IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.8194 of 2012 &

M.P.No.2 of 2012

Ammakamma Charities,
Rep. By Sri.N.M.Noorul Ameen,
No.21, N.S.C.Bose Road,
Chennai-600 079. .. Petitioner

Versus

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

2.The Assistant Revenue Officer,
Revenue Department, Zone III,
Chennai-600 003. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records relating to the impugned notice dated 07.03.2012 vide Ref.No.Zone-Ward No-Bill No-Sub No.03-049-0875-000 and quash the same.

For Petitioner : Mr.M.Ganeshan

For Respondents : Mr.T.C.Gopalakrishnan
Standing Counsel

O R D E R

Heard Mr.M.Ganeshan, learned counsel appearing for the petitioner and Mr.T.C.Gopalakrishnan, learned Standing Counsel appearing for the respondents.

2. The petitioner seeks for issuance of a Writ of Certiorari to quash the impugned demand dated 07.03.2012, demanding arrears of property tax from the petitioner for the period from 1998-199 onwards.

3. This is the fourth time the petitioner has approached this Court pertaining to the same property and on the same issue. The second Writ Petition viz., W.P.No.256 of 2010 was filed by the petitioner, challenging a final demand notice, dated 23.12.2009 and for a direction to the respondents to afford an opportunity to the petitioner before passing final order, as stated in his representation dated 07.02.2008. The said Writ Petition was disposed of along with other three connected Writ Petitions by a common order, dated 20.01.2010. The operative portion of the order and direction issued to the Corporation is as follows:-

> "10. ..... However, with liberty to the Corporation to give individual notices to the owners of correct address and correct particulars and the same shall be issued within two weeks from the date of receipt of a copy of this order and thereafter, the Commissioner, Corporation shall grant 15 days time to the owner or occupier as per the Rules to file their objections and thereafter decide the issue as per the Taxation Rules. If such order is passed by the Commissioner following the said Rules, it is open to the concerned petitioners to file an Appeal to the Taxation Appeal Tribunal and subsequently to the Principal Judge, City Civil Court as per the Rules enumerated above."

In spite of the above said order, once again, a demand was issued to the petitioner, which necessitated the petitioner to file the third Writ Petition in W.P.No.16685 of 2010. This Court granted an order of interim stay on 29.07.2010. Realizing the mistake committed, the second respondent, by Communication, dated 13.08.2010, informed the petitioner that the warrant notice, dated 14.07.2010 issued under Section 375 of the MCMC Act, 1919, stands withdrawn and the petitioner's objection would be decided as per the directions of this Court and the date and time of hearing will be intimated to the petitioner separately. In spite of such orders being passed, it appears that coercive action has been taken against the petitioner for recovery of the so-called arrears of property tax at the enhanced rate. This led to submission of the representation, dated 05.02.2011, followed by a legal notice, dated 07.02.2011. It is thereafter, once again, a demand has been made on the petitioner, challenging the same, the present Writ Petition has been filed.

4. The learned Standing Counsel appearing for the respondents would submit that till date, the petitioner has not given any objection and if objections are given, then, the respondents will consider the same.

5. The question of submitting objection would arise only after notice is issued to the petitioner by the Corporation. The direction issued in the earlier Writ Petition, referred to above, is to the effect that new notice should be issued by the Corporation. It is thereafter, the petitioner should submit objection which should be decided in accordance with law. Without issuing any notice, the respondent-Corporation cannot expect objection to be filed. Furthermore, it is not clear as to how the property tax was revised from Rs.19,450/- to Rs.35,150/-. There is no particulars furnished by the respondent, nor counter affidavit has been filed by the respondent. Thus, it is evidently clear that the entire proceedings stand vitiated, for not adhering to proper procedure of assessment of property tax.

6. Accordingly, the impugned demand cannot be enforced. In the light of the above, the Writ Petition is disposed of by issuing the following directions:-

(i) The petitioner is directed to clear the entire arrears of property tax calculated at the rate of Rs.19,450/- per half year and to this extent, the second respondent shall issue a demand to the petitioner. The second respondent for the present is not entitled to demand the revised property tax over and above Rs.19,450/-.

(ii) On the petitioner remitting the arrears of property tax calculated at the rate of Rs.19,450/- per half year, the respondent shall cause an inspection of the petitioner's building, after due notice to the petitioner and based on such inspection, serve pre-assessment notice on the petitioner, giving liberty to the petitioner to file his objections. After objections are filed, the respondents shall consider the objection and pass final orders of assessment. The abovesaid exercise shall be complied with by the respondents, within a period of eight weeks from the date of receipt of a copy of this order.

7. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

r n s
To
1.The Commissioner,
Corporation of Chennai,
Chennai-600 003.

2.The Assistant Revenue Officer,
Revenue Department, Zone III,
Chennai-600 003.

+1 cc to Mr.T.C.gopalakrishnan Advocate sr 47296

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aa06/09/2016