IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2018

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P. No.6006 of 2018 &
WMP. Nos.7388 and 7389 of 2018

1. M.M.Uvais

2. M.M.Muthu Wappa

3. U.Mohammed Meera Sahib
Rep by their Power Agent
M/s.New Shanthi Agencies by its Partner
A.K.Syed Mohammed Yaseen

.. Petitioners

v.

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

2. The Zonal Officer,
Zone - V (Ward No.055),
Corporation of Chennai ,
Chennai.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records relating to the first respondent's order made in Notice: 10/17-18/53523 dated 06.03.2018, to quash the same and to afford an opportunity before any revision of tax, and to consequently direct the respondents to continue to accept the previous assessed tax for the petitioner's premises.

For Petitioners : Mr.L.Chandrakumar

For Respondents : Mrs.Karthika Ashok
Standing Counsel

ORDER

Heard Mr.L.Chandrakumar, learned counsel appearing for the petitioners and Mrs.karthika Ashok, learned Standing Counsel, appearing for the respondents 1 to 3. The learned standing counsel is assisted by Mr.V.Murugesan, Assessor, Zone -5, Greater Chennai Corporation.

2. I have considered the submissions made on either side and perused the original file produced by the learned Standing Counsel for the respondents as well as the counter affidavit.

3. The petitioners have filed this writ petition challenging the notice of final assessment in form No.10/17-18/53523 dated 06.03.2018. By impugned notice, the Property Tax Assessment of the petitioners' building has been revised with retrospective effect from second half year 2011-12 to Rs.91,085/-. Half yearly tax prior to revision was Rs.38,672/-.

4. The learned counsel for the petitioners would submit that without proper inspection, the impugned revision of property tax has been made and the retrospective revision with effect from second half-year 2011-2012 is without jurisdiction, as it is barred by limitation. Further, it is submitted that earlier inspection conducted on the building clearly shows that there is no additional construction, the building is 80 years old and two floors were remaining vacant, as there was no occupation for a period of nearly two years during the year 2013-2015. Without considering all these aspects and without affording reasonable opportunity to the petitioner the impugned notice has been issued in Form No.10.

5. The learned Standing Counsel for the respondents vehemently contended that the impugned demand is not barred by limitation in the light of Section 137 (B) of the Chennai City Municipal Corporation Act, 1919, which gives power to assess in case of escaped assessment, which will equally apply to cases where the rate of tax has been assessed at a lower rate than the rate to which it is assessable.

6. It is submitted that after due inspection, the impugned proceedings have been issued and if the petitioner is aggrieved, he should be directed to file an appeal before the Tribunal.

7. After considering the submissions made on either side and after perusing the original files, I find that there is a representation given by the petitioner on 14.02.2018 to the second respondent, wherein it refers to an inspection conducted by Ms.Nirmala, the predecessor Officer, who is the Zonal

Officer/Assessing officer of the area and there is a specific assertion made by the petitioners that there is no additional construction and the measurements were found to be in order.

8. The learned Counsel appearing for the respondents would contend that the original assessment was based upon a return filed by the petitioner and on inspection, it was found that the return did not disclose the property extent and wherever there were permanent constructions, due regard has been given and the assessment has been made and there is no error.

9. In my considered view, when the current file shows that there is a communication to the effect that one Nirmala, Assessing Officer, has inspected the building and there is also an assertion that the said officer found the assessment to be correct. The respondents, to rebut the said assertion, should produce some records. However, in the instant case, no such record has been produced to show that the inspection stated to have been conducted by Ms.Nirmala was incorrect.

10. Furthermore, if the respondent still have several reasons to believe that the property has been assessed at a lower rate, then the same cannot be done without conducting a proper inspection and such inspection should be in the presence of the petitioner. The inspection should not only measure the extent of constructed area of the building, but should also take into consideration the age of the building, whether the owner or tenant is occupying the building, whether the building has been vacant for nearly two years, whether the building is not a RCC construction and does not a firm foundation etc. Without taking into consideration all these aspects, the assessment cannot be completed. There is no supportive material produced by the respondents to show that the assessment of the building was at a lower rate. In any event, the decision making process is clearly flawed and therefore, the reasons assigned by this Court in the preceding paragraphs are sufficient to set aside the impugned order.

In the result, the writ petition is allowed and the notice in Form No.10 dated 06.03.2018 is quashed and the respondents are directed to conduct fresh inspection of the petitioner's building, after notice to the petitioner and while taking measurements, take note of the observations made by this Court in this order and issue a provisional assessment notice to the petitioner and after affording an opportunity to the petitioner to submit their objections and after considering the objections in an effective manner, final assessment be made in accordance with law. Till the above process is completed, no coercive action shall be initiated against the petitioner and the payment of Rs.2 lakhs made by the petitioner shall be retained in assessee's account and adjusted after the order is passed in terms of the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

gpa

To

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

2. The Zonal Officer,
   Zone - V (Ward No.055),
   Corporation of Chennai ,
   Chennai.

+1cc to Mr.Mr.L.Chandrakumar, Advocate, S.R.No.43065
+1cc to Mr.Mrs.Karthika Ashok, Advocate, S.R.No.43031

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nr 16/07/2018