention that the petitioner is not prevented by this order from paying the property tax for the current period.

The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.
Rj

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub-Assistant Registrar

To

1 The Commissioner
Corporation of Chennai,
Rippon Building
Chennai - 600 003.

2 The Zonal Officer
Zone-XI (Ward No.144)
Corporation of Chennai,
Chennai.

+1 C.C. To MR.L.CHANDRAKUMAR, Advocate in SR.NO.51416

W.P.No.26575 of 2015 &
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RV(CO)
sd : 09/10/2015