IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.08.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.27391 of 2016
and
W.M.P.Nos.23593 and 23594 of 2016

Oriental Enterprises
rep. by its Partner,
Mr.S.M.A.J.Abdul Haleem

...Petitioner

Vs.

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
E.V.R.Periyar Salai,
Chennai.

2. The Assistant Revenue Officer,
Revenue Department,
Zonal Office -I X,
Corporation of Chennai,
No.1, Lake Area, 4th Cross Street,
Nungambakkam, Chennai - 600 034.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records from the second respondent, dated 07.06.2016, bearing No.Z.O.IX/R.D.C.No.Spl./2016-17, and to quash the same.

For Petitioner : Mr.K.M.Aasim Shehzad

For Respondents : M/s.Karthikaa Ashok

O R D E R

Heard Mr.K.M.Aasim Shehzad, learned counsel appearing for the petitioner, and M/s.Karthikaa Ashok, learned counsel for respondents. With the consent on either side, the Writ Petition is taken up for final disposal.

2. The petitioner, in this Writ Petition, has challenged the notice issued by the second respondent, calling upon the petitioner to pay a sum of Rs.2674622, being the property tax dues, for the period upto 1/2016-17.

3. It appears that the amount,which has been demanded, has been subsequently revised to Rs.25,73,066/-.

4. When the case came up for admission before this Court on 05.08.2016, the Officials of the Corporation, who were present in Court, informed the Court that assessment has been revised with effect from second half year 2009-2010, and notice in Form 7 was issued to the petitioner, but, they have refused to receive the same. It was stated that the assessment has been made for the ground + four floors, and the annual value has been re-fixed, and the half yearly property tax has been revised from Rs.1,21,596 to Rs.3,03,955/-. It was further submitted that the fourth floor put up by the petitioner is an unauthorized construction. Therefore, this Court pointed out that, if the respondent's allegation is that the petitioner has put up an unauthorized construction, then, how the Corporation of Chennai could have assessed the fourth floor to property tax. The learned counsel sought for time to get instructions in the matter. Accordingly, the matter was directed to be listed today.

5. Today, when the matter is taken up, the learned counsel appearing for the petitioner submitted that the allegation made by the respondent/Corporation that the petitioner has put up unauthorized construction is false, since the petitioner has obtained approved plan for the construction of fourth and fifth floors as early as on 08.08.1998 from the Madras Metropolitan Development Authority (MMDA) in Letter No. C/7979/87, and further, it is submitted that the petitioner is in possession of the approved plan, and it is false to state that the petitioner has put up unauthorized construction. It is fairly admitted by the learned counsel appearing for the petitioner that, as on date, the building consists of ground + five floors.

6. The learned counsel for respondents has produced certain documents, including some photographs of the building to show the number of floors put up by the petitioner. However, the respondent/Corporation has not specifically stated as to whether any approval has been granted by Chennai Metropolitan Development Authority, (CMDA) for construction of the fourth and fifth floors.

7. Be that as it may, this Court is here to test the correctness of the second respondent's action in demanding the property tax for the period upto 1/2016-17 to the tune of Rs.25,73,066. On a perusal of the notice issued in Form 7 , it is seen that the ground + three floors were assessed to property tax, at the rate of Rs.60791.42. If, according to the respondent/Corporation, the fourth floor has been subsequently put up by the petitioner, then, they should have made fresh assessment in respect of the fourth floor. However, what the second respondent has done is that, he has calculated the property tax at the same rate as that of other floors, at Rs.60791.42, added the same and demanded enhanced the property tax. The procedure adopted by the respondent is not tenable. If, according to the respondent/Corporation, the fourth floor is newly constructed, it must be assessed to tax, and it should be a fresh assessment, for which, construction should have been inspected. Notice in Form-7 does not refer to the fifth floor, when admittedly the petitioner has put up the construction up to fifth floor. Therefore, this is one more defect in the notice issued by the second respondent, in Form 7.

8. In the light of the above, the impugned order is not sustainable for the inherent defects, in the manner in which, the assessment was made. Accordingly, the demand made by the second respondent, vide proceedings, dated 07.06.2016, as well as the notice in Form 7 are set aside, and there will be a direction to the second respondent to inspect the petitioner's building, and thereafter, issue a pre-assessment notice, clearly mentioning as to how, he proposes to proceed with the assessment, and on receipt of such notice, the petitioner is entitled to submit their objections within 15 days, and after receipt of the objections and after affording opportunity of personal hearing to the petitioner, or to the authorized representative of the petitioner, the second respondent shall redo the assessment in respect of the ground + first, second and third floors, and make fresh assessment in respect of fourth and fifth floors.

9. Till orders are passed in terms of the above directions, the petitioner shall continue to remit the property tax at the pre revised rate, i.e at the rate of Rs.1,21,596/-, which shall cover the property tax for the ground + three floors, since the fourth floor has not been assessed in a proper manner, and fifth floor has not at all be assessed, pending compliance of the above direction, the petitioner is directed to pay a sum of Rs.2,00,000/- (Rupees Two Lakhs only) to the second respondent, which shall be adjusted as against the assessment for the fourth and fifth floors, in terms of the above directions. The above payment of Rs.2,00,000/- shall be made, within a period of two weeks from the date of receipt of a copy of this order.

10. In the result, the Writ Petition is allowed on the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sd

To

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
E.V.R.Periyar Salai,
Chennai.

2. The Assistant Revenue Officer,
Revenue Department,
Zonal Office -I X,
Corporation of Chennai,
No.1, Lake Area, 4th Cross Street,
Nungambakkam, Chennai - 600 034.

+2 cc to BFS Legal sr 45074
+1 cc to Karhikaa Ashok Advocate sr 44914

Writ Petition No.27391 of 2016

aa26/08/2016