IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.10.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10426 of 2006
and
W.P.M.P.No.11769 of 2006 and W.P.M.P.No.97 of 2013

Himachal Pradesh Horticultural
Produce Marketing and Processing
Corporation Limited,
No.34/1-A3, Ennore Express
High Road, Thiruvottiyur
Chennai – 600 019. ... Petitioner

vs

1.The Commissioner,
Thiruvottiyur Municipality,
Thiruvottiyur,
Thiruvallur District.

2.The Chairman,
Taxation Appeals Committee,
Thiruvottiyur Municipality,
Thiruvottiyur,
Thiruvallur District.

3.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai – 600 003.
(R3-impleaded as per order dated 08.07.2013
in W.P.M.P.No.96/2013
in W.P.No.10426/2006) .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in Assessment No.11119/98-99 on the file of the first respondent dated 06.02.99 as partially reduced in Appeal No.65/98-99 dated 17.08.01 by the second respondent and quash the order passed by the first respondent dated 06.02.99 in Assessment No.11119/98-99 and consequently to direct the first respondent to consider the objection of the petitioner dated 19.02.99.

For Petitioner : M/s.C.S.K.Satish

For Respondents : Mr.S.Saravanan

O R D E R

The demand raised by the erstwhile Thiruvottriyur Municipality in respect of the arrears of property tax to be paid by the writ petitioner in proceedings dated 06.02.1999 as partially reduced property tax in Appeal No.65/98-99 dated 17.08.01 by the second respondent are under challenge in this writ petition. Further, a direction is sought for to direct the 1st respondent to consider the objections filed by the writ petitioner on 19.02.1999.

2.The learned counsel for the writ petitioner forcibly contended that the writ petitioner is a prompt payer of property tax as the writ petitioner is also a Government owned marketing and processing Corporation. The Corporation being administered by the Government of Himachal Pradesh, the petitioners are willing to pay the property tax as per the provisions of law. In view of the fact that the nature of the business, age of the building and the location, where the buildings belongs to the writ petitioners' situated, were not considered by the respondents, while undertaking the process of re-assessment of property tax. In respect of the impugned demand made in proceedings dated 01.10.1998, the writ petitioner preferred an appeal and the property tax amount was partially reduced by the Appellate Court namely, the 2nd respondent. Even that is now questioned by the writ petitioner on the ground that the provisions of the Municipality Act in respect of re-assessment of property tax has not been followed. The general revision made is improper and without considering the factual situations and the provisions of law raised by the writ petitioner.

3.The learned counsel for the writ petitioner states that the property belongs to the writ petitioner, falls within 20 meters from the sea area and therefore,the same assessment has made in respect of other buildings in some other locality, cannot be adopted. A special concession is required to be given, considering the nature of the buildings and the location, in which, the property is situated.

4.The learned counsel for the petitioner further informed this Court that at the time when the appeal was filed before the Chennai Corporation, the authorities have promised that the appeal filed by the writ petitioner would be considered in the event of paying 50% of the arrears of property tax assessed.

Accordingly, the writ petitioners had deposited the substantial amount of Rs.29,93,602/-. However, the appeal now pending before the Appellate authority namely, the Commissioner, Chennai Corporation is pending.

5.The learned counsel appearing on behalf of the Chennai Corporation informed this Court that the arrears of property tax to be paid by the writ petitioner as of now is Rs.45,69,182/- (Rupees Forty Five Lakhs, Sixty Nine Thousand, One Hundred and Eighty Two). The appeal now pending before the Commissioner would be considered in the event of depositing the entire arrears of property tax. It is further brought to the notice of this Court that the erstwhile Thiruvottiyur Municipality had been amalgamated with the Chennai Corporation during the year 2011. After 2011, the re-assessment is to be made in accordance with the provisions of the Chennai City Municipal Corporation Act. This apart, the transit provision enacted in Chennai City Municipal Corporation Act also enumerates that the erstwhile assessment made and the arrears of property tax pursuant to the assessment made by the erstwhile Municipalities can be recovered by the Chennai Corporation. Thus, the Chennai Corporation has got every authority under the provisions of the Chennai City Municipal Corporation Act to recover the arrears of property tax in respect of the petitioners' premises, which falls within the jurisdiction of erstwhile Thiruvottriyur Municipality till the year 2011 and thereafter, within the jurisdiction of the Chennai City Municipal Corporation.

6.Payment of property tax is a duty of the citizen. Every citizen are utilizing common infrastructure facilities and amenities provided by the Greater Chennai Corporation. When the Citizens are utilizing all such common amenities provided by the State and the Corporation, they are bound to pay the taxes within the time stipulated. Non payment of taxes is to be construed as an infringement of right of all other citizens residing within the jurisdiction of Chennai city. In the event of utilising all such common facilities without paying the statutory taxes, the assesse should remind himself that he is utilising all such amenities at the cost of other tax payers, who are all promptly paying the taxes. All responsible citizens should realize that they are not supposed to enjoy all such amenities and infrastructural facilities at the cost of other tax payers who are promptly paying the taxes. Thus, non-payment of taxes infringe the rights of all citizen who are residing within the jurisdiction of Chennai City. This being the principles to be adjudicated, the writ petitioner is liable to pay the assessed water tax and sewerage charges. If there is any discrepancy in respect of certain factual aspects, the writ petitioner has to produce evidences by filing an appeal before the appellate authority for redressing the grievances. However, these factual disputes cannot be adjudicated in the present writ petition.

7.Thus, this Court is of an opinion that rights of all other citizens are also to be protected. in the event of not paying the tax by few individuals and the same will affect the welfare schemes to be provided by the Corporation to the citizens. This being the principles to be adjudicated, this Court is of an opinion that the Writ Petitioner is liable to pay the entire property tax due and thereafter, if he is aggrieved in respect of any such assessment, he is at liberty to approach the competent appellate authority in the manner prescribed under the Act.

8.This Court is of an opinion that in respect of certain factual disputes raised by the learned counsel for the petitioner that the age of the building, nature of the business, location, in which, the property is situated, are all cannot be considered by this Court under Article 226 of the Constitution of India. Such disputed facts and circumstances are to be adjudicated by producing the original documents and by adducing evidences before the competent forum. Under the provisions of the Chennai City Municipal Corporation Act, the appeal lies before the Commissioner at the first instance. Against the order of the Commissioner, the writ petitioner is entitled to approach the Taxation Appellate Tribunal and thereafter, to the Municipal Tax cases, the Principal District Judge, City Civil Court, Chennai. Thus, a three tier appeal provisions are provided under the Act. All such disputed facts and circumstances are to be adjudicated before the Appellate authorities under the provisions of the Act. However, the present writ petition has been filed in the year 2006 and the final hearing of the writ petition is taken by this Court after a lapse of 12 years from the date of filing. This itself shows that the litigants are delaying or postponing the payment of property tax in one way or other and at this point of time, this Court cannot encourage such attitudes. Disputing the property tax in the manner known to law is one aspect of the matter and in respect of filing the present writ petition and evading the payment of tax is another aspect. In order to adopt a balancing approach, the writ petitioner shall be directed to pay the arrears of property tax to be paid to Chennai Corporation and if the petitioner is still occurred, it is left open to the writ petitioner to approach the Appellate authorities as stated supra and redress their grievances in the manner known to law. However, the provision of appeal or the pending appeal will not preclude the writ petitioner from paying the property tax as per the assessment made by the Chennai Corporation.

9.Even now, the learned counsel for the petitioner disputes only in respect of the assessment made with reference to the property tax assessment made by the erstwhile Thiruvottriyur Municipality and not the reassessment made by the Chennai City Corporation. Thus, all these factual disputes can be adjudicated before the Appellate authority under the provisions of the Chennai City Municipal Corporation Act and redress the remedy and by producing the documents and by adducing evidences. The appeal already filed by the writ petitioner shall be considered on merits and in accordance with law without causing any undue delay.

10.In this view of the matter, the following orders are passed:

1.The relief as such sought for in the present writ petition stands rejected.

2.The learned counsel for the respondents state that the arrears of property tax of Rs.45,69,182/- (Rupees Forty Five Lakh, Sixty Nine Thousand, One Hundred and Eighty Two only) has been arrived by deducting the amount already deposited by the writ petitioner in Chennai Corporation. However, it is made clear that if any further adjustment is to be made with reference to the payment already deposited.

3.Thus, the writ petitioner is directed to pay the arrears of property tax amount of Rs.45,69,182/- (Rupees Forty Five Lakh, Sixty Nine Thousand, One Hundred and Eighty Two only) in ten installments and Rs.5,00,000/-(Rupees Five Lakh) per month is to be paid on or before 10th day of every Month and the first installment is to be paid on or before 10th November 2018.

11.With these directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner,
Thiruvottiyur Municipality,
Thiruvottiyur,
Thiruvallur District.

2.The Chairman,
Taxation Appeals Committee,
Thiruvottiyur Municipality,
Thiruvottiyur,
Thiruvallur District.

3.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 600 003.

+1cc to Mr.S.Saravanan, Advocate Sr.69488
+2cc to Mr.C.S.K.Sathish, Advocate Sr.70179

W.P.No.10426 of 2006

ssv[co]
srg 31/10/2018