IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.23552 of 2003

Tmt.Rajaathimani .. Petitioner

Vs.

Mettur Municipality,
Rep. by its Executive Authority,
Mettur Dam,
Mettur. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the proceedings No.RF.50/Order No.2/A1, dated 10.03.2003 on the file of the respondent and quash the same and direct the respondent to fix the property tax after giving opportunity to the petitioner.

For Petitioner : Mrs.Hemalatha

For Respondent : Mr.S.Saravanan

ORDER

The petitioner has come forward with the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the proceedings No.RF.50/Order No.2/A1, dated 10.03.2003 on the file of the respondent and quash the same and direct the respondent to fix the property tax after giving opportunity to the petitioner.

2. The case of the petitioner is that she is the absolute owner of the property in land and building in 27-61A 26A, New Door No.27-9, West Main Road, Mettur Dam-1. The building was constructed and completed in the year 2002 and the building consists of ground floor, first floor and second floor. According to the petitioner, the respondent issued property tax assessment notice for the said premises in two Assessment Nos., viz., 20758 and 20801 and with respect to Notice in No.20758, the respondent fixed the tax amount at Rs.22,203/- for each half-year and in Assessment Notice No.20801, the respondent

fixed the property tax at Rs.2,572/- for each assessment year. The assessment notice in No.20758 was served on the petitioner on 14.09.2002 and she sent her objections on 30.09.2002 and the respondent rejected the objections and fixed the property tax at Rs.22,203/- per half year by proceedings in Na.Ka.No.3805/A/02, dated 06.05.2003. Since the respondent has fixed the tax at Rs.22,203/- per half year by the impugned proceedings dated 10.03.2003, the present Writ Petition is filed. It is the further grievance of the petitioner that since no opportunity of hearing was afforded to the petitioner, the assessment notice dated 14.09.2002 is liable to be interfered with on account of violations of principles of natural justice. It is further averred by the petitioner that the respondent has failed to follow the necessary procedures prescribed under the Tamil Nadu District Municipalities Act. It is further contended by the petitioner that from the details of assessment, it is clear that out of the annual rental value, 16.5% has been demanded as property tax, which is illegal and invalid.

3. From the narration of facts and events supra, it is clear that the only ground of attack in the Writ Petition is that the petitioner was not given an opportunity of being heard. The learned counsel for the petitioner has produced a copy of the Government Order in G.O.(Ms).No.89, Municipal Administration and Water Supply (Na.Ni.4) Department, dated 21.06.2007, wherein the property tax which was increased, was reduced and hence, learned counsel prayed that the benefit of the said G.O may be extended to the petitioner. It is further submitted by the learned counsel for the petitioner that with regard to the query raised under the provisions of the Right to Information Act, the respondent has agreed to reduce the tax, provided the Writ Petition is withdrawn, which is evident from the reply of the Public Information Officer, Mettur Municipality, dated 14.11.2008. It is further contended that the petitioner is willing to prefer an appeal against the impugned fixation of property tax and that she may be given one more opportunity and if not satisfied, the tax may be levied in terms of the provisions of the said Act and the Rules framed thereunder.

4. The respondent has filed counter affidavit stating that the petitioner was having ACC roof structure, which was demolished and she constructed a terrace commercial complex consisting of 11 stalls, measuring an area of 1504 Sq.Ft. in the ground floor and the property tax was levied at Rs.11,106/- per half year, vide assessment No.20758 with effect from 01.10.2001, i.e. from 2001-2002 - II. On receipt of the special notice, the petitioner has not objected to the assessment of tax and she has constructed the first floor of the building and the property tax was also enhanced from Rs.11,106/- to Rs.22,203/- from 01.04.2002, i.e. from 2002-2003 - I. The first floor area consists of 1504 Sq.Ft., which is being used for commercial

purpose for 11 stalls. As per the Resolution No.354, dated 29.11.1999 passed by the respondent-Municipality, the tax was fixed at the rate of Rs.1.25 per Sq.Ft. The special notice was issued and served on the petitioner with regard to the enhancement of property tax. It is further stated in the counter that the petitioner applied for special revision petition on 16.09.2002 for reduction of tax and she appeared in person for the enquiry on 30.01.2003 and the tax was confirmed, vide respondent's office letter in R.50/2-A1, dated 11.03.2003, which was also received by the petitioner on 19.03.2003. The petitioner was asked to remit the tax amount of Rs.22,303/- within 15 days. She neither remitted the tax amount, nor preferred appeal and thereby failed to exhaust the appeal remedy before the taxation appeal committee. Further, the petitioner has also constructed the second floor for her residential purpose and accordingly, the tax was levied at Rs.2,572/- from 01.10.2002, i.e. 2002-2003-II.

5. Learned counsel for the respondent contended that since the petitioner did not send any objection initially and at this distant point of time, she cannot contend that she may be given an opportunity of hearing by the respondent, and the property tax is being levied in respect of the old assessment, and hence, it cannot be a ground to interfere with the impugned order. Even though the counter is dated 17.10.2004, which was served on the petitioner on 19.10.2004 and that even going by the arguments of the learned counsel for the petitioner that there was an information dated 14.11.2008 by the Public Information Officer under the RTI proceedings stating that the petitioner has got a right of appeal and he can avail of the same on the Writ Petition being withdrawn, it is clear that the petitioner has not chosen to withdraw the Writ Petition for preferring the appeal. In the said communication dated 14.11.2008 under the RTI Act, nowhere it is stated that if the appeal is filed, there will be reduction of the amount of property tax. It is further contended by the learned counsel for the respondent that the petitioner was given due opportunity as stated supra and that the tax amount has been levied only in accordance with the guidelines issued by the Government and as per the provisions of the Tamil Nadu District Municipalities Act. It is further argued by the learned counsel for the respondent that G.O.(Ms).No.89 stated supra pertains to Hosur Municipality and not the respondent-Mettur Municipality, and hence, the said G.O. could not be extended to the respondent-Mettur Municipality. Since the petitioner has constructed pucca building and that the building has also been rented out for commercial purpose and that the petitioner was given due opportunity before the enhancement of property tax, even though there is alternative remedy of appeal, relegating the matter to the appellate authority at this stage, may not be required.

6. Heard both sides and perused the materials available on record.

7. It is not in dispute that the petitioner was having 11 stalls of 1504 Sq.Ft. in the ground floor and first floor and the petitioner was assessed to property tax of Rs.11,106/-, which was enhanced to Rs.22,203/- for the respective periods mentioned above. From the facts narrated above, it is seen that admittedly, there are 11 stalls in the ground and first floors and as per the Resolution No.354, dated 29.11.1999 passed by the respondent-Municipality, the property tax was revised/enhanced at the rate of Rs.1.25 per Sq.Ft. Further, the petitioner was given due opportunity and she participated in the enquiry and the order enhancing the property tax was also confirmed by the authority. Knowing that the petitioner has got the appeal remedy and that more than once, the petitioner was informed about the appeal remedy, namely in the counter affidavit served on the petitioner on 19.10.2004 and also by the proceedings of the Public Information Officer under the RTI Act, dated 14.11.2008, yet, the petitioner has not chosen to withdraw this Writ Petition and file appeal.

8. The only contention of the petitioner is that she was not given an opportunity to falsify the fact that she has appeared for the enquiry, but she participated and submitted objections and faced the order, which is the subject matter of this Writ Petition. The property tax is for the year 2001-2002-II and 2002-2003-I, respectively enhanced from Rs.11,106/- to Rs.22,203/- as discussed supra in detail. Nearly, 16 years have gone by from 2001 and apart from that, more than nine years have gone by from the date of communication under RTI Act, dated 14.11.2008 and that the petitioner is entitled to file appeal. Having not chosen to file appeal, at this distant point of time, the petitioner seeking permission to approach the appellate authority is not feasible. Though the alternative remedy is a bar to entertain a Writ Petition, and the present Writ Petition having been admitted in 2003, keeping it pending for more than 14 years and relegating the matter to the appellate authority for fresh disposal, would give relief only to the Advocate and not to the litigant.

9. Hence, I find that the Writ Petition is devoid of merits and the same is accordingly dismissed.

10. Though this is a fit case for imposing costs, this Court is refraining from doing so. The petitioner is directed to pay the amount of property tax as demanded, vide impugned order of the respondent-Municipality, including the arrears as on date, if any, within a period of 45 days from the date of receipt of a copy of this order, failing which, the respondent-Municipality

is empowered to take coercive action to recover the enhanced property tax in accordance with law, in terms of the impugned order. If the said property tax including arrears as on date, if any, is not paid within 45 days from the date of receipt of a copy of this order, it is open to the respondent to levy penalty and also collect compound interest @ 10% p.a. from April 2002 till the amount is realised/recovered from the petitioner. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

cs

Copy to

Mettur Municipality,
Rep. by its Executive Authority,
Mettur Dam, Mettur.

+1cc to Mr.S.Hemalatha, Advocate, S.R.No.57615
+1cc to Mr.S.Saravanan, Advocate, S.R.No.57844

+1cc to Mr.S.Hemalatha, Advocate, S.R.No.57615(03/10/2017)

W.P.No.23552 of 2003

CP(CO)
GN(11/09/2017)