IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.4527 of 2017
and
W.M.P.No.4751 of 2017

M.Mohamed Musthafa ... Petitioner

vs.

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

2. The Revenue Officer,
   Corporation of Chennai,
   Rippon Building,
   Chennai-600003.

3. The Assistant Revenue Officer,
   Corporation of Chennai,
   Zone-5, Basin Bridge Road,
   Washermanpet, Chennai - 600 021. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorarified Mandamus to call for records relating to the order passed by the 3rd respondent in his notice-10 and final Assessment Notice 10/16-110/16132, dated 23.08.2016 in his order No.M/05/060/16-17/1043 and final warrant notice issued by the 3rd respondent dated 17.10.2016 in his Se.Ma.A.Va.Thu/Special/2016-17 dated 17.10.2016 and quash the same and to direct the 3rd respondent to conduct enquiry withi respect to the Assessment for the property situated at No.50/93, Armenian Street, George Town, Chennai - 600 001.

For Petitioner : Mr. K. Sivakumar
For Respondents: Mr.R.Arunmozhi

# O R D E R

The final assessment notice and the final warrant notice issued dated 23.08.2016 and 17.10.2016, by the respondents in proceedings dated 23.08.2016 is under challenge in this Writ Petition.

2. The grievance of the Writ Petitioner is that, the assessment made by the respondent are incorrect. The learned counsel for the petitioner states that, based on certain irrelevant facts, the final assessment order has been passed. The facts and circumstances in respect of the premises owned by the writ petitioner had not been considered by the authorities. Thus, the final assessment order passed is in violation of the rules in force. This apart, no proper opportunity was provided to the Writ Petitioner at the time of effecting final assessment of property tax by the respondents. Thus, the impugned orders are liable to be scrapped.

3. The learned counsel appearing on behalf of the respondents states that, the arrears of property tax to be paid by the writ petitioner as of now is a sum of Rs.7,29,880/-. The Writ Petitioner is a defaulter and in fact the final notice was issued to the writ petitioner in proceedings dated 23.08.2016. If at all, any grievances exist for the Writ petitioner in respect of any discrepancy in measurement or calculation, the petitioner has to approach the Competent Appellate Authority and thereafter approach the Taxation Appellate Tribunal under Part 5 Rule 12 of the Chennai City Municipal Corporation Act and thereafter, further appeal is also provided before the Municipal Tax Appeals under Rule 15.

4. Admittedly, the present Writ Petition has been filed without exhausting the statutory remedies available under the provisions of Chennai City Municipal Corporation Act. Thus, the Writ Petition is liable to be dismissed as not maintainable. This Court is of an opinion that, in respect of the discrepancy in measurement or in calculation, the writ petitioner is at liberty to approach the appropriate competent authorities. Contrarily, the petitioner cannot move the present writ petition and evade the payment of property tax for several years. Keeping the litigation pending for years together and avoiding payment of property tax can never be encouraged by the Constitutional Courts.

5. Every citizen of Chennai city is duty bound to pay the property tax to Chennai Corporation. The infrastructure facilities, common amenities and every

other facilities are provided by Corporation for the usage of public at large. Such welfare schemes are introduced from and out of the tax payments made by the citizens. Thus, non payment of property tax within the time stipulated would infringe the rights of all other citizens. Few persons fails to pay the property tax and the same will affect all other persons who are promptly paying property tax.

6. Rights and duties are corresponding to all the citizens and the persons who are claiming rights must also realize that they are duty bound to pay the property tax and other statutory charges for the welfare of the people at large. Certain discrepancies if at all arises, the same has to be redressed by following the procedures contemplated under law. Contrarily, if the payment of property tax is stalled, the state will suffer. The corporation will not be in a position to introduce welfare schemes for the welfare of the citizens residing within the jurisdiction of Chennai city. Thus, avoiding or delaying the payment of property tax will affect the rights of all other citizens. In this view of the matter, the discrepancies if at all exist for the writ petitioner, it is left open to him to approach the Competent Appellate Authorities and thereafter to the Tribunal constituted under the provisions of the Act.

7. Unnecessary or routine invasion into the statutory powers of the competent authorities under a statute should be restrained by the Constitutional Courts. Frequent or unnecessary invasions in the executive power will defeat the constitutional perspectives enshrined under the Constitution of India. Undoubtedly, the separation of powers under the Indian Constitution has been narrated and settled in umpteen number of judgments. Separation of powers demarcated in the Constitution of India is also to be considered, while exercising the powers of judicial review in the matter of dispensing with the appeal remedy provided for an aggrieved person under a statute. If the High Courts started interfering with such Appellate powers without any valid and substantiated reasons, then the very purpose and object of the statute and provision of appeal under the statute became an empty formality and the High Courts also should see that the provisions of appeal contemplated under the statutes are implemented in its real spirit and in accordance with the procedures contemplated under the rules constituted thereon. While entertaining a writ petition as narrated by the Apex Court, the provision of efficacious alternative remedy under the statute also to be considered. If the writ petitions are entertained in a routine manner, by not

allowing the competent Appellate authority to exercise their powers under the provisions of the statute, then this Court is of an opinion that the power of judicial review has not exercised in a proper manner. Thus, it is necessary for this Court to elaborate the legal principle settled in respect of the separation of powers under the Constitution of India. The legal principles settled in this regard by the Hon'ble Supreme Court are as under.

1. Madras Bar Association vs. Union of India (UOI) (25.09.2014 - SC) : MANU/SC/0875/2014

If the historical background, the preamble, the entire scheme of the Constitution, relevant provisions thereof including Article 368 are kept in mind there can be no difficulty in discerning that the following can be regarded as the basic elements of the constitutional structure. (These cannot be catalogued but can only be illustrated):

(1) The supremacy of the Constitution.

(2) Republican and Democratic form of government and sovereignty of the country.

(3) Secular and federal character of the Constitution.

(4) Demarcation of power between the Legislature, the executive and the judiciary.

(5) The dignity of the individual secured by the various freedoms and basic rights in Part III and the mandate to build a welfare State contained in Part IV.

(6) The unity and the integrity of the Nation.

2. Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Anr. [MANU/SC/0445/1973 : (1973) 4 SCC 225].

That separation of powers between the legislature, the executive and the judiciary is the basic structure of the Constitution is expressly stated by Sikri, C.J.

3. P. Kannadasan and Ors. v. State of T.N. and Ors. [MANU/SC/0650/1996 : (1996) 5 SCC 670] the Supreme Court noted that the Constitution of India recognised the doctrine of separation of powers between the three organs of the State, namely, the legislature, the executive and the judiciary. The Court said:

It must be remembered that our Constitution recognises and incorporates the doctrine of separation of powers between the three organs of the State, viz., the Legislature, the Executive and the Judiciary. Even though the Constitution has adopted the parliamentary form of government where the dividing line between the legislature and the executive becomes thin, the theory of separation of powers is still valid.

4. State of Tamil Nadu and Ors. vs. State of Kerala and Ors. (07.05.2014 - SC) : MANU/SC/0425/2014

121. On deep reflection of the above discussion, in our opinion, the constitutional principles in the context of Indian Constitution relating to separation of powers between legislature, executive and judiciary may, in brief, be summarized thus:

(i) Even without express provision of the separation of powers,the doctrine of separation of powers is an entrenched principle in the Constitution of India.

The doctrine of separation of powers informs the Indian constitutional structure and it is an essential constituent of rule of law.

In other words, the doctrine of separation of power though not expressly engrafted in the Constitution, its sweep, operation and visibility are apparent from the scheme of Indian Constitution. Constitution has made demarcation, without drawing formal lines between the three organs- legislature, executive and judiciary. In that sense, even in the absence of express provision for separation of power, the separation of power between legislature, executive and judiciary is not different from the constitutions of the countries which contain express provision for separation of powers.

(ii) Independence of courts from the executive and legislature is fundamental to the rule of law and one of the basic tenets of Indian Constitution.

Separation of judicial power is a significant constitutional principle under the Constitution of India.

(iii) Separation of powers between three organs--legislature, executive and judiciary--is also nothing but a consequence of principles of equality enshrined in Article 14 of the Constitution of India. Accordingly, breach of separation of judicial power may amount to negation of equality Under Article 14. Stated thus, a legislation can be invalidated on the basis of breach of the separation of powers since such breach is negation of equality Under Article 14 of the Constitution.

(iv) The superior judiciary (High Courts and Supreme Court) is empowered by the Constitution to declare a law made by the legislature (Parliament and State legislatures) void if it is found to have transgressed the constitutional limitations or if it infringed the rights enshrined in Part III of the Constitution.

(v) The doctrine of separation of powers applies to the final judgments of the courts. Legislature cannot declare any decision of a court of law to be void or of no effect. It can, however, pass an amending Act to remedy the defects pointed out by a court of law or on coming to know of it aligned.

In other words, a court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances.

(vi) If the legislature has the power over the subject-matter and competence to make a validating law, it can at any time make such a validating law and make it retrospective. The validity of a validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject-matter and whether in making the validation law it removes the defect which the courts had found in the existing law.”

8. Payment of property tax can never be evaded or avoided by the citizens. When the property tax and other statutory charges are not paid by the citizens, it is to be construed that they are infringing the rights of all other citizens residing within the jurisdiction of Chennai Corporation. When common amenities, infrastructure facilities and other benefits are provided

to the citizens from and out of the tax payers money then denial of payment, delay of payment or otherwise is to be construed as infringement of the rights of all other tax payers, who are all paying their property tax promptly and within the time limit stipulated in this regard by the authorities.

9. When the persons like the writ petitioners are enjoying the common facilities, infrastructure and amenities in the city at the cost of others then, they should shy about the same and every citizens in this regard should have a conscious that they are enjoying such facilities at other costs. If such a feeling is exposed then the citizens who are liable to pay the property tax and other statutory charges have to pay the same within the time limit prescribed. This being the principles to be followed, this Court is of an opinion that there cannot be any leniency or misplaced sympathy in respect of payment of tax to the State and the local bodies. Undoubtedly, on certain grounds they are raising disputes. No doubt, they are entitled to raise such disputes, even while raising such disputes, the tax payers are liable to pay tax in a routine manner and disputes shall be resolved by following the procedures contemplated under law. However, under the guise of the pendency of a writ petition or a pendency of an appeal before the authority, the entire payment can never deferred by the tax payers. Such an attitude to be deprecated. Subject to the appeal or subject to the writ petition, the tax payers are at liberty to pay the tax. However that is not done in most of the cases, where the writ petitions are filed. The attitude of the persons are to raise certain litigations and thereafter avoid and evade payment of tax to the State as well as to the local bodies. In this view of the matter such writ petitions filed in order to evade the tax payment can never be delayed nor be entertained in a routine manner. Such cases are to be decided at the first instance. Atleast the tax payers must be directed to pay the tax, subject to the final outcome in the writ petition. Under these circumstances a balancing and pragmatic approach is required in order to see that the welfare measures and the welfare schemes to be introduced by the State and local bodies get never delayed or paralyzed.

10. This Court is of a strong opinion that institutional respects are to be maintained by the constitutional Courts. Whenever there is a provision for an appeal under the statute, without exhausting the remedies available under the statute, no writ petition can be entertained in a routine manner. Only on exceptional circumstances, the remedy of appeal can be

waived, if there is a gross injustice or if there is a violation of fundamental rights ensured under the Constitution of India. Otherwise, all the aggrieved persons from and out of the order passed by the original authority is bound to approach the Appellate Authority. The Constitutional Courts cannot make an appeal provision as an empty formality. Every Appellate Authority created under the statute to be trusted in normal circumstances unless there is a specific allegation, which is substantiated in a writ proceedings. Thus, the institutional functions and exhausting the appeal remedies by the aggrieved persons, are to be enforced in all circumstances and writ proceedings can be entertained only on exceptional circumstances. Rule is to prefer an appeal and entertaining a writ is only an exception. This being the legal principles to be followed, this Court cannot entertain the writ petitions in a routine manner by waiving the remedy of appeal provided under the statute.

11. Now, let us look into the legal principles settled by the Apex Court for exhausting the efficacious alternative remedy provided under the statute. When an effective alternative remedy is available, a writ petition cannot be maintained.

> 1. In City and Industrial Development Corporation v. DosuAardeshir Bhiwandiwala and Ors. MANU/SC/8250/2008 : (2009) 1 SCC 168, this Court had observed that:
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> The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:
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> (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;
>
> (b) the petition reveals all material facts;
>
> (c) the Petitioner has any alternative or effective remedy for the resolution of the dispute;
>
> (d) person invoking the jurisdiction is guilty of unexplained delay and laches;
>
> (e) ex facie barred by any laws of limitation;
>
> (f) grant of relief is against public policy or barred by any valid law; and host of other factors.
>
> 2. Kanaiyalal Lalchand Sachdev and Ors. vs. State of Maharashtra and Ors. (07.02.2011 - SC) : MANU/SC/0103/2011

It is well settled that ordinarily relief Under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See Sadhana Lodh v. National Insurance Co. Ltd.; Surya Dev Rai v. Ram Chander Rai and SBI v. Allied Chemical Laboratories.)

3. Commissioner of Income Tax and Ors. v. ChhabilDass Agarwal, MANU/SC/0802/2013 : 2014 (1) SCC 603, as follows:

Para 15. while it can be said that this Court has recognised some exceptions to the Rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in ThansinghNathmal case, Titaghur Paper Mills case and other similar judgments that the High Court will not entertain a petition Under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

4. Authorized Officer, State Bank of Travancore and Ors. vs. Mathew K.C. (30.01.2018 - SC) : MANU/SC/0054/2018

The petitioner argued that the SARFAESI Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18. The High Court ought not to have entertained the writ petition in view of the adequate alternate statutory remedies available to the Respondent. The interim order was passed on the very first date, without an opportunity to the Appellant to file a reply. Reliance was placed on United

Bank of India vs. Satyawati Tandon and others, 2010 (8) SCC 110, and General Manager, Sri Siddeshwara Cooperative Bank Limited and another vs. Ikbal and others, 2013 (10) SCC 83. The writ petition ought to have been dismissed at the threshold on the ground of maintainability. The Division Bench erred in declining to interfere with the same. The Supreme Court agreed to the arguments and held the same also noted that the writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum.

5. State of Himachal Pradesh v. Gujarat Ambuja Cement Ltd. reported at AIR 2005 SC 3856, the Supreme Court explained the rule of 'alternate remedy' in the following terms

Considering the plea regarding alternative remedy as raised by the appellant-State. Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.

6. K.S. Rashid and Sons v. Income Tax Investigation Commission and Ors., AIR (1954) SC 207; Sangram Singh v. Election Tribunal, Kotah and Ors., AIR (1955) SC 425; Union of India v. T.R. Varma, AIR (1957) SC 882; State of U.P. and Ors. v. Mohammad Nooh, AIR

(1958) SC 86 and M/s K.S. Venkataraman and Co. (P) Ltd. v. State of Madras, AIR (1966) SC 1089,

Constitution Benches of the Supreme Court held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

7. First Income-Tax Officer, Salem v. M/s. Short Brothers (P) Ltd., [1966] 3 SCR 84 and State of U.P. and Ors. v. M/s. Indian Hume Pipe Co. Ltd., [1977] 2 SCC 724.

There are two well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition.

12. This being the principle to be followed, this Court is of an opinion that, the writ petition in respect of such small discrepancy ought to have approach the appellate authority and thereafter the Tribunal constituted under the Act. For instance, the Municipal Tax Appellate Tribunal is dealing with all such discrepancies raised by the aggrieved person. The District Judge/ Principal District Judge is the presiding officer settled being the case of the legal grounds and factual discrepancies can be raised by the aggrieved persons before the Tribunal constituted for the purpose of adjudicating the orders under the provisions of Chennai City Municipal Corporation Act.

13. This being the principle, the writ petition cannot evade the payment of property tax and on payment of such property tax, the petitioner is at liberty to approach the Competent Appellate Authority as well as the Tribunal to redress his grievances if any exist. Accordingly the following orders are passed:

1. Relief as such sought for stands rejected.
2. The writ petitioner is directed to deposit the entire arrears of property tax amount of Rs.7,29,880/- within a period of six weeks from the date of receipt of a copy of this order.
3. In the event of non payment of property tax within the time stipulated above, the respondent Corporation of Chennai is directed to initiate all further actions to recover the arrears of property tax by following procedures contemplated under law.

14. With these directions, the Writ Petition stands disposed of. However, no order as to costs. Consequently connected miscellaneous petition is also closed.

Sd/--
Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

pkn

To

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

2. The Revenue Officer,
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+1cc to M/s.R.Arulmozhi , Advocate SR.No. 63350

W.P.No.4527 of 2017
and
W.M.P.No.4751 of 2017

ASK(10/10/2018)