In the High Court of Judicature at Madras

Dated : 16.11.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.29357 of 2017 & WMP.No.31620 of 2017

G.Hariharasubramanian ...Petitioner

Vs

1.The Assistant Revenue Officer,
Zone VII (Ambattur), Corporation
of Chennai, Ambattur, Chennai-53.

2.The Commissioner, Greater Chennai
Corporation, Ripon Buildings,
No.1131, EVR Periyar Salai, Park
Town, Chennai-3. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records pertaining to the impugned order namely Notice No.10: Final Assessment bearing Order No.M/ 07/080/17-18/2723 dated 20.9.2017 from the respondents and to quash the said impugned order.

For Petitioner : Mr.Deepak Narayanan
For Respondents : Mrs.Karthika Ashok

ORDER

Mrs.Karthika Ashok, learned Standing Counsel accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner has challenged a notice in Form No.10 dated 20.9.2017, by which, the annual value of the residential house owned by the petitioner, has been fixed at Rs.46,060/- and the half yearly tax has been revised at Rs.3,915/- as against the earlier fixation of Rs.1,012/-.

3. The petitioner is the owner of the property bearing door No.1, Rajagopal Street, Vijayalakshmipuram, Ambattur, Chennai-53 after having purchased the same vide sale deed dated 12.9.1966 registered as doc.No. 3629 of 1966 on the file of the Sub-Registrar, Sembium.

4. On a perusal of the approved building plan in page 7 of the typed set of papers, it is seen that there is a residential house consisting of ground + first floor having a total built up area of 1812 sq.ft. The area of the plot is 4382 sq.ft. The planning permission was granted on 24.5.2002. The property owned by the petitioner was assessed to tax and the petitioner had been paying the property tax at Rs.1,012/-. It appears that the petitioner approached the first respondent seeking some details regarding valuation of the property for certain other purposes, which has now resulted in the revision of property tax for the petitioner's house.

5. By notice dated 06.2.2017 in Form No.7, the petitioner was informed that the first respondent proposes to revise the annual value of the building at Rs.46,060/- and fixed the half yearly property tax at Rs.3,930/-. The petitioner was shocked to receive such notice, since he was not aware as

to on what basis, such proposed fixation was done. Therefore, the petitioner sent his objections to the provisional assessment vide objections dated 06.7.2017 to the second respondent. In the said objections, the petitioner clearly stated as to how the proposed revision is not warranted. The objections were received by the office of the second respondent on 07.7.2017, as could be seen from the postal acknowledgment card.

6. The petitioner also sent their objections dated 06.7.2017 to the Revenue Officer, Corporation of Chennai wherein the petitioner stated that there is no alteration or addition to the building and that when the building was inspected by the zonal officials of Ambattur area, they found that the building was constructed as per the sanctioned plan and no additional construction was made. It was further stated that after Ambattur Municipality area was merged with the Corporation of Chennai in the year 2010-11, there has been no general or special revision of property tax in respect of any other property in the merged area like Ambattur. It was also stated that the basic street rate indexation for the street concerned namely Rajagopal Street is at Rs.2.15 Ps, which is too high, considering the facilities provided by the Corporation. Therefore, the petitioner prayed for revoking the provisional assessment notice.

7. The objections dated 06.7.2017 were received by the Revenue Officer, as could be seen from the postal acknowledgment card. In the meantime, one Mr.N.Biswanath filed an application under the Right to

Information Act requesting a reply for three queries and the reply received from the Information Officer dated 12.7.2017 is to the following effect :

S No.	Your request	Details
1	*Has there been any notification or circular to the zonal offices of the newly added areas like Ambattur, Madhavaram and Alandur (under Chennai Corporation) to enhance the property tax?*	*No*
2	*If there any general revision of property tax after 2010 in the whole of Chennai Corporation limits?*	*No. General revision made*
3	*Under what authority the Corporation is increasing the property tax from 2011 for the newly added areas like Ambattur, Alandur and Madhavaram?*	*Not increased*

8. Thus, from the information received under the Right to Information Act, it is seen that no general revision has taken place and that nowhere the respondent Corporation has increased the property tax from 2011 for the newly added areas like Ambattur, Alandur and Madhavaram. Though the petitioner's objections were on record before the Commissioner and the Revenue Officer was also put on notice, as a copy of the objections was sent to him, in total disregard to the objections, the petitioner's property has now been assessed to tax at the rate of Rs.3,915/- per half year by the impugned final assessment notice in Form No.10 dated 20.9.2017.

9. Time and again, this Court points out that if the property tax is required to be revised, the Assessing Officer has to follow the assessment procedure, which would mandate a pre-assessment notice. For the sake of argument, this Court will accept the notice in Form No.7 as a pre-assessment

notice. On perusal of the same, it is seen that an opportunity has been granted to the assessee to submit an appeal before the Commissioner of Greater Chennai Corporation. The notice should state that the assessee would be entitled to give objections and the usage of the expression 'appeal' is incorrect.

10. Be that as it may, the petitioner had given his objections to the Commissioner of Greater Chennai Corporation on 06.7.2017. It is not known as to what happened to those objections, as no speaking order was passed and communicated to the petitioner.

11. By referring to Part VI of Schedule III to the Chennai City Municipal Corporation Act, 1919, the learned counsel for the petitioner submits that in terms of Rule 20 of the Taxation Rules, what is required to be done is to send an appeal before proceeding to invoke the provisions of Rule 21, which is a distraint proceedings for recovery of tax.

12. The reference to Rule 20 of the Taxation Rules under this Schedule is misconceived, since what is challenged is a revision of property tax. The revision of property tax cannot be done without proper provisional assessment, but only after inviting objections and then by passing a speaking order on the objections raised by the assessee. All these procedure have been thoroughly disregarded while passing the impugned order.

13. Under normal circumstances, this Court would have remanded the matter for a fresh consideration. But, the hard facts prevent this Court from

doing so, especially in the light of the fact that the construction put up by the petitioner has been found to be in accordance with the approved building plan and that there has been no additional construction or change of user of the property, as the notice in Form No.7 as well as the impugned notice in Form No.10 show that it is a residential accommodation and it is occupied by the petitioner, who is the owner.

14. On the other hand, the stand of the respondent Corporation is that the land value in the concerned area has increased and that therefore, the petitioner cannot be singled out and necessarily, the respondent Corporation has to issue notices to all the persons in the locality.

15. What is interesting to note is that the neighboring house owners' properties bearing door Nos.2 and 2A, etc., have not been subjected to any revision of property tax and that the tax collected from the year 1998-99 continues to be collected from them. The learned Standing Counsel for the respondents would state that the area is a commercial area and it is a shop, as the address given refers to 'Nilgiris Shop'.

16. In reply, the learned counsel for the petitioner explains that the entire area is called as 'Nilgiris Shop' and the petitioner's property is a residential property.

17. This is established from the building plan approved by the respondent Corporation on 24.5.2002. Thus, this Court is of the clear view that there is absolutely no ground made out for revision of property tax in

respect of the petitioner's residential accommodation.

18. For all the above reasons, the writ petition is allowed, the impugned notice in Form No.10 dated 20.9.2017 is quashed and the property tax payable by the petitioner is determined at Rs.1,012/- per half year and the petitioner shall continue to pay the same. It is open to the respondent Corporation to effect revision of property tax for all persons in the area by following proper assessment procedure. No costs. Consequently, the connected WMP is closed.

16.11.2017

Internet : Yes

To

1.The Assistant Revenue Officer, Zone VII (Ambattur), Corporation of Chennai, Ambattur, Chennai-53.

2.The Commissioner, Greater Chennai Corporation, Ripon Buildings, No.1131, EVR Periyar Salai, Park Town, Chennai-3.

RS

<u>T.S.SIVAGNANAM,J</u>

RS

WP.No.29537 of 2017&
WMP.No.31620 of 2017

16.11.2017