IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2018

C O R A M

THE HON'BLE Mr.JUSTICE K.RAVICHANDRABAABU

W.P.No.4217 of 2018
and
W.M.P. No.5189 of 2018

S.Murugesan
Owner of the building
Door No. 40/75 Ramanaicken Street,
Nungambakkam
Chennai-600 034 ...Petitioner

vs

1. The Assistant Revenue Officer,
   Revenue Department,
   Zone-09,
   Division 113
   Corporation of Greater Chennai,
   No.1 Lake Area 4th Cross Street,
   Nungambakkam,
   Chennai-600 034.

2. The Revenue Officer,
   Corporation of Greater Chennai,
   Ribbon buildings,
   Park Town,
   Chennai - 600 003.

3. The Commissioner,
   Corporation of Greater Chennai,
   Ribbon buildings,
   Park Town,
   Chennai - 600 003. ...Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified Mandamus calling for the records connected with the impugned G.C.C. R.D. property Tax-Notice for Current Demand and Arrears

Demand, Zone No.09; Ware No.113; Bill No.03329; Sub No 000 dated 23.10.2017 of the first respondent handed over by placing in the building of the petitioner in the 2nd week of February 2018 and to quash the same and further direct the 1st respondent to re assess the Property Tax considering the objection submitted by the Petitioner to the provisional assessment Order dt.31.05.2017 made in Ma.Aa.9.Va.Thu Na.Ka.No.R/007137/2016 on his file.

For petitioner : Mr.B.Kumar, Senior Counsel for Mr.R.Loganathan

For Respondents : Mrs.Karthika Ashok, Senior Counsel for R1 to R3

O R D E R

This writ petition is filed challenging the demand notice dt.23.10.2017. The petitioner is the owner of the property bearing Door No. 40/75 Ramanaicken Street, Nungambakkam, Chennai - 600 034. The respondent Corporation earlier issued a demand notice on 31.12.2011 for payment of enhanced property tax. The said demand was challenged by the petitioner in W.P.No.5826/2012. The said writ petition was allowed on 11.08.2016 on the reason that the petitioner's property was not assessed in a proper manner for revision of property tax and without making such proper assessment, the demand cannot be made. However this court given liberty to the respondent Corporation to make proper assessment of the petitioner's building by conducting inspection, thereafter to issue a provisional assessment order and after affording an opportunity of hearing to the petitioner to submit his objection, to complete the final assessment in accordance with law.

2. Consequent upon such order a provisional assessment order dt.31.05.2017 was issued calling up on the petitioner to file his objection, if any, within 15 days from the date of such order. Thereafter, the present impugned demand was issued on 23.10.2017.

3. The learned Senior Counsel Mr.B.Kumar appearing for the petitioner, submitted that impugned demand was made without passing final order of assessment and considering the objection raised by the petitioner. He further contended that the respondents failed to comply with the order passed in W.P.5826/2012 dt.11.08.2016 in its strict sense.

4. He further invited this court's attention to Section 100 of The Chennai City Municipal (Corporation) Act, 1919, to contend that the respondents failed to follow the procedure contemplated under the above such provision, while making the assessment.

5. On the other hand, the learned counsel appearing for the respondents submitted that the petitioner failed to give any reply to the provisional order of assessment within the time stipulated therein. Therefore, the final assessment order was passed on 04.07.2017 and served on the petitioner. He further contended that suppressing the said fact, the present writ petition is filed and that the reply submitted by the petitioner was also after three months to the notice of proposal. Thus, the learned counsel contended that the impugned demand is perfectly in order.

6. Heard both sides.

7. It is seen that the present writ petition is the 4th round of litigation between the same parties in respect of the very same property. Last litigation was through W.P.5826/2012 as stated supra. This Court, while allowing the said writ petition and setting aside the impugned demand notice therein, has observed at Paragraph Nos. 7 and 8 as follows:

> 7. The facts narrated above will clearly disclose that till date, the petitioner's property has not been assessed in proper manner for revision of property tax. This has been noted by this Court in the earlier writ petitions which were decided in favour of the petitioner. Thus, prior to issuing any demand, the prerequisite is to make proper assessment of the tax. This is more so because any amount collected as tax in excess of what is actually payable would be an illegal collection. Further, there is no record to show that proper assessment was made on the petitioner's property. The petitioner's case is that the building has remained as such from the year 2006 and when there is no additional construction or alteration, there is no justification for revision of property tax.
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> 8. In the light of the above undisputed facts and reasons assigned in preceding paragraphs, the impugned demand has to be held to be unsustainable. Accordingly, the writ petition is allowed and the impugned demand has to be set aside, leaving it open to the respondent Corporation to conduct proper assessment of the petitioner's building by conducting inspection, thereafter issue a provisional assessment order, afford an opportunity to the petitioner to submit the objections and thereafter to complete the final assessment in accordance with law. It is needless to state that till the above directions are complied with, the petitioner should continue to pay the pre-revised property tax as well as the water and sewerage tax. Consequently, connected miscellaneous petition is closed. No costs.

8. It is true that in compliance of the said order passed by this Court, a provisional assessment order was issued on 31.05.2017, wherein the petitioner was called up on to make his objection within 15 days. Though an objection is made by the petitioner, admittedly the same was not within the time stipulated in the provisional assessment order. It is claimed by the respondents that a final assessment order was passed on 04.07.2017. A copy of the said order is also placed before this Court.

9. Perusal of the said final assessment order would show that the assessing officer has not discussed the facts and figures and given any reason for fixing the value and the consequential property tax payable by the owner. On the other hand, the said final assessment order is in a printed format, where the blanks are filled with certain figures. No doubt, the petitioner has not made their objection within the time stipulated. But that does not mean the respondents can pass the final assessment order without disclosing the reasons for justification in confirming the proposal made through the provisional assessment order. Therefore I find that the final assessment order said to have been passed on 04.07.2017 is not in accordance with law. Even otherwise as it is contended by the learned Senior Counsel that the same was not served on the petitioner, this Court is of the view that the assessing officer can consider the objection raised by the petitioner, admittedly received by the respondents and pass a fresh order of assessment on merits and in accordance with law. Accordingly, the writ petition is disposed of as follows.

a) The impugned demand shall be kept in abeyance for a period of six weeks.
b) The concerned assessing officer shall consider the objection raised by the petitioner and pass a speaking final order of assessment on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order.
c) On issuance of such final order as stated supra, it is open to the petitioner to work out his remedy as against the final order in the manner known to law before the appropriate forum.

No Costs. Consequentially the connected W.M.P. is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The Assistant Revenue Officer,
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   Chennai - 600 003.

+1cc to Mr.R.Loganathan, Advocate sr.no.58757
+1cc to Mrs.Karthika Ashok, Advocate sr.no.58782

W.P.No.4217 of 2018
and
W.M.P. No.5189 of 2018

ks(co)
nr 12/09/2018