IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.5826 of 2012
and
M.P.No.1 of 2012

S.Murugesan
S/o.Subbiah
40/75, Ramanaicken Street
Nungambakkam
Chennai - 600 034. .. Petitioner

..Vs..

1.The Asst Revenue Officer
Zone - IX
Revenue Department
Corporation of Chennai
No.1, Lake Area 4th Cross street
Nungambakkam
Chennai - 600 034.

2.The Revenue Officer
Corporation of Chennai
Ribbon Buildings
Chennai - 600 003.

3.The Commissioner
Corporation of Chennai
Ribbon Buildings
Chennai - 600 003. .. Respondents

Prayer

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records in connection with the records in ZO.IX.R.D.C.No. R/108 Amr.1/2011-20212 dt 31.12.2011 on the file of the 1st respondent and to quash the same and to further direct the respondents 2 and 3 to give effect to the order they suffered by an order dt 1.12.2008 made in W.P.No.34438/2007.

For Petitioner : Mr.R.Loganathan

For Respondents : Mr.R.Arunmozhi

ORDER

This is the third time the petitioner is before this Court virtually for the same issue, i.e., with regard to the claim for payment of enhanced property tax.

2.The first writ petition namely W.P.No.34438/2007 was filed challenging a demand issued to the petitioner claiming enhanced property tax which was set aside by an order dated 01.12.2008 on the ground that no assessment has been made. As the writ petition was disposed of by an order dated 01.12.2008 restraining the respondent from enforcing the payment of enhanced property tax, the respondent was directed to consider the petitioner's objections. Inspite of such an order, the CMWSSB demanded enhanced water and sewerage tax and therefore, the petitioner approached this Court once again and filed a writ petition in W.P.No.4563/2009. The said writ petition was allowed and the demand issued by the CMWSSB was quashed giving liberty to the CMWSSB to revise the water and sewerage tax as and when the revision of property tax is made by the Corporation of Chennai.

3.While doing so, the Court directed the CMWSSB to take into consideration the 25% of the amount which was deposited by the petitioner when the writ petition was entertained. Nothing happened thereafter and the Corporation of Chennai has not assessed the petitioner's property to tax. Once again the problem arose in the year 2009, when final warrant notice was issued to the petitioner claiming arrears of property tax at enhanced rate. Apart from that, the CMWSSB also issued revised demands. These were put to challenge by the petitioner by filing W.P.Nos.16542 and 16574/2009. The writ petitions were disposed of by a common order dated 26.10.2009 by issuing the following directions.

> "4. Without going into the merits of the case, the writ petition is allowed with a direction to the respondents to comply with the terms of the order passed in WP No.34438 of 2007 dated 1.12.2008. The respondents shall pass orders without any further default within a period of eight weeks from the date of receipt of copy of this order. Without passing orders on the representation made as to the revision of property tax assessment, the present proceedings issued by the Chennai Metropolitan Water Supply and Sewerage Board dated 20.7.2009, hence, has to be kept in abeyance. Depending on the outcome of the orders passed on the representation and the assessment orders passed giving out the reasons for revision of assessment, the demand for property tax could be enforced. In the light of the above, the present WP No.16574 of 2009 filed

against the demand notice issued by the Chennai Metropolitan Water Supply and Sewerage Board, hence need to await the outcome of the property tax revision proceedings. Consequently, the respondents are hereby directed to keep the recovery notice on hold till the property tax is revised.”

4.Inspite of the above directions, there was no further action initiated by the respondent. Thereafter, once again CMWSSB issued a reminder cum cut off notice. Therefore, the petitioner came before this Court once again by filing W.P.No.133/2011, wherein interim order was granted and the interim order was also made absolute on 20.01.2011, as no counter affidavit was filed. It appears that the writ petition was disposed of and the matter has been referred to the taxation tribunal constituted under the Tamil Nadu Water Supply and Drainage Board Act.

5.While the facts remain thus, the impugned notice was issued to the petitioner demanding a sum of Rs.9,97,138/- alleging the sum to be the property tax due for the period I/2009-2010 to II/2011-2012. The respondent Corporation have not filed the counter affidavit.

6.I have heard Mr.R.Loganathan, learned counsel for the petitioner and Mr.R.Arunmozhi, learned standing counsel appearing for the respondent Corporation.

7.The facts narrated above will clearly disclose that till date, the petitioner's property has not been assessed in proper manner for revision of property tax. This has been noted by this Court in the earlier writ petitions which were decided in favour of the petitioner. Thus, prior to issuing any demand, the pre-requisite is to make proper assessment of the tax. This is more so because any amount collected as tax in excess of what is actually payable would be an illegal collection. Further, there is no record to show that proper assessment was made on the petitioner's property. The petitioner's case is that the building has remained as such from the year 2006 and when there is no additional construction or alteration, there is no justification for revision of property tax.

8.In the light of the above undisputed facts and reasons assigned in preceding paragraphs, the impugned demand has to be held to be unsustainable. Accordingly, the writ petition is allowed and the impugned demand has to be set aside, leaving it open to the respondent Corporation to conduct proper assessment of the petitioner's building by conducting inspection, thereafter issue a provisional assessment order, afford an opportunity to the petitioner to submit his objections and thereafter to complete the final assessment in accordance with law. It is needless to state that till the above directions are complied with, the petitioner should continue to pay the pre-revised property tax as well as the water and sewerage tax. Consequently, connected miscellaneous petition is closed. No costs.

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s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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3.The Commissioner
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Chennai - 600 003.

+ 1 cc to Mr.R.Loganathan, Advocate SR 46142

+ 1 cc to Mr.R.Arunmozhi, Advocate SR 46304

bvr(co)
prk1/9

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and
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