IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE : 26.10.2018
CORAM
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
W.P.No.8412 of 2008
and
M.P.No.1 of 2008

S.M.A.Mohammed Saleem ... Petitioner

Versus

Contonment Executive Officer,
Office of the Contonment Board,
St, Thomas Mount, Chennai - 600 116. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of Certiorarified Mandamus, to call for the proceedings of the respondent culminating with their tax bill No.488 signed on 17.03.2008 and quash the same and direct the respondent to fix property tax by following the procedures found in Contonment Act, 1924 and demand property tax.

For Petitioner : Mr.M.Liagat Ali

For Respondent : Mr.C.Mohan
for Ms. King & Partridge

O R D E R

This Writ Petition has been filed under Article 226 of the Constitution of India, seeking a writ of Certiorarified Mandamus to quash the respondent’s proceedings culminating with their Tax Bill No.488 signed on 17.03.2008 and direct the respondent to fix the property tax by following the procedures, as per the Contonment Act,1924 and to demand property tax from the petitioner.

2. The case of the petitioner is that the respondent was demanding huge property tax by fixing the annual property tax at Rs.79,500/- for the temporary shed without making any enquiry or final assessment and the same is against law and principles of natural justice. The respondent passed an assessment order by fixing the property tax at Rs.79,500/- and no proper verification has been done. The respondent had not ascertained whether the superstructure is temporary or permanent in nature and the respondent did not observe the statutory provisions for fixing the re-fixed annual property tax at Rs.38,160/- and procedures have not been followed by the respondent in fixing the property tax. The respondent had called upon the petitioner to pay annual property tax of Rs.38,160/- for the period from 01.04.1996. The petitioner had constructed the temporary shed

during April 2001, which was not a permanent structure and at the end of the year 2001, the shed was used for storing iron materials. Hence, the respondent is illegally demanding a sum of Rs.38,160/- for annual property tax from the year 1996, which was barred by limitation. The demand of tax is retrospective effect, which is against law and not sustainable. Due to the frequent threat of the respondent, the petitioner was forced to pay a sum of Rs.10,000/-, through his letter dated 28.03.2003. As the huge tax was levied by the respondent without any proper enquiry, the petitioner sent a legal notice to the respondent on 17.04.2007, to conduct proper investigation, enquiry and to pass final assessment order. But till date, the respondent neither replied to the petitioner’s legal notice nor passed any final assessment order as per Section 69 of the Contonment Act, 1924.

3. That apart, the petitioner would submit that the respondent sent another tax bill dated 17.03.2008, demanding to pay a sum of Rs.3,57,920/- which includes, house tax of Rs.7,200/-, Water tax of Rs.2,520/-, Scavenge tax of Rs.3,600/-, Lighting and Drainage tax of Rs.4,320/- and Education tax of Rs.1,440/-, with arrears amount of Rs.3,38,840/- totalling of Rs.3,57,920/-. Further, the petitioner would contend that the said property was used as only godown and there is no water, drainage or any scavenge connections, hence, he is not entitled to pay any tax on the said heads and therefore, the demand of the respondent without giving an opportunity is illegal and arbitrary and ought to have been quashed. The petitioner would further submit that annual rental value has not been fixed as per Section 64(a) of the Contonment Act, 1924 and Section 68(3) of the Act has not been complied with, and the objection of the petitioner has not been considered and no opportunity was given before making huge demand of property tax and the petitioner was not inquired either in person or by authorized agent and no new assessment list was published as per the Section 69 and 72 of the above Act.

4. The learned counsel for the petitioner would also submit that the said superstructure in the subject property came into existence in the year 2001, but the property tax was demanded retrospectively from the year 1996, without any proper investigation. Without knowing the status of the building construction, the respondent levied the property tax, hence the petitioner had sent a legal notice on 17.04.2007. Without having any other option, the petitioner has filed this Writ petition to quash the respondent’s proceedings signed on 17.03.2008.

5. The learned counsel for the respondent/ Chief Executive Officer has filed a counter affidavit stating that the writ petition is not maintainable both on law and on facts, since there was an efficacious alternate remedy is available against such tax issues under the Cantonment Act, 2006. Further, on facts too, the petitioner was given more than reasonable and

adequate opportunity before fixing the tax and only after proper assessment, the demand was made. The Cantonment Act is a full fledged code by itself and covers every aspect that was required for the 62 Cantonments in the country. The concepts of Cantonments and law regulating the same have been in vogue for several centuries. Prior to the present enactment, the above said Act, 1924 was in force and the same came to be replaced by the present Cantonments Act, 2006. The tax assessment of the petitioner pertains to both Cantonments Acts 1924 and 2006. Under both the enactments, the provisions relating to tax, efficacious remedy, and such others are similar except for certain minor amendments, which are not relevant to the issue raised by the petitioner.

6. The learned counsel for the petitioner would also submit that the subject property is situated at 4/92- 6H, Mangaliamman Koil Street, St.Thomas Mount, Chennai - 600 016 and the petitioner has constructed a superstructure viz., shed with an extent of 2250 sq.ft for storing steel and iron material in the Cantonment land. The Cantonment Board is empowered to levy property tax under Section 66 and corresponding Section 60 of old Cantonments Act, 1924. As per the Act, said the Cantonment Board is empowered to impose the property tax and according to the Section 64 of the Cantonment Act, 1924 (Section 73 of the New Cantonment Act, 2006), this respondent levied tax as per Annual Rateable Value (ARV) and accordingly the assessment order was issued to the petitioner. The petitioner raised his objection, against the said assessment, and then the respondent conducted an enquiry with regard to the said property tax and the same was revised and reduced.

7. Further, the learned counsel for the respondent would submit that if the petitioner is aggrieved by the assessment order of the Cantonment Board, he ought to have filed an appeal against the assessment before the District Court as provided under law and not before this High Court. The present writ petition is not maintainable, when alternative remedy is available as per the Act.

8. The learned counsel for the petitioner also contend that the petitioner is storing materials from the year 1999 onwards and not from April 2001. Moreover, the petitioner sent his letters dated 22.10.2001 and 08.06.2002 admitting that he started storing materials form the year 1999. The petitioner cannot make incorrect and contradicting statement in his affidavit and the fixation of tax was analysed based on the Annual Rateable Value (ARV) as prescribed under the Cantonment Act. The respondent had fixed the property tax as per Sections 64 and 73 of the Cantonment Act, wherein the definition of "Annual Rateable Value" means any building, which the Chief Executive Officer decides to assess under the clause, 1/20th of

the sum obtained by adding the estimated present cost of erecting the building to the estimated value of the land appertaining thereto. Therefore, in compliance with the above provision the Cantonment Board assessed the property tax and demanded Rs.3,00,000/- as annual value with effect from 01.04.1996, by issuing an assessment order dated 28.09.2001. But the petitioner by his letter dated 22.10.2001, objected for assessing the property tax from the period 1996, claiming that the petitioner is storing materials only from the year 1999. Upon hearing the petitioner's request, the respondent gave an opportunity and reassessed the tax and reduced 40% of the ARV from Rs.3,00,000/- to Rs.1,80,000/-. Accordingly, the new ARV was fixed at Rs.1,80,000/- and property tax at Rs.47,770/- with effect from 01.04.1999, vide Standing Assessment Committee Resolution No.9, dated 20.12.2001. CBR.No.2(9) dated 29.01.2002. When the matter stood thus, the petitioner once again raised objection to the new assessed ARV by his letter dated 08.06.2002. Based on the petitioner's objection and requisition made, once again the respondent reduced the ARV by 20% and fixed it as Rs.1,44,000/- and property tax was fixed at Rs.38,160/- p.a vide CBR.NO.2(18) dated 12.11.2002 and the petitioner also agreed and accepted the revised ARV. Inspite of the same the petitioner was not satisfied and he has suppressed the factual aspects and filed this writ petition before this Court.

9. Heard the learned counsel for the petitioner and the learned counsel for the respondent and also perused the materials available on records.

10. From a perusal of records, it could be seen that the petitioner objected to the assessment of Property tax from 1996, hence, he was given opportunity to pay the property tax assessed which was reduced by 40% of the ARV from Rs.3,00,000/- to Rs.1,80,000/- and property tax at Rs.47,770/- with effect from 01.04.1999, once again the petitioner objected to the same and based on the same, the ARV was once again reduced by 20% and fixed at Rs.1,44,000/- and property tax was fixed at Rs.38,160/-.

11. The petitioner himself has admitted that the respondent called him for enquiry and after the enquiry, ARV was reduced from Rs.1,80,000/- to Rs.1,44,000/- by the respondent, which is evidenced from petitioner's letter dated 09.03.2004. The petitioner suppressed all the above factual aspects and falsely represented before this Court.

12. It could be also seen from the counter affidavit that during the pendency of this writ petition, the petitioner had paid a sum of Rs.2,35,000/- till 31.03.2011, which clearly shows that the petitioner had agreed to pay the revised and reduced property tax. However, after 31.03.2011, till date the petitioner did not pay any tax with arrears to the respondent.

The respondent considered the petitioner's request and reduced ARV by 52% and the balance property tax amount to be paid on 01.04.2018 is Rs.4,90,040/-. But, without paying any arrears, the petitioner is utilizing the said land. From the above, it could be seen that the respondent Board has given several opportunities to the petitioner. The averment, that the petitioner has been utilising the property from the year 1999 to 2001 only is not an acceptable one, when the petitioner himself started storing iron materials from the year 1999, which was proved by his own letters dated 22.10.2001 and 08.06.2002 respectively and the petitioner suppressed the facts that the petitioner was called for an enquiry giving an opportunity and the respondent had reduced the ARV from Rs.3,00,000/- to Rs.1,80,000/- and fixed the property tax as Rs.47,770/- with effect from 01.04.1999 and once again the ARV was reduced by another 20% and fixed at Rs.1,44,000/- and the property tax at Rs.38,160/-, vide order dated 12.11.2002 in CBR.No.2(18), and when the petitioner paid Rs.2,35,000/- till 31.03.2011, during the pendency of the Writ petition. Further, the contention raised by the petitioner that the respondent forced him to pay the above said amount towards property tax is not acceptable by this Court.

13. The fact that the area which has been enjoying by the petitioner i.e., 2250 sq.ft land in Revenue District of Pallavaram, which is a prime location of city, cannot be ignored by this Court and property tax of Rs.38,160/- per annum for the said area is a meagre amount when compared to the regular market value of commercial establishment.

14. If the petitioner is aggrieved by the assessment order, he has got an alternative remedy to approach the Cantonment Board for revision of the said tax by way of filing an appeal under the Cantonment Act, 2006, which reads as follows:

" Section 93. Appeals against assessment:-

> (1) An appeal against the assessment or levy of, or against the refusal to refund, any tax under this Act shall lie to the District Court.
>
> (2) If the District Court, on the hearing of an appeal under this section, entertains reasonable doubt on any question as to the liability to, or the principle of assessment of, a tax, the Court may, either on its own motion or on the application of the appellant, draw up statement of the facts of the case and the point on which doubt is entertained, and refer the statement with its opinion on the point for the decision of the High Court.
>
> (3) On a reference being made under sub-

section (2), the subsequent proceedings in the case shall be, as nearly as may be, in conformity with the rules relating to references to the High Court contained in order XLVI of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908).

Explanation.- For the purposes of this section and sections 94,95,96, 97 and 102, "District Court", in relation to a cantonment, means the Principal Civil Court of original jurisdiction having jurisdiction over the area in which that cantonment is situated, and includes such other Civil Court having jurisdiction over that area as the Central Government may, by notification in the Official Gazette, specify in this behalf, in consultation with the High Court having jurisdiction over that area."

15. But, without availing the appeal remedy, the petitioner has approached this High Court. Hence, the writ petition filed by the petitioner is not maintainable.

16. The writ petition is dismissed and the petitioner is directed to pay 50% of arrears amount from the year 2011 till date, within a period of six weeks from the date of receipt of a copy of this order. In the mean while, the petitioner is at liberty to file an appeal before the authority concerned under Section 93 of the Cantonment Board Act, 2006 within a period of two weeks from the date of receipt of a copy of this order and the authority concerned is directed to consider the same and pass appropriate orders within a period of eight weeks, thereafter. Consequently, connected miscellaneous petition is closed. No Costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

klt

To

Contonment Executive Officer,
Office of the Contonment Board,
St, Thomas Mount, Chennai - 600 116.

+1cc to Mr.M.Liagat Ali, Advocate, S.R.No.73570
+1cc to Mr.King & Partridge, Advocate, S.R.No.73641

W.P.No.8412 of 2008

CP(CO)
rrs 13/12/2018