IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.37667 of 2016 &
W.M.P.No.32285 of 2016

S.Jayasundar .. Petitioner

Versus

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

2.The Chairman,
(Judicial Officer / District Judge),
Taxation Appeal Tribunal,
Greater Corporation of Chennai,
Rippon Building, Chennai-600 003. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the first respondent in passing the impugned order dated 02.03.2016 in Notice No.10/15-16/10328 and for the records of the second respondent Tribunal in passing the impugned order dated 11.08.2016 in Appeal dated 24.06.2016 filed by the petitioner against the first respondent's Final Order dated 02.03.2016 and quash the same and direct the second respondent to receive the petitioner's above appeal dated 24.06.2016 on its file and dispose it on merits.

(Prayer amended as per order dated 09.11.2016 in W.M.P.No.33584 of 2016 in W.P.No.37667 of 2016)

For Petitioner : Mr.N.Nagu Sah

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

O R D E R

Heard Mr.N.Nagu Sah, learned counsel appearing for the petitioner and Mr.T.C.Gopalakrishnan, learned Standing

Counsel appearing for the respondent-Corporation.

2. The amended prayer in the Writ Petition is for issuance of a Writ of Certiorarified Mandamus to quash the order passed by the first respondent, dated 02.03.2016, which is a final assessment order in Form No.10 and the order passed by the second respondent-Tribunal in refusing to entertain the petitioner's appeal petition and for directing the Tribunal to accept the petitioner's appeal petition.

3. This Court will first consider the validity of the final assessment notice dated 02.03.2016 and if the Court comes to a conclusion that the final notice of assessment is flawed, then the necessity of directing the petitioner to approach the second respondent Tribunal would not arise. Therefore, at the first instance, this Court will test the correctness of the final assessment notice in Form 10, dated 02.03.2016. The original owners of the property were S.Rani and R.Porkodi, had sold the property in favour of the petitioner, vide sale deed, dated 19.07.2012. The petitioner has intimated the Corporation of Chennai about the purchase and requested for transfer of the property tax assessment in his name, vide representation dated 12.10.2012. Nevertheless the assessment was made on 02.12.2014, in the name of the original owners, that too, with retrospective effect from I/01-02. The petitioner challenged the said assessment, dated 02.12.2014 by way of a Writ Petition before this Court in W.P.No.3504 of 2015. The said Writ Petition was allowed with certain directions, by an order dated 23.02.2015 and the operative portion of the order reads as follows:-

> "7. In view of such circumstances, I am inclined to quash the impugned order only on the ground of violation of principles of natural justice. Accordingly, the impugned assessment order is set aside and the matter is remitted back to the original authority for fresh consideration.
>
> 8. The authority concerned is directed to send a copy of the provisional assessment notice to the petitioner in the address mentioned in the contempt notice dated 01.10.2014 through the Registered Post with Acknowledgement Due or Speed Post within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the petitioner is directed to file his objections along with documents, if any, within a period of two weeks thereafter. On receipt of the said objections, the authority concerned shall pass orders on merits and in accordance with law, after affording an opportunity of personal hearing and

also after taking into consideration the observation stated supra, within a period of two weeks thereafter. The respondents shall send a communication with regard to the date of appearance well in advance by Registered Post with Acknowledgement Due or Speed Post.

9. The Petitioner is directed to appear before the Authority concerned on the date to be specified by them and make his submissions both oral and written and also produce all the documents, if any, in support of his case.

10. In case the petitioner fails to avail the opportunity on the date to be specified by the authority, it is open to the respondents to pass appropriate orders on merits and in accordance with law without being influenced by the earlier order passed by the Authority, which has been set aside by this Court in this Writ Petition.

The Writ Petition is allowed to the extent indicated above. No costs. Consequently, connected Miscellaneous Petition is closed."

4. On a perusal of the above direction, it is evidently clear that the Court was of the firm view that adequate opportunity should be given to the petitioner to put-forth their objections. That is why a detailed direction was issued, clearly safeguarding the interest of the Corporation of Chennai in the event the petitioner fails to avail the opportunity. Pursuant to which, a proceedings was issued on 28.11.2015 by the Assistant Revenue Officer, calling upon the petitioner to file his objections. On the same date, a provisional assessment order was once again made in the name of the original owners viz., S.Rani and R.Porkkodi, dated 28.11.2015 proposing to revise the property tax with retrospective effect from second half year 2001-02. The petitioner has submitted the objections on 16.12.2015 well within the 15 days period. A personal hearing was afforded to the petitioner on 28.12.2015 in which, the petitioner had appeared and the petitioner was informed by the Assistant Revenue Officer to appoint their Chartered Engineer and submit a valuation report. Accordingly, the petitioner sent another representation on 11.01.2016 along with Engineer's report and enclosed copies of all relevant documents. The Engineer's Report apart from giving the total built up area of the property has also given a sketch of the property. However, the Assistant Revenue Officer without considering any of the points raised by the petitioner, by an order dated 02.03.2016 stated that the representation given by the petitioner has

been considered and the property tax is revised. The order dated 02.03.2016 is a clear case of total abdication of power vested with the Assistant Revenue Officer, totally oblivious of the order and direction issued in the Writ Petition W.P.No.3504 of 2015. In fact, the Assistant Revenue Officer can be punished for having committed contempt of Court of the earlier order passed in the Writ Petition. Not stopping with that final assessment order has been issued on 02.03.2016 revising the property tax with retrospective effect from II/01-02 to Rs.12,740/-.

5. Thus, it is clear that the final assessment order passed, is an outcome of a total non application of mind on the part of the first respondent, wherein, the first respondent did not take into consideration the order passed in the earlier Writ Petition. This is sufficient to hold that the final assessment notice dated 02.03.2016 is illegal and arbitrary, so also the proceedings of the Assistant Revenue Officer, dated 02.03.2016 .

6. So far as the second limb of the relief sought for by the petitioner, since the final assessment order itself is to be set-aside, the petitioner need not approach the Tribunal.

7. It is further made clear that though the property tax assessment has been made in the names of the original owners viz., S.Rani and R.Porkodi, the petitioner has locus standi to question the same, since the respondent retrospectively revised the property tax and as the petitioner has stepped into the shoes of the original owners. Furthermore, the petitioner's representation for transfer of property tax assessment in his name by way of a representation, dated 12.10.2012 has not been considered till date. Therefore, this Court holds that the petitioner has locus standi and jurisdiction to challenge the impugned orders. Therefore, when the matter is remanded to the first respondent for fresh consideration, question of non suiting the petitioner on the ground that he is not the assessee of the property cannot arise and said ground cannot be put against the petitioner.

8. Accordingly, the Writ Petition is allowed and the impugned orders are quashed and there will be a direction to the first respondent to authorize his officers to inspect the petitioner's building, after issuing notice to the petitioner and after receiving the inspection report, the first respondent shall consider the petitioner's objections dated 16.12.2015 along with the representation dated 11.01.2016 and the Engineers report, dated 08.01.2016 and pass appropriate final orders in accordance with law. No costs. Consequently,

connected miscellaneous petition is closed.
r n s

-Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

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

2.The Chairman,
(Judicial Officer / District Judge),
Taxation Appeal Tribunal,
Greater Corporation of Chennai,
Rippon Building, Chennai-600 003.

+ 1cc to Mr.N.Nagu sah, Advocate Sr.No.69386

W.P.No.37667 of 2016 &
W.M.P.No.32285 of 2016

CO/SSI

KP(26/12/2016)