IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.13846 of 2017 & W.M.P.No.15028 of 2017

K.R.Balachandran ... Petitioner

Vs.

1.Corporation of Chennai,
Rep. by its Commissioner,
Rippon Buildings, Chennai-600 003.

2.The Deputy Commissioner (R & F),
Greater Chennai Corporation,
Chennai-600 003.

3.The Assistant Revenue Officer,
Zone No.IX, Corporation Office,
Rippon Buildings, Chennai-600 003. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, to call for the records relating to the impugned distraint notice dated 13.01.2017 issued by the third respondent herein in No.Ma.a-9/va.thu.na.ka.No.R1/Special/2017 and quash the same and also direct the respondents 2 and 3 herein to consider the petitioner's written representations dated 25.06.2016, 07.07.2016 and 09.12.2016 respectively.

For Petitioner : Mr.M.Balasubramanian

For Respondents : Mr.T.C.Gopalakrishnan

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O R D E R

Heard Mr.M.Balasubramanian, learned counsel for the petitioner and Mr.T.C.Gopalakrishnan, learned counsel appearing for the respondents. With consent on either side, this writ petition is taken up for final disposal.

2.The petitioner is aggrieved by a distraint notice issued by the third respondent threatening coercive action against the petitioner, if the petitioner does not remit a sum of

Rs.1,42,850/-. This amount is demanded from the petitioner being the arrears of enhanced property tax in respect of the building in question. The petitioner's case is that without following the proper assessment procedure, the demand was made and without reference to any of the petitioner’s representation dated 25.06.2016, 07.07.2016, 09.12.2016, the property tax has been arbitrarily revised.

3.Further, it is submitted that the building is a 60 years old building with no addition made over the period of 60 years. It is situated in a very congested area and on account of the fly over having been constructed on the main road, the value of the property got diminished to a maximum extent and due to congestion, cars cannot enter into the house property during peak hours and the drainage is also blocked on account of water logging during rainy season etc. None of these objections appears to have been considered by the respondents before issuance of the impugned notice. Thus, the third respondent has not followed the proper assessment procedures before initiating the distraint proceedings. This is sufficient to hold that the impugned notice is illegal.

4.It is seen that the respondent-Corporation had issued Form 6 Notice dated 16.03.2016. According to the petitioner the built-up area of the ground floor as mentioned in the notice is incorrect. Equally, notice in respect of the occupancy is also incorrect and therefore, the entire proposal to re-assess the property to higher rate of tax is in dispute. Though the impugned notice states that within a period of 15 days an appeal can be preferred to the Commissioner, Greater Chennai Corporation, Chennai, such appeal should be construed as an objection to a pre-assessment notice.

5.Thus, for all practical purposes, the Form 6 Notice should be construed as a pre-assessment notice. In fact, the petitioner has given his objections/replies as noted above. None of these replies/objections have been considered. Therefore, the entire re-assessment proceedings are completely flawed. Accordingly, this writ petition is allowed, the impugned notice is quashed and the matter is remanded to respondents 2 and 3 for fresh consideration. The petitioner is directed to submit their fresh objections to the proposal in the Form 6 Notice dated 16.03.2016 within a period of 30 days from the date of receipt of a copy of this order enclosing all relevant documents in support of their stand. On receipt of the objections, the appropriate authority of the respondent-Corporation shall conduct an inspection of the building after due notice to the petitioner and based on such inspection after ascertaining the location, advantage of the building, the usage of the building, the age of the building etc., the authority shall consider the petitioners objections and pass appropriate final assessment order in accordance with law. Till such proceedings are completed, the petitioner is directed to pay the pre-revised property tax without default. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

abr

To

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

2.The Deputy Commissioner (R & F),
Greater Chennai Corporation,
Chennai-600 003.

3.The Assistant Revenue Officer,
Zone No.IX, Corporation Office,
Rippon Buildings, Chennai-600 003.

+ 1 cc to Mr.T.C.Gopalakrishnan Advocate,SR.71532

+ 1 cc to Mr.M.Balasubramanian Advocate,SR.71378

W.P.No.13846 of 2017

SV(CO)
NR 08/11/2017