IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 12.8.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.2105 of 2010

A.C.VENKATESH ... Petitioner

Vs

1 THE COMMISSIONER
CORPORATION OF Chennai
RIPON BUILDINGS, PARK TOWN CHENNAI-3.

2 THE ASST. REVENUE OFFICER
ZONE VII DIVISION NO.106 CORPORATION OF
CHENNAI NUNGAMBAKKAM CHENNAI-34.

3 VIJAY P.KUMAR ... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent dated 09.12.2009 and quash the same and direct the respondents to re-assess the property tax in Bill No.1411 situated at Door No.225/301-B Ethiraj Salai Egmore Chennai-8.

For petitioner ... Mr.B.Nedunchezhiyan
For respondents 1 and 2 ... Mr.K.Soundararajan

O R D E R

Heard Thiru.B.Nedunchezhiyan, learned counsel for the petitioner and Thiru.K.Soundararajan, learned Standing counsel for the respondent/ corporation.

2. Though notice has been served on the third respondent and his name is printed in the cause list, none appears for the third respondent.

3. The petitioner has challenged the final warrant notice issued by the respondent Corporation, claiming arrears of property tax from 2001-02 to 2009-10. The petitioner had approached this Court earlier by way of Writ Petition in W.P.No.6699 of 2008. In the said Writ Petition, the petitioner

had challenged a notice issued by the second respondent demanding arrears of property tax in respect of the same building. The said Writ Petition was allowed by order dated 13.8.2008, issuing the following directions :-

> 9. In view of the above, the impugned demand notice issued by the second respondent is quashed. The Writ Petition is allowed. However, the following direction are issued.
>
> (i) The first respondent is directed to pass final order after affording one more opportunity to the petitioner.
>
> (ii) The petitioner is at liberty to submit his explanation within a period of 15 days from the date of receipt of a copy of this order.
>
> (iii) The respondents will be free to proceed further as the final order being passed by the first respondent. In the mean while, if so advised, the second respondent may proceed to recover the property tax on the basis of the unrevised rate of property tax.”

4. Thus, in terms of the above directions, the second respondent was directed to pass final orders, after affording one more opportunity to the petitioner and the petitioner was at liberty to submit his explanation, within a period of fifteen days. In the meantime, the respondent was directed not to proceed to recover the property tax on the basis of the revised rate. The petitioner is said to have given his reply on 13.9.2008, after which, the petitioner received a notice dated 27.9.2008, for a personal hearing on 29.9.2008. The notice was sent one day prior to the date of personal hearing. It appears that the petitioner could not attend the hearing and another notice was issued on 3.10.2008, to attend a personal hearing on 6.10.2008. According to the petitioner, he has appeared for the personal hearing and also handed over a copy of the objections. However, without passing any final orders as per the directions issued by this Court in W.P.No.6699 of 2008, straightaway, final warrant notice has been sent to the petitioner.

5. At the time when this Writ Petition was entertained, the Court being satisfied that the petitioner has made out a prima facie case, granted an order of interim stay. Though the order of interim stay has been in force for more than five years, the

respondent Corporation has not cared to file counter affidavit nor have they deputed their officers to give instructions to the learned standing counsel. In the absence of any records to show that final order was passed in terms of the directions in the earlier Writ Petition, this Court can safely conclud that the official respondents have violated the directions issued in the earlier Writ Petition.

6. The learned standing counsel for the respondent Corporation submitted that after the show cause notice dated 17.5.2007, the petitioner's objections were considered and thereafter only, tax has been demanded. As rightly pointed out by the learned counsel for the petitioner, notice was issued in the name of the third respondent and therefore, that notice by itself will not improve the case of the respondent since in the earlier Writ Petition, these facts were taken into consideration and orders were passed. Hence, for all the above reasons, it has to be held that the impugned demand is not sustainable in law.

7. In the result, the Writ Petition is allowed and the impugned final warrant notice is set aside and the matter is remanded to respondents 1 and 2 for fresh consideration and to complete the assessment in an appropriate manner after conducting fresh inspection. Till orders are passed as per the above direction, the petitioner shall continue to pay the pre-revised property tax without default. There is no order as to costs. M.P.No.2 of 2010 is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//



Sub Assistant Registrar



To

1. THE COMMISSIONER
CORPORATION OF Chennai
RIPON BUILDINGS, PARK TOWN
CHENNAI-3.

2. THE ASST. REVENUE OFFICER
ZONE VII DIVISION NO.106 CORPORATION OF
CHENNAI NUNGAMBAKKAM
CHENNAI-34.

+1cc to Mr.B.Nedunchezhiyan, Adocate sr.46634
+1cc to Mr.K.Soundararajan, Advocate Sr.46374

W.P.No.2105 of 2010

svi[co]
srg 09/09/2016