IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.44098 of 2016
And
W.M.P.No.37906 of 2016

Mr.Ravindra Chand Chordia
Represented by his Power Agent
Mr.Prasan Chand Chordia ... Petitioner

Vs.

1.The Commissioner,
Corporation of Chennai,
Chennai.

2.The Zonal Officer,
Zone No.5,
Chintadripet.

3.Assistant Revenue Officer,
Corporation of Chennai,
Revenue Department,
Chennai. ... Respondents

Prayer:
Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to the order dated 05.11.2016 bearing No.M/05/062/16-17/0522 passed by the first respondent and quash the same.

For Petitioner : Mr.P.J.Sriganesh
For Respondents : Mr.T.C.Gopalakrishnan

O R D E R

The petitioner is aggrieved against the order of the first respondent dated 05.11.2016 which is a final assessment of property tax.

2.The case of the petitioner in short is as follows:
(i)The petitioner is the owner of the property located at

No.26 (31) Wallers Road, Chintadripet, Chennai - 600 002 and has let out some of the portions of the same to third parties. The land in which, the building was constructed is 6300 sq.ft. and the building was constructed much prior to 1969 with ground, first and second floors.

(ii)The property is assessed to property tax. The petitioner has been remitting the payment of tax without any delay. However, a notice dated 12.09.2015, under Notice No.7 was issued to the petitioner as revised assessment notice, proposing to revise the property tax at the rate of Rs.1,16,030/- per half year with effect from 2009-10, while the petitioner was paying a sum of Rs.51,884/- per half year from 1999-2000 till the date of receipt of the above said communication.

(iii)The revised assessment notice did not contain any details as to how the revision was arrived at. The petitioner gave a reply on 01.04.2016 pointing out the deficiencies with regard to measures, assessment of the building. However, the respondents without considering the objections raised by the petitioner passed the final order of assessment which is impugned in this writ petition.

3.The respondents have filed a counter affidavit wherein it is stated that the Officials of the respondents found that the property tax paid by the petitioner is very low and accordingly, a notice was served on the petitioner and thereafter, the final order of assessment was passed after considering the objections raised by the petitioner. It is further contended by the respondents that the Commissioner can invoke Section 137 B of the Chennai City Municipal Corporation Act for under assessment or escaped assessment. The respondents further contended in the counter that the petitioner can approach the Tribunal and file an appeal against the final order of assessment.

4.The learned counsel for the petitioner submitted that neither in the provisional notice in Notice No.7, dated 12.09.2015 nor in the final assessment in Notice No.10 dated 05.11.2016, the respondents have discussed the details as to how they have come to such conclusion to revise the assessment. He further contended that final assessment order was passed without considering any of the objections raised by the petitioner and making any discussion on the same. Therefore, the learned counsel contended that in the absence of such material particulars and details followed by discussions, the impugned order of assessment cannot be sustained and consequently, the matter has to be remitted back to the Officer concerned for redoing the assessment once again after giving due opportunity of hearing to the petitioner.

5.The learned counsel for the petitioner in support of his contention also relied upon an unreported decision of this Court made in W.P.No.26575 of 2015 dated 21.09.2015.

6.On the other hand, the learned counsel for the respondents Corporation has submitted that the concerned Officials is empowered to revise the order of assessment by invoking Section 137 B read with Section 107 of the Chennai City Municipal Corporation Act, 1919. He further submitted that the impugned order of assessment was passed after considering the objections raised by the petitioner which is evident by the very fact that the original proposal was reduced from Rs.1,16,030/- to Rs.1,11,995/-.

7.Heard both sides.

8.The petitioner is aggrieved against the order of assessment revising the property tax. There is no dispute to the fact that before issuance of the final assessment order, the petitioner was put on notice dated 12.09.2015 in Notice No.7. Consequent upon the receipt of the said notice, the petitioner made an objection on 01.04.2016 and the said fact is admitted by the respondents in the counter affidavit. Perusal of the said objections raised by the petitioner would show that they have disputed with regard to measurement of certain area in certain floors and thus requested the authority to continue with the old rate of tax. However, perusal of the impugned final assessment order would only indicate that it is nothing but a proceedings issued in a printed format filling up the columns thereunder, without there being any discussion on the proposal made and the objections given by the petitioner in respect of revision of tax.

9.Needless to say, when a notice is issued calling upon objection from the owner of the property as against the proposed revision of property tax and when the owner has also given such objection, the authority who issued the proposal must discuss and pass a speaking

order as to how the said objections raised by the owner is not sustainable and as to why the proposal made has to be confirmed. In other words, even assuming that the objections raised by the owner of the property is not sustainable, the reasoning of such rejection must be reflected in the final assessment order itself so as to justify that the same has been made by application of mind to the objections raised by the petitioner. In this case, I do not find any such discussion or finding in the final assessment order.

10.It is to be noted at this juncture that this Court in W.P.No.26575 of 2015 dated 21.09.2015 has observed at paragraph no.6 as follows:

> "6.Having regard to the facts and circumstances of the case, this court after considering the submissions of learned counsel on either side, perused the notice and found that it is not in dispute that impugned notice dated 27.12.2014 was sent to the petitioner proposing to revise the tax. The provisional notice does not provide sufficient details on the mode of fixing and calculating the Annual Rental Value, the basic rate, the monthly rental value, deductions and discounts applied in connection with the revised assessment. In the absence of essential details, the petitioner submitted that the provisional notice is arbitrary, incomplete, invalid and against the provisions of the Chennai Municipal Corporation Act, 1919 and Rules thereunder and further the demand of current tax and arrears of tax were made even before considering the objections and without affording an opportunity of hearing to the petitioner. Therefore, the issuance of notice by the 1st respondent informing him about a new provision to make payments of property tax online and enclosing unsigned notice for current demands and arrear demands with retrospective effect from 2008-09 is not only without jurisdiction but also impermissible and hence, the same cannot be sustained."

11.Perusal of the said order would show that even the provisional notice should contain sufficient details and particulars. In this case as stated supra, neither the provisional notice nor the final assessment order contains those details and discussions.

12.Therefore, I am of the view that the matter has to go back to the Authority namely, the first respondent for considering the matter afresh and for passing a speaking order based on the objections already raised by the petitioner on 01.04.2016. The above finding of mine is very much supported by the very stand taken by the respondent themselves in their counter affidavit as if the Commissioner has invoked the provision under Section 137 B of the Chennai City Municipal Corporation Act, which undoubtedly deals with escaped assessment. If that is their case, then the very provisional notice issued in Form No.7 followed by the final order of assessment must have dealt with that aspect. It has not been done in this case. Therefore, I find that the impugned order is liable to be set aside for the purpose of remitting the matter back to the first respondent.

13.Accordingly, the writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the first respondent for passing a fresh order of assessment after giving an opportunity of personal hearing to the petitioner as well as by considering the objections raised by the petitioner. Such exercise shall be done by the first respondent within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner,
Corporation of Chennai,
Chennai.

2.The Zonal Officer,
Zone No.5,
Chintadripet.

3.Assistant Revenue Officer,
Corporation of Chennai,
Revenue Department,
Chennai.

+1cc to Mr.Gopalakrishnan, Advocate, S.R.No.19178
+1cc to Mr.Rishikesh, Advocate, S.R.No.19365

W.P.No.44098 of 2016
And
W.M.P.No.37906 of 2016

SVI(CO)
RS(11/04/2017)